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DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2014–BT–TP–0014]

RIN 1904–AD22

Energy Conservation Program: Test Procedures for Portable Air Conditioners; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Correcting amendments.

SUMMARY: The U.S. Department of Energy (DOE) published a final rule in the **Federal Register** on June 1, 2016, establishing test procedures for portable air conditioners. This correction addresses typographical errors in that final rule that were included in Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix CC. Neither the errors nor the corrections in this document affect the substance of the rulemaking or any of the conclusions reached in support of the final rule.

DATES: This correction is effective October 14, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov*.

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, Mailstop GC–33, 1000 Independence Ave. SW., Washington, DC 20585–0121. Telephone: (202) 586–1777. Email: *Sarah.Butler@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: On June 1, 2016, DOE published a final rule (the ''June 2016 final rule'') to establish test procedures for portable air conditioners. 81 FR 35241. DOE has since found that the June 2016 final rule contained minor typographical errors in Title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix CC. This final rule correction revises appendix CC to subpart B of 10 CFR part 430, to correct these typographical errors. Specifically, in section 4.1.1, DOE is correcting the following errors: An incorrect subscript for the variable $T_{duct_SD_j}$ in the Q_{duct_SD} equation and missing subscripts ''j'' on the T_{duct} variables in the equations for Q_{duct_95} and Q_{duct_83}. In section 4.1.2, DOE is correcting the following errors: A missing equals sign and parenthesis; incorrect subscripts for the variable C_{p_da} and the infiltration air variables in the Q_{s_95} equation; incorrect subscripts in the infiltration air variables in the Q_{s_83} equation; missing equals signs in the Q_{l_95} and Q_{l_83} equations; and missing ''Q'' variables and incorrect subscripts for the Q_{l_95} and Q_{l_83} variables in the $Q_{infiltration_95}$ and $Q_{infiltration_83}$ equations.

DOE also found that the summation symbols in the two dual-duct Q_{duct} equations in section 4.1.1 were not properly represented in the Electronic Code of Federal Regulations (eCFR).

Neither the errors nor the corrections in this document affect the substance of the rulemaking or any of the conclusions reached in support of the final rule. Accordingly, DOE finds that there is good cause under 5 U.S.C. 553(b)(B) to not issue a separate notice to solicit public comment on the corrections contained in this final rule as doing so would be impractical, unnecessary, and contrary to the public interest. For the same reasons and pursuant to 5 U.S.C. 553(d), DOE finds good cause to waive the 30-day delay in effective date.

Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements to the June 2016 final rule that originally codified DOE's test procedures for portable air conditioners remain unchanged for this final rule technical correction. 81 FR 35241. The amendments from that final rule became effective July 1, 2016. *Id.*

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on October 7, 2016.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends part 430 of title 10, Code of Federal Regulations by making the following correcting amendments:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Appendix CC to subpart B of part 430 is amended by revising sections 4.1.1 and 4.1.2 to read as follows:

Appendix CC to Subpart B of Part 430–Uniform Test Method for Measuring the Energy Consumption of Portable Air Conditioners

* * * * *

4. * * *

4.1.1. *Duct Heat Transfer.* Measure the surface temperature of the condenser exhaust duct and condenser inlet duct, where applicable, throughout the cooling mode test. Calculate the average temperature at each individual location, and then calculate the average surface temperature of each duct by averaging the four average temperature measurements taken on that duct. Calculate the surface area (A_{duct_j}) of each duct according to:

$$A_{duct_j} = \pi \times d_j \times L_j$$

Where:

d_j = the outer diameter of duct ''j'', including any manufacturer-supplied insulation.

L_j = the extended length of duct ''j'' while under test.

j represents the condenser exhaust duct and, for dual-duct units, the condenser exhaust duct and the condenser inlet duct.

Calculate the total heat transferred from the surface of the duct(s) to the indoor conditioned space while operating in cooling mode for the outdoor test conditions in Table 1 of this appendix, as follows. For single-duct portable air conditioners:

$$Q_{duct_SD} = h \times A_{duct_j} \times (T_{duct_SD_j} - T_{ei})$$

For dual-duct portable air conditioners:

$Q_{duct_95} = \mathbf{\Sigma}_j\{h \times A_{duct_j} \times (T_{duct_95_j} - T_{ei})\}$

$Q_{duct_83} = \mathbf{\Sigma}_j\{h \times A_{duct_j} \times (T_{duct_83_j} - T_{ei})\}$

Where:

Q_{duct_SD} = for single-duct portable air conditioners, the total heat transferred from the duct to the indoor conditioned space in cooling mode when tested according to the test conditions in Table 1 of this appendix, in Btu/h.

Q_{duct_95} and Q_{duct_83} = for dual-duct portable air conditioners, the total heat transferred from the ducts to the indoor conditioned space in cooling mode, in Btu/h, when tested according to the 95 °F dry-bulb and 83 °F dry-bulb outdoor test conditions in Table 1 of this appendix, respectively.

h = convection coefficient, 3 Btu/h per square foot per °F.

A_{duct_j} = surface area of duct "j", in square feet.

$T_{duct_SD_j}$ = average surface temperature for the condenser exhaust duct of single-duct portable air conditioners, as measured during testing according to the test condition in Table 1 of this appendix, in °F.

$T_{duct_95_j}$ and $T_{duct_83_j}$ = average surface temperature for duct "j" of dual-duct portable air conditioners, as measured during testing according to the two outdoor test conditions in Table 1 of this appendix, in °F.

j represents the condenser exhaust duct and, for dual-duct units, the condenser exhaust duct and the condenser inlet duct.

T_{ei} = average evaporator inlet air dry-bulb temperature, in °F.

4.1.2 *Infiltration Air Heat Transfer.* Measure the heat contribution from infiltration air for single-duct portable air conditioners and dual-duct portable air conditioners that draw at least part of the condenser air from the conditioned space. Calculate the heat contribution from infiltration air for single-duct and dual-duct portable air conditioners for both cooling mode outdoor test conditions, as described in this section. Calculate the dry air mass flow rate of infiltration air according to the following equations:

$$\dot{m}_{SD} = \frac{V_{co_SD} \times \rho_{co_SD}}{(1 + \omega_{co_SD})}$$

For dual-duct portable air conditioners:

$$\dot{m}_{95} = \left[\frac{V_{co_95} \times \rho_{co_95}}{(1 + \omega_{co_95})}\right] - \left[\frac{V_{ci_95} \times \rho_{ci_95}}{(1 + \omega_{ci_95})}\right]$$

$$\dot{m}_{83} = \left[\frac{V_{co_83} \times \rho_{co_83}}{(1 + \omega_{co_83})}\right] - \left[\frac{V_{ci_83} \times \rho_{ci_83}}{(1 + \omega_{ci_83})}\right]$$

Where:

$\dot{m}_{SD}$ = dry air mass flow rate of infiltration air for single-duct portable air conditioners, in pounds per minute (lb/m).

$\dot{m}_{95}$ and $\dot{m}_{83}$ = dry air mass flow rate of infiltration air for dual-duct portable air conditioners, as calculated based on testing according to the test conditions in Table 1 of this appendix, in lb/m.

V_{co_SD}, V_{co_95}, and V_{co_83} = average volumetric flow rate of the condenser outlet air during cooling mode testing for single-duct portable air conditioners; and at the 95 °F and 83 °F dry-bulb outdoor conditions for dual-duct portable air conditioners, respectively, in cubic feet per minute (cfm).

V_{ci_95}, and V_{ci_83} = average volumetric flow rate of the condenser inlet air during cooling mode testing at the 95 °F and 83 °F dry-bulb outdoor conditions for dual-duct portable air conditioners, respectively, in cfm.

ρ_{co_SD}, ρ_{co_95}, and ρ_{co_83} = average density of the condenser outlet air during cooling mode testing for single-duct portable air conditioners, and at the 95 °F and 83 °F dry-bulb outdoor conditions for dual-duct portable air conditioners, respectively, in pounds mass per cubic foot (lb_m/ft^3).

ρ_{ci_95}, and ρ_{ci_83} = average density of the condenser inlet air during cooling mode testing at the 95 °F and 83 °F dry-bulb outdoor conditions for dual-duct portable air conditioners, respectively, in lb_m/ft^3.

ω_{co_SD}, ω_{co_95}, and ω_{co_83} = average humidity ratio of condenser outlet air during cooling mode testing for single-duct portable air conditioners, and at the 95 °F and 83 °F dry-bulb outdoor conditions for dual-duct portable air conditioners, respectively, in pounds mass of water vapor per pounds mass of dry air (lb_w/lb_{da}).

ω_{ci_95}, and ω_{ci_83} = average humidity ratio of condenser inlet air during cooling mode testing at the 95 °F and 83 °F dry-bulb outdoor conditions for dual-duct portable air conditioners, respectively, in lb_w/lb_{da}.

For single-duct and dual-duct portable air conditioners, calculate the sensible component of infiltration air heat contribution according to:

$Q_{s_95} = \dot{m} \times 60$
$\times [c_{p__da} \times (T_{ia_95} - T_{indoor}))$
$+ (c_{p_wv} \times (\omega_{ia_95} \times T_{ia_95} - \omega_{indoor} \times T_{indoor}))]$

$Q_{s_83} = \dot{m} \times 60$
$\times [(c_{p_da} \times T_{ia_83} - T_{indoor}$
$+ (c_{p_wv} \times (\omega_{ia_83} \times T_{ia_83} - \omega_{indoor} \times T_{indoor}))]$

Where:

Q_{s_95} and Q_{s_83} = sensible heat added to the room by infiltration air, calculated at the 95 °F and 83 °F dry-bulb outdoor conditions in Table 1 of this appendix, in Btu/h.

$\dot{m}$ = dry air mass flow rate of infiltration air, $\dot{m}_{SD}$ or $\dot{m}_{95}$ when calculating Q_{s_95} and $\dot{m}_{SD}$ or $\dot{m}_{83}$ when calculating Q_{s_83}, in lb/m.

c_{p_da} = specific heat of dry air, 0.24 $Btu/lb_m - °F$.

c_{p_wv} = specific heat of water vapor, 0.444 $Btu/lb_m - °F$.

T_{indoor} = indoor chamber dry-bulb temperature, 80 °F.

T_{ia_95} and T_{ia_83} = infiltration air dry-bulb temperatures for the two test conditions in Table 1 of this appendix, 95 °F and 83 °F, respectively.

ω_{ia_95} and ω_{ia_83} = humidity ratios of the 95 °F and 83 °F dry-bulb infiltration air, 0.0141 and 0.01086 lb_w/lb_{da}, respectively.

ω_{indoor} = humidity ratio of the indoor chamber air, 0.0112 lb_w/lb_{da}.

60 = conversion factor from minutes to hours.

Calculate the latent heat contribution of the infiltration air according to:

$Q_{l_95} = \dot{m} \times 60 \times H_{fg} \times (\omega_{ia_95} - \omega_{indoor})$
$Q_{l_83} = \dot{m} \times 60 \times H_{fg} \times (\omega_{ia_83} - \omega_{indoor})$

Where:

Q_{l_95} and Q_{l_83} = latent heat added to the room by infiltration air, calculated at the 95°F and 83°F dry-bulb outdoor conditions in Table 1 of this appendix, in Btu/h.

$\dot{m}$ = mass flow rate of infiltration air, $\dot{m}_{SD}$ or $\dot{m}_{95}$ when calculating Q_{l_95} and $\dot{m}_{SD}$ or $\dot{m}_{83}$ when calculating Q_{l_83}, in lb/m.

H_{fg} = latent heat of vaporization for water vapor, 1061 Btu/lb_m.

ω_{ia_95} and ω_{ia_83} = humidity ratios of the 95 °F and 83 °F dry-bulb infiltration air, 0.0141 and 0.01086 lb_w/lb_{da}, respectively.

ω_{indoor} = humidity ratio of the indoor chamber air, 0.0112 lb_w/lb_{da}. 60 = conversion factor from minutes to hours.

The total heat contribution of the infiltration air is the sum of the sensible and latent heat:

$Q_{infiltration_95} = Q_{s_95} + Q_{l_95}$

$Q_{infiltration_83} = Q_{s_83} + Q_{l_83}$

Where:

$Q_{infiltration_95}$ and $Q_{infiltration_83}$ = total infiltration air heat in cooling mode, calculated at the 95 °F and 83 °F dry-bulb outdoor conditions in Table 1 of this appendix, in Btu/h.

Q_{s_95} and Q_{s_83} = sensible heat added to the room by infiltration air, calculated at the 95 °F and 83 °F dry-bulb outdoor conditions in Table 1 of this appendix, in Btu/h.

Q_{l_95} and Q_{l_83} = latent heat added to the room by infiltration air, calculated at the 95 °F and 83 °F dry-bulb outdoor conditions in Table 1 of this appendix, in Btu/h.

* * * * *

[FR Doc. 2016–24869 Filed 10–13–16; 8:45 am]

BILLING CODE 6450–01–P

FARM CREDIT ADMINISTRATION

12 CFR Chapter VI

Farm Credit Administration Board Policy Statements

AGENCY: Farm Credit Administration.

ACTION: Notice of policy statements and index.

SUMMARY: The Farm Credit Administration (FCA), as part of its annual public notification process, is publishing for notice an index of the 18 Board policy statements currently in existence. Most of the policy statements remain unchanged since our last **Federal Register** notice on November 2, 2015, except for one as discussed below on Equal Employment Opportunity and Diversity.

DATES: October 14, 2016.

FOR FURTHER INFORMATION CONTACT:
Dale L. Aultman, Secretary to Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4009, TTY (703) 883–4056; or
Mary Alice Donner, Senior Counsel, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: A list of the 18 FCA Board policy statements is set forth below. FCA Board policy statements may be viewed online at *www.fca.gov/handbook.nsf.*

On August 8, 2016, the FCA Board updated FCA–PS–62 on, ''Equal Employment Opportunity and Diversity.'' The policy was published in the **Federal Register** on August 12, 2016 (81 FR 53482). The policy was slightly edited at the Equal Employment Opportunity Commission's recommendation to indicate that FCA begins prompt, thorough, and impartial investigations within 10 days of receiving notice of harassment allegations.

The FCA will continue to publish new or revised policy statements in their full text.

FCA Board Policy Statements

FCA–PS–34 Disclosure of the Issuance and Termination of Enforcement Documents
FCA–PS–37 Communications During Rulemaking
FCA–PS–41 Alternative Means of Dispute Resolution
FCA–PS–44 Travel
FCA–PS–53 Examination Philosophy
FCA–PS–59 Regulatory Philosophy
FCA–PS–62 Equal Employment Opportunity and Diversity
FCA–PS–64 Rules for the Transaction of Business of the Farm Credit Administration Board
FCA–PS–65 Release of Consolidated Reporting System Information
FCA–PS–67 Nondiscrimination on the Basis of Disability in Agency Programs and Activities
FCA–PS–68 FCS Building Association Management Operations Policies and Practices
FCA–PS–71 Disaster Relief Efforts by Farm Credit Institutions
FCA–PS–72 Financial Institution Rating System (FIRS)
FCA–PS–77 Borrower Privacy
FCA–PS–78 Official Names of Farm Credit Institutions
FCA–PS–79 Consideration and Referral of Supervisory Strategies and Enforcement Actions
FCA–PS–80 Cooperative Operating Philosophy—Serving the Members of Farm Credit System Institutions
FCA–PS–81 Ethics, Independence, Arm's-Length Role, Ex Parte Communications and Open Government

Dated: October 6, 2016.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2016–24680 Filed 10–13–16; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5872; Directorate Identifier 2016–NE–11–AD; Amendment 39–18681; AD 2016–20–15]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all General Electric Company (GE) GEnx–1B64/P2, –1B67/P2, –1B70/P2, –1B70C/P2, –1B70/75/P2, and –1B74/75/P2 turbofan engines with engine assembly, part number (P/N) 2447M10G01 or P/N 2447M10G02, installed. This AD was prompted by a report of a significant fan rub event. This AD requires rework of the engine fan stator module assembly. We are issuing this AD to prevent failure of the fan blades and the load reduction device, loss of power to one or more engines, loss of thrust control, and loss of the airplane.

DATES: This AD is effective November 18, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 18, 2016.

ADDRESSES: For service information identified in this final rule, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.* You may view this referenced service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5872.

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–2016–5872; 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 Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Christopher McGuire, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7120; fax: 781–238–7199; email: *chris.mcguire@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all GE GEnx–1B64/P2, –1B67/P2, –1B70/P2, –1B70C/P2, –1B70/75/P2, and –1B74/75/P2 turbofan engines with engine assembly, P/N 2447M10G01 or P/N 2447M10G02, installed. The NPRM published in the **Federal Register** on May 10, 2016 (81 FR 28777). The NPRM was prompted by a report of a significant fan rub event. The NPRM proposed to require rework of the engine fan stator module assembly. We are issuing this AD to prevent failure of the fan blades and the load reduction device, loss of power to one or more engines, loss of thrust control, and loss of the airplane.

Request To Add Terminating Action

Japan Airlines and United Airlines requested that the airplane flight manual (AFM) limitations mandated by AD 2016–08–12, Amendment 39–18488 (81 FR 23581, April 22, 2016) (''AD 2016–08–12''), be removed from an aircraft that has complied with the fan case grind procedure mandated in this AD. They reason that once the fan case grind is completed on both engines installed on an airplane, there is no longer an unsafe condition.

We agree. Once the fan case grind has been completed on both engines installed on an airplane, the unsafe condition no longer exists. With agreement from the Transport Airplane Directorate (TAD), we added a terminating action paragraph to this AD.

Request To Add Compliance Methods

Japan Airlines requested that alternate service documents be approved as compliance to AD 2016–06–08, Amendment 39–18439 (81 FR 14704, March 18, 2016) (''AD 2016–06–08''). They reason that the service documents provide the same procedure and the same post-rework configuration.

We disagree. AD 2016–06–08 is a separate AD issued by the TAD, which includes aircraft-level corrective actions. The commenter must contact the TAD to request a change to AD 2016–06–08. We did not change this AD.

Request To Change Applicability

GE requested that the applicability explicitly state that engine assembly, P/N 2447M10G03, is not applicable to this AD. They reason that engine assembly, P/N 2447M10G03, is a new production part that does not contain the unsafe condition.

We disagree. Since engine assembly, P/N 2447M10G03, is not listed in the applicability of this AD, it is not applicable to this AD. We did not change this AD.

Request To Change Compliance Method

GE requested that another procedure included within a new service bulletin, GE GEnx–1B Service Bulletin (SB) 72–0317 R00, dated June 29, 2016, be added as a means of compliance to this AD. They reason that this new procedure achieves the same configuration as the proposed procedure.

We agree. The new procedure in GE GEnx–1B SB 72–0317 R00, dated June 29, 2016, also corrects the unsafe condition addressed in this AD. We added GE GEnx–1B SB 72–0317 R00, dated June 29, 2016, as a means of compliance in this AD.

Request To Change Compliance Time

GE requested that we move the action specified in paragraph (f) Credit for Previous Action, to compliance paragraph (e) of this AD. They reason that this action is an equivalent method of performing the fan case rework.

We agree. The action is equivalent to the current compliance, but located within a different service document. We revised paragraph (f) and paragraph (e) of this AD accordingly.

Request To Change Affected ADs

United Airlines requested that we list AD 2016–06–08 and AD 2016–08–12 in this AD. They reason that AD 2016–06–08 and AD 2016–08–12 address the same unsafe condition as this AD and also mandate a fan case rework.

We agree. AD 2016–06–08 and AD 2016–08–12 address the same unsafe condition as this AD. We list AD 2016–06–08 and AD 2016–08–12 in paragraph (h) of this AD.

Request To Change Affected ADs

United Airlines requested that we supersede AD 2016–08–12 with this AD. They reason that AD 2016–06–08 and AD 2016–08–12 address the same unsafe condition of the engine and mandate a fan case rework procedure.

We disagree. An AD that mandates engine-level corrective actions, ''this AD'', cannot supersede an AD, ''AD 2016–08–12'' that mandates aircraft-level corrective actions. AD 2016–08–12 mandates aircraft limitations in addition to the engine rework procedure that can only be mandated at the aircraft level, not the engine level. We did not change this AD.

Request To Change Operating Procedures

United Airlines requested that we revise the operating procedures that require the ice removal procedure to be done every 5 minutes, rather than the preferred every 5 minutes or less, allowing the pilot to do the procedure prior to 5 minutes after Engine Indication and Crew Alerting System (EICAS) notification. United Airlines suggests the 5 minute requirement does not allow pilots to effectively manage the cockpit within reasonable parameters or room to operate.

We disagree. The AFM operating procedures are mandated by aircraft-level AD 2016–06–08 and AD 2016–08–12, which were issued by the TAD. The commenter must contact the TAD to request a change to AD 2016–06–08 or AD 2016–08–12. We did not change this AD.

Request To Change Compliance Time

United Airlines requested that we allow installation of engine assembly, P/N 2477M10G03, by using GE GEnx–1B SB 72–0317 to modify the engine instead of using the fan grind rework procedure as compliance to AD 2016–08–12. They reason that the procedure in GE GEnx–1B SB 72–0317 achieves the same engine outcome as the currently mandated compliance.

We disagree. AD 2016–08–12 was issued by the TAD. The commenter must contact the TAD to request a change to AD 2016–08–12. We did not change this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously. 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.

We also determined that these changes will not increase the economic

burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed GE GEnx–1B SB 72–0314 R00, dated April 1, 2016. The SB describes procedures for increasing the clearance of the fan stator module assembly. We also reviewed GE GEnx–1B SB 72–0309 R00, dated March 11, 2016. That SB describes procedures for increasing the clearance of the fan stator module assembly. We also reviewed GE GEnx–1B SB 72–0317 R00, dated June 29, 2016. That SB releases a new fan stator module assembly. 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 89 engines installed on airplanes of U.S. registry. We also estimate that it will take about 40 hours per engine to comply with this AD. The average labor rate is $85 per hour. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $302,600.

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 to the extent that it justifies making a regulatory distinction, 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):

2016–20–15 General Electric Company: Amendment 39–18681; Docket No. FAA–2016–5872; Directorate Identifier 2016–NE–11–AD.

(a) Effective Date

This AD is effective November 18, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all General Electric Company (GE) GEnx–1B64/P2, –1B67/P2, –1B70/P2, –1B70C/P2, –1B70/75/P2, and –1B74/75/P2 turbofan engines with engine assembly, part number (P/N) 2447M10G01 or P/N 2447M10G02, installed.

(d) Unsafe Condition

This AD was prompted by a report of a significant fan rub event. We are issuing this AD to prevent failure of the fan blades and the load reduction device, loss of power to one or more engines, loss of thrust control, and loss of the airplane.

(e) Compliance

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

(1) Modify the fan stator module assembly, with one of the following methods, before December 31, 2016.

(i) Use paragraphs 3.B.(1) through 3.B.(6) or 3.C.(1) through 3.C.(6) of the Accomplishment Instructions of GE GEnx–1B Service Bulletin (SB) 72–0314 R00, dated April 1, 2016, to do the modification.

(ii) Use paragraphs 3.B.(1) through 3.B.(6) or 3.C.(1) through 3.C.(6) of the Accomplishment Instructions of GE GEnx–1B SB 72–0309 R00, dated March 11, 2016, to do the modification.

(iii) Use paragraph 3.A. of the Accomplishment Instructions of GE GEnx–1B SB 72–0317 R00, dated June 29, 2016, to do the modification.

(2) Reserved.

(f) Terminating Action

Compliance with this AD constitutes terminating action for AD 2016–06–08, Amendment 39–18439 (81 FR 14704, March 18, 2016) (''AD 2016–06–08'') and AD 2016–08–12, Amendment 39–18488 (81 FR 23581, April 22, 2016) (''AD 2016–08–12''), provided that all of the airplanes within the operator's fleet that have engines identified in paragraph (c) of this AD are modified as specified in paragraph (e) of this AD. After fleet incorporation of this AD, do not install any engine listed in paragraph (c) of this AD unless the engine is modified as specified in paragraph (e) of this AD, or AD 2016–06–08, or AD 2016–08–12.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs to this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(h) Related Information

(1) For more information about this AD, contact Christopher McGuire, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7120; fax: 781–238–7199; email: *chris.mcguire@faa.gov.*

(2) AD 2016–06–08 and AD 2016–08–12 pertain to the subject of this AD.

(i) 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) General Electric Company (GE) GEnx–1B Service Bulletin (SB) 72–0309 R00, dated March 11, 2016.

(ii) GE GEnx–1B SB 72–0314 R00, dated April 1, 2016.

(iii) GE GEnx–1B SB 72–0317 R00, dated June 29, 2016.

(3) For GE service information identified in this AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *aviation.fleetsupport@ge.com.*

(4) You may view this service information at FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For

information on the availability of this material at the FAA, call 781–238–7125.

(5) You may view this service information 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 Burlington, Massachusetts, on September 30, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–24795 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6551; Directorate Identifier 2013–SW–070–AD; Amendment 39–18682; AD 2016–21–01]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bell Helicopter Textron (Bell) Model 430 helicopters. This AD requires establishing a life limit for a certain main rotor hub attachment bolt (bolt) and removing from service each bolt that has met or exceeded its life limit. This AD was prompted by a documentation error that omitted the life limit of a certain part-numbered bolt from the Airworthiness Limitations section of the maintenance manual. The actions of this AD are intended to establish a life limit for a certain part-numbered bolt to prevent failure of a bolt, failure of a main rotor hub, and subsequent loss of control of a helicopter.

DATES: This AD is effective November 18, 2016.

ADDRESSES: For service information identified in this final rule, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

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–2016–6551; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the Transport Canada AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On May 10, 2016, at 81 FR 28766, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to certain serial-numbered Bell Model 430 helicopters with bolt part number (P/N) MS21250–08083 installed. The NPRM proposed to require, within 10 hours time-in-service (TIS), revising the Airworthiness Limitations section of the applicable maintenance manual or Instructions for Continued Airworthiness (ICA) by establishing a life limit of 5,000 hours TIS for each bolt P/N MS21250–08083, determining the number of hours TIS for each bolt and using the helicopter's hours if the hours TIS of a bolt is unknown, and removing from service each bolt that has reached or exceeded its life limit. The proposed requirements were intended to establish a life limit for the bolt to prevent failure of a bolt, failure of a main rotor hub, and subsequent loss of control of a helicopter.

Transport Canada, which is the aviation authority for Canada, has issued Canadian AD No. CF–2013–26, dated September 24, 2013, to correct an unsafe condition for certain serial-numbered Bell Model 430 helicopters. Transport Canada advises that bolt P/N MS21250–08083, which replaced bolt P/N 20–065–08083 in 2009, has a retirement life of 5,000 hours. However, the retirement life for the replacement bolt was inadvertently omitted from the limitations section of the Bell 430 maintenance manual. Transport Canada advises that this situation, if not corrected, could result in failure of a bolt and loss of control of the helicopter. Transport Canada AD No. CF–2013–26 requires reviewing the helicopter records to determine if bolt P/N MS21250–08083 is installed, creating a historical service record, and establishing an airworthiness life of 5,000 hours air time.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (81 FR 28766, May 10, 2016).

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to our bilateral agreement with Canada, Transport Canada, its technical representative, has notified us of the unsafe condition described in its AD. We are issuing this AD because we evaluated all information provided by Transport Canada and determined the unsafe condition exists and is likely to exist or develop on other helicopters of the same type design and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the Transport Canada AD

This AD requires compliance within 10 hours TIS, while the Transport Canada AD requires compliance within 60 days.

Related Service Information

We reviewed Bell Helicopter Alert Service Bulletin 430–12–47, dated November 14, 2012 (ASB). The ASB states that original bolt P/N 20–065–08083 has a retirement life of 5,000 hours but has been replaced by standard bolt P/N MS21250–08083, which does not have a life limit listed in the maintenance manual. The purpose of the ASB is to establish a life limit of 5,000 hours for the replacement bolt. Bell specifies reviewing the aircraft records back to January 2009 to determine which part-numbered bolts are installed. If a replacement bolt P/N MS21250–08083 is installed, the ASB specifies using data from aircraft records to create a historical service record for the replacement bolts and reflecting the 5,000 hours life limit. The ASB also specifies updating the Bell 430 maintenance manual.

Costs of Compliance

We estimate that this AD affects 43 helicopters of U.S. Registry.

We estimate that operators may incur the following costs to comply with this AD. At an average labor cost of $85 per work-hour, we estimate reviewing and revising the records requires 1 work-hour for a cost of about $85 per helicopter and $3,655 for the U.S. fleet. We estimate replacing a bolt that has exceeded its life limit requires 0.5 work-hour plus $290 for a replacement bolt, for a total cost of $333 per bolt.

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 helicopters 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 to the extent that it justifies making a regulatory distinction; 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.

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

List of Subjects in 14 CFR Part 39

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

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):

2016–21–01 Bell Helicopter Textron: Amendment 39–18682; Docket No. FAA–2016–6551; Directorate Identifier 2013–SW–070–AD.

(a) Applicability

This AD applies to Model 430 helicopters, serial number 49001 through 49129, with a main rotor head attachment bolt (bolt) part number (P/N) MS21250–08083 installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a bolt remaining in service beyond its fatigue life. This condition could result in failure of a bolt, failure of the main rotor hub and subsequent loss of control of a helicopter.

(c) Effective Date

This AD becomes effective November 18, 2016.

(d) Compliance

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

(e) Required Actions

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

(1) Revise the Airworthiness Limitations section of the applicable maintenance manual or Instructions for Continued Airworthiness (ICA) to establish a life limit of 5,000 hours TIS for each bolt P/N MS21250–08083.

(2) Determine the number of hours TIS for each bolt and update the helicopter's historical records. If the hours TIS is unknown, calculate the number of hours TIS by counting the helicopter's hours TIS beginning January 1, 2009.

(3) Remove from service each bolt that has reached or exceeded its life limit.

(f) Alternative Methods of Compliance (AMOCs)

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

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

(g) Additional Information

(1) Bell Helicopter Alert Service Bulletin 430–12–47, dated November 14, 2012, which is not incorporated by reference, contains additional information about the subject of this final rule. For service information identified in this final rule, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in Transport Canada AD No. CF–2013–26, dated September 24, 2013. You may view the Transport Canada AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2016–6551.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6220 Main Rotor Head.

Issued in Fort Worth, Texas, on October 3, 2016.

Lance T. Gant,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–24741 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–0069; Directorate Identifier 2016–NE–01–AD; Amendment 39–18685; AD 2016–21–04]

RIN 2120–AA64

Airworthiness Directives; Continental Motors, Inc. Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Continental Motors, Inc. (CMI) TSIO–550–K, TSIOF–550–K, TSIO–550–C, TSIOF–550–D, and TSIO–550–N reciprocating engines. This AD was

prompted by a report of an uncommanded in-flight shutdown (IFSD) resulting in injuries and significant airplane damage. This AD requires replacing the oil cooler cross fitting assembly. We are issuing this AD to prevent failure of the oil cooler cross fitting and engine, IFSD, and loss of the airplane.

DATES: This AD is effective November 18, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 18, 2016.

ADDRESSES: For service information identified in this final rule, contact Continental Motors, Inc., 2039 Broad Street, Mobile, Alabama 36615; phone: 800–326–0089; Internet: *http://www.continentalmotors.aero.* You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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–2016–0069; 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 Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Scott Hopper, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5535; fax: 404–474–5606; email: *scott.hopper@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 CMI TSIO–550–K, TSIOF–550–K, TSIO–550–C, TSIOF–550–D, and TSIO–550–N reciprocating engines. The NPRM published in the **Federal Register** on March 11, 2016 (81 FR 12833). The NPRM was prompted by a report of an uncommanded IFSD resulting in injuries and significant airplane damage. The NPRM proposed to require replacing the oil cooler cross fitting assembly. We are issuing this AD to correct the unsafe condition on these products.

Comments

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

Change to Cost of Compliance

We increased our estimate of the cost of the affected parts in this AD from $0 to $261 per engine and increased the number of labor hours to perform the replacement from 1 to 2 hours. This increased the overall estimated cost of compliance from $111,095 to $563,317.

Update to Service Information

We revised our reference in this AD from CMI Critical Service Bulletin (CSB) CSB15–7, Revision A, dated November 10, 2015 (also referred to as CMI CSB CSB15–7A, dated November 10, 2015) to CMI CSB CSB15–7, Revision B, dated April 26, 2016 (also referred to as CMI CSB CSB15–7B) to reflect the latest service information published by CMI.

Clarification of Part Number

We clarified in this AD that the affected oil cooler cross fitting has a part number AN918–1J or AN918–2J.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for the changes noted above. We have determined that these 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.

Relevant Service Information Under 1 CFR part 51

We reviewed CMI CSB CSB15–2, Revision C, dated November 9, 2015 (also referred to as CMI CSB CSB15–2C, dated November 9, 2015), and CMI CSB CSB15–7, Revision B, dated April 26, 2016 (also referred to as CMI CSB CSB15–7B, dated April 26, 2016). The CSBs describe detailed procedures for replacing oil cooler cross fittings, nipples, and bushings with a redesigned oil cooler cross fitting. 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 1,307 engines installed on airplanes of U.S. registry. We also estimate that it will take about 2 hours per engine to comply with this AD. The average labor rate is $85 per hour. Parts cost about $261 per engine. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $563,317. Our cost estimate is exclusive of possible warranty coverage.

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 to the extent that it justifies making a regulatory distinction, 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):

2016–21–04 Continental Motors, Inc. (Type Certificate previously held by Teledyne Continental Motors) Reciprocating Engines: Amendment 39–18685; Docket No. FAA–2016–0069; Directorate Identifier 2016–NE–01–AD.

(a) Effective Date

This AD is effective November 18, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Continental Motors, Inc. (CMI) TSIO–550–K, TSIOF–550–K, TSIO–550–C, TSIOF–550–D, and TSIO–550–N reciprocating engines with an engine serial number below 1012296 and an oil cooler cross fitting, part number AN918–1J or AN918–2J, installed.

(d) Unsafe Condition

This AD was prompted by a report of an uncommanded in-flight shutdown (IFSD) resulting in injuries and significant airplane damage. We are issuing this AD to prevent failure of the oil cooler cross fitting and engine, IFSD, and loss of the airplane.

(e) Compliance

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

(1) Within 12 months or 100 flight hours after the effective date of the AD, whichever occurs first, replace the oil cooler cross fitting, nipple, and bushing. Use the Action Required paragraphs III.1 through III.8 of CMI Critical Service Bulletin (CSB) CSB15–2, Revision C, dated November 9, 2015 (also referred to as CMI CSB CSB15–2C, dated November 9, 2015), or the Action Required paragraphs III.1 through III.8 of CMI CSB CSB15–7, Revision B, dated April 26, 2016 (also referred to as CMI CSB15–7B, dated April 26, 2016), to perform the replacement.

(2) Reserved.

(f) Credit for Previous Actions

You may take credit for the replacement that is required by paragraph (e) of this AD, if the replacement was performed before the effective date of this AD using CMI CSB CSB15–2B, dated November 6, 2015 or earlier versions; or CSB CSB15–7A, dated November 10, 2015 or earlier version.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Atlanta Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(h) Related Information

For more information about this AD, contact Scott Hopper, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5535; fax: 404–474–5606; email: *scott.hopper@faa.gov.*

(i) 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) Continental Motors, Inc. (CMI) Critical Service Bulletin (CSB) CSB15–2, Revision C, dated November 9, 2015 (also referred to as CMI CSB CSB15–2C, dated November 9, 2015).

(ii) CMI CSB CSB15–7, Revision B, dated April 26, 2016 (also referred to as CMI CSB CSB15–7B, dated April 26, 2016).

(3) For CMI service information identified in this AD, contact Continental Motors, Inc., 2039 Broad Street, Mobile, Alabama 36615; phone: 800–326–0089; Internet: *http://www.continentalmotors.aero.*

(4) You may view this service information at FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(5) You may view this service information 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 Burlington, Massachusetts, on October 7, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–24794 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31102; Amdt. No. 529]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective 0901 UTC, November 10, 2016.

FOR FURTHER INFORMATION CONTACT: Thomas J Nichols, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK, 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125). Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the

amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on October 7, 2016.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, November 10, 2016.

PART 95—[AMENDED]

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT

[Amendment 529 effective date November 10, 2016]

From	To	MEA
§ 95.6001 Victor Routes–U.S.		
§ 95.6021 VOR Federal Airway V21 Is Amended To Read in Part		
CUT BANK, MT	VORTAC U.S. CANADIAN BORDER	6300
§ 95.6023 VOR Federal Airway V23 Is Amended To Read in Part		
LINDEN, CA	VOR/DME SACRAMENTO, CA VORTAC	2300
§ 95.6025 VOR Federal Airway V25 Is Amended To Read in Part		
YAKIMA, WA	VORTAC * ELLENSBURG, WA VOR/DME	5900
* 6800—MCA	ELLENSBURG, WA VOR/DME, N BND	
ELLENSBURG, WA	VOR/DME * WENATCHEE, WA VOR/DME	8900
* 7400—MCA	WENATCHEE, WA VOR/DME, S BND	
§ 95.6028 VOR Federal Airway V28 Is Amended To Read in Part		
HAIRE, CA	FIX LINDEN, CA VOR/DME	* 3000
* 2100—MOCA		
LINDEN, CA	VORTAC * KATSO, CA FIX	5000
* 12400—MCA	KATSO, CA FIX, NE BND	
KATSO, CA	FIX * SPOOK, CA FIX	** 13000
* 15000—MCA	SPOOK, CA FIX, N BND	
** 12100—MOCA		
§ 95.6048 VOR Federal Airway V48 Is Amended To Read in Part		
BURLINGTON, IA	VOR/DME PEORIA, IL VORTAC	2500
§ 95.6071 VOR Federal Airway V71 Is Amended To Read in Part		
MONROE, LA	VORTAC EL DORADO, AR VOR/DME	2200
§ 95.6108 VOR Federal Airway V108 Is Amended To Read in Part		
OAKEY, CA	FIX LINDEN, CA VOR/DME	2300
§ 95.6113 VOR Federal Airway V113 Is Amended To Read in Part		
LINDEN, CA	VOR/DME * KATSO, CA FIX	5000
* 12400—MCA	KATSO, CA FIX, NE BND	
KATSO, CA	FIX SPOOK, CA FIX	* 13000
* 12100—MOCA		
§ 95.6120 VOR Federal Airway V120 Is Amended To Read in Part		
MASON CITY, IA	VORTAC * AREDA, IA FIX	3000
* 4500—MRA		

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINT—Continued
[Amendment 529 effective date November 10, 2016]

From	To	MEA
§ 95.6212 VOR Federal Airway V212 Is Amended To Read in Part		
INDUSTRY, TX	VORTAC NAVASOTA, TX VOR/DME	2200
§ 95.6295 VOR Federal Airway V295 Is Amended To Read in Part		
VIRGINIA KEY, FL *2000—MOCA	VOR/DME STOOP, FL FIX	*5000
§ 95.6336 VOR Federal Airway V336 Is Amended To Read in Part		
ELLENSBURG, WA *6500—MCA	VOR/DME *QUINT, WA FIX QUINT, WA FIX, SW BND	7100
§ 95.6365 VOR Federal Airway V365 Is Amended To Read in Part		
CHOTE, MT	FIX CUT BANK, MT VORTAC	7000
§ 95.6459 VOR Federal Airway V459 Is Amended To Read in Part		
FRIANT, CA *6600—MOCA	VORTAC BAGBY, CA FIX	*8500
BAGBY, CA	FIX LINDEN, CA VOR/DME	7000
§ 95.6485 VOR Federal Airway V485 Is Amended To Read in Part		
FELLOWS, CA *7000—MCA **6100—MOCA	VOR/DME *REDDE, CA FIX REDDE, CA FIX, SE BND	**7000

[FR Doc. 2016–24889 Filed 10–13–16; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 760

[Docket No. 160303188–6188–01]

RIN 0694–AG92

Amendments to the Export Administration Regulations: Reporting Requirements Optional Electronic Filing of Reports of Requests for Restrictive Trade Practice or Boycott

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to permit electronic submission as an additional method available to United States persons for reporting requests they receive to take certain actions in furtherance or support of an unsanctioned foreign boycott, as required under the restrictive trade practices or boycotts provisions of the EAR. These amendments are administrative changes to those provisions' reporting requirements, which currently permit reporting of such requests solely by mail. BIS is making these amendments consistent with U.S. Government policy to modernize regulatory requirements and promote efficiency. This rule also makes conforming regulatory changes.

DATES: This rule is effective October 14, 2016.

FOR FURTHER INFORMATION CONTACT: Cathleen Ryan, Director, Office of Antiboycott Compliance, by telephone at (202) 482–0520 or by email at *Cathleen.Ryan@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Restrictive Trade Practices or Boycotts

Part 760 of the Export Administration Regulations (EAR) is entitled ''RESTRICTIVE TRADE PRACTICES OR BOYCOTTS,'' otherwise referred to as the antiboycott provisions of the EAR. These provisions apply to, and may prohibit, certain activities in the interstate or foreign commerce of the United States undertaken by United States persons (defined in § 760.1(b)) with intent to comply with, further or support an unsanctioned foreign boycott (see § 760.1(e)). In addition, § 760.5(a)(1), Scope of Reporting Requirements, requires United States persons to report to the Department of Commerce (Department) certain requests they receive to take any ''action which has the effect of furthering or supporting a restrictive trade practice or boycott fostered or imposed by a foreign country against a country friendly to the United States or against any United States person. . . .'' (boycott-related requests). Section 760.5(b), Manner of Reporting, specifies the required reporting procedures; specifically, § 760.5(b)(4)—(b)(7) prescribe the manner of submission of the report to the Department. Failure to report such boycott-related requests in the manner prescribed may constitute a violation of the EAR.

Prior to this rule, § 760.5(b)(4) and (5) of the EAR required United States persons to prepare reports of boycott-related requests on form BIS 621–P (single transaction) or on form BIS 6051–P (multiple transactions), both available on-line through the Office of Antiboycott Compliance (OAC) page of the BIS Web site (OAC Web page) in a fillable PDF format, and to submit the reports in duplicate paper copy to OAC postmarked by the last day of the month following the calendar quarter in which the request was received (or, if received outside the United States, by the last day of the second month following the calendar quarter in which the request was received).

Electronic Submission of Report of Request for Restrictive Trade Practice or Boycott

While United States persons may continue to submit paper reports by mail consistent with § 760.5(b)(4)—(b)(7), this final rule amends the EAR to allow submission of reports electronically, with the same deadlines, through the OAC Web page.

These revisions amend only the manner of reporting by offering an alternative method of submitting the report; in all other respects, the reporting requirements remain unchanged. Electronic filing offers the recipient of a boycott-related request a faster and less burdensome method to fulfill the regulatory reporting requirement than paper submission by mail. This action is consistent with the Administration's ongoing efforts to modernize regulatory requirements. Information on both paper and electronic submissions is available through the OAC Web page at *http://bis.doc.gov/index.php/enforcement/oac?id=300*.

United States persons who choose to submit reports electronically may access the electronic form via a link on the OAC Web page. Once all required fields are completed and the report has been submitted electronically, an electronic ''Submission Confirmation'' notification, confirming the date and time of receipt of the submission by OAC, will automatically be displayed on the reporting person's screen. Additional guidance on accessing and completing electronic reports is available on the OAC Web page or by contacting OAC at 202.482.2448.

Amendments to Part 760 of the EAR to Establish the Electronic Filing Option for Report of Request for Restrictive Trade Practice or Boycott

In this rule, BIS amends § 760.5 (Reporting Requirements) by revising paragraph (b) to provide United States persons with the option to submit reports of boycott-related requests electronically through the OAC Web page, as described above. Specifically, in this rule, BIS authorizes the electronic reporting option by amending paragraphs (b)(4), (b)(5), (b)(6) and (b)(7) of § 760.5 of the EAR.

Export Administration Act of 1979

The Export Administration Act of 1979, 50 U.S.C. 4601–4623 (Supp. III 2015) (available at *http://uscode.house.gov*), has been in lapse since August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 4, 2016 (81 FR 52587 (Aug. 8, 2016)), has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves a collection previously approved by the Office of Management and Budget (OMB) under Control Number 0694–0012, ''Report of Requests for Restrictive Trade Practice or Boycott—Single or Multiple Transactions,'' which carries a burden hour estimate of 71 minutes to prepare and submit. Total burden hours associated with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and the aforementioned OMB Control Number are expected to decrease slightly as a result of the addition of an electronic method to submit required reports of boycott requests through the OAC Web page pursuant to § 760.5 (Reporting Requirements) of the EAR. Notwithstanding any other provisions of law, no person is required to respond to, or may be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b), BIS finds that publication of this rule in other than final form is unnecessary because the amendments in this rule are administrative changes. They are provided to notify the public that an electronic filing option is available as a result of the technical update of the capabilities of OAC's information technology system. These administrative changes will not affect the rights of the public to continue to use the report filing option that existed prior to these changes. They do not change the existing regulatory requirement that United States persons report requests they receive to take certain actions in support of restrictive trade practices or boycotts. They only offer an option to use a second method, electronic reporting, as an alternative to reporting by mail. Offering this second method may facilitate compliance with the reporting requirements.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the **Federal Register**. BIS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3) because the delay would be contrary to the public interest. The delay in effectiveness delays the availability to the public of the additional method of filing reports. BIS is simply amending the EAR to provide a second reporting method. Further, this rule is an administrative change to assist the public in complying with reporting requirements. Delaying this action would not serve any other practical purpose. Delaying the notice to the public of the new report filing option is contrary to the interest of establishing methods of making regulatory compliance efficient, and, therefore, less burdensome.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking is not required under the APA or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. As a result, no final regulatory flexibility analysis is required, and none has been prepared.

List of Subjects in 15 CFR Part 760

Boycotts, Exports, Reporting and recordkeeping requirements.

Accordingly, part 760 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 760—[AMENDED]

■ 1. The authority citation for part 760 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

■ 2. Section 760.5 is amended by revising paragraphs (b)(4) through (7) to read as follows:

§ 760.5 Reporting requirements.

* * * * *

(b) * * *

(4) Reports may be submitted by mail or electronically. Mailed paper reports must be submitted in duplicate to: Report Processing Staff, Office of Antiboycott Compliance, U.S. Department of Commerce, Room 6098, Washington, DC 20230. Electronic reports must be submitted in duplicate, by following the prompts on the screen, through the Office of Antiboycott Compliance Web page of the BIS Web site, *http://bis.doc.gov/index.php/enforcement/oac?id=300.* Each submission, whether paper or electronic, must be made in accordance with the following requirements:

(i) Where the person receiving the request is a United States person located in the United States, each report of requests must be postmarked or electronically date-stamped by the last day of the month following the calendar quarter in which the request was received (*e.g.,* April 30 for the quarter consisting of January, February, and March).

(ii) Where the person receiving the request is a United States person located outside the United States, each report of requests must be postmarked or electronically date-stamped by the last day of the second month following the calendar quarter in which the request was received (*e.g.,* May 31 for the quarter consisting of January, February, and March).

(5) Mailed paper reports may, at the reporting person's option, be submitted on either a single transaction form (Form BIS–621P, Report of Request for Restrictive Trade Practice or Boycott, Single Transaction, (revised 10–89)) or on a multiple transaction form (Form BIS–6051P, Report of Request for Restrictive Trade Practice or Boycott, Multiple Transactions, (revised 10–89)).

Electronic reports may be submitted only on the single transaction form, which will electronically reproduce the reporting person's identifying information to facilitate reporting of multiple transactions.

(6) Reports, whether submitted on the paper single transaction form or on the paper multiple transaction form, or submitted electronically, must contain entries for every applicable item on the form, including whether the reporting person intends to take or has taken the action requested. If the reporting person has not decided what action he will take by the time the report is required to be filed, he must later report the action he decides to take within 10 business days after deciding. In addition, anyone filing a report on behalf of another must so indicate and identify that other person.

(7) Each report of a boycott request, whether submitted by mail or electronically, must be accompanied by two copies of the relevant page(s) of any document(s) in which the request appears (*see,* paragraph (c)(2) of this section). For mail submissions, the relevant pages shall be attached in paper format to the report form; for electronic submissions, the relevant pages shall be attached in PDF format to the electronic submission. Reports, whether paper or electronic, may also be accompanied by any additional information relating to the request as the reporting person desires to provide concerning his response to the request. For electronic submissions, such additional information should be provided as a PDF attachment.

* * * * *

Dated: October 7, 2016.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2016–24831 Filed 10–13–16; 8:45 am]

BILLING CODE 3510–33–P

FEDERAL TRADE COMMISSION

16 CFR Part 304

RIN 3084–AB34

Rules and Regulations Under the Hobby Protection Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: As part of its regular review of all its Rules and Guides, and in response to Congressional amendments to the Hobby Protection Act ("Hobby Act" or "Act"), the Federal Trade Commission ("Commission") amends its Rules and Regulations under the Hobby Protection Act ("Rules").

DATES: This rule is effective November 16, 2016.

FOR FURTHER INFORMATION CONTACT: Joshua S. Millard, (202) 326–2454, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

As part of its ongoing regulatory review program, the Commission published a **Federal Register** Notice in 2014 [1] seeking comment on the costs, benefits, and overall impact of the Rules. After the comment period closed, in December 2014, Congress enacted amendments to the Hobby Act. In response, the Commission published a Notice of Proposed Rulemaking ("NPRM") earlier this year addressing the comments it received, proposing amendments to the Rules to track Congress' changes to the Hobby Act, and posing additional questions.[2] The NPRM asked, in particular, whether the proposed amendments would appropriately implement Congressional changes to the Act, and what regulatory burden the proposed amendments might impose. The Commission did not receive substantive comments in response to this NPRM, and the record supports amending the Rules as proposed. Accordingly, this Notice describes the background of the Commission's regulatory review, summarizes the record, and explains the grounds for amendments to the Rules. Additionally, it provides analyses required by the Regulatory Flexibility and Paperwork Reduction Acts and sets forth the amended Rules provision.

II. Background

On November 29, 1973, President Nixon signed the Hobby Protection Act, 15 U.S.C. 2101–2106. The Hobby Act requires manufacturers and importers of "imitation political items" [3] to "plainly and permanently" mark them with the "calendar year" the items were manufactured. *Id.* 2101(a). The Hobby Act also requires manufacturers and importers of "imitation numismatic items" [4] to "plainly and permanently" mark these items with the word "copy." *Id.* 2101(b). The Act further directed the Commission to promulgate regulations for determining the "manner and form" that imitation political items and imitation numismatic items are to be permanently marked with the calendar year of manufacture or the word "copy." *Id.* 2101(c).

In 1975, the Commission issued Rules and Regulations Under the Hobby Protection Act, 16 CFR part 304.[5] The Rules track the definitions used in the

[1] 79 FR 40691 (July 14, 2014).

[2] 81 FR 23219 (Apr. 20, 2016).

[3] An imitation political item is "an item which purports to be, but in fact is not, an original political item, or which is a reproduction, copy, or counterfeit of an original political item." 15 U.S.C. 2106(2). The Hobby Act defines original political items as being any political button, poster, literature, sticker or any advertisement produced for use in any political cause. *Id.* 2106(1).

[4] An imitation numismatic item is "an item which purports to be, but in fact is not, an original numismatic item or which is a reproduction, copy, or counterfeit of an original numismatic item." 15 U.S.C. 2106(4). The Hobby Act defines original numismatic items to include coins, tokens, paper money, and commemorative medals which have been part of a coinage or issue used in exchange or used to commemorate a person or event. *Id.* 2106(3).

[5] 40 FR 5459 (Feb. 6, 1975).

Hobby Act and implement that Act's ''plain and permanent'' marking requirements by establishing where the item should be marked, the sizes and dimensions of the letters and numerals to be used, and how to mark incusable and nonincusable items.[6] In 1988, the Commission amended the Rules to provide additional guidance on the minimum size of letters for the word ''copy'' as a proportion of the diameter of coin reproductions.[7]

The Commission reviewed the Rules in 2004. That review yielded many comments proposing that the Commission expand coverage to products beyond the scope of the Hobby Act and address problems involving the selling (or passing off) as originals of reproductions of antiques and other items not covered by the Act. However, the Commission retained the Rules without change, noting that it did not have authority under the Hobby Act to expand the Rules as requested.[8]

In 2014, the Commission again requested public comment on the Rules' costs, benefits, and overall impact.[9] That comment period closed on September 22, 2014.

On December 19, 2014, President Obama signed into law H.R. 2754, the Collectible Coin Protection Act (''CCPA''), a short set of amendments to the Hobby Act. The CCPA amends the Act's scope to address not only the distribution by manufacturers and importers of imitation numismatic items, but also ''the sale in commerce'' of such items. CCPA, Public Law 113–288, section 2(1)(A) (2014). Additionally, the CCPA makes it a violation of the Hobby Act ''for a person to provide substantial assistance or support to any manufacturer, importer, or seller if that person knows or should have known that the manufacturer, importer, or seller is engaged in any act or practice'' violating the marking requirements of the Act. Public Law 113–288, section 2(1)(B).[10]

III. Summary of Comments and Analysis

A. Initial Request for Comments (2014)

The Commission received six comments [11] in response to its 2014 FRN: Four from members of the general public; one from a self-identified professional coin and paper money dealer; and one from an attorney with asserted experience pertaining to coins and other collectibles.

1. Support for the Rules

All of the commenters who addressed the issue supported the Rules; none advocated rescinding them. For example, one commenter stated, ''there [is] a continuing need for the Rules as currently promulgated because . . . they do protect consumers.'' [12] Another described the Act as ''a boon to collectors of legitimate numismatic and political items,'' and stated: ''Over the years the presence of the law and supporting regulations has provided guidance for makers of replicas.'' [13] A dealer stated that the Act ''is a brilliant effort to help protect the consumer from fraud, and . . . is well thought of across all [l]legitimate [d]ealers.'' [14]

2. Suggested Rules Modifications

Some commenters suggested modifications to the Rules. In particular, several commenters suggested modifications to address ''fantasy coins,'' government-issued coins altered by non-governmental entities to bear historically impossible dates or other features marketed as novelties.[15] Commenters variously suggested that the Commission require manufacturers of fantasy coins to stamp such items with a ''FANTASY'' mark,[16] expressly permit the sale of such items without an identifying mark,[17] or ban such items altogether.[18] One commenter specifically suggested expanding the Rules' scope to incorporate the provisions of the CCPA before Congress adopted it and sent it to the President for his signature.[19]

3. Analysis of Public Comments

From the responses to its 2014 request for public comment, the Commission concluded that there was a continuing need for the Rules, and that the costs they impose on businesses were reasonable.[20] Commenters who addressed the subject supported the Rules, and no dealer or business expressed the view that they should be rescinded or revised to reduce costs. Further, the Commission noted that after the comments period closed, Congress expanded the Hobby Act's scope (addressing, among others, persons who substantially assist or support manufacturers, importers, or sellers that violate the Act's marking requirements). This change evinces Congress' conclusion that the Rules did not impose undue costs upon businesses or the public. The Commission thus concluded that both the record and Congressional action supported retaining the Rules.

Additionally, the Commission found that it was unnecessary to amend the Rules to address specific collectible items (such as ''fantasy coins,'' as some commenters suggested) because it can address specific items as the need arises.[21] Notably, the Commission has addressed whether coins resembling government-issued coins with date variations are subject to the Rules. *In re Gold Bullion Int'l, Ltd.,* 92 F.T.C. 196 (1978). It concluded that such coins should be marked as a ''COPY'' because otherwise they could be mistaken for an original numismatic item.[22]

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[6] Incusable items are items that can be impressed with a stamp.

[7] 53 FR 38942 (Oct. 4, 1988). Before this amendment, if a coin were too small to comply with the minimum letter size requirements, the manufacturer or importer had to request a variance from those requirements from the Commission. Because imitation miniature coins were becoming more common, the Commission determined that it was in the public interest to allow the word ''copy'' to appear on miniature imitation coins in sizes that could be reduced proportionately with the size of the item.

[8] 69 FR 9943 (Mar. 3, 2004).

[9] 79 FR 40691 (July 14, 2014).

[10] The CCPA also amends the Hobby Act to expand the permissible venue (*i.e.,* location) for private actions seeking injunctions or damages for violations of the Hobby Act. Previously, a proper venue was ''any United States District Court for a district in which the defendant resides or has an agent.'' Proper venue now extends to any U.S. District Court for a district in which the defendant transacts business, or wherever venue is proper under 28 U.S.C. 1391. Public Law 113–288, section 2(2)(A)–(B). Further, the CCPA amends the Hobby Act to state that in cases of violations of the Act involving unauthorized use of a trademark of a collectible certification service, the owners of such trademarks also have rights provided under the Trademark Act of 1946, 15 U.S.C. 1116 *et seq.* Public Law 113–288, section 2(2)(C).

[11] The comments are available on the Commission's Web site at *http://www.ftc.gov/policy/public-comments/initiative-577.*

[12] Comment of Luke Burgess, *available at http://www.ftc.gov/policy/public-comments/2014/09/09/comment-00008.*

[13] Comment of Roger Burdette, *available at http://www.ftc.gov/policy/public-comments/2014/09/09/comment-00007; see also* Comment of Kenneth Tireman of NC Coppers, *available at http://www.ftc.gov/policy/public-comments/2014/07/30/comment-00004.*

[14] Comment of Kenneth Tireman, *supra.*

[15] *See* Comment of Luke Burgess, *supra* (offering example of Roosevelt dime altered to read ''1945,'' noting that Roosevelt dime was not introduced until 1946, and noting that such coins are not intended to be used as currency).

[16] *See id.*

[17] *See* Comment of Daniel Carr, *available at http://www.ftc.gov/policy/public-comments/2014/09/17/comment-00010;* Comment of Armen Vartian, available at *http://www.ftc.gov/policy/public-comments/2014/09/19/comment-00011.*

[18] *See* Comment of Luke Burgess, *supra.*

[19] *See* Comment of Armen Vartian, *supra.*

[20] 81 FR 23219, 23220.

[21] 81 FR 23220.

[22] *See* 92 F.T.C. at 223 (''[M]inor variations in dates between an original and its alleged 'copy' are insufficient to deprive the latter of its status as a 'reproduction, copy or counterfeit' of an 'or[i]ginal numismatic item' and do not eliminate the requirement that the latter be marked with the word 'Copy.' '').

B. Notice of Proposed Rulemaking With Request for Comments (2016)

While the Commission found it was unnecessary to amend the Rules to regulate specific collectible items, it observed that amendments to the Rules were necessary to bring them into harmony with Congress' expansion of the Hobby Act. Hence, in April 2016, it solicited public comment on proposed amendments to the Rules.[23]

The Commission proposed to align its Rules with the amended Hobby Act by: (1) Extending the Rules' scope to cover persons or entities engaged in ''the sale in commerce'' of imitation numismatic items; and (2) stating that persons or entities violate the Rules if they provide substantial assistance or support to any manufacturer, importer, or seller of imitation numismatic items, or any manufacturer or importer of imitation political items, when they know, or should have known, that such person is engaged in any act or practice violating the marking requirements set forth in the Hobby Act and the Rules. The Commission solicited comment on the regulatory burden the amended Rules might impose.[24]

1. No Public Comments or Objections to Proposed Amendments

The Commission received no substantive comments in response.[25] Thus, no member of the public objected to the proposed amendments, which incorporate Congress' changes to the Hobby Act. Significantly, no commenter objected that the amendments would impose undue costs upon businesses or would not properly implement Congress' changes to the Act. As previously noted, Congress' expansion of the Hobby Act's scope appears to evince Congressional sentiment that the Act has not, and will not, impose undue costs upon businesses or the public. Having published the proposed amendments for comment and received no objection, the Commission concludes that the regulatory burden that the amendments might impose on businesses, including small businesses, is minimal.

IV. Final Amendments

The record supports modifying the Rules as the Commission proposed. As the CCPA's amendments to the Hobby Act require conforming changes in the Rules, and the record supports amending the Rules as proposed, the Commission accordingly amends the Rules' ''Applicability'' section, set forth at 16 CFR 304.3. The revised text of this provision is set forth at the end of this FRN.

V. Paperwork Reduction Act

The amendments to the Rules do not constitute a ''collection of information'' under the Paperwork Reduction Act, 44 U.S.C. 3501–3521 (''PRA''). The amendments incorporate changes made to the Hobby Act pursuant to the enactment of the CCPA. Prior to those changes, the Hobby Act already required manufacturers and importers of imitation political items and imitation numismatic items to mark such replica items (with the calendar year of manufacture or the word, ''copy,'' respectively) so they may be identified as replicas. The disclosure requirement under the existing Rules and the amendments are not a PRA ''collection of information'' for which ''burden'' is evaluated and estimated as they specify the wording for proper disclosure (here, the year of manufacture or the word ''copy''). *See* 5 CFR 1320.3(c)(2) (''The public disclosure of language of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within [the definition of a 'collection of information.']''). Moreover, extending this disclosure requirement to sellers of imitation numismatic items should not increase the burden of compliance to the extent they are selling items previously marked in compliance with the Hobby Act by manufacturers or importers. The amendments do not impose any new burden upon manufacturers and importers who produce replica items covered by the Hobby Act and Rules. Nor do the amendments impose any burden beyond that imposed by the CCPA's changes to the Hobby Act.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires an agency to provide an initial and final analysis of the anticipated economic impact of amendments on small entities. The RFA provides that such an analysis is not required if the agency certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605. As discussed below, the Commission believes that the amendments will not have a significant economic impact upon small entities that manufacture or import imitation political items or manufacture, import, or sell imitation numismatic items, although they may affect a substantial number of small entities.

In the April 2016 NPRM, the Commission's staff estimated that approximately 5,000 retailers, manufacturers, and importers of imitation numismatic items are subject to the Rules. 81 FR 23219, 23221. FTC staff further estimated that there are fewer manufacturers and importers of imitation political items, from 500 to 2,500. *Id.* The Commission invited members of the public to estimate how many retailers, manufacturers, and importers are subject to the Rules, and received no comments in response. Commission staff understands from a prominent political memorabilia membership organization, the American Political Items Collectors, that a disclosure that an item is an imitation is built into the manufacturing process. Entities compliant with the Rules mark replica coins with ''COPY,'' and replica political items with the date of manufacture, when those items are made. The entities subject to these burdens will be classified as small businesses if they satisfy the Small Business Administration's relevant size standards, as determined by the Small Business Size Standards component of the North American Industry Classification System (''NAICS'').[26] Potentially relevant NAICS size standards, which are either minimum annual receipts or number of employees, are as follows:

NAICS industry title	Small business size standard
Sign Manufacturing	500 employees
Fastener, Button, Needle and Pin Manufacturing.	500 employees
Miscellaneous Manufacturing	500 employees
Miscellaneous Fabricated Metal Product Manufacturing.	750 employees
Rubber Product Manufacturing.	500 employees
Miscellaneous Wood Product Manufacturing.	500 employees
Leather Good and Allied Product Manufacturing.	500 employees
Commercial Printing	500 employees
Miscellaneous Durable Goods Merchant Wholesalers.	100 employees
Book, Periodical, and Newspaper Merchant Wholesalers.	100 employees

[23] 81 FR 23219, 23220, 23223.

[24] 81 FR 23220–21.

[25] The Commission received six comments that were non-germane; none of these comments referred or related to the Hobby Act or Rules, the proposed amendments to the Rules, numismatic or political items, or imitations thereof. The comments expressed dissatisfaction with unwanted phone calls, used profane language, or were unintelligible.

[26] The standards are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*.

NAICS industry title	Small business size standard
Toy and Hobby Goods and Supplies Merchant Wholesalers.	100 employees
Hobby, Toy and Game Stores.	$27.5 million
Souvenir Stores	$7.5 million
Political Organizations	$7.5 million
Electronic Shopping	$32.5 million
Electronic Auctions	$38.5 million
Mail-Order Houses	$38.5 million

From the record of this proceeding, the Commission is unable to conclude how many of the above-listed entities qualify as small businesses. The record does not contain information regarding the size of the entities subject to the Rules. Moreover, the relevant NAICS categories include many entities that do not engage in activities covered by the Rules. Therefore, estimates of the percentage of small businesses in those categories would not necessarily reflect the percentage of small businesses subject to the Rules in those categories.

Even absent this data, however, the Commission does not expect that the amendments will have a significant economic impact on small entities. As discussed above in Section V, the amendments do not impose any new costs upon persons or entities engaged in commerce concerning items that comply with the marking requirements of the Hobby Act and Rules. This document serves as notice to the Small Business Administration of the agency's certification of no effect. The Commission has nonetheless determined that it is appropriate to publish the following final regulatory flexibility analysis to ensure that the economic impact of the amendments on small entities is fully addressed.

(1) Need for, and objectives of, the amendments to the Rules.

As explained above, the amendments are intended to harmonize the Rules with the Hobby Act, as amended by the CCPA. Amending 16 CFR 304.3 extends the Rules' coverage to persons engaged in the sale in commerce of imitation numismatic items, and persons or entities that provide substantial assistance or support to any manufacturer, importer, or seller of covered items under certain circumstances. The legal basis for this amendment is the CCPA, which expanded the scope of the Hobby Act.

(2) Significant issues raised by comments in response to the proposed amendments to the Rules.

The Commission received no substantive comments from the public and no comments from the Chief Counsel for Advocacy of the Small Business Administration. Consequently, no significant issues have arisen from comments, and no changes have been made to the proposed rule in the final rule as a result of comments.

(3) A description of and an estimate of the number of small entities to which the Rules will apply.

As noted earlier, staff estimates that approximately 5,000 retailers, manufacturers, and importers of imitation numismatic items are subject to the Rules, and from 500 to 2,500 manufacturers and importers of imitation political items are subject to the Rules.

(4) A description of the projected reporting, recordkeeping and other compliance requirements.

The Rules impose a disclosure (marking) burden, currently estimated at 5 hours annually. The amendment is not expected to increase this burden on any person or entity subject to and in compliance with the Rules. The additional burden imposed by the amendment will result solely from the expanded scope of the Rules to cover certain additional persons and entities, consistent with the Hobby Act, as amended. As noted earlier, the disclosure burden imposed by the Rules is normally addressed in the manufacturing process, which requires graphic or other design skills for the die, cast, mold or other process used to manufacture the item.

(5) Steps taken by the agency to minimize the significant economic impact, if any, on small entities, consistent with the stated objectives of applicable statutes.

Commission staff have not identified any significant alternatives that would accomplish the statute's objectives while minimizing any significant economic impact on small entities. The amendment, as explained earlier, is intended to bring the scope of the Rules in line with the scope of the Hobby Act, as amended by the CCPA. Neither the Act nor the Rules exempt small entities, or impose lesser or different requirements on such entities. Such exemptions or alternative requirements would undermine the purpose and effect of the Act and the Rules, to the extent that Congress has determined by law that covered items, regardless of the size of the entity that manufactures, imports or sells them, require markings (*i.e.,* disclosures) under certain circumstances for the protection of consumers who may purchase such items.

List of Subjects in 16 CFR Part 304

Hobbies, Labeling, Trade practices.

For the reasons set forth above, the Federal Trade Commission amends 16 CFR part 304 as follows:

PART 304—RULES AND REGULATIONS UNDER THE HOBBY PROTECTION ACT

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

Authority: 15 U.S.C. 2101 *et seq.*

■ 2. Revise § 304.3 to read as follows:

§ 304.3 Applicability.

Any person engaged in the manufacturing, or importation into the United States for introduction into or distribution in commerce, of imitation political or imitation numismatic items shall be subject to the requirements of the Act and the regulations promulgated thereunder. Any person engaged in the sale in commerce of imitation numismatic items shall be subject to the requirements of the Act and the regulations promulgated thereunder. It shall be a violation of the Act and the regulations promulgated thereunder for a person to provide substantial assistance or support to any manufacturer, importer, or seller of imitation numismatic items, or to any manufacturer or importer of imitation political items, if that person knows or should have known that the manufacturer, importer, or seller is engaged in any practice that violates the Act and the regulations promulgated thereunder.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–24880 Filed 10–13–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9789]

RIN 1545–BM03

Election To Take Disaster Loss Deduction for Preceding Year

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the election to accelerate the timing of a loss sustained by a taxpayer attributable to a federally declared disaster. The text of the temporary

regulations also serves as the text of the proposed regulations (REG–150992–13) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective October 13, 2016.

Applicability Dates: For dates of applicability, see § 1.165–11T(i).

FOR FURTHER INFORMATION CONTACT: Daniel Cassano (202) 317–7011 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 165(i) of the Internal Revenue Code (Code) regarding the election to deduct a loss attributable to a federally declared disaster for the taxable year prior to the year in which the disaster occurred.

Under section 165, a loss from a federally declared disaster is a form of casualty loss. A casualty loss is generally allowed as a deduction only for the taxable year in which the loss is sustained (disaster year). Section 165(i) provides an exception to the general timing rule by allowing a taxpayer to elect to treat an allowable loss occurring in a disaster area and attributable to a federally declared disaster as sustained in the taxable year immediately prior to the taxable year in which the disaster occurred (preceding year).

Taxpayers make the election under section 165(i) by clearly indicating on an original return, an amended return, or a refund claim, that the election has been made. The existing regulations under section 165(i) provide that the original return, amended return, or refund claim must be filed on or before the later of: (1) The due date of the taxpayer's income tax return (determined without regard to any extension of time for filing the return) for the disaster year; or (2) the due date of the taxpayer's income tax return (determined with regard to any extension of time for filing the return) for the preceding year. Thus, taxpayers typically have until the unextended due date of the return for the disaster year to make the section 165(i) election.

Concerns have been raised that the due date for making the section 165(i) election may not always provide sufficient time for taxpayers affected by disasters to consider whether to make the election. These concerns led the Department of the Treasury (Treasury Department) and the IRS to issue notices postponing the due date in the wake of a number of federally declared disasters in the last ten years. Notice 2006–17, 2006–1 C.B. 559, postponed the due date for victims of Hurricanes Katrina, Rita, and Wilma to make a section 165(i) election for their disaster losses to October 16, 2006. Notice 2013–21, 2013–15 I.R.B. 903, postponed the due date for victims of Hurricane Sandy to make a section 165(i) election for their disaster losses to October 15, 2013. Notice 2014–20, 2014–16 I.R.B. 937, postponed the due date for victims of a major Colorado flooding event to make a section 165(i) election for their disaster losses to October 15, 2014.

Explanation of Provisions

1. Definitions

These temporary regulations add a paragraph that defines the following terms for purposes of the temporary regulations: Federally declared disaster; federally declared disaster area; disaster loss; disaster year; and preceding year. A *federally declared disaster* means any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or a successor enactment. A *federally declared disaster area* is the area determined to be eligible for assistance pursuant to the Presidential declaration in paragraph (b)(1) of the section. A *disaster loss* is a loss occurring in a federally declared disaster area that is attributable to a federally declared disaster and that is otherwise allowable as a deduction for the disaster year under section 165(a) and §§ 1.165–1 through 1.165–10 of the Income Tax Regulations. The *disaster year* is defined as the taxable year in which a taxpayer sustains a loss attributable to a federally declared disaster. The *preceding year* is the taxable year immediately prior to the disaster year.

2. Time and Manner of Making the Section 165(i) Election

These temporary regulations generally provide that the due date for making the section 165(i) election is six months after the due date for filing the taxpayer's federal income tax return for the disaster year (determined without regard to any extension of time to file). This amount of time is comparable to the length of the postponements of the due dates for making the election granted in the notices identified in the Background section of this preamble.

These temporary regulations also authorize the Treasury Department and the IRS to issue additional guidance regarding the time and manner for making the section 165(i) election. The authorization in these temporary regulations will permit the Treasury Department and the IRS to act quickly to adapt to both taxpayer needs and the needs of tax administration as future disasters occur.

Contemporaneously with these temporary regulations, the Treasury Department and the IRS are issuing Rev. Proc. 2016–53, I.R.B 2016–44, which specifies how a taxpayer makes a section 165(i) election and incorporates the due date for making the election provided in these temporary regulations.

3. Revocations of a Section 165(i) Election

These temporary regulations extend the period of time for revoking a section 165(i) election to ninety (90) days after the due date for making the election. This change conforms to the rule established by the United States Tax Court in *Matheson* v. *Commissioner,* 74 T.C. 836 (1980), *acq.,* AOD–1980–177. These temporary regulations also authorize the Treasury Department and the IRS to issue additional guidance regarding the time and manner of revoking the election. Rev. Proc. 2016–53 specifies how a taxpayer revokes a section 165(i) election and incorporates the due date for revoking the election provided in these temporary regulations.

4. Consistent Return Positions

These temporary regulations reflect rules established elsewhere in federal tax law that a taxpayer cannot deduct the same loss in more than one taxable year. Taxpayers must amend the return for the disaster year in order to make the section 165(i) election for a disaster loss if the taxpayer has deducted such loss for the disaster year. Similarly, taxpayers must amend the preceding year return to revoke a section 165(i) election before filing a return or amended return to deduct the loss in the disaster year. Rev. Proc. 2016–53 contains further guidance for taxpayers in amending returns and taking consistent return positions to minimize the administrative burden on the IRS in ensuring the prompt processing of refunds.

5. Immediate Effect

These temporary regulations are effective immediately because they provide relief to taxpayers who suffer casualty losses attributable to federally declared disasters and the Treasury Department and the IRS anticipate a significant number of casualty losses arising from recent instances of flooding

in areas located throughout the United States, including Texas and Louisiana.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Daniel Cassano and Christopher Wrobel of the Office of the Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1— INCOME TAXES

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

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

■ **Par. 2.** Section 1.165–11 is revised to read as follows:

§ 1.165–11 Election in respect of losses attributable to a disaster.

(a) through (j) [Reserved]. For further guidance, see § 1.165–11T(a) through (j).

■ **Par. 3.** Section 1.165–11T is added to read as follows:

§ 1.165–11T Election to take disaster loss deduction for preceding year (temporary).

(a) *In general.* Section 165(i) allows a taxpayer who has sustained a loss attributable to a federally declared disaster in a taxable year to elect to deduct that disaster loss in the preceding year. This section provides rules and procedures for making and revoking an election to claim a disaster loss in the preceding year.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) A *federally declared disaster* means any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or a successor enactment.

(2) A *federally declared disaster area* is the area determined to be eligible for assistance pursuant to the Presidential declaration in paragraph (b)(1) of this section.

(3) A *disaster loss* is a loss occurring in a federally declared disaster area that is attributable to a federally declared disaster and that is otherwise allowable as a deduction for the disaster year under section 165(a) and §§ 1.165–1 through 1.165–10.

(4) The *disaster year* is the taxable year in which a taxpayer sustains a loss attributable to a federally declared disaster.

(5) The *preceding year* is the taxable year immediately prior to the disaster year.

(c) *Scope and effect of election.* An election made pursuant to section 165(i) for a disaster loss attributable to a particular disaster applies to the entire loss sustained by the taxpayer from that disaster during the disaster year. If the taxpayer makes a section 165(i) election with respect to a particular disaster occurring during the disaster year, the disaster to which the election relates is deemed to have occurred, and the disaster loss to which the election applies is deemed to have been sustained, in the preceding year.

(d) *Requirement to file consistent returns.* A taxpayer may not make a section 165(i) election for a disaster loss if the taxpayer claims a deduction (as a loss, as cost of goods sold, or otherwise) for the same loss for the disaster year. If a taxpayer has claimed a deduction for a disaster loss for the disaster year and the taxpayer wishes to make a section 165(i) election with respect to such loss, the taxpayer must file an amended return to remove the previously deducted loss on or before the date that the taxpayer makes the section 165(i) election for such loss. Similarly, if a taxpayer has claimed a deduction for a disaster loss for the preceding year based on a section 165(i) election and the taxpayer wishes to revoke that election, the taxpayer must file an amended return to remove the loss for the preceding year on or before the date the taxpayer files the return or amended return for the disaster year that includes the loss.

(e) *Manner of making election.* An election under section 165(i) to deduct a disaster loss for the preceding year is made on an original federal tax return for the preceding year or an amended federal tax return for the preceding year in the manner specified by guidance issued pursuant to these regulations. See paragraph (h) of this section.

(f) *Due date for making election.* The due date for making the section 165(i) election is six months after the due date for filing the taxpayer's federal income tax return for the disaster year (determined without regard to any extension of time to file).

(g) *Revocation.* Subject to the requirements in paragraph (d) of this section, a section 165(i) election may be revoked on or before the date that is ninety (90) days after the due date for making the election.

(h) *Additional guidance.* The time and manner for making and revoking a section 165(i) election under paragraphs (d), (e), (f), and (g) of this section may be modified through guidance published in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d) of this chapter).

(i) *Effective/applicability date.* This section is effective October 13, 2016 and applies to elections, revocations, and any other related actions that can be made or taken on or after October 13, 2016.

(j) *Expiration date.* The section expires October 13, 2019.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: September 19, 2016.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–24664 Filed 10–13–16; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to

prescribe interest assumptions under the regulation for valuation dates in November 2016. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective November 1, 2016.

FOR FURTHER INFORMATION CONTACT:
Deborah C. Murphy (*Murphy.Deborah@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4400 ext. 3451. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4400 ext. 3451.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for November 2016.[1]

The November 2016 interest assumptions under the benefit payments regulation will be 0.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for October 2016, these interest assumptions are unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during November 2016, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE–EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 277 is added to the table to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
277	11–1–16	12–1–16	0.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 277 is added to the table to read as follows:

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
277	11–1–16	12–1–16	0.50	4.00	4.00	4.00	7	8

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

Judith Starr,
General Counsel, Pension Benefit Guaranty Corporation.
[FR Doc. 2016–24811 Filed 10–13–16; 8:45 am]
BILLING CODE 7709–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0154]

RIN 1625–AA00

Safety Zones; San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending several permanent safety zones located in the Captain of the Port San Francisco zone that are established to protect public safety during annual firework displays. These amendments are necessary to update listed events to accurately reflect the firework display locations. This regulation prohibits the movement of vessels within the established firework display areas unless authorized by the Captain of the Port (COTP) San Francisco or a designated representative.

DATES: This rule is effective November 14, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0154 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Christina Ramirez, U.S. Coast Guard Sector San Francisco; telephone 415–399–3585, email *D11-PF-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On April 19, 2016 we published a notice of proposed rulemaking (NPRM) entitled Safety Zones; San Francisco, CA, in the **Federal Register** (81 FR 22946), to amend several permanent safety zones located in the Captain of the Port San Francisco zone that are established to protect public safety during annual firework displays. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to the amended fireworks safety zones. We received no comments on the NPRM nor did we receive a request for public meeting. A public meeting was not held.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port San Francisco (COTP) has determined that potential hazards associated with the current outdated fireworks locations, if not updated, pose safety concerns for event crew, spectators, participants of the event, participating vessels, and other users and vessels of the waterway.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published on April 19, 2016. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule amends Table 1 in § 165.1191 to update three events to reflect the current event locations. These events are listed numerically in Table 1 of this section: (7), (8), (22).

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of each safety zone. Vessel traffic would be able to safely transit around each safety zone which would impact a small designated area of the COTP San Francisco zone for less than 1 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Local Notice to Mariner and Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zones.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132,

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zones lasting less than 1 hour that would prohibit entry within 1,000 feet of a fireworks barge. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 165.1191, in Table 1 to § 165.1191, revise items 7, 8, and 22, to read as follows:

§ 165.1191 Northern California and Lake Tahoe Area Annual Fireworks Events.

* * * * *

Table 1 to § 165.1191

* * * * *

* * * * * * *

7. San Francisco Independence Day Fireworks	
Sponsor	The City of San Francisco.
Event Description	Fireworks Display.
Date	July 4th.
Location 1	A barge located approximately 1000 feet off San Francisco Pier 39 at approximately 37°48′49″ N., 122°24′46″ W.
Location 2	A barge located at the end of the San Francisco Municipal Pier at Aquatic Park at approximately 37°48′39″ N., 122°25′37″ W.
Regulated Area 1	1. 100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1,000-foot radius upon commencement of the fireworks display.
Regulated Area 2	2. 100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1,000-foot radius upon commencement of the fireworks display.

8. Fourth of July Fireworks, Berkeley Marina	
Sponsor	Berkeley Marina.
Event Description	Fireworks Display.
Date	July 4th.
Location	A barge located near Berkeley Pier at approximately 37°51′40″ N., 122° 19′19″ W.
Regulated Area	100-foot radius around the fireworks barge during the loading, transit, setup, and until the commencement of the scheduled display. Increases to a 1,000-foot radius upon commencement of the fireworks display.

* * * * * * *

22. Monte Foundation Fireworks	
Sponsor	Monte Foundation Fireworks.

TABLE 1 TO § 165.1191—Continued

Event Description	Fireworks Display.
Date	Second Saturday in October.
Location	Capitola Pier in Capitola, CA.
Regulated Area	1,000-foot safety zone around the navigable waters of the Capitola Pier.

* * * * * * *

Dated: September 15, 2016.

Anthony J. Ceraolo,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2016–24915 Filed 10–13–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–HQ–OAR–2011–0151; FRL–9952–86–OAR]

RIN 2060–AR98

General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Six Source Categories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing general permits for use in Indian country pursuant to the Federal Minor New Source Review (NSR) Program in Indian Country for new or modified minor sources in the following six source categories: concrete batch plants; boilers and emergency engines; stationary spark ignition engines; stationary compression ignition engines; graphic arts and printing operations; and sawmill facilities.

DATES: This final rule is effective on November 14, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–0151. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Christopher Stoneman, Outreach and Information Division, Office of Air Quality Planning and Standards, (C–304–03), Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–0823, facsimile number (919) 541–0072, email address: *stoneman.chris@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''Reviewing Authority,'' ''we,'' ''us'' and ''our'' refer to the EPA. The information in this preamble is organized as follows:

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  J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  K. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

Entities potentially affected by this final action consist of owners and operators of facilities included in the following source categories that are located, or planning to locate, 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 where there is no EPA-approved program in place and that are subject to the requirements of the Federal Indian Country Minor NSR rule.

TABLE 1—SOURCE CATEGORIES

Industry categories	North American industry classification categories	Examples of regulated industries
Boilers and Emergency Engines	11	Agriculture, Greenhouses.
	2211	Electric Power Generation.
	321	Wood Product Manufacturing (Except Sawmill Facilities).

TABLE 1—SOURCE CATEGORIES—Continued

Industry categories	North American industry classification categories	Examples of regulated industries
	311	Food Manufacturing.
	327	Nonmetallic Mineral Product Manufacturing (Except Ready-Mix Concrete).
	424	Wholesale Trade, Nondurable Goods.
	611110	Elementary and Secondary Schools.
	611210	Junior Colleges.
	611310	Colleges, Universities and Professional Schools.
	62	Health Care and Social Assistance.
	721120	Casino Hotels.
	813110	Religious Organizations.
	92	Public Administration.
Concrete Batch Plants	327320	Concrete Batch Plants (including temporary).
	327320	Central-Mixed Concrete Manufacturing.
	327320	Truck-Mixed Concrete Manufacturing.
	327320	Transit-Mixed Concrete Manufacturing.
	327320	Ready-Mix Concrete Manufacturing and Distribution.
	327331	Concrete Manufacturing: All Types of Blocks and Bricks.
	327332	Concrete Manufacturing: All Types of Pipes and Conduit.
	327390	Concrete Block and Brick.
Engines	622110	Medical and Surgical Hospitals.
	2211	Electric Power Generation, Transmission and Distribution.
Graphic Arts and Printing	323111	Printing: Flexographic, Rotogravure, Gravure, Letterpress, Lithographic, Digital.
	323113	Commercial Printing, Newspapers, Print Shops.
	323117	Printing Books.
Sawmill Facilities	321113	Sawmill Facilities.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be potentially affected by this action. You should examine the applicability criteria in the Federal Minor NSR Program in Indian Country (40 Code of Federal Regulations (CFR) 49.153) to determine whether your facility could be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, contact the appropriate person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

In addition to being available in the docket, an electronic copy of this final rule is posted on the tribal minor NSR home page at *https://www.epa.gov/tribal-air/tribal-minor-new-source-review*.

II. Overview of the Final Rule

In July 2011, the EPA issued the Federal Minor NSR Program in Indian Country rule [1] that established, among other things, the requirements and process for the preconstruction permitting of minor sources in Indian country. Under the rule, on or after 3 years from the effective date of the Federal Indian Country Minor NSR rule (September 2, 2014), an owner or operator must obtain a preconstruction permit from the Reviewing Authority,[2] if the owner or operator intends to construct a new true minor source [3] or modify an existing true minor source in Indian country. The rule also specifies the process and requirements for using general permits as a streamlined permitting approach to authorize construction and modification of true minor sources. General permits streamline the preconstruction permitting of new or modified true minor sources because they involve the issuance of one permit that can apply to multiple stationary sources that have similar emissions units.

In this action, the EPA is finalizing general permits for the following six source categories for the permitting of affected emissions units and emissions-generating activities: concrete batch plants; boilers and emergency engines; stationary spark ignition engines; stationary compression ignition engines; graphic arts and printing operations; and sawmill facilities. We are providing the following implementation documents and tools for all of the permits we are finalizing today: questionnaires; instructions; potential to emit (PTE) calculators; background documents; and Request for Coverage Forms (applications). For all of these permits, the implementation tools and documents are available at either: *https://www.epa.gov/tribal-air/tribal-minor-new-source-review* or Docket ID No. EPA–HQ–OAR–2011–0151.

Five prior actions are also relevant to this action. First, in a final rulemaking signed May 22, 2014, and published June 16, 2014,[4] the EPA amended the

[1] "Review of New Sources and Modifications in Indian Country," U.S. Environmental Protection Agency, 76 FR 38748, July 1, 2011, *https://www.federalregister.gov/articles/2011/07/01/2011-14981/review-of-new-sources-and-modifications-in-indian-country*.

[2] In this document, Reviewing Authority refers to an EPA Regional office. However, tribes can become reviewing authorities if they decide to assist the EPA with implementing the minor NSR program in their area through a delegation agreement.

[3] True minor source means a source that emits, or has the potential to emit, regulated NSR pollutants in amounts that are less than the major source thresholds under either the Prevention of Significant Deterioration (PSD) program at 40 CFR 52.21, or the Major NSR program for Nonattainment Areas in Indian Country at 40 CFR 49.166–49.173, but equal to or greater than the minor NSR thresholds in 40 CFR 49.153, without the need to take an enforceable restriction to reduce its Potential to Emit (PTE) to such levels. The PTE includes fugitive emissions, to the extent that they are quantifiable, only if the source belongs to one of the 28 source categories listed in part 51, appendix S, paragraph II.A.4(iii) or 40 CFR 52.21(b)(1)(iii), as applicable.

[4] "Review of New Sources and Modifications in Indian Country Amendments to the Registration

Continued

Federal Minor New Source Review Program in Indian Country rule by finalizing the following three actions:

1. Extending the minor NSR permitting deadline for true minor sources in the oil and natural gas sector located, or planning to locate, in Indian country (§ 49.151(c)(1)(iii)(B));

2. Adjusting the registration deadline to conform to the extended permitting deadline for true minor sources in the oil and natural gas sector (§§ 49.151(c)(1)(iii)(A) and 49.160(c)(1)(ii) and (iii)); and

3. Eliminating a requirement for all true minor sources that begin construction before September 2, 2014, and are eligible to construct pursuant to a general permit, to obtain a minor NSR permit 6 months after the EPA publishes the relevant general permit. No general permits had been finalized by the date 6 months prior to September 2, 2014, so the provision was moot (§ 49.151(c)(1)(iii)(B)).

Second, on May 1, 2015, the EPA published a final rule, ''General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,'' to simplify the Clean Air Act (CAA) permitting process for certain smaller sources of air pollution commonly found in Indian country.[5] In the action, the EPA finalized general permits for use in Indian country for new or modified minor sources in the following two source categories: hot mix asphalt plants and stone quarrying, crushing and screening facilities. The EPA also finalized permits by rule for use in Indian country for new or modified minor sources in three source categories: auto body repair and miscellaneous surface coating operations; gasoline dispensing facilities; and petroleum dry cleaning facilities. The EPA also took final action authorizing the use of general permits established under the program to create synthetic minor sources.

Third, on September 18, 2015, the EPA proposed a federal implementation plan (FIP)[6] that would apply to new true minor sources and minor modifications at existing true minor sources in the production segment of the oil and natural gas sector that are locating or expanding in Indian reservations or in other areas of Indian country over which an Indian tribe, or the EPA, has demonstrated the tribe's jurisdiction. The FIP was proposed to satisfy the minor source permitting requirement under the Federal Indian Country Minor NSR rule.

Fourth, on February 24, 2016, we finalized three amendments to the Federal Indian Country Minor NSR rule that we proposed in our September 18, 2015, proposal, along with the FIP:

1. We revised the deadline under § 49.151(c)(1)(iii)(B) by which new and modified true minor sources in the oil and natural gas sector that are located in (or planning to locate in) reservation areas of Indian country or other areas of Indian country for which tribal jurisdiction has been demonstrated must obtain a minor NSR permit prior to beginning construction. We extended the deadline from March 2, 2016, to October 3, 2016, for all new and modified true minor sources within the oil and natural gas sector located in Indian country.

2. We revised § 49.151(c)(1)(iii)(A) to conform the registration deadline to the extended permitting deadline in § 49.151(c)(1)(iii)(B).

3. We revised § 49.160(c)(1)(ii) to conform the registration deadline to the extended permitting deadline in § 49.151(c)(1)(iii)(B).

Finally, on June 3, 2016, the EPA published the final FIP for true minor sources in the oil and natural gas sector (and associated amendments to the Federal Indian Country Minor NSR rule).[7] The final FIP applies to the true minor sources in Indian country engaged in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector.

III. Background

A. Federal Minor New Source Review Program in Indian Country

1. What is the Federal Indian Country minor NSR rule?

On August 21, 2006, the EPA proposed the regulation: ''Review of New Sources and Modifications in Indian Country'' (*i.e.,* Indian Country NSR rule).[8] Within this regulation, the EPA proposed to protect air quality in Indian country by establishing a FIP program to regulate the modification and construction of minor stationary sources consistent with the requirements of section 110(a)(2)(c) of the CAA. (The proposal also included a major source NSR program for areas of Indian country designated as nonattainment.) The minor source part of the program is officially titled Federal Minor New Source Review Program in Indian Country, but we generally refer to it as the Federal Indian Country Minor NSR rule. Under the Federal Indian Country Minor NSR rule, we proposed to fill a regulatory gap and to provide a mechanism for issuing preconstruction permits for the construction of new minor sources and minor modifications at major and minor sources in Indian country. We promulgated final rules on July 1, 2011,[9] and the FIP became effective on August 30, 2011.

The Federal Indian Country Minor NSR rule applies to new and modified minor stationary sources and to minor modifications at existing major stationary sources located in Indian country[10] where there is no EPA-

and Permitting Deadlines for True Minor Sources,'' U.S. Environmental Protection Agency, 79 FR 34231, June 16, 2014, *https://www.gpo.gov/fdsys/pkg/FR-2014-06-16/pdf/2014-14030.pdf.*

[5] ''General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,'' U.S. Environmental Protection Agency, 80 FR 25068, May 1, 2015, *https://www.gpo.gov/fdsys/pkg/FR-2015-05-01/pdf/FR-2015-05-01-FrontMatter.pdf.*

[6] ''Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions from True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country,'' U.S. Environmental Protection Agency, 81 FR 56554, September 18, 2015, *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-21025.pdf.*

[7] ''Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector,'' U.S. Environmental Protection Agency, 81 FR 35944, June 3, 2016, *https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf.*

[8] ''Review of New Sources and Modifications in Indian Country,'' U.S. Environmental Protection Agency, 71 FR 48696, August 21, 2006, *https://www.gpo.gov/fdsys/pkg/FR-2006-08-21/html/06-6926.htm.*

[9] ''Review of New Sources and Modifications in Indian Country,'' U.S. Environmental Protection Agency, 76 FR 38748, July 1, 2011, *https://www.federalregister.gov/articles/2011/07/01/2011-14981/review-of-new-sources-and-modifications-in-indian-country.*

[10] The Federal Indian Country Minor NSR rule defines ''Indian country'' to include three categories of lands consistent with 18 U.S.C. 1151, *i.e.,* Indian reservations, dependent Indian communities, and Indian allotments. The U.S. Court of Appeals for the District of Columbia Circuit vacated the rule with respect to non-reservation areas of Indian country (*i.e.,* dependent Indian communities and Indian allotments) (*Oklahoma Dept. of Environmental Quality* v. *EPA,* 740 F.3d 185 (D.C. Cir. 2014)). The court held that the state, not tribes or the EPA, has initial primary responsibility for implementation plans under CAA section 110 in non-reservation areas of Indian country in the absence of a demonstration of tribal jurisdiction by the EPA or a tribe. The rule, therefore, does not apply in non-reservation areas of Indian country unless a tribe or the EPA has demonstrated that a tribe has jurisdiction in a particular non-reservation area of Indian country.

approved program in place. Beginning September 2, 2014, any new stationary sources that will emit, or will have the potential to emit, a regulated NSR pollutant in amounts that will be: (1) Equal to or greater than the minor NSR thresholds established in the Federal Indian Country Minor NSR rule; and (2) less than the amount that would qualify the source as a major source or a major modification for purposes of the PSD Program or nonattainment major NSR, must apply for and obtain a minor NSR permit before beginning construction of the new source.

Likewise, any existing stationary source (minor or major) must apply for and obtain a minor NSR permit before beginning construction of a physical or operational change that will increase the allowable emissions of the stationary source by more than the specified minor source threshold amounts, if the change does not otherwise trigger the permitting requirements of the PSD or nonattainment major NSR program(s).[11]

Among other things, the Federal Indian Country Minor NSR rule created a framework for the EPA to streamline the issuance of preconstruction permits to true minor sources by using general permits.

2. What is a true minor source and how does it differ from a synthetic minor source?

''True minor source'' under the Federal Indian Country Minor NSR rule means a source that emits, or has the PTE, regulated NSR pollutants in amounts that are less than the major source thresholds under either the PSD Program at 40 CFR 52.21, or the Major NSR Program for Nonattainment Areas in Indian Country at 40 CFR 49.166–49.173, but equal to or greater than the minor NSR thresholds in § 49.153, without the need to take an enforceable restriction to reduce its PTE to such levels. A source's PTE includes fugitive emissions, to the extent that they are quantifiable, only if the source belongs to one of the 28 source categories listed in part 51, appendix S, paragraph II.A.4(iii) or § 52.21(b)(1)(iii) of 40 CFR, as applicable. By contrast, ''synthetic minor source'' means a source that otherwise has the PTE regulated NSR pollutants in amounts that are at or above those for major sources, but that has taken a restriction so that its PTE is less than such amounts. Such restrictions must be enforceable as a legal and practical matter.

3. What is a general permit?

The Federal Indian Country Minor NSR rule specifies the process and requirements for using general permits to authorize construction and modifications at true minor sources as a streamlined permitting approach. A general permit, for purposes of this action, is a permit document that contains standardized requirements that multiple stationary sources can use. The EPA may issue a general permit for categories of emissions units or stationary sources that are similar in nature, have substantially similar emissions, and would be subject to the same or substantially similar permit requirements.[12] ''Similar in nature'' refers to size, processes, and operating conditions. The purpose of a general permit is to provide for protection of air quality, while simplifying the permitting process for similar minor sources. General permits offer a cost-effective means of issuing permits and provide a quicker and simpler mechanism for permitting minor sources than the source-specific permitting process.

While the final Federal Indian Country Minor NSR rule contemplated issuance of general permits by the EPA Regional offices, we have determined, for the permits we are finalizing here, that a nationwide action is appropriate. Through this action, we are finalizing general permits to serve as preconstruction permit authorizations that contain emission limitations and other restrictions to govern how specified sources construct, modify and operate.

B. General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country—Proposed Rule

1. What was in the proposed rule?

On July 17, 2014, the EPA published a proposed rule, ''General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country,'' to simplify the CAA permitting process for certain smaller sources of air pollution commonly found in Indian country.[13] The proposed action was intended to facilitate the implementation of the Federal Indian Country Minor Source NSR rule issued by the EPA in July 2011 in a manner that minimized the administrative and time burden associated with the permitting process, while at the same time adequately protecting air quality in Indian country.

As its preferred approach, the EPA made available draft general permits for use in Indian country pursuant to the Federal Indian Country Minor NSR rule for new or modified true minor sources in the following six source categories: Concrete batch plants; boilers; stationary spark ignition engines; stationary compression ignition engines; graphic arts and printing operations; and sawmill facilities. In the alternative, the EPA also proposed a permit by rule for use in Indian country for new or modified true minor sources in one of the six source categories: graphic arts and printing operations.

We requested comment on the following areas:

1. All aspects of the permit documents and implementation tools for the six source categories:
- Concrete batch plants;
- Boilers;[14]
- Stationary spark ignition engines;
- Stationary compression ignition engines;
- Graphic arts and printing operations; and
- Sawmill facilities;

2. The appropriateness of using a streamlined general permit/permit by rule application for one source category: graphic arts and printing operations;

3. Various aspects of the EPA's conclusion on its control technology review that the measures in the draft/proposed permits are technically and economically feasible and cost effective because they are currently used by similar sources in other areas of the country;

4. Setback requirements, which are provisions related to the location of the emitting activities and the source property boundary and certain nearby structures;

5. The process for sources to address threatened or endangered species and historic properties with respect to the six categories in the proposal;

6. Use of throughput limits and capacity limits as surrogates for tons per

[11] A source may, however, be subject to certain monitoring, recordkeeping and reporting (MRR) requirements under the major NSR programs, if the change has a reasonable possibility of resulting in a major modification. A source may be subject to both the Federal Indian Country Minor NSR Program and the ''reasonable possibility'' MRR requirements of the major NSR program(s).

[12] ''Review of New Sources and Modifications in Indian Country,'' U.S. Environmental Protection Agency, 76 FR 38770, July 1, 2011, *https://www.federalregister.gov/articles/2011/07/01/2011-14981/review-of-new-sources-and-modifications-in-indian-country*.

[13] ''General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country,'' U.S. Environmental Protection Agency, 79 FR 41846, July 17, 2014, *https://www.gpo.gov/fdsys/pkg/FR-2014-07-17/pdf/2014-16814.pdf*.

[14] In the proposal for this action (79 FR 41846, July 17, 2014), the title for the source category for boilers did not include emergency engines; in this final rule, we are adding emergency engines to the source category title so that it encompasses boilers and emergency engines.

year (tpy) allowable emission limitations, or, alternatively, establishment of annual allowable emission limitations for each pollutant, and the use of throughput limits as surrogate monitoring measures to demonstrate compliance with tpy annual allowable emission limitations;

7. Finalizing both permitting mechanisms for graphic arts and printing operations by providing authorization to construct or modify true minor sources in this category via permits by rule and by providing enforceable limitations to create synthetic minor sources in this category via general permits; and

8. A proposed rule change to the Federal Indian Country Minor NSR rule: shortening the general permit application review process from 90 to 45 days for graphic arts and printing operations.

IV. Final Rulemaking Action

This section outlines the major areas where we sought comment in the July 17, 2014, proposal, highlights our responses to major comments received and describes our final action. We received 11 comments from industry (or their representatives), 12 comments from tribes (or their representatives), 1 comment from a local air quality agency and 1 comment from a state environmental agency. The Response to Comments (RTC) Document can be found in docket EPA–HQ–OAR–2011–0151 and is available online at: *https://www.epa.gov/tribal-air/tribal-minor-new-source-review*. It contains more detailed descriptions of the comments we received and our responses to them.

A. Permitting Documents and Implementation Tools

1. Proposed Rule

As our preferred approach, the EPA made available draft general permits for use in Indian country pursuant to the Federal Indian Country Minor NSR rule for new or modified minor sources in the following six source categories: Concrete batch plants; boilers; stationary spark ignition engines; stationary compression ignition engines; graphic arts and printing operations; and sawmill facilities. In the alternative, we also proposed a permit by rule for use in Indian country for new or modified minor sources in the graphic arts and printing operations source category. Overall, we sought comment on all aspects of the permit documents and implementation tools for these source categories. Specifically, Section VI of the July 17, 2014, proposal provided a summary of the specific terms and conditions of the general permits and indicated specific areas where we requested comment.

2. Summary of Comments, Responses and Final Action

The following sections provide an abbreviated summary of changes to the implementation tools, as well as significant comments on the draft general permits for the six source categories in this final rule and our responses. Detailed responses to the comments on the permits and related tools and documents are addressed in the RTC Document. In our final action, based on comments, we have made substantive changes to the terms and conditions of all of the draft permits and the related implementation tools in several areas, including the following: setback requirements; throughput limits; various control requirements; and enhancements and clarifications to the implementation tools.

a. Overview of Changes to Permits and Implementation Tools

In direct response to public comments (and upon further review), we are revising the draft general permits and implementation tools in many areas, including as follows:

(1) Expanding the scope of the draft boilers general permit to include emergency engines so that the final general permit is titled: ''General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country'';

(2) Removing emissions limitations for emergency engines from the general permits for the following three source categories: Sawmill facilities, graphic arts and printing operations and concrete batch plants, as discussed below with respect to the final engines general permits (we did so because we expect that emergency engines that are not located at sources covered by a general permit or permit by rule that we have already developed, and that are not otherwise exempt consistent with § 49.153 of the Federal Indian Country Minor NSR rule,[15] will be located at a source with one or more boilers and, thus, will be covered by the ''General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country'');

(3) Recalculating maximum capacity ratings for certain boilers in the final ''General Air Quality Permit for New or Modified Boilers and Emergency Engines in Indian Country'' based on non-greenhouse gas (GHG) pollutants (*e.g.,* nitrogen oxides (NO_X)) to reflect the change in GHG permitting requirements resulting from the U.S. Supreme Court's June 23, 2014, ruling[16] and to ensure minor source status for eligible sources;

(4) Revising and reconfiguring control options for the following three general permits to accommodate their use by sources seeking synthetic minor status: ''General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country,'' ''General Air Quality Permit for New or Modified Minor Source Compression Ignition Engines in Indian Country'' and ''General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country'';[17]

(5) Revising the titles of all six general permits in this action, to make it clear that they are all available for true minor and synthetic minor sources (including all of the implementation tools), by removing the words ''true minor'' (and adding clarifying text to the Request for Coverage Forms to reflect this expanded coverage of source types);

(6) Adjusting the definition of ''promptly'' for reporting deviations under the final ''General Air Quality Permit for New or Modified Boilers and Emergency Engines in Indian Country''

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[15] Under 40 CFR 49.153(c)(9), emergency generator engines at a single source are ''exempt'' if the combined maximum horsepower (hp) rating of all emergency generator engines is below 1,000 hp in attainment areas or 500 hp in ozone nonattainment areas classified as Serious or lower. If your source consists of only exempt equipment, then you are not required to obtain a minor NSR permit.

[16] In setting the permitting capacity limits in the draft boilers general permit, the ''controlling'' regulated pollutant considered in our evaluation was GHGs. This pollutant was regarded as primarily a factor for units emitting higher levels of carbon dioxide (CO_2), a GHG. Therefore, the draft maximum capacity ratings for certain size boilers were set for GHGs at levels sufficiently low to keep eligible sources below the major source permitting threshold of 100,000 tpy of CO_2 equivalent. On June 23, 2014, the U.S. Supreme Court ruled that sources are no longer required to obtain a PSD permit solely based on their GHG emissions. This means that a source must trigger the major source PSD permitting requirements for non-GHG pollutants, either as a newly constructed source or as a modification at a major source, in order to be subject to NSR Best Available Control Technology (BACT) review for GHGs. Therefore, the minor sources covered under the final ''General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country'' can be required to obtain a permit based only on their emissions of non-GHG pollutants.

[17] This approach is consistent with the policy we finalized on May 1, 2015, that allows for the use of general permits in Indian country to create synthetic minor sources. ''General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,'' U.S. Environmental Protection Agency, 80 FR 25068, May 1, 2015, *https://www.gpo.gov/fdsys/pkg/FR-2015-05-01/pdf/FR-2015-05-01-FrontMatter.pdf.*

and the final ''General Air Quality Permit for New or Modified Concrete Batch Plants in Indian Country'' to conform to the definition of this term in the general permits that the EPA has already completed for hot mix asphalt plants and stone quarrying, crushing and screening facilities;

(7) Adjusting the condition concerning the timing and location for records retention in the final ''General Air Quality Permit for New or Modified Concrete Batch Plants in Indian Country'' to conform to the corresponding condition in the general permits the EPA has already completed for hot mix asphalt plants and stone quarrying, crushing and screening facilities;

(8) Revising the general permit for sawmill facilities to accommodate sources that may trigger the major source threshold for hazardous air pollutants (HAPs) prior to reaching the 80 ton per year/12-month rolling emission limits in the permit and that, thus, may need to seek synthetic minor status for HAP emissions;

(9) Revising the throughput limits in the final ''General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country'' to match the revised input data provided in the sawmill facilities PTE calculator (from thousand board-feet (Mbf) to wood log inputs expressed in tons);

(10) Correcting the board-foot throughput limit in the ''General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country'' to reflect corrections made to the sawmill facilities PTE calculator;

(11) Adding a separate throughput limit to the final ''General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country'' for Serious PM_{10} (particulate matter equal to or less than 10 microns in diameter) nonattainment areas and $PM_{2.5}$ (particulate matter equal to or less than 2.5 microns in diameter) nonattainment areas;

(12) Clarifying in the final ''General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country'' that gaseous and liquid-fueled auxiliary heaters up to 10 million British thermal units per hour (MMBtu/hour) are allowed, separate from the 30 MMBtu/hr boiler limit, which can include solid fuels like biomass;

(13) Revising the boiler and auxiliary heater capacity limits for Severe and Extreme ozone nonattainment areas in the final ''General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country'' to allow for larger boiler capacity;

(14) Adding a condition to the ''General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country'' that restricts all emergency engines in Severe and Extreme ozone nonattainment areas to units that are model year 2006 or later to ensure the sources' emissions stay below major source levels;

(15) Changing the permitting tools (*e.g.,* background documents) for the source categories to reflect changes made to permit requirements in areas such as setbacks and treatment of emergency engines;

(16) Retitling the implementation tools for the boilers and emergency engines source category to match the change in the title of the general permit;

(17) Clarifying each of the implementation tools for the final ''General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country'' and the final ''General Air Quality Permit for New or Modified Minor Source Compression Ignition Engines in Indian Country'' to better identify the types of sources likely to be eligible for these permits and to clarify the requirements, including reflecting the removal of the emergency engines provisions from these permits;

(18) Removing the list of eligibility criteria at the front of the questionnaires, to avoid confusion and redundancy with the eligibility criteria provided in the Request for Coverage Forms;

(19) Changing the instructions and questionnaires to reflect changes made to the Request for Coverage Forms;

(20) Revising the Request for Coverage Form for the final ''General Air Quality Permit for New or Modified Minor Source Concrete Batch Plants in Indian Country'' to:

- Clarify that the source may seek approval for multiple locations and that additional locations may be added in the future; and
- Add a section allowing a source to list multiple source locations in cases where a portable source is planning to relocate and for which it wants Reviewing Authority approval;

(21) Adding to the Request for Coverage Forms for the general permits a request for estimates of PTE and, at existing sources, actual emissions, to satisfy the minor source registration requirement of § 49.160, and clarifying that sources covered by the general permits must also register under § 49.160 (submittal of the Request for Coverage Form satisfies that requirement);

(22) Adding standards for non-engine combustion units to the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country'';

(23) Revising the Request for Coverage Form for the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country'' to require more detailed information from the applicant that is appropriate for a general permit that is being made available for both true minor and synthetic minor sources;

(24) Revising the threatened and endangered species and historic properties screening procedures in the Request for Coverage Forms to reflect changes made to those same procedures in response to comments that we received on the January 14, 2014, proposal that we also reflected in the final rule ''General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,'' published on May 1, 2015; [18]

(25) Correcting an error on the ''Input'' page for the PTE calculator for the final ''General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country'' that did not properly sum emissions for all of the small, auxiliary heaters and boilers, and adjusting the MMBtu/hr limit for boilers and hp for engines for Extreme ozone nonattainment areas once we corrected the error; [19] and

(26) Adding the following caveat to the PTE calculators for the six source categories in this action: ''If you have one or more of the following units that are exempt from the Indian Country Minor NSR Program,[20] please contact

[18] ''General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,'' U.S. Environmental Protection Agency, 80 FR 25068, May 1, 2015, *https://www.gpo.gov/fdsys/pkg/FR-2015-05-01/pdf/FR-2015-05-01-FrontMatter.pdf.*

[19] The draft spreadsheet underestimated emissions for this source category and the correction and adjustment had the greatest effect on emissions estimates for sources in Extreme ozone nonattainment areas.

[20] All units/categories listed under § 49.153(c), including the ones listed below, are exempt from the Federal Minor NSR Program in Indian Country and emissions from such sources are, therefore, not counted in calculating a source's PTE for the purpose of determining whether the source's PTE exceeds the minor source permitting thresholds. However, emissions from the units/categories listed under § 49.153(c) shall be included when calculating a source's PTE for the purpose of determining whether the source is a major source under either PSD or nonattainment NSR programs.

your EPA Regional office before you use this calculator to determine whether you need to obtain a minor NSR permit:

- Internal combustion engines used for landscaping purposes;
- Emergency generators, designed solely for the purpose of providing electrical power during power outages:
  - In nonattainment areas classified as Serious or lower, the total maximum manufacturer's site-rated hp of all units shall be below 500;
  - In attainment areas, the total maximum manufacturer's site-rated hp of all units shall be below 1,000;
- Stationary internal combustion engines with a manufacturer's site-rated hp of less than 5; and
- Furnaces or boilers used for space heating that use only gaseous fuel, with a total maximum heat input (*i.e.,* from all units combined) of:
  - In nonattainment areas classified as Serious or lower, 5 MMBtu/hr or less;
  - In nonattainment areas classified as Severe or Extreme, 2 MMBtu/hr or less; and
  - In attainment areas, 10 MMBtu/hr or less.''

In addition, we made some changes in the general provisions that are included in all of the final permits from this final action and the May 1, 2015, final action. One commenter stated that the condition in the draft general permits concerning Notification of Change in Ownership is unclear in establishing whether it is the responsibility of the new permittee or the old permittee to comply with the notification requirements. The same commenter requested that certain conditions of the draft general permit be clarified to cover situations in which there is a change of operator, but the ownership of the equipment is the same. In response to the comments, the EPA has clarified in the permits for the six source categories covered by this action that it is the responsibility of the new permittee to submit a written or electronic notice to the Reviewing Authority within 90 days before or after the change in ownership is effective. For all of the permits, we have also modified the two conditions related to changes in ownership that appear in Sections 5 and 6 to include the word ''operator'' to clarify that these conditions cover a change in either ownership or operator where the equipment is the same.[21]

One commenter stated that the term ''Responsible Official'' should be defined to ensure truth, accuracy and completeness of required reports. The EPA agrees and, in response to the comment, we have added a definition of ''Responsible Official'' to each of the final permits.

Two commenters supported the proposed rule's approach of requiring each source to post the current Approval of the Request for Coverage and to label each affected emissions unit and associated air pollution control technology with the identification numbers listed in the approval. One commenter recommended that the general permit and the most current approval of the request for coverage for the permitted source ''must be made available immediately upon request,'' as opposed to ''must be posted.'' The commenter stated that it was not necessary to label the air pollution control equipment, as the description and serial numbers are provided in the application. The EPA acknowledges the support of the commenters with respect to posting the Approval of the Request for Coverage. Upon review of comments received related to the posting of the general permit in addition to the Approval of the Request for Coverage, the EPA is revising the permits to exclude the requirement that the general permits must be posted. Posting of the Approval of the Request for Coverage is required under 40 CFR 49.156(e)(6), but general permits themselves are not required under the regulation to be posted and only need to be available on site as needed. Regarding the labeling of emission units and air pollution control equipment, identification and labeling of these units is needed to facilitate identification by inspectors of equipment covered under a general permit without the need to refer to the application. Therefore, the EPA is finalizing the labeling requirements as proposed.

Three commenters supported incorporating the Approval of the Request for Coverage into the general permit, in order to ensure that the revision procedures in 40 CFR 49.159 would apply to revisions a Reviewing Authority may need to make to a previously issued Approval of a Request for Coverage. Two commenters recommended that the EPA consider amending 40 CFR 49.156 to include a provision that specifically allows for revisions to a previously issued Approval of a Request for Coverage under a general permit. Upon review of comments received related to incorporating the Approval of the Request for Coverage into the general permits, the EPA is finalizing each general permit to include the proposed language in the draft general permits related to incorporating the Approval of the Request for Coverage into each permit.

In addition, we have added a provision to all of the permits to address those circumstances that can cause a permit to become invalid under 40 CFR 49.156(e)(8). In the general permits in this action, the provision can be found in Section 6.

b. Comments and Responses Concerning General Permits for Concrete Batch Plants

One commenter objected to the visible emissions 10 percent opacity limit included in the draft concrete batch plants general permit. The commenter argued that the limit would create an unequal playing field with existing concrete batch facilities subject to the Federal Air Rules for Reservations' (FARR) requirements for limiting visible emissions (40 CFR 49.124). The EPA acknowledges that the draft visible emissions opacity limit in the final ''General Air Quality Permit for New or Modified Minor Source Concrete Batch Plants'' (10 percent) is more stringent than the opacity limit provided for facilities in the FARR.[22] The opacity limit in the FARR is a generally applicable requirement that applies to any person who owns or operates an air pollution source, regardless of whether the equipment is existing, new, or modified. This limit was not specifically developed for concrete batch plants. The EPA's general permit for concrete batch plants applies to new or modified concrete batch plants, for which we have determined a 10 percent opacity limit is achievable. In our Background Document[23] for this permit, our review of state general permits for this source category indicated a range of opacity limits. For all of the states researched, the limits ranged from no visible emissions allowed to 25 percent, with only one state having a 40 percent opacity limit. Furthermore, the opacity limit is consistent with the opacity limits for the ''General Air Quality Permit for New or Modified Minor Source Stone Quarrying, Crushing, and Screening Facilities in Indian Country'' (7–12 percent) and less than the opacity limit for the ''General Air Quality

[21] The conditions are: Notification of Change in Ownership or Operator (Section 5) and Change in Ownership or Operator (Section 6).

[22] The FARR is limited in scope to Indian Reservations in EPA Region 10. The opacity limit in the FARR at 40 CFR 49.124(d) is the visible emissions from an air pollution source must not exceed 20% opacity, averaged over any consecutive six-minute period, unless paragraph (d)(2) or (3) of 49 CFR 49.124(d) applies to the air pollution source.

[23] Background Document: General Air Quality Permit for New or Modified Minor Source Concrete Batch Plants in Indian Country, Docket ID No. EPA–HQ–OAR–2011–0151, *https://www.epa.gov/tribal-air/tribal-minor-new-source-review.*

Permit for New or Modified Minor Source Hot Mix Asphalt Plants in Indian Country'' (20 percent or greater), both made available in the final rule on April 17, 2015.[24] We continue to believe that a 10 percent opacity limit is achievable for new or modified concrete batch plant sources and, as a result, we are not revising the opacity limit for the final ''General Air Quality Permit for New or Modified Minor Source Concrete Batch Plants in Indian Country.''

Another commenter recommended that the EPA consider the requirements in the South Coast Air Quality Management District (SCAQMD) Rule 1155—Particulate Matter from Control Devices (used to establish requirements for permitted PM air pollution control devices) and Rule 1157—PM_{10} Emission Reductions From Aggregate and Related Operations (which includes general performance standards and work practice requirements for opacity, unloading, loading and transferring operations, storage piles and related equipment), in establishing provisions in the draft concrete batch general permit. The commenter also requested that the general permit include certain BACT[25] requirements related to controlling PM_{10}. One commenter specifically requested that the EPA consider certain control devices for either wet central mix plants or transit mix plants. The EPA considered SCAQMD rules when developing some of the nonattainment area emission requirements and a review of the requirements suggested by the commenter and those in the draft general permit indicate that the draft permit conditions are already at least as stringent as those suggested by the commenter. Therefore, no changes in this regard were made to the final ''General Air Quality Permit for New or Modified Concrete Batch Plants in Indian Country.''

One commenter supported the use of the draft general permit for concrete batch plants to authorize relocation of a concrete batch plant to a pre-approved site location. The EPA recognizes that concrete batch plants are portable and may require the flexibility to relocate to additional areas in the future. We have revised the Request for Coverage Form for the final ''General Air Quality Permit for New or Modified Concrete Batch Plants in Indian Country'' to clarify that the facility may seek up-front approval of multiple locations and that additional locations may be added in the future.

c. Comments and Responses Concerning General Permits for Boilers

One commenter requested that the EPA consider the requirements in three SCAQMD Rules that apply to boilers, including Rule 1146—Emissions of Oxides of Nitrogen from Industrial, Institutional and Commercial Boilers, Steam Generators, and Process Heaters; Rule 1146.1—Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters; and Rule 1146.2—Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers and Process Heaters. The commenter stated that these rules limit emissions of NO_X and carbon monoxide (CO) and have requirements for initial and periodic testing, monitoring and recordkeeping. The EPA considered SCAQMD rules when developing some of the nonattainment area emission requirements and a review of the requirements suggested by the commenter and those in the draft general permit indicates that the draft permit conditions are generally consistent with those suggested by the commenter for Severe and Extreme ozone nonattainment areas. For example, the emission limits for NO_X and CO of the final ''General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country'' are consistent with SCAQMD Rules 1146 and 1146.1. For each boiler rated at or above 2 MMBtu/hr in a Severe or Extreme ozone nonattainment area, the final permit is consistent with SCAQMD Rules 1146 and 1146.1 by containing a limit of nine parts per million (ppm) at 3 percent oxygen for NO_X and a limit of 400 ppm at 3 percent oxygen for CO. However, for boilers rated below 2.0 MMBtu/hr in Severe or Extreme ozone nonattainment areas, we did not apply the requirement in SCAQMD Rule 1146.2 for owner/operators to purchase SCAQMD ''compliant'' boilers. As this is a nationally applicable regulation, we did not find it appropriate to require SCAQMD-compliant boilers in applicable areas everywhere due to their uncertain availability outside of the South Coast region of California. Instead, emissions from these small boilers and auxiliary heaters (those rated less than 2.0 MMBtu/hr) are restricted by limiting the combined rating of all small boilers and auxiliary heaters to a total of 10 MMBtu/hr in Extreme ozone nonattainment areas and 20 MMBtu/hr in all other areas.

We disagree that these boiler requirements should apply in all areas, as suggested by the commenter. The limits suggested by the commenter are not typically associated with attainment areas or Marginal, Moderate, or Serious ozone nonattainment areas. No changes were made to the final ''General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country,'' as a result of this comment.

d. Comments and Responses Concerning General Permits for Stationary Spark Ignition and Compression Ignition Engines

Two commenters expressed confusion regarding the reference to Table 1 of the New Source Performance Standard (NSPS), 40 CFR part 60, subpart JJJJ, in the draft spark ignition engines general permit. One commenter noted that it is unclear whether the EPA is limiting the use of engines ≥100 hp to only those manufactured after the dates incorporated from Table 1 to 40 CFR part 60, subpart JJJJ, in the draft spark ignition engines general permit, or if the specified emission limits from Table 1 must be met regardless of the date of engine manufacture. Another commenter stated that the emission limits only appear to apply to engines manufactured after 2010. One commenter noted that this would exclude other newer engines and would be more restrictive than the NSPS for spark ignition engines (NSPS, 40 CFR part 60, subpart JJJJ). The commenter also stated that the draft emission limits from Table 1 are appropriate for new, modified, or reconstructed engines after July 1, 2010, or January 1, 2011, but are not appropriate for older existing engines not subject to the spark ignition engines NSPS (40 CFR part 60, subpart JJJJ) or those engines subject to the NSPS after 2007, but before the 2010 or 2011 dates listed in Table 1. The commenter asserted that, for NSPS engines, all of the emission limits and dates in Table 1 should apply to engines ≥100 hp, and that, for non-NSPS engines, emission controls should be no more stringent than those required in National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR part 63, subpart ZZZZ, for existing engines. Another commenter stated that the general permits should allow for the use of existing engines in attainment areas. Commenters recommended that the EPA consider the Texas Commission on

[24] ''General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,'' U.S. Environmental Protection Agency, 80 FR 25068, May 1, 2015, *https://www.gpo.gov/fdsys/pkg/FR-2015-05-01/pdf/FR-2015-05-01-FrontMatter.pdf.*

[25] For federal purposes, BACT is a requirement for major sources under the PSD Program. However, here and elsewhere in this document where responses to comments are discussed, the term is being used as it is used by the SCAQMD air program in the context of minor source NSR permitting in nonattainment areas.

Environmental Quality's Permit by Rule for engines found in 30 Texas Air Code section 106.512 as a model.

The EPA acknowledges that our draft general permit did not clearly state our intent with regard to the types of non-emergency spark ignition engines eligible to operate under the draft general permit for spark ignition engines. We are revising the final ''General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country'' to clarify this issue. As a result, the requirements applicable to existing non-emergency engines in the NESHAP at 40 CFR part 63, subpart ZZZZ, are not needed in the general permit. The EPA disagrees with the commenter's suggestion that the use of engines manufactured prior to these dates should be allowed for attainment areas. Given the types of stationary sources we expect to be eligible for the final spark ignition engines general permit, we continue to determine that pre-2010 or pre-2011 engines should not be eligible for this permit. For this permit, where the covered stationary sources will mainly consist of non-emergency engines, it is necessary to limit the types of engines eligible to operate under the permit to those with the most current technology to be protective of the National Ambient Air Quality Standards (NAAQS), even in attainment areas. We note that we have not taken this approach for all of the general permits. For example, the general permits for hot mix asphalt plants; stone quarrying, crushing, and screening operations; and concrete batch plants allow for the use of existing compression ignition non-emergency engines. However, in those cases the engines covered are smaller and are not the primary equipment (and, thus, emissions) at the source.

The Texas Commission on Environmental Quality's Permit by Rule for engines found in 30 Texas Air Code section 106.512 suggested by the commenter appears to apply to a broader group of stationary sources (*i.e.,* turbines) and is not limited to spark ignition engines. Thus, its limits would not be translatable to a general permit limited to spark ignition engines.

We are clarifying each of the draft documents for the spark ignition and compression ignition engines general permits to better identify the types of sources that are eligible for these permits. Additionally, the EPA did not intend that the draft engines permits would apply to sources where non-exempt emergency engines are present (alone or in combination with other emissions sources),[26] or to engines in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector for which the EPA has issued a separate, final rulemaking.[27] Therefore, we are revising the title of the draft boiler general permit to ''General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country'' to clarify that sources with non-exempt emergency engines should apply for that general permit.

One commenter stated that the engines general permits reference certain certification or emission requirements at 40 CFR part 89, 40 CFR part 90, 40 CFR part 1048, and Table 1 to 40 CFR part 60, subpart JJJJ, which contain complex language that may require engine operators to conduct legal analytical work. The commenter requested that the EPA list these requirements more succinctly in order to help tribal operators determine whether their sources are subject to certain requirements and what the requirements are. The commenter also requested that the EPA clarify the applications to make them as easy to understand as possible, noting that tables would be easier to follow than text.

The EPA acknowledges that the language contained in the engine regulations can be complex and potentially difficult for individual owners or operators of engines to understand. This is why the EPA has generally designed the permit requirements for engines to require the owner or operator to simply install certified engines. We are revising the draft general permit for spark ignition engines to specifically list the applicable emission standards from Table 1 to 40 CFR part 60, subpart JJJJ, instead of incorporating them by reference.[28] We have also revised the permitting documents as suggested to provide more clarity to the applicable requirements.

Two commenters stated that, in the draft compression ignition engines general permit, the EPA excludes existing compression ignition engines in Condition 19, which requires non-emergency engines to be model year 2014 or later. The commenters argued that requiring sources to install only new engines would be inappropriate and inconsistent with existing engine rules. One commenter further stated that no state prohibits the relocation of existing engines, which would be prohibited under the proposed rule. The EPA notes that the commenters seem to misinterpret the intent of the draft permits for engines. These general permits are intended for a limited set of stationary sources—those consisting primarily of non-emergency engines. We generally expect the final ''General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country'' and the final ''General Air Quality Permit for New or Modified Minor Source Compression Ignition Engines in Indian Country'' to be used by sources in Indian country that, for example, provide electricity or pump groundwater in areas where power from the grid is not available. The general permits are not intended to be used by all source categories with non-emergency engines. Each permit is intended for a particular source category. We are clarifying each of the documents for the spark ignition and compression ignition permits to better identify the types of sources likely to be eligible for these permits. Finally, we note that the general permits for engines do not prohibit relocation of engines. While we limit the types of engines that can be used under the permits, engines that meet the permit requirements may be relocated to a new or modified, permitted stationary source.[29]

Three commenters expressed the view that including compliance requirements for emergency spark ignition engines in a compression ignition engine permit and compliance requirements for emergency compression ignition engines in a spark ignition engine permit creates confusion. One commenter remarked that it is unclear

[26] Under 40 CFR 49.153(c)(9), emergency generator engines at a single source are ''exempt'' if the combined maximum hp rating is below 1,000 hp in attainment areas or 500 hp in ozone nonattainment areas classified as Serious or lower. If your source consists of only exempt equipment, then you are not required to obtain a minor NSR permit.

[27] ''Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector,'' U.S. Environmental Protection Agency, 81 FR 35944, June 3, 2016, *https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf*.

[28] The draft general permit for spark ignition engines also contained a typographical error that referenced ''40 CFR subpart JJJJ'' instead of the correct citation 40 CFR part 60, subpart JJJJ.

[29] We have provided guidance on the in-kind replacement of units in the preamble to the final rule issued on May 30, 2014, in which we clarified requirements for such units in the Federal Indian Country Minor NSR rule. ''Review of New Sources and Modifications in Indian Country—Amendments to the Federal Indian Country Minor New Source Review Rule,'' U.S. Environmental Protection Agency, 79 FR 31035, May 30, 2014, *https://www.gpo.gov/fdsys/pkg/FR-2014-05-30/pdf/2014-11499.pdf*.

which permit would be appropriate for a source operating an emergency compression ignition engine, and what criteria are used to determine when an emergency compression ignition engine would be covered under one permit or another. The EPA notes that draft permits for compression ignition and spark ignition engines contain limits on the combined hp rating for emergency engines that are at, or below, the exemption thresholds finalized in 40 CFR 49.153(c). Therefore, we are removing the emergency engine provisions from these two general permits, as this equipment is exempt from the program at the thresholds in the permits.[30] We are revising the Request for Coverage Forms and questionnaires for these permits to identify this exemption. During the development of the engines general permits, the EPA finalized exemptions for certain emergency engines at 40 CFR 49.153(c).

Two commenters asserted that stack testing procedures for emergency engines are inappropriate and not required by states. Instead, the commenters recommended that the EPA include maximum non-emergency run time hour limits (*e.g.,* 500 hours/year) in both the spark ignition and compression ignition engines general permits. The EPA disagrees that we should replace the testing requirements with limits on the hours an emergency engine can operate in non-emergency situations. However, as noted above, we are removing the requirements for emergency engines from the final ''General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country'' and the final ''General Air Quality Permit for New or Modified Minor Source Compression Ignition Engines in Indian Country.''

Two commenters questioned the specific testing procedures outlined in the engines general permits. One commenter stated that the outlined procedures for stack testing were contradictory with regard to engine load during testing. In the draft spark ignition engines general permit, another commenter stated that emissions testing requirements should allow portable analyzer testing and test methods other than the EPA reference methods. The commenter stated that allowing portable analyzers is necessary due to the remote and dispersed nature of many engines. The EPA recognizes that some engines typically do not operate within 10 percent of peak load. However, the ''within 10 percent peak load'' requirement was included in the permit to be consistent with the testing requirements in the applicable NSPS. This allows testing conducted under the NSPS to be used for the general permit as well. The EPA has generally included a requirement in our general permits to ensure testing is conducted under typical operating conditions to avoid testing being conducted, for example, during startup or malfunction. We do not find the two provisions to be contradictory. Regarding the use of portable analyzers, the draft general permit for spark ignition engines provides for the use of test methods identified in 40 CFR part 60, appendix A, which allow the use of a portable analyzer. In addition, the draft spark ignition engines general permit specifically references the use of portable analyzers. No changes have been made to the final ''General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country,'' as a result of this comment.

One commenter stated that the requirement to monitor fuel use for each engine on a monthly basis is not practical, given the many remote locations where engines are used for oil and gas production. The commenter further asserted that because the standards are based on an emissions/hp-hour basis, fuel measurement is unnecessary to demonstrate compliance. The EPA notes that these general permits do not apply to engines in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector for which the EPA has issued a separate, final rulemaking in the form of a FIP.[31] [32] We do not anticipate that sources outside of the oil and natural gas production and natural gas processing segments of the oil and natural gas sector with stationary spark ignition and compression ignition engines will have difficulty meeting the monthly fuel use requirements. Thus, no changes have been made to the final permits as a result of this comment.

One commenter requested that the EPA provide clear direction for authorization of in-kind replacement engines. The commenter noted that engines are frequently swapped out with an in-kind engine to minimize compressor downtime, and that these replacements have the same or lower emissions than the engine being replaced. Two commenters noted that existing compressors may be moved and installed at another site to meet production needs. One commenter argued that the EPA must allow for relocation of existing engines without requiring them to be retrofitted. Another commenter suggested that the EPA consider the permit by rule and general permitting programs run by the states of Texas, Colorado, and Louisiana as models to address relocation of existing engines.

Because these commenters represent the oil and natural gas industry, the EPA infers that the commenters are referring to engines used in the oil and natural gas sector. The EPA notes that these general permits do not apply to engines in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector for which the EPA has issued a separate, final rulemaking in the form of a FIP.[33] The general permits being finalized for engines in this action do not contain any specific conditions related to in-kind replacements. The commenter has not provided a specific description for what is meant by ''in-kind'' replacements, only alluding to the fact they have ''the same or lower emissions than the engine being replaced.'' We cannot provide a more detailed response other than to point the commenter to how we addressed the issue of emissions unit relocation/replacement in the oil and natural gas industry in response to comments on final amendments to add to the list of

[30] Emergency generator engines at a single source are ''exempt'' if the combined maximum hp rating is less than 1,000 hp in attainment areas or less than 500 hp in ozone nonattainment areas classified as Serious or below. If your source consists of only exempt equipment, then you are not required to obtain a minor NSR permit.

[31] ''Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector,'' U.S. Environmental Protection Agency, 81 FR 35944, June 3, 2016, *https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf.*

[32] The final oil and natural gas FIP focuses on the oil and natural gas production and natural gas processing segments of the oil and natural gas sector because we believe that these segments include the majority of the true minor sources in the sector that would need to obtain a minor source permit in areas covered by the Federal Indian Country Minor NSR rule.

[33] ''Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector,'' U.S. Environmental Protection Agency, 81 FR 35944, June 3, 2016, *https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf.*

exempted units in the Federal Indian Country Minor NSR rule.[34]

In the Federal Indian Country Minor NSR rule, we indicated our understanding that, in oil and gas sector operations, moving a single piece of equipment from one facility to another, or replacing a piece of equipment with a new one, can occur on a regular basis. For clarification purposes, we believed that it would be beneficial to both sources and reviewing authorities for us to list the different situations involving a piece of equipment (a unit) that we believed would be most common, and to specify the outcome with respect to minor NSR permitting and registration. In the preamble to the final rule, we listed expected outcomes to provide guidance on how we would address certain ''relocation'' scenarios. We did, however, indicate that the source owner/operator should still verify with its Reviewing Authority that the scenario provided, and its stated outcome, applies to its case.[35] Regardless, each model year engine has to meet its applicable emissions control NSPS requirements.

One commenter stated that the requirement to ''maintain onsite all records required to be kept by this permit'' is not practical at unmanned oil and natural gas production facilities. The commenter asked that the requirement be modified to recognize that records for unmanned facilities are normally kept at an office having operational control of the unmanned facility where the engines are located. The EPA notes that these general permits do not apply to engines in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector for which the EPA has issued a separate, final rulemaking in the form of a FIP.[36]

We do not anticipate that sources outside of the oil and natural gas production and natural gas processing segments of the oil and natural gas sector with stationary spark ignition and compression ignition engines will have difficulty meeting the recordkeeping requirements. Therefore, no changes have been made to the final permits as a result of this comment.

Two commenters stated that the reporting requirements in the draft general permits for engines are equivalent to the requirements for major sources subject to Title V. The commenters argued that these requirements are not appropriate for minor or area sources. Specifically, the commenters asserted that deviation reporting, compliance certifications, and requiring signature by a Title V equivalent ''responsible official'' is overly burdensome to minor sources. The commenters also stated that these requirements would increase the burden on the EPA to review these reports. One commenter asserted that engines that are already affected sources of an NSPS or NESHAP should have no additional requirements (reporting or otherwise).

While the reporting requirements contained in the draft general permits may be similar to reporting requirements of the Title V Program, the EPA disagrees that a change is warranted. In developing the draft general permits, the EPA followed the Federal Indian Country Minor NSR rule, 40 CFR 49.155(a)(5), which identifies reporting requirements that must be included in each permit. The EPA cannot simply rely on assumed existing reporting and other requirements from other rules (*e.g.,* NSPS or NESHAP) to ensure compliance with the emission limitations in our general permits. However, in some instances the reporting requirements in the final permits in this action are similar to or identical to reporting requirements in NESHAP and NSPS standards. Thus, for some requirements reporting under the other standards will also suffice for these permits. (If a permittee has a question about whether a particular reporting requirement under a NESHAP or NSPS will also suffice for these permits, they should work with the Reviewing Authority during the review process.) Further, the requirement to have a responsible official sign reports is common and consistent with state permitting programs. It is unclear why this certification would be costly or overly burdensome for permittees, as the commenter has not provided any specific information demonstrating an actual problem or a particular difficulty.

One commenter stated that the timeframe for submittal of performance test reports in the draft engines permits is too short. The commenter noted that performance test reports are typically required to be submitted within 60 days of completion of the test by NSPS and NESHAP requirements for engines. The commenter also asked that stack test reporting required for NSPS and NESHAP satisfy the requirements for minor NSR reporting. In response, the EPA is extending the timeframe for submittal of performance test reports to 60 days for both the final ''General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country'' and the final ''General Air Quality Permit for New or Modified Minor Source Compression Ignition Engines in Indian Country.'' This timeframe is consistent with the requirements of 40 CFR part 60, subpart JJJJ, and 40 CFR part 63, subpart ZZZZ. Additionally, we are revising the draft engines general permits to clarify that facilities may satisfy the initial and subsequent stack testing requirements in the general permits by using the initial and subsequent performance tests performed to meet NSPS and NESHAP requirements, assuming the required testing requirements in the permits are met.

Two commenters requested that the engines general permits include provisions to establish a source as synthetic minor for criteria pollutants and/or HAPs. Another commenter asserted that the EPA must require more stringent monitoring, recordkeeping and reporting for these sources.

In our final action signed on April 17, 2015,[37] we finalized a policy that allows for the use of general permits in Indian country to create synthetic minor sources. Consistent with the policy, and after considering the concerns raised by commenters, we are finalizing the ''General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country'' and the ''General Air Quality Permit for New or Modified Minor Compression Ignition Engines in Indian Country'' to allow for their use by true minor sources and to create synthetic minor sources.[38] For the final ''General Air Quality Permit for New or Modified Minor Source Compression Ignition Engines in Indian Country,'' we added operational limits so that the permit serves both true minor and synthetic minor sources. For the same purpose, for the final ''General Air Quality Permit for New or Modified

[34] ''Review of New Sources and Modifications in Indian Country: Amendments to the Federal Indian Country Minor New Source Review Rule,'' U.S. Environmental Protection Agency, 79 FR 31035, May 30, 2014, *https://www.gpo.gov/fdsys/pkg/FR-2014-05-30/pdf/2014-11499.pdf.*

[35] Ibid.

[36] ''Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector,'' U.S. Environmental Protection Agency, 81 FR 35944, June 3, 2016, *https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf.*

[37] ''General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,'' U.S. Environmental Protection Agency, 80 FR 25068, May 1, 2015, *https://www.gpo.gov/fdsys/pkg/FR-2015-05-01/pdf/FR-2015-05-01-FrontMatter.pdf.*

[38] The Request for Coverage Forms for these permits list the different control options available to sources seeking coverage under the permits, making it clear which options are for true minor sources and which options are for synthetic minor sources.

Minor Source Spark Ignition Engines in Indian Country,'' we created synthetic minor limits for fuel use for only natural gas engines as we believe that is the most likely fuel use scenario. We do not feel that we have sufficient information available to create these limits for other fuel types, as the other fuels can have varying characteristics, which will change engine efficiency and affect emissions. We do not see a need to add any additional monitoring, recordkeeping and reporting requirements for synthetic minor sources as the existing requirements in the general permits are sufficient to ensure sources' emissions will remain below major source levels.

Two commenters requested clarification on the proposed FIP or permit by rule considered in the Advance Notice of Proposed Rulemaking.[39] The commenters noted that it is not clear whether the draft engines general permits cover engines located at oil and natural gas production facilities. The EPA recognizes that it was unclear at the time of proposal whether the draft permits would apply to engines located at oil and natural gas production facilities. The final engines general permits do not apply to engines in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector for which the EPA has issued a separate, final rulemaking in the form of a FIP following consideration of comments received on the proposed FIP.[40] Only new sources or modifications consisting of one or more non-emergency engines that are not located in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector are eligible to apply for coverage under the spark ignition and/or compression ignition stationary engines general permits. Engines in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector have been addressed in the separate, final rulemaking.[41]

[39] ''Managing Emissions From Oil and Natural Gas Production in Indian Country,'' U.S. Environmental Protection Agency,'' 79 FR 32502, June 5, 2014, *https://www.gpo.gov/fdsys/pkg/FR-2014-06-05/pdf/2014-12951.pdf.*

[40] ''Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector,'' U.S. Environmental Protection Agency, 81 FR 35944, June 3, 2016, *https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf.*

[41] Ibid.

One commenter representing oil and natural gas sector interests expressed a preference for a permit by rule mechanism for compression ignition and spark ignition engines in lieu of a general permit, and recommended that the EPA consider, as an example, the permit by rule in the Texas Administrative Code, Title 30, Part 1, Chapter 106, Subchapter A, Rule section 106.4, coupled with the engine-specific Permits by Rule 106.511 and 106.512. The commenter stated that a permit by rule allows sources the flexibility to install and operate engines without delays arising from review and approval by permitting authorities. The commenter also pointed out that a primary advantage of implementing a permit by rule or FIP would be that a new federal decision triggering the Endangered Species Act (ESA) and National Historic Preservation Act (NHPA) would not be made each time a source avails itself of the permit by rule or FIP. Regarding the use of a permit by rule or FIP for compression ignition and spark ignition engines, the EPA did not propose the use of these permitting mechanisms in the proposed rule and does not consider their use appropriate at this time. Thus, we did not seek comment on their use at the time of proposal. Furthermore, the draft permits do not apply to engines in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector. The EPA has issued a separate, final rulemaking addressing oil and natural gas production sources, including non-emergency engines located at such sources.[42]

e. Comments and Responses Concerning General Permits for Graphic Arts and Printing Operations

One commenter noted that the preamble description of ''graphic arts'' does not match the description in the draft general permit and that the draft general permit does not include screen printing and manual and sheet-fed techniques. The EPA has corrected the discrepancy and modified the final questionnaire and Request for Coverage Form to clarify that the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country'' applies to sheet-fed printing operations.

One commenter recommended that all solvent cleaning operations (except batch loaded cold cleaners) comply with emission standards similar to SCAQMD Rule 1171. The EPA considered SCAQMD rules when developing some

[42] Ibid.

of the nonattainment area emission requirements. We have determined that the additional limits and work practice standards not already included in the draft permit should only be added to the requirements for Serious and above ozone nonattainment areas. As a result, we are revising requirements in the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country'' to include additional emission limits and work practice standards consistent with SCAQMD Rule 1171 that apply only in Serious and above ozone nonattainment areas.

One commenter noted that the term ''reasonable time'' in Condition 9 of the draft permit is subjective and not easily enforceable, and requested a specific timeframe. The EPA agrees with the commenter and replaced ''reasonable time'' with ''30 days unless another timeframe is specified by the EPA'' in the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country.'' We have made this change in all of the final permits included in this action.

One commenter recommended that the volatile organic compound (VOC) limits in Condition 17 of the draft general permit for graphic arts and printing operations be changed to grams per liter (g/L) of ink/coating/adhesive less water and exempt compounds. The EPA agrees with the recommendation that the coating content limits in Condition 17 should also be provided in g/L and has added VOC content limits measured in g/L. We also agree with the recommendation that the coating content limits be on an ''as applied'' basis, excluding water, and have modified the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country,'' accordingly. In response to the same comment, we have also added a definition for VOC to the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country'' to clarify the compounds not included when considering VOC.

One commenter stated that Serious and above ozone nonattainment area VOC limits for inks, coatings and adhesives should be limited, measured and reported in g/L or pounds/gallon (lbs/gal), excluding water and any other compounds exempted by the permitting authority or the local/neighboring air district. The same commenter recommended for all areas that the proposed percent alcohol or percent alcohol substitute limits in Condition 18

of the draft general permit be converted to an equivalent VOC content limit in g/L, as applied, including water and exempt compounds. The same commenter requested that if the standards for fountain solution are changed to VOC content rather than percent alcohol or alcohol substitute, then the log required in Condition 31 of the draft general permit should reflect: (1) The units (*e.g.,* g/L or lbs/gal, as applied, including water and exempt compounds) of the fountain solution standards; (2) the units (*e.g.,* g/L or lbs/gal, as applied, less water and exempt compounds) of the VOC limits for the coating, ink or adhesive; and (3) the units (*e.g.,* g/L or lbs/gal, as applied, less water and exempt compounds) of the VOC limits. The commenter also recommended that the VOC limits in Attachment C for all materials except fountain solution should be g/L or lbs/gal, less water and less exempt compounds, and that the VOC limits for fountain solution should be converted to an equivalent VOC content limit in g/L, as applied, including water and exempt compounds.

The EPA generally agrees with the commenters and has made corresponding changes to the final permit conditions. The EPA agrees with the recommendation that the nonattainment area VOC ink, coating, and adhesive content limits should also be provided in g/L and lbs/gal, which is how we presented the draft VOC content limits for nonattainment areas in the draft permit. We have retained the VOC limits provided in g/L and lbs/gal in the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country.'' We also agree with the recommendation that the coating content limits should be on an ''as applied'' basis, excluding water and other compounds. We have added a definition for VOC to the final permit to clarify the compounds not included when considering VOC. We have also made corresponding changes to the recordkeeping requirements, as appropriate.

One commenter requested that the EPA clarify Condition 21 of the draft general permit to apply only to flexible packaging printing operations. In the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country,'' the EPA agrees with the commenter and we have revised the heading for the draft condition that reads ''Exemption for Non-compliant Materials'' to a new heading, ''Exemption for Flexible Packaging Printing Operations,'' to clarify that the non-compliant materials exemption is only applicable for flexible packaging printing.

One commenter requested that the frequency of monitoring of the usage of all VOC-containing material (Condition 27 of the draft general permit) be changed from a weekly basis to a daily basis. The EPA agrees with this recommendation as it relates to certain nonattainment areas and we are, accordingly, revising the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country'' to include a requirement for daily monitoring of VOC usage for Serious and above ozone nonattainment areas. The EPA has concluded that a greater level of monitoring is necessary: (1) To protect air quality in areas that are designated as Serious and above ozone nonattainment; and (2) to ensure a consistent set of requirements across state and tribal areas in common airsheds.

One commenter requested that the EPA add requirements for performance testing at facilities with air pollution control equipment to verify the overall VOC control efficiency and to quantify the NO_X emissions from any air pollution control equipment (*e.g.,* oxidizers). The EPA agrees with the commenter and has added testing requirements for potential add-on control equipment. (The option for owners or operators to rely on add-on control devices for compliance was added to the permit in response to another comment.) For each add-on control system used at a graphic arts and printing operation source, the source must conduct an initial performance test within certain timeframes to verify compliance with the add-on control standards according to a test plan submitted to the Reviewing Authority. The testing is to determine the capture/control efficiency of the emission control system. The source must also conduct subsequent performance tests every five years.

One commenter requested that the monthly record requirements in Conditions 31 through 33 of the draft general permit be clarified to specify calendar-monthly records. Although the EPA intended that records be kept on a calendar-monthly basis, we recognize that the draft permit was unclear. We are, therefore, revising the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country'' to clarify that the recordkeeping requirements are to be kept on a calendar-monthly basis. This means under the final permit each source must update a log of their usage of VOC-containing material and report that usage on a calendar-monthly basis.

One commenter requested that if requirements to conduct additional performance tests are added to the general permit, the EPA should include a requirement for recording the results of each performance test. The EPA agrees that the results of all performance tests should be recorded and the records maintained. As a result, in authorizing the use of add-on controls, we included recordkeeping and reporting requirements for specified performance testing for add-on control equipment.

One commenter recommended that the definition of ''coldset'' be modified to clarify that coldset printing operations include presses with infrared or other energy curing devices such as ultraviolet dryers. The same commenter recommended that the definition of ''heatset'' be modified to clarify that coldset printing operations do not include presses with infrared or other energy curing devices such as ultraviolet dryers. The EPA has reviewed these definitions and agrees that the language suggested by the commenter provides additional clarifications that can help facilitate a better understanding of the permit's requirements. We have revised the definitions, accordingly, to add the commenter's suggested language.

One commenter recommended that the definition of ''offset lithographic and letterpress printing operation'' be modified to be consistent with SCAQMD Rule 1130. The EPA has reviewed this definition and agrees with the language suggested by the commenter because the change provides additional clarification that can help facilitate understanding of the permit's requirements. We have revised the definition accordingly.

One commenter recommended that the EPA add a definition for ''exempt compounds,'' including compounds in the jurisdiction of neighboring air districts to Indian country (SCAQMD Rule 102). The EPA agrees that the definition of VOCs provided in the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country'' (that was not provided in the draft permit) should identify ''exempt compounds.'' We have revised the ink/coating content limits to regulate on an ''as applied'' basis, excluding water. We have also added a definition for VOC to the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country'' to clarify which compounds are not included when considering

VOC. However, in lieu of referencing the exempt compounds in SCAQMD Rule 102, the definition references the list of exempt compounds in 40 CFR 51.100(s)(1), which we have determined to be more generally applicable to sources in Indian country.

One commenter recommended that the EPA include a definition for ''fountain solution'' and provided a suggestion. The EPA agrees that including such a definition will improve the rule's efficacy and enforceability and agrees that the commenter's proposed definition is appropriate. As a result, we have added the suggested definition for ''fountain solution'' to the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country.''

One commenter recommended that the EPA include a definition for ''grams of VOC per liter of coating (or ink or adhesive), less water and less exempt compounds.'' The commenter provided the EPA with a calculation method for VOC content per liter of coating used. The EPA agrees that the information suggested by the commenter will improve the permit's efficacy. We have, therefore, added the information to the Sample Calculations section of the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country.''

One commenter recommended that the sample calculations in Attachment D of the general permit should include more representative values for heatset lithographic ink. The commenter also noted a typographical error for the VOC retention factor for heatset lithographic ink, which should be listed as 20 percent instead of 30 percent. In addition, the EPA acknowledges that the sample calculations in Attachment D of the permit should reflect more representative values for heatset lithographic inks because it is intended to provide ''real world'' values. We have modified Attachment D to include more representative values and to correct the erroneous VOC retention factor.

One commenter requested that the EPA add language to clarify that these are uncontrolled VOC emissions. The commenter referenced language in the preamble which indicates that printing presses ''would need to be able to demonstrate compliance with the permit (25 tpy VOC) without the consideration of controls.'' The same commenter requested that the EPA add language to clarify what equipment ''all printing lines'' includes (*i.e.,* combustion emissions from gas-fired equipment, air pollution control equipment, internal combustion engines, pre-press operations, or other non-printing related VOC-emitting operations performed). The EPA agrees with the commenter's suggestion of clarifying the permit language. We have done so by clarifying that compliance with the following condition must not consider the reduction in emissions from any add-on control technology: ''The permittee shall not allow volatile organic compound (VOC) emissions from an individual printing press (printing line) to exceed 25 tons per year.'' The EPA also agrees with the commenter that the equipment included in all printing lines should be identified in the permit. The permit has been revised accordingly.

Two commenters supported the proposal to increase the stringency of the overall tpy emission limitations for all printing lines at a facility based on the increasing classification of the ozone nonattainment area designation. Another commenter asserted that, for nonattainment areas, the EPA should require the most stringent emissions limitation or installation of BACT based on requirements of the neighboring air district, regardless of the facility's PTE or throughput. The commenter argued that emissions generated in these areas would have an effect on the neighboring district's air quality.

The EPA has determined that the VOC content limits in the draft general permit for graphic arts and printing operations effectively limit VOC emissions in nonattainment areas and are consistent with the BACT requirements suggested by the commenter. However, we are also adding add-on control requirements for this source category as an option for complying with the VOC content limits contained in the draft permit. This option provides owners and operators the flexibility to use non-compliant materials, while also protecting air quality. Finally, we note that the EPA has the authority to determine that a particular general permit is no longer sufficient to protect air quality for new or modified sources in a geographic area and, therefore, does not meet the requirements of the Federal Indian Country Minor NSR rule. Such a determination would, for example, consider local air quality conditions, typical control technology and other emission reduction measures used by similar sources in surrounding areas, anticipated economic growth of the area, and/or cost-effective emission reduction alternatives.

One commenter argued that facilities utilizing fuel combustion heating units (*e.g.,* ovens, dryers, oxidizers) in Serious and above ozone nonattainment areas should use only natural gas as their primary fuel for heatset printing presses (non-electric heated), and that the NO_X emissions from heatset printing presses should not exceed 30 parts per million, volumetric dry, corrected to 3 percent oxygen. The same commenter requested that if NO_X concentration limits are added to the emissions limits and standards for gas-fired dryers/ovens on heatset printing presses, the EPA should consider adding requirements for performance tests to be conducted on heatset printing press ovens with gas-fired burners to demonstrate compliance. The EPA has considered the commenter's recommendations and has included the requirements proposed by the commenter into the requirements for ozone nonattainment areas in the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country.'' The EPA has concluded that in ozone nonattainment areas a greater level of control is required to protect air quality. Thus, the requirements, which would reduce levels of NO_X from combustion sources, are appropriate for these areas. Therefore, we have added an overall capacity limit for combustion units, excluding engines, that applies to all areas, attainment and nonattainment. The more stringent provisions recommended by the commenter will apply only to Severe and Extreme ozone nonattainment areas because they are necessary to ensure that the permit provides adequate air quality protection. We have not required the more stringent provisions in Serious ozone nonattainment areas because we do not believe that in those areas the extra control is necessary to protect air quality. We have also revised the permit to reflect associated monitoring and recordkeeping requirements.

One commenter stated that in nonattainment areas, all facilities should vent ovens to air pollution control equipment with a minimum 95 percent overall VOC control efficiency. The commenter requested that the EPA clarify that in an Extreme ozone nonattainment area (the South Coast and San Joaquin Valley Air Basins), the major source threshold for VOC is 10 tpy. The commenter referenced the SCAQMD BACT for PM and VOC emissions from a heatset lithographic printing press, which requires venting the press oven to air pollution control equipment with a minimum 95 percent overall VOC control efficiency. The commenter noted that the facility VOC emission threshold for a general permit can be as low as 7 tpy from all printing

lines combined; however, all heatset lithographic printing press ovens should be vented to air pollution control equipment with a minimum 95 percent overall VOC control efficiency. The EPA has included the requirements proposed by the commenter in the requirements of the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country'' to allow sources the flexibility to use add-on control requirements as an alternative to the VOC content limits in the permit. In addition, we are making the add-on control requirement mandatory in Extreme ozone nonattainment areas. Furthermore, we have determined that provisions similar to those in the SCAQMD requirements identified by the commenter are appropriate to include because the only Extreme ozone nonattainment areas in Indian country are located in California. In addition, we are also clarifying that in ozone nonattainment areas, new or modified sources must obtain a permit for VOC emissions increases of 2 tpy or more. Sources in Extreme ozone nonattainment areas emitting above 7 tpy are not eligible for the final ''General Air Quality Permit for New or Modified Minor Source Graphic Arts and Printing Operations in Indian Country'' and must obtain a source-specific permit prior to beginning construction.

One commenter recommended, for nonattainment areas, that all solvent cleaning operations (excluding batch loaded cold cleaners) should comply with lower emission standards. The commenter requested that the EPA consider the standards in SCAQMD Rule 1171. The EPA considered SCAQMD rules when developing some of the nonattainment area emission requirements for Serious and above ozone nonattainment areas and concluded that the requirements in SCAQMD Rule 1171 are appropriate for inclusion in the final permit generally because they are necessary to ensure consistency (and, thus, a more level playing field) with requirements in neighboring areas under local requirements. The EPA has, therefore, included the emission standards and specific work practice standards in Rule 1171 referenced by the commenter as requirements in the final permit for sources in nonattainment areas.

One commenter recommended that, at graphic arts and printing operations in nonattainment areas, compression ignition emergency engines should comply with NSPS 40 CFR part 60, subpart IIII, and NESHAP 40 CFR part 63, subpart ZZZZ. The commenter also recommended additional limits on operating hours of up to 50 hours per year for maintenance and testing and 200 hours per year total operation for nonattainment areas. The EPA disagrees with the commenter that compression ignition emergency engines at graphic arts and printing operations in nonattainment areas should meet limits on operating hours in addition to complying with 40 CFR part 60, subpart IIII, and 40 CFR part 63, subpart ZZZZ. Additional operating limits are unnecessary and would conflict with the requirements of the NSPS and NESHAP, which would create an additional, unjustified reporting burden for sources. However, we do agree that in nonattainment areas, emergency engines that are not otherwise exempt from the Federal Indian Country Minor NSR Program should be certified to the EPA's standards in 40 CFR part 60, subpart IIII. The final ''General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country'' has been revised, accordingly.

f. Comments and Responses Concerning General Permits for Sawmill Facilities

One commenter stated that prohibiting open burning (Condition 16 in the draft sawmill facilities general permit) conflicts with the FARR open burning rule (40 CFR 49.131). The EPA notes that the condition in the draft general permit only bans open burning at sawmills. It is not intended to prohibit open burning of all kinds, but was included to prevent operators of sawmill facilities from burning waste or other disposed materials on the property of the mill. It does not prohibit open burning at locations other than sawmill facilities and, thus, is consistent with the FARR in that regard. The EPA does not believe that there is a conflict. However, disposal of any waste from sawmill facility activity must be handled in accordance with applicable requirements in all tribal, local and federal regulations and statutes.

One commenter objected to Condition 11 in the draft sawmill facilities general permit, stating that it is not necessary to label emission units and air pollution control equipment with identification numbers, and that serial numbers or the location of the unit should suffice. The EPA believes that the identification and labeling of emission units and air pollution equipment is needed to facilitate identification of equipment covered under the general permit by inspectors. Therefore, we are finalizing the labeling requirements included in the draft permit. It is worth noting that this requirement is consistent with all of the other permits in this final action and in the final action that we finalized in May 2015.[43]

One commenter stated that the pollution control requirements in Conditions 24 to 26 of the draft sawmill facilities general permit are too specific. The EPA disagrees. Specific permit conditions are necessary in order to ensure that the conditions in the general permit are enforceable. No changes have been made to the permit conditions in the final ''General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country,'' as a result of this comment.

One commenter noted that if a planar mill does not have a baghouse or fabric filter, per Condition 24 of the draft sawmill facilities general permit, they would be required to obtain a source-specific permit. The same commenter stated that, per Condition 25 of the draft general permit, sawmill facilities with uncovered outdoor operations, or with covered operations that do not have a baghouse or fabric filter, would need to obtain a source-specific permit. The same commenter also stated that, per Condition 26 of the draft general permit, sawmill facility operations that are indoors without a baghouse or fabric filter would be required to get a source-specific permit. In all three cases, the EPA agrees and has determined that the use of a baghouse or fabric filter is a reasonable and readily available technology for new or modified sources indoors and covered facilities outdoors. Sources that cannot, or do not wish to, install a baghouse or fabric filter must seek a source-specific permit.

One commenter objected to weekly visible emissions surveys (Conditions 33 and 34 of the draft sawmill facilities general permit). The commenter argued that weekly surveys would be burdensome, especially compared to Title V sawmill facilities that have a quarterly survey frequency. The EPA disagrees with the commenter that weekly visible emission surveys are overly burdensome. They are not resource-intensive to accomplish using Method 22,[44] as specified in the draft permit (versus the Method 9[45] opacity

[43] ''General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,'' U.S. Environmental Protection Agency, 80 FR 25068, May 1, 2015, *https://www.gpo.gov/fdsys/pkg/FR-2015-05-01/pdf/FR-2015-05-01-FrontMatter.pdf.*

[44] Appendix A–4 to 40 CFR part 60—Test Methods 6 through 10B, Method 9—Visual determination of the opacity of emissions from stationary sources, *https://www.ecfr.gov/cgi-bin/text-idx?SID=ff80e78b603d3fe6e25595510b35f885&mc=true&node=pt40.8.60&rgn=div5#ap40.8.60.a_67.*

[45] Appendix A–7 to 40 CFR part 60—Test Methods 19 through 25E, Method 22—Visual

test, which requires certified observers). The fact that there may be some Title V permits for sawmills that only require quarterly surveys does not mean that quarterly monitoring is appropriate for sources wishing to operate pursuant to the general permit. The general permits developed by the EPA have consistently used weekly surveys for monitoring opacity and fugitive emissions. Frequent monitoring of equipment is necessary to ensure a source is in compliance at all times. No changes have been made to the conditions of the final ''General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country,'' as a result of this comment.

One commenter pointed out that Condition 35 of the draft sawmill facilities general permit, which requires an initial performance test for fugitive emissions, references Condition 17 of the draft sawmill facilities general permit, which applies to emissions units and not sources of fugitive emissions. The EPA has corrected the final ''General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country,'' which inadvertently applied only to affected emission units. We have modified the final permit to also require that sources of fugitive emissions not discharge into the atmosphere any gases that exhibit 20 percent opacity or greater averaged over any consecutive 6-minute period. These changes correct the final ''General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country,'' which requires an initial performance test to verify compliance with its opacity limitations.

One commenter stated that the testing requirements in Condition 37 of the draft sawmill facilities general permit for emergency engines are excessive, especially for older engines. The EPA disagrees with the commenter that the testing requirements for emergency engines are excessive. The requirements in the permit only apply to engines that have not been certified to the applicable standards in the permit. The testing requirements are necessary to ensure that uncertified engines under the permit comply with applicable limits in the permit.

One commenter recommended revising Condition 40.b. of the draft sawmill facilities general permit to read: ''For each kiln, monthly throughput 'by species' in Mbf.'' The EPA agrees with the commenter's recommendation, which clarifies that records must be kept that reflect the monthly throughput of the individual tree species because different species release differing amounts of VOC. We have modified the final ''General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country,'' accordingly.

One commenter pointed out a circular reference in Condition 50.c. of the draft sawmill facilities general permit. The commenter is correct that Condition 50.c. in the draft general permit inadvertently contained a circular reference. We have modified the ''Annual Reports'' Condition in the final ''General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country'' to refer correctly to the ''Deviation Reports'' Condition.

One commenter noted that, in the request for coverage for the draft sawmill facilities general permit, when the answer to a question would invalidate the use of a general permit, the instructions sometimes direct the applicant to contact the permitting authority for a source-specific permit. However, in other instances the instructions do not tell the applicant that they do not qualify for the general permit. The EPA acknowledges that not all of the questions on the Request for Coverage Form include a directive to contact the permitting authority for a source-specific permit based on a particular answer. This directive was only included for questions for which a specific ''yes'' or ''no'' answer would result in permittees not qualifying for the sawmill facilities general permit. In the case of Question 19 in the draft Request for Coverage Form, which was identified by the commenter as an example, the question requests the distance of the facility from the nearest property boundary or nearest residence. Because we are not finalizing setback requirements for sawmill facilities, this question has been removed from the Request for Coverage Form; therefore, the commenter's concern regarding this particular question is moot.

B. Issues Concerning Aspects of Finalizing a General Permit/Permit by Rule for Graphic Arts and Printing Operations

1. Proposed Rule

In the July 17, 2014, proposed rule, we proposed two types of minor NSR preconstruction permits to help streamline permitting of true minor sources that construct or modify in Indian country and that belong to one of six additional source categories. The first type of permit is a general permit and the second type is a permit by rule. As our preferred approach, we made available draft general permits for the six source categories. As an alternative, for graphic arts and printing operations, we requested comment on whether, in lieu of establishing a general permit for the source category, we should instead adopt a permit by rule.

We requested comment on all aspects of a draft general permit or proposed permit by rule for graphic arts and printing operations. We noted that we might not finalize the draft general permit for graphic arts and printing operations, if we finalized a permit by rule for the source category. Alternatively, we indicated that we might opt to finalize both permitting mechanisms for the source category, and might tailor one of the permitting mechanisms to provide authorization to construct or modify true minor sources (*i.e.,* permit by rule) and another to provide enforceable limitations to create synthetic minor sources (*i.e.,* general permit). We specifically requested comment on this ''hybrid'' approach.

In the proposal, we sought comments on all aspects of the draft implementation tools we provided (*e.g.,* general permit Request for Coverage Form). The draft general permit application for graphic arts and printing operations is more streamlined because sources in the category represent more straightforward operations, largely involve one air pollutant (*i.e.,* VOCs) and, therefore, could necessitate less intensive review for approval. The draft general permit application form for the category asks for basic solvent usage information and whether the source has complied or will comply with relevant requirements. By contrast, the draft general permit applications for concrete batch plants, engines, boilers and sawmill facilities request more detailed technical information about the proposed facility in question because these facilities are more complex and can involve multiple operations and pollutants. The draft form was also intended to serve as a Notification of Coverage Form for sources seeking coverage under a permit by rule, should we have decided to issue one for this category.

2. Summary of Comments, Responses and Final Action

With respect to comments on the appropriateness of utilizing a permit by rule for graphic arts and printing operations, responses are addressed here and in Section 2.0 of the RTC Document. Overall, as a result of the comments received on the proposal and

determination of fugitive emissions from material sources and smoke emissions from flares, *https://www.ecfr.gov/cgi-bin/text-idx?SID=ff80e78b603d3fe6e25595510b35f885&mc=true&node=pt40.8.60&rgn=div5#ap40.8.60.a_67.*

our continued evaluation of the circumstances, we are issuing only a general permit for graphic arts and printing operations. Three commenters provided comments regarding the EPA's proposal to establish a permit by rule for graphic arts and printing operations. One commenter agreed that the approach could provide significant time savings due to its streamlined approach. However, two commenters were concerned that a permit by rule approach does not provide the public, including Indian tribes, the opportunity to comment on a minor source's use of the permit. Another commenter disagreed that a permit by rule is consistent with the Federal Indian Country Minor NSR rule, which requires preconstruction permits. The commenter asserted that use of a permit by rule would effectively mean that sources exceeding the minor source permit threshold are effectively exempt from permitting. One commenter argued that the use of a permit by rule on tribal lands is not appropriate for either true minor or synthetic minor sources. Two commenters requested that the EPA provide either a notice and comment period or a consultation process for tribes for the permit by rule approach, citing that tribes must be given an opportunity to comment to recognize their sovereignty. For these reasons, the commenters supported only a general permit approach.

The EPA is not finalizing a permit by rule, either in lieu of or in conjunction with a general permit, for the graphic arts and printing operations source category for two reasons. First, many sources in this source category are major sources and require synthetic minor source permits in order to gain minor source status. While some of these sources may be true minor sources, the potential variation in size of individual sources warrants including a mechanism for creating synthetic minor sources. The permit by rule is not a mechanism that can be used to create synthetic minor sources; the general permit is a mechanism that can create synthetic minor sources, as it affords the opportunity for the Reviewing Authority to perform a review. The EPA established this approach when we finalized the first set of general permits and permits by rule in May 2015.[46] Thus, a general permit is more appropriate for this source category. Second, we agree with commenters that the permit by rule approach does not provide the public, including Indian tribes, the opportunity to comment about a minor source's use of the permit. We are, therefore, finalizing a general permit for this source category, which is an approach that affords the public an opportunity to object to a source gaining coverage under the permit pursuant to 40 CFR 49.157(a)(5).

The EPA disagrees with the commenter that the use of permits by rule effectively means that sources exceeding the minor source permit threshold are exempt from a permit. We also disagree that the permits by rule are not consistent with the concept of preconstruction permits in the Federal Indian Country Minor NSR rule. A permit by rule establishes a standard set of requirements that must be met by any source commencing construction in reliance on that permit and, thus, serves the same purpose as any other preconstruction permit. The primary difference between a permit by rule and a general permit is procedural, not substantive. As to consistency with the concept of preconstruction permits in the Federal Indian Country Minor NSR rule, the rule specifically authorizes the issuance of the general permits and the permits by rule we have issued thus far.[47]

With respect to comments on finalizing both permitting mechanisms for graphic arts and printing operations, we include responses here and in Section 7.0 of the RTC Document. As noted, we have decided to finalize only a general permit for graphic arts and printing operations, rather than to make both permit types available for the graphic arts and printing operations source category. We are not finalizing the proposed ''hybrid'' approach for graphic arts and printing operations because the EPA does not believe that sources in the source category are appropriate candidates for permits by rule, particularly since some of them may be major sources seeking synthetic minor status. Furthermore, we believe that having two permit types would add additional complication to administration of the rule with little, if any, apparent benefit. We are not adopting such a hybrid approach.

Finally, the EPA did not receive any comments on the issue of using a streamlined general permit/permit by rule application for graphic arts and printing operations. However, because this permit will serve as a general permit for true minor and synthetic minor sources, we are enhancing the application to request additional details about equipment present at the site. Since applicant sources could potentially be major sources seeking minor source status, we need to ensure that we have sufficient information to be able to make an approval review decision.

C. Proposed Rule Change to the Federal Indian Country Minor New Source Review Rule in One Area: Shortening the General Permit Application Review Process From 90 to 45 Days for Graphic Arts and Printing Operations

1. Proposed Rule

In the July 17, 2014, proposed rule, we proposed to change the Federal Indian Country Minor NSR rule at 40 CFR 49.156(e)(4) to shorten the general permit application review process from 90 to 45 days for one source category: Graphic arts and printing operations.

2. Summary of Comments, Responses and Final Action

This section provides a brief summary of other significant comments received and our responses. A full summary of the comments received on this subject and our responses are presented in Section 8.0 of the RTC Document.

Two commenters supported the proposal to amend 40 CFR 49.156(e)(4) to shorten the review period to 45 days for the graphic arts and printing operations permit. Conversely, one commenter recommended not reducing the review period since the EPA requires time to: (1) Review the material safety data sheets of graphic arts materials used; (2) review the specifications on gas-fired burners on heatset printing presses and oxidizers; and (3) evaluate internal combustion engines for compliance with NSPS and NESHAP requirements. We agree with the commenter that this source category requires a 90-day review period, particularly since the general permit is also serving as a permit to create synthetic minor sources. Consequently, the EPA is not finalizing revisions to § 49.156(e)(4) to shorten the general permit application review process from 90 to 45 days for the graphic arts and printing operations source category.

D. Control Technology Review

1. Proposed Rule

In the proposal, we requested comment on various aspects of the EPA's conclusion following its control technology review that, because the control measures in the draft general permits are currently used by other similar sources in other areas of the country, the measures in the draft

[46] ''General Permits and Permits by Rule for the Federal Minor New Source Review Program in Indian Country for Five Source Categories,'' U.S. Environmental Protection Agency, 80 FR 25068, May 1, 2015, *https://www.gpo.gov/fdsys/pkg/FR-2015-05-01/pdf/2015-09739.pdf.*

[47] Ibid.

permits are technically and economically feasible and cost effective.

2. Summary of Comments, Responses and Final Action

This section provides a brief summary of significant comments received and our responses. A full summary of the comments received on this subject and our responses are presented in Section 3.0 of the RTC Document. The EPA is largely retaining the basic approach to the control technology review outlined in the July 17, 2014, proposal.

One commenter expressed confusion over the term ''control technology.'' The commenter requested the EPA clarify if this refers to add-on controls or if it includes controls that may be part of the equipment itself. In response, we note that the term ''control technology'' refers to integrated controls, add-on controls and other emissions reduction techniques (*e.g.,* work practice standards and the use of compliant materials).

One commenter stated that because the EPA intends to issue general permits at the national level instead of through Regional Administrators, the Agency should require the most stringent requirements applicable in adjacent areas of Indian country. The commenter recommended that the general permits require the use of BACT and the most current version of adjacent area rules and regulations to avoid a competitive disadvantage. The commenter also noted that the EPA may wish to consider making general permits applicable only within one of the EPA Regions, in order to avoid making sources in Indian country subject to more stringent requirements than those in adjacent states.

Regarding the level at which the EPA issues general permits, the commenter is correct that all of the general permits that the EPA has established to date (including this set) have been at the national level. However, we may in the future issue general permits (or permits by rule) on a smaller geographic scale for a particular state or region of the country. In fact, in the first batch of streamlined permits we issued, we indicated that EPA Region 9 will be developing a general permit or permit by rule for areas within California for gasoline dispensing facilities.[48] In addition, once the EPA issues a general permit at the national level, Regional offices serving as the Reviewing Authority are responsible for processing the Request for Coverage and issuing the Approval of Request for Coverage under nationally-issued general permits (as well as any general permits issued by that Region for a smaller geographic area), Alternatively, a tribe may serve as the Reviewing Authority for its area of Indian country by taking delegation of responsibility for implementing the permit program.

Regarding other points made by the commenter, the EPA crafted the minor source general permits to ensure air quality is properly protected and to provide a streamlined approach, where appropriate. We undertook a survey of existing national and state requirements, and reviewed, weighed and compared these requirements to develop general permits that would help provide a level playing field for minor sources in Indian country. The EPA has not necessarily adopted the most stringent of these observed standards, but, rather, has evaluated relevant rules and regulations to determine the most appropriate and commonly employed standards for each source and unit type covered under the Federal Indian Country Minor NSR rule. The EPA has the authority to determine that a particular general permit or permit by rule is no longer sufficient to protect air quality for new or modified sources in a particular geographic area and, thus, does not meet the requirements of the Federal Indian Country Minor NSR rule. Such a determination would consider, for example, local air quality conditions, typical control technology of other emission reduction measures used by similar sources in surrounding areas, anticipated economic growth in the area and/or cost-effective emission reduction alternatives. If the EPA were to make such a determination, it could either issue a revised general permit for use in that area or require sources in that area to obtain source-specific permits. In addition, the EPA Regional Administrators may adopt general permits or permits by rule that apply within those areas.

E. Setback Requirements

1. Proposed Rule

For the draft general permits for boilers, concrete batch plants, engines, and sawmill facilities, we included permit provisions related to the location of emitting activities relative to the source property boundary. We call these provisions, which are designed to minimize the impacts of emissions, setback requirements. Under a setback requirement, sources may not locate or expand within a specific distance from the property boundary and nearest residences. We proposed that these provisions seemed both reasonable and prudent measures to protect local air quality, and are economically feasible and cost effective.

2. Summary of Comments, Responses and Final Action

This section provides a brief summary of significant comments received and our responses. A full summary of the comments received on this subject and our responses are presented in Section 4.0 of the RTC Document.

Two commenters supported the inclusion of setback requirements for boilers, concrete batch plants, spark and compression ignition engines, and sawmill facilities. These commenters requested that the EPA not only apply the setback requirements to schools and nursing homes, but also to other physical locations such as community centers, health care facilities, hospitals, agricultural fields, ball fields, parks, locations designated for cultural and subsistence activities, and waterways. The same commenters requested that the EPA carefully consider each tribe's sovereign right to manage and oversee land use within its own boundaries. The commenters noted that some tribes may not provide for setback requirements where others may already have setback requirements that are less restrictive than those in the draft permits. The commenters recommended that the EPA consult and communicate with tribes on the application of setback requirements and that the EPA insert a provision in the general permits allowing a tribe to obtain a partial or full waiver from the requirements (*e.g.,* from the types of buildings to which the requirements apply).

Two commenters objected to the inclusion of setback requirements in the stationary compression ignition and spark ignition engines general permits. The commenters argued that the EPA has not demonstrated the need for or provided any data to support setback requirements and that no current NSPS or NESHAP for engines includes similar requirements. The commenters further argued that setting distances to property boundaries is counter to, and conflicts with, federal and state agency requirements for land management and parks and wildlife preserves created to minimize surface disturbance and encroachment on endangered species areas. One commenter noted that specific setback requirements are already included in Indian mineral leases. Another commenter urged that setback regulations have historically been considered ''land use'' regulation relegated to state and local jurisdictions. The commenters stated that establishing a setback requirement that applies to all of Indian country would create

[48] Ibid.

jurisdictional conflicts. The commenter further warned that the EPA would be setting precedent that could cause other regulatory agencies to follow suit.

One commenter did not support the use of physical markers on a property to show compliance with the setback requirements.

Due to the lack of an EPA analysis demonstrating the air quality benefits of requiring setbacks, we lack sufficient information to incorporate them in the final general permits for boilers and emergency engines, concrete batch plants, spark and compression ignition engines, and sawmill facilities. Therefore, the final general permits for these source categories do not contain setback provisions. Nonetheless, the Reviewing Authority retains the discretion to deny the granting of source coverage under the general permits for any source category based on local air quality concerns.

F. Requirements Relating to Threatened or Endangered Species and Historic Properties

1. Proposed Rule

The ESA requires federal agencies to ensure, in consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (the Services), that any action they authorize, fund, or carry out will not likely jeopardize the continued existence of any listed threatened or endangered species, or destroy or adversely modify the designated critical habitat of such species. The NHPA requires federal agencies to take into account the effects of their undertakings on historic properties—*i.e.,* properties that are either listed on, or eligible for listing on, the National Register of Historic Places—and to provide the Advisory Council on Historic Preservation (the Council) a reasonable opportunity to comment on such undertakings. We provided draft screening processes in Appendices to the draft Request for Coverage Forms for the draft general permits that we made available for comment to ensure appropriate consideration of listed species and historic properties.

2. Summary of Comments, Responses and Final Action

This section provides a brief summary of significant comments received and our responses. A full summary of the comments received on this subject and our responses are presented in Section 5.0 of the RTC Document. Overall, as a result of the comments we received, we are largely retaining the processes we presented in the proposal with some adjustment in this final action.

Two commenters expressed concerns regarding provisions for listed species and historic properties. One commenter contended that the Bureau of Land Management (BLM) and the Bureau of Indian Affairs (BIA) currently develop a resource management plan for oil and gas activities on Indian lands that triggers ESA and NHPA review. The commenter argued that it is unnecessary to repeat an ESA or NHPA review during the general permit process given that it may rely on this existing review. The commenter further asserted that the proposed provisions would require minor source permit applicants to interface with various federal agencies in the absence of any procedures governing that interaction, and that the legal consequences of certifying compliance with the ESA and NHPA are undefined.

The EPA is aware that new sources locating in Indian country may also need approvals or other authorizations from other federal agencies such as the BIA or the BLM, which may trigger a review under the ESA and/or the NHPA. Such approvals or authorizations by other agencies are, however, separate from the authorization provided in the EPA's minor NSR general permits. However, to avoid duplication of effort, we believe it is appropriate for facilities seeking to be covered under the general permits to use listed species and historic property assessments, analyses, and outcomes obtained through BIA/BLM's separate compliance with the ESA and NHPA in connection with their own actions to satisfy the relevant screening procedures for coverage under the minor NSR general permits. We anticipate that where a separate ESA or NHPA compliance process is undertaken by BIA/BLM in connection with a new source, that process will satisfy the EPA's permit screening procedures.

Therefore, we have modified the listed species procedures in appendix A for endangered and threatened species that are attached to the Request for Coverage Forms to clarify that this approach is the first consideration in the screening process. We believe that this option as a first choice is already clear in the historic property screening procedures and, therefore, we have not revised appendix B in that regard in the historic properties procedures included with the Request for Coverage Forms.

One commenter expressed concerns about the ability of permit applicants to meet the compliance requirements of the ESA and NHPA, citing limitations in time and availability of in-house expertise. The commenter asserted that the process could be costly and requested whether the EPA has assessed the time and cost impacts to comply with the ESA and NHPA. The EPA understands that satisfactorily addressing the screening procedures for threatened and endangered species and historic properties will impose some burden on sources seeking coverage under general permits. However, we have attempted to streamline the screening processes in order to minimize the effort needed to complete them. For example, both sets of procedures have been clarified to make more explicit that sources can, as appropriate, rely on prior assessments performed by other federal agencies to satisfy the procedures.

G. Use of Throughput Limits and Capacity Limits

1. Proposed Rule

The Federal Indian Country Minor NSR rule requires the Reviewing Authority to establish annual allowable emission limitations for each affected emissions unit and for each NSR-regulated pollutant emitted by the unit, if the unit is issued an enforceable limitation lower than the PTE of that unit (see 40 CFR 49.155(a)(2)). The EPA included throughput, fuel usage, and materials usage limitations and compliance monitoring requirements in the draft general permits and proposed permit by rule as a means for limiting emissions and demonstrating compliance with those limits.

For the six source categories in this action, some states (but not all) provide both annual tpy allowable emission limitations and throughput limits in their general permits. Other states provide only overall production limits that limit the amount of throughput a facility can process over a period of time. We requested comment on the use of throughput limits as a surrogate for tpy allowable emission limitations, or, alternatively, establishment of annual allowable emission limitations for each pollutant, and the use of throughput limits as surrogate monitoring measures to demonstrate compliance with tpy annual allowable emission limitations.

2. Summary of Comments, Responses and Final Action

This section provides a brief summary of significant comments received and our responses. A full summary of the comments received on this subject and our responses are presented in Section 6.0 of the RTC Document. In the final general permits, the EPA has retained the throughput limits contained in the

draft general permits, except that we have revised the limits in the final general permits for boilers and emergency engines, spark ignition engines, compression ignition engines and sawmill facilities. This has included adding control options and fuel-based limits to accommodate synthetic minor sources.

Two commenters supported the use of throughput production limits as a surrogate for annual tpy emission limits in the draft concrete batch plants general permit. The commenters declared that facilities currently track information about the material they process, and that complying with a throughput limitation would be less costly. One commenter stated that the proposed rule does not provide for different production limits for facilities located in attainment and nonattainment areas for PM, and requested that the EPA consider this issue more closely.

The EPA appreciates the commenters' support for the use of throughput limits. The EPA also appreciates the commenters' concern regarding separate production limits for PM_{10} and $PM_{2.5}$ nonattainment areas. We set the throughput limit in the draft concrete batch plants general permit to ensure that a source in any area (attainment or nonattainment) would not be a major source.

For the draft boilers general permit, two commenters supported the use of varying capacity limits as a surrogate for annual tpy emission limits based on boiler and process heater size. The commenters supported the use of different capacity limits for process heaters and process heaters and boilers combined located in ozone nonattainment areas. The commenters also supported finalizing two boilers general permits—one intended for smaller, simpler sources using capacity limits, and one for larger, more complex sources using tpy emission limitations and additional monitoring and recordkeeping. The EPA has decided to issue only one final ''General Air Quality Permit for New or Modified Minor Source Boilers and Emergency Engines in Indian Country,'' which also covers emergency engines. We do not agree that two are needed. We believe that one permit for boilers can accommodate boilers of varying sizes.

Two commenters expressed concerns with the capacity limits included in the draft spark ignition engines general permit. The commenters noted an inconsistency between the engine site capacity limit of 1,750 hp and the emission limits set by reference to Table 1 of 40 CFR part 60, subpart JJJJ. One commenter provided the example that, using the EPA's PTE spreadsheet and a single 1,000 hp 4-stroke lean burn engine, the CO limit of 2.0 grams per hp-hour in Table 1 yields a total annual CO emission PTE of just under 20 tpy, which would allow for up to 5,000 hp site capacity based on a 100 tpy limit. The commenters stated that these issues bring into question whether the draft spark ignition and compression ignition engines permits should include capacity-based limits or emissions-based limits. Both commenters reasoned that emission limits are preferable to capacity limits, because an emission limit approach would allow flexibility for operators to determine how to configure engines. One commenter argued that if the EPA uses capacity limits, then it would seem pointless to also include emission limits or monitoring. The commenter stated that capacity limits are most appropriate for small engines to simplify exclusion from minor source NSR, stating that neither the draft spark ignition engines general permit nor the draft compression ignition engines general permit addressed excluding low emitting small engines. The commenter further argued that the upper limit used should actually be 250 tpy to avoid the PSD Program in attainment areas.

The EPA acknowledges that, in setting the capacity limits in the draft spark ignition engines general permit, the limit was based on the highest emission factor under the NSPS for the various engines types. We also acknowledge that there is significant variability in the emission factors for the different types of engines. Given the differences, we are revising the capacity limits to add a fuel-based capacity limit option for natural gas-fired spark ignition engines. In addition, the draft spark ignition engines general permit does not apply to engines in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector. The EPA has issued a separate, final rulemaking addressing oil and natural gas activities that includes requirements for non-emergency engines.[49] Non-emergency spark ignition engines (and any additional emergency engines) located at sources that are not in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector are eligible for coverage under the final ''General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country.''

Regarding excluding small engines, we note that the Federal Indian Country Minor NSR rule exempts stationary internal combustion engines with a manufacturer's site-rated hp of less than 50. The EPA finalized this exemption during the development of the general permits.[50] We have revised the permitting documents to reflect this exemption.

Regarding the use of emission limits versus capacity limits, we have retained the capacity limits but we have also added additional flexibility by allowing for the use of synthetic minor fuel limits in lieu of the engine capacity limits. This flexibility is close to the approach suggested by the commenter, as it allows for engines of greater capacity as long as overall fuel use remains below the specified threshold. We consider this approach the best option for the types of owners and operators that we expect to be subject to the permits—striking a balance between flexibility and ease of compliance. Sources needing even greater operational flexibility should consider applying for a source-specific permit. The general permits are intended for common, straightforward permitting actions.

Regarding the upper tpy emission limit used for setting the limits in the permit, we disagree with the commenter's suggestion of using 250 tpy. While the EPA will still determine when sources applying for a general permit need a source-specific permit due to air quality concerns, we do not believe that will occur as often as would be required if we used the upper threshold in attainment areas proposed by the commenter.

Two commenters supported the proposed approach for establishing capacity limits for compression ignition emergency and non-emergency engine sources that differentiate among locations in ozone attainment, unclassifiable, or Marginal/Moderate ozone nonattainment areas. The commenters requested that the EPA explain why the draft general permit for stationary spark ignition engines does not use a similar approach. One commenter stated that nonattainment minor source permitting should be

[49] ''Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector,'' U.S. Environmental Protection Agency, 81 FR 35944, June 3, 2016, *https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf.*

[50] ''Review of New Sources and Modifications in Indian Country—Amendments to the Federal Indian Country Minor New Source Review Rule,'' U.S. Environmental Protection Agency, 79 FR 31035, May 30, 2014, *https://www.gpo.gov/fdsys/pkg/FR-2014-05-30/pdf/2014-11499.pdf.*

regionally specific and based on emissions inventory evaluation and modeling to determine the requirements after a designation is made. The commenter declared that because no nonattainment designation has been made in any tribal land areas, it is premature to specify minor source permitting requirements. The EPA notes that the draft general permit for spark ignition engines does not need separate limits for sources in different types of ozone areas. The limiting pollutant—the pollutant with the highest emissions in setting the capacity limits—is CO. The established limits in the draft general permit are set low enough to ensure sources in ozone nonattainment areas will be below the major source thresholds, regardless of the area's classification. The final ''General Air Quality Permit for New or Modified Minor Source Spark Ignition Engines in Indian Country'' is not available in Serious CO nonattainment areas. Currently, there are no CO nonattainment areas.

Regarding the comment that nonattainment minor source permitting should be based on an emissions inventory evaluation and modeling, in this instance it is not necessary to develop an emissions inventory or perform ambient air modeling in order to establish minor source permits in attainment or nonattainment areas that are protective of air quality. The general permits in this action are intended to prevent the construction of sources that would interfere with attainment or maintenance of the NAAQS in attainment and nonattainment areas. However, some of the general permits in this action do not cover all potential nonattainment areas because, in order to protect air quality in such areas, we would have had to construct an overly stringent, potentially unworkable permit for such sources in such areas. A better alternative is to direct such sources to work with the Reviewing Authority to develop a more workable, source-specific permit. Moreover, the Reviewing Authority has the discretion under the Federal Indian Country Minor NSR rule to not grant coverage under a general permit to a particular source or in a particular area if there is a concern that the general permit will not be protective of air quality in the area.

Three commenters supported the EPA's draft emission limitations for sawmill facilities, including a limitation of 25 million board feet on a 12-month rolling basis and a total tpy VOC emission limitation that becomes more stringent based on the increasing classification of the ozone nonattainment area in which the facility is located. However, one commenter asserted that it was unlikely a sawmill facility would be a true minor NSR facility and approach 80 tpy VOC without triggering the major source threshold for HAPs (Condition 23 of the draft sawmill facilities general permit). Regarding the comment that a source may trigger the major source threshold for HAPs prior to reaching the 80 ton per year/12-month rolling emission limits, the EPA has determined that such a scenario could arise and has added a synthetic minor limit for HAP emissions in the final ''General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country.''

One commenter requested that the EPA use a 12-month rolling total limit for the production limits and emissions limitations in Conditions 19, 23 and 41 of the draft sawmill facilities general permit. The commenter also expressed concern that new sources in operation for less than 12 months would not be able to determine compliance with the draft conditions for the first 11 months. The commenter provided draft language for consideration.

The EPA notes that the draft sawmill facilities permit uses a 12-month rolling total for the production limits and emissions limitations in Conditions 19, 23, and 41 of the draft general permit. Regarding the concern that new sources would have difficulty determining compliance with the draft conditions in the first 11 months, the general permit requires that sources maintain records of monthly production and monthly VOC emissions and submit an annual report that evaluates the source's compliance status with the emission limitations and standards. This will allow a source to evaluate its eventual compliance with the 12-month rolling total well before the 12th month. We have not modified the final ''General Air Quality Permit for New or Modified Minor Source Sawmill Facilities in Indian Country,'' as suggested by the commenter.

V. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB Control Number 2060–0003. The general permits finalized in this action do not impose any new obligations or enforceable duties on any state, local or tribal government or the private sector. This action merely establishes general permits to aid sources in satisfying the requirements of the Federal Indian Country Minor NSR rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The EPA analyzed the impact of streamlined permitting on small entities in the Federal Indian Country Minor NSR rule.[51] The EPA determined that that action would not have a significant economic impact on a substantial number of small entities. This action merely implements a particular aspect of the Federal Indian Country Minor NSR rule. As a result, this action will not have a significant economic impact on a substantial number of small entities. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities. And, by establishing general permits that simplify and shorten the permitting process, this rule will lessen the burden on small business in the affected source categories that are seeking to construct in Indian country.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate, as described in the UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. Sources that choose to use one or more of the general permits finalized in this action must comply with the requirements contained therein; however, no source is required

[51] ''Review of New Sources and Modifications in Indian Country,'' U.S. Environmental Protection Agency, 76 FR 38748, July 1, 2011, *https://www.federalregister.gov/articles/2011/07/01/2011-14981/review-of-new-sources-and-modifications-in-indian-country.*

to use the general permits. As a result, the action imposes no enforceable duty on any state, local or tribal government or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The EPA conducted outreach on the July 17, 2014, proposal via on-going monthly meetings with tribal environmental professionals in the development of this final action. The EPA offered consultation to elected tribal officials immediately after proposal on June 14, 2014, via letter to 566 tribes to provide an opportunity for meaningful and timely input into the development of this regulation. No tribal officials requested consultation on this action.

Two commenters took exception to the EPA's claim that the proposed rule would ''not impose duties or responsibilities on tribes.'' The commenters noted that several Indian tribes own and operate facilities covered under source categories identified in the draft rule, and, thus, the draft rule will impose duties or responsibilities on some tribes. The commenters requested that the EPA review the number of tribes that own and operate facilities represented by the source categories listed in the proposed rule and determine the extent of the duties and responsibilities imposed on the tribes. The EPA disagrees with the assertion that the rule ''imposes duties or responsibilities on tribes.'' As noted in the preamble to the proposed rule, the EPA concluded that the rule would not impose duties or responsibilities on tribes, although it will have tribal implications. Some tribes may own affected facilities in the source categories for which we are issuing general permits via this action. However, this action merely provides general permits to aid interested minor sources in Indian country in satisfying the already existing requirement under the Federal Indian Country Minor NSR rule that they obtain a minor source permit. This action does not impose any requirements on sources in these source categories that may need to obtain a minor source permit to construct in Indian country. The use of the general permits in this final action is optional; they do not impose any compliance requirements on any source unless and until the EPA grants coverage under one of the permits to a source.

This action reflects tribal comments on and priorities for developing general permits and permits by rule in Indian country. The RTC document details all of the comments we received on the July 17, 2014, proposal from tribal and other entities. We received comments from 5 tribal commenters. We have responded favorably to tribal comments in the several areas, including:

- General support for the establishment of general permits for the six categories;
- Structure and general requirements of the draft general permits;
- Authorizing multiple locations for the use of certain general permits;
- Specific provisions of the draft spark ignition and compression ignition engines general permits;
- Specific provisions of the draft sawmill facilities general permit;
- Utilizing a permit by rule for graphic arts and printing operations; and
- Use of throughput limits and capacity limits.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in Section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

The final action involves technical standards. The EPA has decided to use the EPA Methods 5, 7, 9, 10, 18, 22 and 25A of 40 CFR part 60, appendix A.[52] Three voluntary consensus standards were identified as applicable for purposes of the proposal:

1. ANSI/ASME PTC 19.10–1981 part 10 ''Flue and Exhaust Gas Analyses'' (alternative to the EPA Method 7);
2. ASTM D7520–09 ''Standard Test Method for Determining Opacity of a Plume in the Outdoor Ambient Atmosphere'' (alternative to the EPA Method 9); and
3. ASTM D6420–99 (2010) ''Test method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography/Mass Spectrometry'' (alternative to the EPA Method 18).

We are not finalizing these in this rulemaking. The use of these voluntary consensus standards would not be practical with applicable law due to a lack of equivalency, documentation, validation data and other important technical and policy considerations. The EPA did not receive comments that have caused us to alter the standards and methods in the final permits.

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

The EPA believes that the human health or environmental risk addressed by this action will not have potential, disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action does not affect the level of protection provided to human health or the environment. Rather, this final rule implements certain aspects of the Federal Indian Country Minor NSR rule. Therefore, this final action will not have a disproportionately high and adverse human health or environmental effects on minorities, low-income or indigenous populations in the United States.

Our primary goal in developing this program is to ensure that air resources in Indian country will be protected in the manner intended by the CAA. We believe that when sources have permits

[52] Information on any available voluntary consensus standards that we indicated could be used as alternatives to the emissions measurement standards in the draft general permits can be found in: ''Voluntary Consensus Standard Results for General Permits and Permits by Rule for the Indian Country Minor New Source Review Program; 40 CFR part 49, subparts 156(c) and 162,'' from Robin Segall, Acting Group Leader, Measurement Technology Group, to Laura McKelvey, Group Leader, Community and Tribal Programs Group, February 7, 2014, Docket ID No. EPA–HQ–OAR–2011–0151, *https://www.epa.gov/tribal-air/tribal-minor-new-source-review.*

and compliance reporting requirements, that means that there will be reduced emissions and greater responsibility on the part of sources. This final action will reduce adverse impacts by improving air quality in Indian country. In addition, we seek to establish a flexible preconstruction permitting program for minor sources in Indian country that is comparable to similar programs in neighboring states in order to create a more level regulatory playing field for owners and operators within and outside of Indian country. This final action will reduce an existing disparity by filling the regulatory gap.

K. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practices and procedures, Air pollution control, Indians, Indians-law, Indians-tribal government, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 16, 2016.

Gina McCarthy,

Administrator.

[FR Doc. 2016–23178 Filed 10–13–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0312; FRL–9954–08–Region 4]

Air Plan Approval; KY; Removal of Stage II Gasoline Vapor Recovery Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving changes to the Kentucky State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky, through the Kentucky Energy and Environmental Cabinet, on May 3, 2016. This SIP revision removes Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State and allows for the decommissioning of existing Stage II equipment in Boone, Campbell and Kenton Counties in Kentucky (hereinafter referred to as the ''Northern Kentucky Area'' or ''Area''). EPA determined that Kentucky's May 3, 2016, SIP revision is approvable because it is consistent with the Clean Air Act (CAA or Act).

DATES: This rule will be effective November 14, 2016.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2016–0312. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Sheckler's telephone number is (404) 562–9222. She can also be reached via electronic mail at *sheckler.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On February 3, 1998, the Commonwealth of Kentucky submitted a SIP revision to address the Stage II requirements [1] for the Northern Kentucky Area.[2] EPA approved that SIP revision, containing Kentucky regulation 401 KAR 59:174—*Stage II controls at gasoline dispensing facilities,* in a notice published on February 8, 1999 (63 FR 67586). On May 3, 2016, the Commonwealth of Kentucky submitted a SIP revision to EPA seeking modifications of the Stage II requirements in the Northern Kentucky Area. Specifically, it sought the removal of the Stage II requirements in Kentucky regulation 401 KAR 59:174—*Stage II Controls at gasoline dispensing facilities.* EPA published a proposed rulemaking on August 17, 2016, to approve that SIP revision. The details of Kentucky's submittal and the rationale for EPA's action are explained in the proposed rulemaking. *See* 81 FR 54780. The comment period for this proposed rulemaking closed on September 16, 2016. EPA did not receive any comments, adverse or otherwise, during the public comment period.

II. 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 Kentucky regulation 401 KAR 59:174—*Stage II Controls at gasoline dispensing facilities,* effective May 3, 2016, which removes Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State. 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.[3] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 4 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information)

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[1] Stage II is a system designed to capture displaced vapors that emerge from inside a vehicle's fuel tank, when gasoline is dispensed into the tank. There are two basic types of Stage II systems, the balance type and the vacuum assist type.

[2] On November 6, 1991, EPA designated and classified Boone, Campbell and Kenton Counties in Kentucky as part of the seven-county area in and around the Cincinnati-Hamilton, OH–KY, area as a moderate nonattainment area for the 1-hour ozone NAAQS. *See* 56 FR 56694. The ''moderate'' classification triggered various statutory requirements for the Area, including the requirement pursuant to section 182(b)(3) of the CAA to require all owners and operators of gasoline dispensing systems to install and operate Stage II. EPA redesignated the Northern Kentucky portion of the Area to attainment for the 1-hour ozone NAAQS, effective July 31, 2002. *See* 67 FR 49600.

[3] 62 FR 27968 (May 22, 1997).

III. Final Action

EPA is taking final action to approve the May 3, 2016, revision to Kentucky Air Regulation 401 KAR 59:174, submitted by the Commonwealth of Kentucky. This action removes Stage II vapor control requirements for new and upgraded gasoline dispensing facilities and allows for the decommissioning of existing Stage II equipment. EPA has determined that Kentucky's May 3, 2016, SIP revision related to the State's Stage II rules is consistent with the CAA and EPA's regulations and guidance related to removal of Stage II requirements from the SIP and that these changes will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA, and therefore satisfy section 110(l).

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this 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 13, 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 in 40 CFR Part 52

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

Dated: October 3, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

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 S—Kentucky

■ 2. Section 52.920(c) Table 1 is amended under Chapter 59 by revising the entry for ''401 KAR 59:174'' to read of follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED KENTUCKY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
	Chapter 59 New Source Standards			
* * *	*	*	*	*
401 KAR 59:174	Stage II controls at gasoline dispensing facilities.	5/3/2016	[Insert citation of publication].	
* * *	*	*	*	*

* * * * *

[FR Doc. 2016–24779 Filed 10–13–16; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0362; FRL–9954–09-Region 4]

Air Plan Approval; NC Infrastructure Requirements for the 2010 1-hour NO_2 NAAQS

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve the State Implementation Plan (SIP) submission, submitted by the State of North Carolina, through the North Carolina Department of Environmental Quality, Division of Air Quality (NCDAQ) on August 23, 2013, to demonstrate that the State meets certain infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour nitrogen dioxide (NO_2) national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. NCDAQ certified that the North Carolina SIP contains provisions that ensure the 2010 1-hour NO_2 NAAQS is implemented, enforced, and maintained in North Carolina. EPA has determined that North Carolina's infrastructure SIP submission, provided to EPA on August 23, 2013, satisfies certain required infrastructure elements for the 2010 1-hour NO_2 NAAQS.

DATES: This rule is effective November 14, 2016.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2015–0362. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8726. Mr. Richard Wong can also be reached via electronic mail at *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On January 22, 2010 (published at 75 FR 6474, February 9, 2010), EPA promulgated a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion (ppb), based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 NO_2 NAAQS to EPA no later than January 22, 2013.

In a proposed rulemaking published on July 20, 2016 (81 FR 47115), EPA proposed to approve North Carolina's 2010 1-hour NO_2 NAAQS infrastructure SIP submission submitted on August 23, 2013, with the exception of the elements related to state boards of section 110(a)(2)(E)(ii), the PSD permitting requirements for major sources of sections 110(a)(2)(C), and (J), and the interstate requirements of 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4). On November 13, 2015, EPA approved North Carolina's August 23, 2013, infrastructure SIP submission regarding the state boards requirements of sections 110(a)(2)(E)(ii). *See* 80 FR 67645. On May 10, 2016 (81 FR 28797), EPA proposed to approve in part and disapprove in part, North Carolina's December 4, 2015, infrastructure SIP submission regarding the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i) and (J) for the 2012 Annual $PM_{2.5}$ NAAQS. Today EPA is not taking final action pertaining to sections 110(a)(2)(C), prong 3 of D(i) and (J) for North Carolina for the 2010 1-hour NO_2 NAAQS but instead will consider final action of these elements in a separate rulemaking. Additionally, on June 3, 2016, EPA finalized a rule related to the prong 4 element of North Carolina's August 23, 2013, SIP submission for the 2010 1-hour NO_2 NAAQS. *See* 81 FR 35634. With respect to the interstate transport requirements of section 110(a)(2)(D)(i)(I) (prongs 1 and 2), North Carolina provided a separate submission and EPA is considering action related to these provisions through a separate rulemaking. The details of North Carolina's submission and the rationale for EPA's actions for this final rulemaking are explained in the July 20, 2016, proposed rulemaking. Comments on the proposed rulemaking were due on or before August 19, 2016. EPA received no adverse comments on the proposed action.

II. Final Action

With the exception of the elements related to state boards of section 110(a)(2)(E)(ii), the PSD permitting requirements for major sources of sections 110(a)(2)(C), and (J), and the interstate requirements of 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4), EPA is taking final action to approve North Carolina's infrastructure SIP submission for the 2010 1-hour NO_2 NAAQS submitted on August 23, 2013. EPA is taking final action to approve North Carolina's infrastructure SIP submission for the 2010 1-hour NO_2 NAAQS because the submission is consistent with section 110 of the CAA.

III. 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. *See* 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).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this 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 13, 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 in 40 CFR Part 52

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

Dated: October 3, 2016.

Heather McTeer Toney

Regional Administrator, Region 4.

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 II—North Carolina

■ 2. Section 52.1770(e), is amended by adding an entry for ''110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO_2 NAAQS'' at the end of the table to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	**Federal Register** citation	Explanation
*	*	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO_2 NAAQS.	August 23, 2013	10/14/16	[Insert citation of publication].	With the exception of sections: 110(a)(2)(E)(ii) concerning state boards; 110(a)(2)(C) and (J) concerning PSD permitting requirements; and 110(a)(2)(D)(i)(I) and (II) (prongs 1 through 4) concerning interstate transport requirements.

[FR Doc. 2016–24778 Filed 10–13–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2016–0429; FRL–9952–59]

Isofetamid; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of the fungicide isofetamid, *N*-[1,1-dimethyl-2-[2-methyl-4-(1-methylethoxy)phenyl]-2-oxoethyl]-3-methyl-2-thiophenecarboxamide, in or on caneberry subgroup 13–07A and bushberry subgroup 13–07B. This action is in response to EPA's granting of an emergency exemption, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on caneberry subgroup 13–07A and bushberry subgroup 13–07B. This regulation establishes maximum permissible levels for residues of isofetamid in or on these commodities. The time-limited tolerances expire on December 31, 2019.

DATES: This regulation is effective October 14, 2016. Objections and requests for hearings must be received on or before December 13, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0429, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael L. Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0429 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 13, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0429, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with FFDCA sections 408(e) and 408(l)(6) of, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing time-limited tolerances for the fungicide, isofetamid, *N*-[1,1-dimethyl-2-[2-methyl-4-(1-methylethoxy)phenyl]-2-oxoethyl]-3-methyl-2-thiophenecarboxamide, in or on caneberry subgroup 13–07A at 4.0 parts per million (ppm) and bushberry subgroup 13–07B at 5.0 ppm. These time-limited tolerances expire on December 31, 2019.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances to set binding precedents for the application of FFDCA section 408 and the safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, *i.e.,* without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA

defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Isofetamid on Caneberry Subgroup 13–07A and Bushberry Subgroup 13–07B and FFDCA Tolerances

The Washington State Department of Agriculture (WSDA) requested an emergency exemption for the use of isofetamid on blackberries, blueberries, and raspberries to control gray mold caused by *Botrytis cinerea. Botrytis cinerea* has a very wide host range which causes gray mold that becomes visible on developed fruit just prior to harvest. According to WSDA, *Botrytis cinerea* developed fungicide resistance and coupled with the unseasonably warm weather in Washington State, created conditions favorable for gray mold outbreaks resulting in crop damage and yield loss. After having reviewed the submission, EPA determined that an emergency condition exists for Washington, and that the criteria for approval of an emergency exemption are met. EPA has authorized a specific exemption under FIFRA section 18 for the use of isofetamid on blueberry, blackberry, and raspberry for control of gray mold (*Botrytis cinerea*) in Washington.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of isofetamid in or on caneberry subgroup 13–07A and bushberry subgroup 13–07B. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in FFDCA section 408(l)(6). Although these time-limited tolerances expire on December 31, 2019, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on caneberry subgroup 13–07A and bushberry subgroup 13–07B after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these time-limited tolerances at the time of that application. EPA will take action to revoke these time-limited tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether isofetamid meets FIFRA's registration requirements for use on caneberry subgroup 13–07A and bushberry subgroup 13–07B or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of isofetamid by a State for special local needs under FIFRA section 24(c). Nor does this tolerance by itself serve as the authority for persons in any State other than Washington to use this pesticide on the applicable crops under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for isofetamid, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . .''

Consistent with the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of this emergency exemption request and the time-limited tolerances for isofetamid, *N*-[1,1-dimethyl-2-[2-methyl-4-(1-methylethoxy)phenyl]-2-oxoethyl]-3-methyl-2-thiophenecarboxamide, on caneberry subgroup 13–07A at 4.0 ppm and bushberry subgroup 13–07B at 5.0 ppm. EPA's assessment of exposures and risks associated with establishing time-limited tolerances follows.

A. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-*

assessing-pesticide-risks/assessing-human-health-risk-pesticides.

A summary of the toxicological endpoints for isofetamid used for human risk assessment is discussed in Unit III.B of the final rule published in the **Federal Register** of July 30, 2015 (80 FR 45438) (FRL–9923–86).

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to isofetamid, EPA considered exposure under the time-limited tolerances established by this action as well as all existing isofetamid tolerances in 40 CFR 180.681. EPA assessed dietary exposures from isofetamid in food as follows:

i. *Acute exposure.* No acute effects were identified in the toxicological studies for isofetamid; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM–FCID, Version 3.16 software with 2003–2008 food consumption data from the USDA's National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA evaluated the combined residues of parent isofetamid and its metabolite GPTC (*N*-[l,l-dimethyl-2-(4-β-D-glucopyranosyloxy-2-methylphenyl)-2-oxoethyl]-3-methyl-2-thiophenecarboxamide). EPA's chronic dietary exposure assessment is based on mean residue levels found in field trials for each of the crops on which isofetamid is used, using empirical and default processing factors as available, and assuming 100 percent crop treated (PCT).

iii. *Cancer.* Based on the data summarized in Unit IV.A., EPA has concluded that isofetamid does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use crop-specific PCT information in the dietary assessment for isofetamid. EPA assumed that for each food commodity on which isofetamid is used, 100% of the commodity has combined residues of parent isofetamid and GPTC equal to the mean field trial residues.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for isofetamid in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of isofetamid. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Pesticide Flooded Application Model (PFAM) and the Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of isofetamid for chronic exposures for non-cancer assessments are estimated to be 110 ppb for surface water and 43 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 110 parts per billion (ppb) was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Isofetamid is currently registered for the following uses that could result in residential exposures: Turfgrass including golf courses, residential lawns, and recreational turfgrass. Since there may be residential use sites, residential handler exposure and risk estimates were calculated for all possible residential exposure scenarios. Given that there is no dermal toxicity concern in regard to isofetamid, the residential handler assessment only includes the inhalation route of exposure. Residential handler exposure is expected to be short-term in duration as a maximum of eight applications are allowed per year. Thus, intermediate-term exposures are not likely because of the intermittent nature of applications by homeowners. Unit exposure values and estimates for area treated or amount handled were taken from the Agency's 2012 Standard Operating Procedures for Residential Pesticide Exposure Assessment (Section 3: Lawns/Turf). The algorithms used to estimate exposure and dose for residential handlers can be found in the 2012 Residential SOPs (Section 3: Lawns/Turf). For all residential exposure scenarios, isofetamid risk estimates are not of concern. Short-term inhalation MOEs range from 850,000 to 18,000,000.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at: *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and'' other substances that have a common mechanism of toxicity.''

EPA has not found isofetamid to share a common mechanism of toxicity with any other substances, and isofetamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that isofetamid does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

C. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional Safety Factor (SF) when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence of developmental toxicity or reproductive susceptibility associated with isofetamid, and there are no residual uncertainties concerning pre- or post-natal toxicity or exposure.

3. *Conclusion.* EPA has determined that reliable data show that the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X for isofetamid. That decision is based on the following findings:

i. The toxicity database for isofetamid is complete.

ii. There is no indication that isofetamid is a neurotoxic chemical and

there is no need for a developmental neurotoxicity study or additional Uncertainty Factors (UF) to account for neurotoxicity.

iii. There is no evidence that isofetamid results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and average (mean) level field trial residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to isofetamid in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by isofetamid.

D. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, isofetamid is not expected to pose an acute dietary risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to isofetamid from food and water will utilize <1% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in the unit regarding residential use patterns, chronic residential exposure to residues of isofetamid is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Isofetamid is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to isofetamid.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential isofetamid exposures result in aggregate MOEs of 24,000 and 3,900 for adults and children (1–2 years old), respectively. Because EPA's level of concern for isofetamid is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, isofetamid is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for isofetamid.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, isofetamid is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to isofetamid residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement methodology (liquid chromatography with tandem mass spectrometry (LC–MS/MS)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established any MRLs for isofetamid.

VI. Conclusion

Therefore, time-limited tolerances are established for residues of isofetamid, isofetamid, in or on caneberry subgroup 13–07A and bushberry subgroup 13–07B at 4.0 and 5.0 ppm. These tolerances expire on December 31, 2019.

VII. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA sections 408(e) and 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established in accordance with FFDCA sections 408(e) and 408(l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 30, 2016.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.681, revise paragraph (b) to read as follows:

§ 180.681 Isofetamid; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances specified in the following table are established for residues of the fungicide, isofetamid (*N*-[1,1-dimethyl-2-[2-methyl-4-(1-methylethoxy)phenyl]-2-oxoethyl]-3-methyl-2-thiophenecarboxamide) in or on the specified agricultural commodities, resulting from use of the pesticide pursuant to FIFRA section 18 emergency exemptions. The tolerances expire on the date specified in the table.

Commodity	Parts per million	Expiration date
Caneberry subgroup 13–07A	4.0	12/31/2019
Bushberry subgroup 13–07B	5.0	12/31/2019

* * * * *

[FR Doc. 2016–24932 Filed 10–13–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0390; FRL–9951–92]

Pyridaben; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the insecticide pyridaben in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 14, 2016. Objections and requests for hearings must be received on or before December 13, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number HQ–EPA–OPP–2015–0390, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an

objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number HQ–EPA–OPP–2015–0390 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 13, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number HQ–EPA–OPP–2015–0390, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of Wednesday, August 26, 2015 (80 FR 51759) (FRL–9931–74), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 5E8363) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W., Princeton, NJ 08540. The petition requested that 40 CFR 180.494 be amended by establishing tolerances for residues of the insecticide pyridaben, [2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3(2H)-one] in or on berry, low growing subgroup 13–07G, except cranberry at 2.5 ppm; cucumber at 0.5 ppm; fruit, citrus group 10–10 at 0.5 ppm; fruit, pome group 11–10 at 0.75 ppm; fruit, stone, group 12–12 at 2.5 ppm; fruit, small, vine climbing, subgroup 13–07F, except fuzzy kiwifruit at 1.5 ppm; and nut, tree, group 14–12 at 0.05 ppm. In addition, the petitioner requests removal of established tolerances under 40 CFR 180.494 in or on apple at 0.5 ppm; pear at 0.75 ppm; nut, tree, group 14 at 0.05 ppm; citrus (fruit) at 0.5 ppm; fruit, stone, group 12 at 2.5 ppm; pistachio at 0.05 ppm; grape at 1.5 ppm; and strawberry at 2.5 ppm upon approval of tolerances mentioned above and thereby eliminating redundancies. That document referenced a summary of the petition prepared by Gowan Company, the registrant, which is available in the docket, *http://www.regulations.gov.* Two comments were received on the notice of filing in support of this action.

Based upon review of the data supporting the petition, EPA has revised certain proposed tolerance levels, corrected crops/crop group definitions, as needed, and modified the tolerance expression for pyridaben to comply with current EPA policies. The reason for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for pyridaben including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with pyridaben follows.

A. Toxicological Profile

EPA has evaluated the available toxicity database and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

In subchronic and chronic oral toxicity studies in rats and mice, the adverse effects were decreased body weight and food consumption; in dogs, toxicity consisted of increased incidences of clinical signs (*i.e.,* ptyalism) and decreased body weight. In the repeat dose dermal toxicity studies in rabbits, the adverse effect was decreased body weight. In the repeat dose inhalation toxicity study in rats, there were no adverse effects up to the highest dose tested. In all animals where toxicity was observed, body weight decreases became more pronounced as study duration increased while incidences of clinical signs of toxicity did not become more severe or more frequent as the study duration increased.

Susceptibility was observed in the rat prenatal developmental toxicity and rat developmental neurotoxicity studies. In the rat prenatal developmental toxicity study, fetal toxicity (*i.e.,* decreased bodyweight and incomplete ossification) occurred in the absence of maternal toxicity at the highest dose tested (HDT) of 30 mg/kg/day. In the rat developmental neurotoxicity study, offspring toxicity (*i.e.,* decreased bodyweight) occurred in the absence of maternal toxicity at the HDT of 8.4 mg/kg/day. In the rabbit prenatal developmental toxicity study, fetal and maternal toxicity consisted of abortions and occurred at the HDT of 15 mg/kg/day. There were no adverse effects observed in the rabbit dermal prenatal developmental toxicity study. In the rat reproduction and fertility effects study, parental and offspring toxicity (*i.e.,* decreased bodyweight) occurred at the HDT of 6.3 mg/kg/day.

In the acute neurotoxicity study in rats, animals had increased incidences of clinical signs (*i.e.,* piloerection, hypoactivity, tremors, and partially closed eyes). In the subchronic neurotoxicity study in rats, male animals had increased incidences of

impaired righting reflex. In the developmental neurotoxicity study in rats, there were no neurotoxicity effects up to the highest dose tested (17.7 mg/kg/day).

Pyridaben has been classified as ''not likely to be carcinogenic in humans'' based on the results from carcinogenicity studies in rats and mice. The mutagenicity studies do not indicate increased mutagenic potential in the battery of in vivo and in vitro assays.

Specific information on the studies received and the nature of the adverse effects caused by pyridaben as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Pyridaben—Human Health Risk Assessment for Proposed Uses on Greenhouse Cucumbers and Crop Group Expansions for Pome Fruit Group 11–10, Tree Nut Group 14–12, Stone Fruit Group 12–12, Citrus Fruit Group 10–10, Small Fruit Vine Climbing (except Fuzzy Kiwifruit) Subgroup 13–07F, and Low Growing Berry Subgroup 13–07G (except Cranberry), dated June 21, 2016'' at page 28 in docket ID number EPA–HQ–OPP–2015–0390.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for pyridaben used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PYRIDABEN FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (General population including infants and children).	NOAEL = 44 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.44 mg/kg/day. aPAD = 0.44] mg/kg/day	*Acute Neurotoxicity Study in Rats:* LOAEL = 80 mg/kg/day based on increased incidences of clinical signs (*i.e.,* piloerection, hypoactivity, tremors, and partially closed eyes).
Chronic dietary (All populations)	NOAEL= 2.2 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.022 mg/kg/day. cPAD = 0.022 mg/kg/day	*Reproduction and Fertility Effects in Rats* LOAEL = 6.3 mg/kg/day based on decreased parental and pup body weight.
Cancer (Oral, dermal, and inhalation)	Classification: ''Not Likely to be Carcinogenic to Humans'' based on the results of carcinogenicity studies in rats and mice.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to pyridaben, EPA considered exposure under the petitioned-for tolerances as well as all existing pyridaben tolerances in 40 CFR 180.494. EPA assessed dietary exposures from pyridaben in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for pyridaben. In estimating acute dietary exposure, EPA used the Dietary Exposure Evaluation Model-Food Commodity Intake Database (DEEM–FCID™), Version 3.16, which incorporates 2003–2008 food consumption information from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA used anticipated-residue estimates derived from proposed and established tolerance levels; DEEM–FCID™, Version 7.81 default processing factors were utilized for most processed commodities; and 100 percent crop treated (PCT).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the DEEM–FCID™, Version 3.16, which incorporates 2003–2008 food consumption data from the USDA's NHANES/WWEIA. As to residue levels in food, the chronic dietary exposure assessment is partially refined, assuming anticipated residue estimates derived from proposed and established tolerance levels and percent crop treated estimates for most crops.

iii. *Cancer.* Pyridaben has been classified as not likely to be carcinogenic to humans. Based on the data summarized in Unit III.A., EPA has concluded that pyridaben does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA

to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for chronic exposure for existing uses as follows: almonds 2.5%; apples 20%; cherries 2.5%; grapefruit 35%; grapes 5%; lemons 2.5%; nectarines 2.5%; oranges 10%; peaches 10%; pears 35%; pecans 2.5%; plums/prunes 5%; tangelos 15%; tangerines 25%; tomatoes 2.5%; and walnuts 5%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which pyridaben may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for pyridaben in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of pyridaben. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at: *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide*.

The EPA's Tier II water models have been updated and applied in the drinking water analysis for total residues of concern (TRC) of pyridaben. The Pesticide Water Calculator (PWC), Ver.1.5001, has replaced the PE5 shell for the Pesticide Root Zone Model/ Exposure Analysis Modeling System (PRZM/EXAMS) used previously to generate surface water estimated drinking water concentrations (EDWC) in dietary risk assessments. In addition, the PRZM-Ground Water (PRZM GW) model, version 1.07, has replaced Screening Concentration in Ground Water (SCI–GROW), which was used to generate groundwater EDWCs. These latest versions of the PWC and PRZM–GW models not only analyze for pyridaben, but its two degradates PB–7 and P–9, residues of concern for drinking water.

Based on the PWC and PRZM GW, the maximum acute surface water EDWCs of pyridaben TRC for acute exposures are estimated to be 12 parts per billion (ppb) for surface water and an indeterminately low concentration for ground water.

For chronic exposures for non-cancer assessments are estimated to be 0.91 ppb for surface water and an indeterminately low concentration for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

For acute dietary risk assessment, the water concentration value of 12 ppb was used to assess the contribution to drinking water.

For chronic dietary risk assessment, the water concentration of value 0.91 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Pyridaben is not registered for any specific use patterns that would result in residential exposure.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at: *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide*.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found pyridaben to share a common mechanism of toxicity with any other substances, and pyridaben does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that pyridaben does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine

which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at: *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There was no evidence for increased susceptibility to pyridaben following pre- or post-natal exposure in the rat reproduction and fertility effects study, notwithstanding the observed decreased pup body weight since that is not considered to be more severe than decreased parental body weight. Parental and offspring toxicity (*i.e.,* decreased bodyweight) occurred at the HDT of 6.3 mg/kg/day.

Increased susceptibility following prenatal exposure in the rat prenatal developmental toxicity studies was observed including fetal toxicity (*i.e.,* decreased bodyweight and incomplete ossification) occurring in the absence of maternal toxicity at the HDT of 30 mg/kg/day. In the rabbit prenatal developmental toxicity study, fetal and maternal toxicity consisted of abortions and occurred at the HDT of 15 mg/kg/day. There were no adverse effects observed in the rabbit dermal prenatal developmental toxicity study.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for pyridaben is complete.

ii. Although there are signs that pyridaben causes neurotoxic effects, a developmental neurotoxicity study in rats demonstrated no observed neurotoxicity effects in offspring up to the HDT of 17.7 mg/kg/day. Furthermore, the RfD of 0.44 mg/kg/day for acute dietary exposures is protective of the HTD in the developmental neurotoxicity study. Additionally, the acute RfD is based on clinical signs (piloerection, hypoactivity, tremors and partially closed eyes) in adults that could be signs of neurotoxicity, however tissue analysis did not confirm neurotoxicity. Similarly, the chronic RfD of 0.022 mg/kg/day (based on parental and pup body weight decreases in a reproductive study) is protective of the impaired righting reflex observed in the subchronic neurotoxicity study at 8.5 mg/kg/day. There is no need to retain the FQPA 10X to account for any residual uncertainties concerning neurotoxicity.

iii. There is evidence that pyridaben results in increased susceptibility following prenatal exposure in the rat prenatal developmental toxicity and rat developmental neurotoxicity studies. There was no evidence for increased susceptibility following pre- or post-natal exposure in the rat reproduction and fertility effects study since the decreased pup body weight is not considered to be more severe than decreased parental body weight. EPA concluded that selected endpoints based on the rat reproduction and fertility effects study's NOAELs/LOAELs are protective of the susceptibility observed in the rat prenatal developmental toxicity and rat developmental neurotoxicity studies.

iv. There are no residual uncertainties identified in the exposure databases. The pyridaben exposure databases are complete or are estimated based on data that reasonably account for potential exposures. The chronic dietary food exposure assessment was based on anticipated residue estimates derived from proposed and established tolerance levels and PCT assumptions and conservative ground water drinking water modeling estimates. All of the exposure estimates are not likely to result in underestimated exposure and risks posed by pyridaben.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to pyridaben will occupy 7.8% of the aPAD for the general U.S. population and 29% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to pyridaben from food and water will utilize 5% of the cPAD for the general U.S. Population and 20% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for pyridaben.

3. *Short-term and Intermediate-term risks.* Short-term and intermediate-term aggregate exposures take into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Pyridaben is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, pyridaben is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to pyridaben residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography with mass spectrometry (GC/MS) detection using a modified version of BASF Method D9312A) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the

international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are no Codex maximum residue levels (MRLs) established for residues of pyridaben on the commodities for which tolerances are being established in this action.

C. Revisions to Petitioned-for Tolerances

In order to harmonize tolerances with Canada and avoid trade irritants, EPA is establishing pyridaben tolerances as follows: (1) Fruit, stone, group 12–12 at 3.0 ppm, instead of at 2.5 ppm as requested; (2) Fruit, citrus, group 10–10 at 0.9 ppm, instead of at 0.5 ppm as requested; and (3) Fruit, small, vine climbing, except fuzzy kiwifruit subgroup 13–07F at 2.0 ppm, instead of at 1.5 ppm, as requested.

Finally, in accordance with EPA's policy to update its tolerance expressions where applicable, EPA is revising the tolerance expression to clarify that (1) as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of pyridaben not specifically mentioned; and (2) compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of the insecticide pyridaben, [2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3(2*H*)-one] in or on berry, low growing subgroup 13–07G, except cranberry at 2.5 ppm; cucumber at 0.50 ppm; fruit, citrus group 10–10 at 0.9 ppm; fruit, pome group 11–10 at 0.75 ppm; fruit, stone, group 12–12 at 3.0 ppm; fruit, small, vine climbing except fuzzy kiwifruit subgroup 13–07F at 2.0 ppm; and nut, tree, group 14–12 at 0.05 ppm. Additionally, the existing tolerances in or on apple at 0.50 ppm; pear at 0.75 ppm; nut, tree, group 14 at 0.05 ppm; fruit, stone, group 12 at 2.5 ppm; citrus at 0.5 ppm; pistachio at 0.05 ppm; grape at 1.5 ppm; and strawberry at 2.5 ppm are being removed as a result of being superseded by the new tolerances. Also, the tolerance expression is being updated to clarify that the tolerance covers metabolites and degradates of pyridaben not specifically mentioned and compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression. Finally in order to correct a typographical error that was made in a previous action (**Federal Register** of July, 14, 2000 (65 FR 43704) (FRL–6593–1)), where a number was inadvertently dropped from the table in paragraph (a), the EPA is revising the goat fat tolerance from 0.0 ppm to 0.05 ppm in order to reinstate the original tolerance level published in the **Federal Register** of May 16, 1997 (62 FR 26954) (FRL–5178–4).

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 9, 2016.

Michael L. Goodis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.494 is amended by revising paragraphs (a) and (c) to read as follows:

§ 180.494 Pyridaben; tolerance for residues.

(a) *General.* Tolerances are established for residues of the insecticide pyridaben, including its metabolites and degradates, in or on the commodities as indicated in the following table. Compliance with the tolerance levels specified below for plant commodities is to be determined by measuring the insecticide pyridaben [2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3(2*H*)-one] on the plant commodity. Compliance with the tolerance levels specified below for animal commodities is to be determined by measuring the insecticide pyridaben and its metabolites, [2-tert-butyl-5-(4-(1-carboxy-1-methylethy 1) benzylthio)-4-chloropyridazin-3 (2*H*)one] and [2-tert-butyl-5-[4(-1, l-dimethyl-2-hydroxyethyl)benzylthio-4-chloropyridazin-3(2*H*)one] on the animal commodity.

Commodity	Parts per million
Almond, hulls	4.0
Apple, wet pomace	0.75
Berry, low growing, subgroup 13–07G, except cranberry	2.5
Canistel	0.10
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, meat byproducts	0.05
Citrus, dried pulp	1.5
Citrus, oil	10.0
Cucumber	0.50
Fruit, citrus group 10–10	0.9
Fruit, pome group 11–10	0.75
Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F	2.0
Fruit, stone, group 12–12	3.0
Goat, fat	0.05
Goat, meat	0.05
Goat, meat byproducts	0.05
Hog, fat	0.05
Hog, meat	0.05
Hog, meat byproducts	0.05
Hop, dried cones	10.0
Horse, fat	0.05
Horse, meat	0.05
Horse, meat byproducts	0.05
Mango	0.10
Milk	0.01
Nut, tree, group 14–12	0.05
Papaya	0.10
Sapodilla	0.10
Sapote, black	0.10
Sapote, mamey	0.10
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, meat byproducts	0.05
Star apple	0.10
Tomato	0.15

* * * * *

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(m) are established for residues of the insecticide pyridaben, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring the insecticide pyridaben [2-tert-butyl-5-(4-tert-butylbenzylthio)-4-chloropyridazin-3(2*H*)-one] on the following plant commodity.

Commodity	Parts per million
Cranberry	0.5

* * * * *

[FR Doc. 2016–24089 Filed 10–13–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1659–CN]

RIN 0938–ZB26

Medicare Program; Explanation of FY 2004 Outlier Fixed-Loss Threshold as Required by Court Rulings; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Clarification; correction.

SUMMARY: This document corrects a technical error that appeared in the document published in the **Federal Register** on January 22, 2016 entitled ''Medicare Program; Explanation of FY 2004 Outlier Fixed-Loss Threshold as Required by Court Rulings.''

DATES: October 14, 2016.

FOR FURTHER INFORMATION CONTACT: Don Thompson, (410) 786–6504.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2016–01309 of January 22, 2016 (81 FR 3727), there was an error that is identified and corrected in the Correction of Errors section below. The provisions of this correction document are applicable as if they had been included in the document published January 22, 2016.

II. Summary of Errors

On page 3728, in our discussion of the cost-to-charge ratios estimates, we made an error regarding the fiscal year (FY).

III. Correction of Errors

In FR Doc. 2016–01309 of January 22, 2016 (81 FR 3727), make the following correction:

1. On page 3728, second column, first partial paragraph, line 12, the phrase ''FY 2004 using actual market basket'' is corrected to read ''FY 2002 using actual market basket''.

Dated: October 6, 2016.

Wilma Robinson,

Deputy Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2016–24917 Filed 10–13–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 190

[Docket No. PHMSA–2016–0091; Amdt. No. 190–18]

RIN 2137–AF26

Pipeline Safety: Enhanced Emergency Order Procedures

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Interim final rule.

SUMMARY: This interim final rule (IFR) establishes regulations implementing the emergency order authority conferred on the Secretary of Transportation (Secretary) by the ''Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016'' (PIPES Act). These regulations are mandated by the PIPES Act and, in accordance with the Act, PHMSA is establishing procedures for the issuance of emergency orders that will be used to address an unsafe condition or practice, or combination of unsafe conditions or practices, that pose an imminent hazard to public health and safety or the environment. By implementing this statutory mandate, PHMSA will enhance its existing enforcement authority to respond immediately to conditions or practices that exist in a subset of, or across, the pipeline industry. This IFR solely affects agency enforcement procedures to implement the emergency order provisions of the law and; therefore, this rulemaking results in no additional burden or compliance costs to industry. PHMSA is issuing this IFR because the PIPES Act directs PHMSA to first issue temporary regulations. However, the agency invites comments and will, if appropriate, make changes to the IFR prior to the issuance of a final rule, which the agency must

issue, by statute, no later than 270 days following enactment of the PIPES Act.

DATES: *Effective date:* This interim final rule is effective October 14, 2016.

Comment date: Comments must be received by December 13, 2016.

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

- *U.S. Government Regulations Web site: http://www.regulations.gov.* Use the search tools to find this rulemaking and follow the instructions for submitting comments.
- *U.S. Mail* or private delivery service: Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590–0001.
- *Fax:* 1–202–493–2251.
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Instructions: You must include the agency name and docket number, PHMSA–2016–0091 or the Regulatory Identification Number (2137–AF26) for this rulemaking at the beginning of your comment. Note that all comments received will be posted without change to the U.S. Government Regulations Web site: *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act section of this document.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

I. Introduction

Section 16 of the PIPES Act amends 49 U.S.C. 60117 by establishing a new emergency order authority for PHMSA in the area of pipeline safety. *See* 49 U.S.C. 60117(o). The statutory mandate requires PHMSA to develop procedures for the issuance of emergency orders to address unsafe conditions or practices posing an imminent hazard. This emergency order authority augments PHMSA's existing authority (*e.g.,* Corrective Action Orders, Notices of Proposed Safety Order, Advisory Bulletins, etc.) by allowing PHMSA to act quickly to address imminent safety hazards that exist across a subset or larger group of owners or operators.

PHMSA is initiating this rulemaking with an IFR without prior notice of proposed rulemaking and opportunity to comment because section 16 states that the Secretary of Transportation [1] must issue temporary regulations no later than 60 days (August 21, 2016) following enactment of the PIPES Act. Furthermore, the Secretary must issue final regulations no later than 270 days (March 19, 2017) following enactment of the PIPES Act, at which time the temporary regulations will expire. In order to comply with this section of the PIPES Act as quickly as possible, PHMSA has determined that good cause exists for issuing an IFR.

II. Background and Purpose

On June 22, 2016, the President signed the PIPES Act, Pubic Law 114–183, which amended the Pipeline Safety Laws in title 49 of the statute, 130 Stat. 514. Congress enacted section 16 to address the current gap in PHMSA's authority that prevents it from addressing conditions or practices that extend beyond or affect more than a single pipeline owner or operator and must be addressed immediately in order to protect life, property or the environment. Section 60117(o) augments PHMSA's existing enforcement authority to act quickly to address imminent safety hazards that exist across a subset or larger group of owners or operators. Section 60117(o) authorizes PHMSA to issue an emergency order if it determines that a violation, unsafe condition or practice, or a combination of unsafe conditions and practices, constitutes or is causing an imminent hazard. Under this section, an emergency order may impose restrictions, prohibitions, and safety measures on owners and operators of gas or hazardous liquid pipeline facilities without prior notice or an opportunity for a hearing. This regulatory authority allows PHMSA to impose conditions on a subset, or a broader group, of owners/operators, facilities, or systems, in accordance with the statutorily-mandated procedures outlined in this IFR.

A. Current Authorities: Corrective Action Orders and Safety Orders

1. Corrective Action Orders

Section 60112 of title 49, United States Code, provides for the issuance of a Corrective Action Order (CAO) to a pipeline facility after notice and an opportunity for a hearing. Prior to issuing a CAO, the Associate Administrator for Pipeline Safety must consider the following factors, if relevant: (1) The characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction or assembly; (2) the nature of the materials transported by such facility (including their corrosive and deteriorative qualities), the sequence in which such materials are transported, and the pressure required for such transportation; (3) the characteristics of the geographical areas in which the pipeline facility is located, in particular the climatic and geologic conditions (including soil characteristics) associated with such areas, and the population density and population and growth patterns of such areas; (4) any recommendation of the National Transportation Safety Board (NTSB) issued in conjunction with any investigations conducted by the NTSB; and (5) such other factors as the Associate Administrator may consider appropriate. 49 CFR 190.233(e). After weighing these factors and finding that a particular facility ''is or would be hazardous to life, property, or the environment,'' *see* 49 CFR 190.233(a), the Associate Administrator may order the suspended or restricted use of a pipeline facility, physical inspection, testing, repair, replacement, or other appropriate action. Furthermore, if the Associate Administrator finds that failure to issue the CAO expeditiously would result in the likelihood of serious harm to life, property, or the environment, the CAO may be issued without prior notice and an opportunity for a hearing. *See* 49 CFR 190.233(b). In such cases, the affected owner or operator must be provided with the opportunity for a hearing and expedited review as soon as practicable following issuance of the CAO. In all circumstances, CAOs are issued to and binding upon a single owner, operator, or pipeline facility. PHMSA's statutory grant of authority does not confer the ability to issue a CAO to more than one owner or operator.

2. Safety Orders

PHMSA also utilizes a Notice of Proposed Safety Order (NOPSO) to notify an operator that a particular pipeline facility has a condition or conditions that pose a pipeline integrity risk to public safety, property, or the environment. The NOPSO proposes

[1] The Secretary has delegated the responsibility to exercise the authority vested in chapter 601 of title 49, U.S.C. to the Administrator for PHMSA. *See* 49 CFR 1.97(a).

specific measures that an operator must take to address the identified risk. These may include inspections, testing, repairs, or other appropriate actions to remedy the identified risk or condition. A NOPSO addresses pipeline integrity risks that may require the owner or operator to take immediate corrective actions or ones that must be addressed over a longer period of time. Again, these orders may only be issued to a single owner or operator and are not intended to address imminent safety or environmental hazards.

B. Hazmat Emergency Order Authority

The Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (HMTSSRA) conferred on the Secretary enhanced inspection authority for hazardous materials transportation, investigation, and enforcement authority. Public Law 109–59 (Aug. 10, 2005). Prior to the enactment of HMTSSRA, DOT could obtain relief against a hazmat safety violation posing an imminent hazard only through a court order. After finding such a threat, the DOT operating administration was required to enlist the Department of Justice to file a civil action against the offending party, and seek a restraining order or preliminary injunction. As a practical matter, judicial relief could rarely be obtained before the hazardous transportation movement was complete. In 2011, PHMSA published a final rule instituting enhanced enforcement authority. (Hazardous Materials: Enhanced Enforcement Authority Procedures, 76 FR 11570 (Mar. 2, 2011)). The final rule included streamlined administrative remedies that materially enhanced PHMSA's ability to prevent the unsafe movement of hazardous materials. These procedures address the issuance of emergency orders to abate unsafe conditions or practices posing an imminent hazard related to the transportation of hazardous materials. The Emergency Order Authority regulations contained in this IFR are modeled after the enhanced authority conferred by HMTSSRA, to the extent required by the PIPES Act.

C. Need for Enhanced Emergency Order Authority for Pipelines

While CAOs are an effective tool for the prompt evaluation and correction of a particular operator's facilities or procedures and advisory bulletins provide recommendations—but not enforceable requirements—to a wider audience, no enforcement vehicle existed, prior to adoption of the PIPES Act, that would allow PHMSA to address immediate safety threats facing the wider industry. This new enforcement tool will allow the Administrator to issue an emergency order either prohibiting an unsafe condition or practice or imposing an affirmative requirement when an unsafe condition, practice, or other activity in the transportation of natural gas or hazardous liquids poses a threat to life or significant harm to property or the environment. The emergency order authority conferred by the PIPES Act is intended to serve as a flexible enforcement tool that can be used to address time-sensitive, safety conditions affecting multiple owners/operators, facilities, or systems that pose a threat to life or significant harm to property or the environment. Unlike a CAO issued to a single operator, an emergency order would affect multiple or all operators and/or pipeline systems that share a common characteristic or condition. A variety of circumstances could warrant such an action, including: (1) Where a natural disaster affects many pipelines in a specific geographic region; (2) where a serious flaw has been discovered in pipe, equipment manufacturing, or supplier materials; and (3) where an accident reveals a specific industry practice that is unsafe and needs immediate or temporary correction. This list is not intended to be exhaustive. PHMSA will examine the specific facts in each situation to determine if an imminent hazard exists and will tailor each emergency order to address the specific imminent hazard under each circumstance presented, while observing the statutorily-mandated due process procedures.

D. PIPES Act Requirements Related to the Emergency Order Authority

Under section 16 of the PIPES Act, PHMSA may issue an emergency order without prior notice or an opportunity for a hearing when an unsafe condition or practice, or a combination of unsafe conditions and practices constitutes or is causing an imminent hazard. Section 16 defines an ''imminent hazard'' as ''the existence of a condition relating to a gas or hazardous liquid pipeline facility that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of such death, illness, injury, or endangerment.''

The IFR requires that prior to issuance of an emergency order, PHMSA must consider the impact that an emergency order will have on public health and safety, the national or regional economy or national security, and the ability of owners and operators of pipeline facilities to maintain reliability and continuity of service to customers. An aggrieved entity may file a petition for review, at which time PHMSA must provide an opportunity for a review of the emergency order under 5 U.S.C. 554 to determine whether the order should remain in effect, be modified, or be terminated. If no agency decision with respect to the petition is issued on or before the last day of the 30-day period beginning on the date on which the petition is filed, the order will cease to be effective, unless the Administrator determines in writing, on or before the last day of such period, that the imminent hazard still exists.

III. Basis for Good Cause Determination

Under the Administrative Procedure Act (APA) and the Federal Pipeline Safety Laws, PHMSA may issue an IFR when there is ''good cause'' to find that the notice-and-comment process would be ''impracticable, unnecessary, or contrary to the public interest,'' and the agency incorporates that finding and a brief statement of the reasons supporting the finding into the rulemaking document. *See* 5 U.S.C. 553(b)(3)(B), and 49 U.S.C. 60102(b)(6)(C). These statutes are incorporated into PHMSA's pipeline safety regulations at 49 CFR 190.311, which allow PHMSA to modify aspects of an IFR in issuing the final rule after receiving and reviewing public comments, as well as any other relevant documents.

The good cause exception was made part of the APA to address certain scenarios encountered by federal agencies where delay would jeopardize their assigned missions to protect the public. Advance notice and comment rulemaking procedures may be deemed impracticable when an agency cannot both follow the notice-and-comment procedure and still achieve its statutory objectives. The ''impracticability exception'' to normal notice and comment procedures is an important exception that is used where delay would do real harm.

In this instance, the PIPES Act established a 60-day timeline for issuing these temporary or interim emergency-order regulations. This statutory deadline makes notice and comment impracticable, and not in the public interest. The final details of the PIPES Act were not known to PHMSA until after the statute was enacted, and the PIPES Act only affords PHMSA 60 days to issue temporary regulations implementing emergency order authority. Thus, allotting time for notice

and public comment (the standard comment period for a notice of proposed rulemaking is 60 days) prior to issuing temporary regulations would thwart PHMSA's ability to manage the schedule laid out by Congress and impede the due and timely execution of the agency's functions. Furthermore, section 16 of the PIPES Act directs a specific regulatory outcome—establishing a standard for determining when an emergency order is warranted, identifying particular factors for the agency to consider, and directing the agency to follow specific consultation requirements—for which PHMSA has no discretion.

IV. Summary of Proposals in This IFR

This IFR establishes interim procedures to implement the expanded emergency order enforcement authority conferred by the PIPES Act. These procedures will apply only when PHMSA determines that an unsafe condition or practice is causing an imminent hazard. PHMSA may issue an emergency order without advance notice or opportunity for a hearing. The emergency order may impose emergency restrictions, prohibitions, and safety measures on owners and operators of gas or hazardous liquid pipeline facilities, but only to the extent necessary to abate the imminent hazard.

Section-by-Section Analysis

PHMSA proposes to amend part 190 of title 49, Code of Federal Regulations. Below is an analysis of the regulatory provisions.

Section 190.3 Definitions

This section contains a comprehensive set of definitions for part 190. PHMSA will add two definitions in order to clarify the meaning of these important terms as they are used in the text of this IFR.

Emergency order means a written requirement imposing an emergency restriction, prohibition, or safety measure on owners and operators of gas or hazardous liquid pipeline facilities without prior notice or an opportunity for a hearing.

As defined by statute, *imminent hazard* means "the existence of a condition relating to a gas or hazardous liquid pipeline facility that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of such death, illness, injury, or endangerment."

Section 190.5 Service

This section contains procedures for effective service of enforcement actions issued under Part 190 and is amended to specifically exclude service of emergency orders from this section. Service of emergency orders will be defined in Section 190.236 Emergency Orders.

Section 190.236 Emergency Orders

A new section 190.236 is added to authorize the Administrator to issue emergency orders upon determining that an unsafe condition or practice, or a combination of unsafe conditions and practices, constitutes or is causing an imminent hazard. This tool is necessary to abate conditions or other widespread circumstances that pose a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment that may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of such death, illness, injury, or endangerment. The order must articulate a sufficient factual basis to address the emergency situation warranting prompt corrective action.

Paragraph (a) outlines the critical elements that must be established in an emergency order prior to issuance. Principally, the order must be in writing and describe the violation, condition or practice that is causing the imminent hazard; specify the entities subject to the order; enumerate the restrictions, prohibitions, or safety measures imposed; explain the standards and procedures for obtaining relief from the order; explain how the order is circumscribed to abate the specific imminent hazard and why the authorities under sections 60112 and 60117(1) are insufficient; and explain how certain considerations were taken into account. In other words, the order must be narrowly tailored to the discrete and specific safety hazard and identify the corrective action(s) needed to remedy the hazard.

Paragraph (d) outlines how service of an emergency order will be achieved. The Administrator will publish emergency orders in the **Federal Register** as soon as practicable. In addition, OPS will post emergency orders on its Web site. The emergency order will contain filing and service requirements, including the address of the DOT Docket Office and all persons to be served with petitions for review.

Section 190.237 Petitions for Review

A new section 190.237 is added to provide an affected party with administrative due process rights to seek redress of an emergency order, and thus, 49 CFR 190.237 sets forth the procedures for filing a petition for administrative review of an emergency order. The petition: (1) Must be in writing; (2) specifically state the section(s) of the emergency order being appealed; (3) include all information and arguments in support of the appellant's petition; and (4) follow appropriate service procedures. The petitioner may request a formal or an informal hearing. If a petitioner requests review of the order under section 554 of title 5, the party must detail the material facts in dispute giving rise to the hearing request. This process will allow PHMSA and the aggrieved entity to present evidence and argument in relation to the emergency order. If the petitioner does not request a formal hearing, the petition will be handled informally through the Office of Pipeline Safety unless the Associate Administrator determines that there is a reasonable basis for handling the petition through the formal hearing process.

Paragraphs (c) sets out the Associate Administrator for Pipeline Safety's responsibilities. These include: (1) Upon receipt of a petition for review of an emergency order that includes a formal hearing request and states material facts in dispute, immediately assigning the petition to the Office of Hearings, DOT; (2) for a petition for review of an emergency order that does not include a formal hearing request or fails to state material facts in dispute, issuing an administrative decision on the merits within 30 days of receipt of the petition (the Associate Administrator's decision will constitute the agency's final decision); (3) if more than one petition for review of an emergency order is received, and those orders are substantially similar, the Associate Administrator may consolidate the petitions for the purposes of complying with 49 CFR 190.237; and (4) in the event that a petitioner does not request a formal hearing, the Associate Administrator may reassign the petition to the Office of Hearings, DOT, when there is a reasonable basis for the reassignment.

Paragraphs (d) through (k) set out the administrative hearing procedures that the Department's Office of Hearings would employ. Upon receiving the petition from PHMSA, the Chief Administrative Law Judge assigns it to an Administrative Law Judge (ALJ), who schedules and conducts an "on the record" hearing under 5 U.S.C. 554. Given the statutory language of the PIPES Act, a petitioner must be afforded

an opportunity for a formal hearing that addresses the merits of a petition to ensure that a record is created in a proceeding that forms the basis for the final agency decision and judicial review, if necessary.

Paragraph (d)(1) provides that an ALJ may administer oaths and affirmations, issue subpoenas as authorized by PHMSA's regulations, enable the parties to engage in discovery, and conduct settlement conferences and hearings to resolve disputed factual issues. PHMSA expects ALJs to conduct efficient and expeditious proceedings, including controlling discovery actions, to enable the parties to obtain relevant information and present material arguments at a hearing within the time parameters established.

Paragraph (g) requires the ALJ to issue a report and recommendation when the record is closed. The decision must contain factual findings and legal conclusions based on legal authorities and evidence presented on the record. Critically, the decision must be issued within 30 days after the Chief Counsel receives the petition.

PHMSA notes that Congress mandated that the Secretary must decide a petition for review within 30 days of its receipt, unless the Secretary determines in writing that an imminent hazard continues to exist, extending the order, pending review of the petition. *See* 49 U.S.C. 60117(o)(5). Therefore, paragraph (j) provides that the emergency order will no longer be effective if no agency decision has been rendered on the petition within 30 days of the receipt of the petition, unless the Administrator determines in writing that the imminent hazard continues to exist. The order would then remain in effect pending the disposition of the petition unless stayed or modified by the Administrator. PHMSA maintains that this provision is necessary to ensure that the order is extended until the imminent hazard is abated.

Paragraph (h) provides that an aggrieved party may file a petition for reconsideration of the ALJ's report and recommendation with the Associate Administrator for Pipeline Safety within one day of the issuance of the decision. The Associate Administrator is charged with issuing a final agency decision on the petition for reconsideration within three days of service of the final pleading, but no later than 30 days after receipt of the original petition for review.

Judicial review would be available in an appropriate District Court and afforded expedited consideration. All parties should note that the filing of a petition will not stay or modify the force and effect of final agency decision unless otherwise ordered.

Paragraph (k) specifies the computation of time in the adjudications process.

Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Interim Final Rule

PHMSA's general authority to publish this IFR and prescribe pipeline safety regulations is codified at 49 U.S.C. 60101, *et seq.* Section 16 of the PIPES Act authorizes the Secretary of Transportation to establish procedures for the issuance of emergency orders that will be used to address an unsafe condition or practice, or combination of unsafe conditions or practices that pose an imminent hazard to public health and safety or the environment. The Secretary has delegated the responsibility to exercise this authority to the Administrator. *See* 49 CFR 1.97(a).

B. Executive Order 12866, Executive Order 13563, and DOT Policies and Procedures

This IFR is a non-significant regulatory action under section 3(f) of Executive Order 12866, 58 FR 51735 (Oct. 4, 1993) and 13563, 76 FR 3821 (Jan. 21, 2011), and; therefore, was not reviewed by the Office of Management and Budget (OMB). This IFR is non-significant under the Regulatory Policies and Procedures of the Department of Transportation. 44 FR 11034 (Feb. 26, 1979).

Executive Orders 12866 and 13563 require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' This IFR solely affects agency enforcement procedures to implement the emergency order provisions of the law, and therefore this rulemaking results in no additional burden or compliance costs to industry. However, under circumstances warranting that PHMSA issue an emergency order, there may be incremental compliance actions and costs to operators and benefits related to the immediate lessening of the imminent risks of death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment across the entirety of affected populations and environments. In the case of existing regulatory provisions, costs and benefits are attributable to the original rulemaking.

Executive Order 13132

This IFR has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). 64 FR 43255 (Aug. 10, 1999). This IFR does not introduce any regulation that: (1) Has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on state and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Further, this IFR does not have an impact on federalism that warrants preparation of a federalism assessment.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 60101 *et seq.,* requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule will not have a significant impact on a substantial number of small entities. Because this rule does not directly impact any entity, PHMSA determined that this IFR will not have a significant impact on a substantial number of small entities.

D. Paperwork Reduction Act

PHMSA has analyzed this IFR in accordance with the Paperwork Reduction Act of 1995 (PRA). Pub. L. 96–511 (Dec. 11, 1980). The PRA requires federal agencies to minimize paperwork burden imposed on the American public by ensuring maximum utility and quality of federal information, ensuring the use of information technology to improve Government performance, and improving the federal government's accountability for managing information collection activities. This IFR contains no new information collection requirements subject to the PRA. However, following issuance of an emergency order, PHMSA may require the issuance of status updates, reports, or other information. PHMSA seeks comment on the potential paperwork burdens associated with this rulemaking.

E. Executive Order 13175

PHMSA has analyzed this IFR according to the principles and criteria in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). 65 FR 67249 (Nov. 9, 2000). Because this IFR will not significantly or uniquely affect

the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

F. Executive Order 13211

This IFR is not a significant energy action under Executive Order 13211. 66 FR 28355 (May 18, 2001). It is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant, adverse effect on the supply, distribution, or use of energy. Furthermore, this IFR has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

G. Unfunded Mandates Reform Act of 1995

The proposal in this IFR would not impose unfunded mandates under the Unfunded Mandates Act of 1995. Pub. L. 104–4 (Dec. 4, 1995). The IFR would not result in annual costs of $100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector, and is the least burdensome alternative to achieve the objective of the IFR.

H. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires that federal agencies analyze proposed actions to determine whether an action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations order federal agencies to conduct an environmental review considering (1) the need for the proposed action (2) alternatives to the proposed action (3) probable environmental impacts of the proposed action and alternatives and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

1. Purpose and Need

Congress enacted the PIPES Act, in part, to address safety issues affecting multiple or all owners/operators of gas or hazardous liquid pipeline facilities

2. Alternatives

Because this IFR addresses a Congressional mandate, we have limited latitude in defining alternative courses of action. The option of taking no action would be both inconsistent with Congress' direction and undesirable from the standpoint of safety and enforcement. Failure to implement the new authority would continue PHMSA's inability to address conditions or practices constituting an imminent risk of death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment.

3. Analysis of Environmental Impacts

There are no direct environmental impacts to analyze. However, the issuance of an emergency order represents a reduction in imminent risk of death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment that cannot be lessened timely enough through a formal proceeding begun to lessen the risk.

I. Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the United Agenda.

J. 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 published in the **Federal Register**, *see* 65 FR 19477–78 (April 11, 2000), or you may visit *http://www.regulations.gov.*

List of Subjects in 49 CFR Part 190

Emergency Orders; Administrative practice and procedures.

For the reasons discussed in the preamble, PHMSA amends 49 CFR Subchapter C as follows:

PART 190—PIPELINE SAFETY PROGRAMS AND RULEMAKING PROCEDURES

■ 1. The authority citation for part 190 is revised to read as follows:

Authority: 49 U.S.C. 60101 *et seq.*

■ 2. In § 190.3, new definitions for ''Emergency Order'' and ''Imminent Hazard'' are added in alphabetical order to read as follows:

§ 190.3 Definitions.

* * * * *

Emergency order means a written order imposing restrictions, prohibitions, or safety measures on affected entities.

* * * * *

Imminent hazard means the existence of a condition relating to a gas or hazardous liquid pipeline facility that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal administrative proceeding begun to lessen the risk of such death, illness, injury or endangerment.

* * * * *

■ 3. In § 190.5, paragraph (a) is revised to read as follows:

§ 190.5 Service.

(a) Each order, notice, or other document required to be served under this part, with the exception of emergency orders under § 190.236, will be served personally, by certified mail, overnight courier, or electronic transmission by facsimile or other electronic means that includes reliable acknowledgement of actual receipt.

* * * * *

■ 4. Add § 190.236 to subpart B to read as follows:

§ 190.236 Emergency orders.

(a) *Determination of imminent hazard.* When the Administrator determines that a violation of a provision of the Federal pipeline safety laws, or a regulation or order prescribed under those laws, an unsafe condition or practice, or a combination of unsafe conditions and practices, constitutes or is causing an imminent hazard, as defined in § 190.3, the Administrator may issue or impose an emergency order, without advance notice or an opportunity for a hearing. The basis for any action taken under this section will be set forth in writing that describes:

(1) The violation, condition, or practice that constitutes or is causing the imminent hazard;

(2) Those subject to the order;

(3) The restrictions, prohibitions, or safety measures imposed;

(4) The standards and procedures for obtaining relief from the order;

(5) How the order is tailored to abate the imminent hazard and the reasons the authorities under 49 U.S.C. 60112 and 60117(l) are insufficient to do so;

(6) How the considerations listed in paragraph (c) of this section were taken into account.

(b) *Consultation requirement.* In evaluating the considerations under paragraph (c), the Administrator shall consult as the Administrator determines appropriate, with appropriate Federal agencies, State agencies, and other entities knowledgeable in pipeline safety or operations.

(c) *Considerations.* Prior to issuing an emergency order, the Administrator must consider the following:

(1) The impact of the emergency order on public health and safety;

(2) The impact, if any, of the emergency order on the national or regional economy or national security;

(3) The impact of the emergency order on the ability of owners and operators of pipeline facilities to maintain reliability and continuity of service to customers; and

(4) The result of consultations with appropriate Federal agencies, State agencies, and other entities knowledgeable in pipeline safety or operations.

(d) *Service.* The Administrator will publish emergency orders in the **Federal Register**, as soon as practicable upon issuance. In addition, OPS will post emergency orders on its Web site. The emergency order will contain filing and service requirements, including the address of DOT Docket Operations and of all persons to be served with petitions for review.

■ 5. Add § 190.237 to subpart B to read as follows:

§ 190.237 Petitions for review.

(a) *Requirements.* An entity that is subject to and aggrieved by an emergency order may petition the Administrator for review to determine whether the order will remain in place, be modified, or terminated. A petition for review must:

(1) Be in writing;

(2) State with particularity each part of the emergency order that is sought to be amended or rescinded and include all information, evidence and arguments in support thereof;

(3) State whether a formal hearing in accordance with 5 U.S.C. 554 is requested, and, if so, the material facts in dispute giving rise to the request for a hearing; and,

(4) Be filed and served in accordance with paragraph (f) of this section.

(b) *Response to the petition for review.* An attorney designated by the Office of Chief Counsel may file and serve, in accordance with paragraph (f) of this section, a response, including appropriate pleadings, within five days of receipt of the petition by the Chief Counsel.

(c) *Associate Administrator for Pipeline Safety Responsibilities*—(1) *Hearing requested.* Upon receipt of a petition for review of an emergency order that includes a formal hearing request and states material facts in dispute, the Associate Administrator for Pipeline Safety will immediately assign the petition to the Office of Hearings, DOT. Unless the Associate Administrator for Pipeline Safety issues an order stating that the petition fails to set forth material facts in dispute and will be decided under paragraph (c)(2) of this section, a petition for review including a formal hearing request will be deemed assigned to the Office of Hearings three days after the Associate Administrator for Pipeline Safety receives it.

(2) *No hearing requested.* For a petition for review of an emergency order that does not include a formal hearing request or fails to state material facts in dispute, the Associate Administrator for Pipeline Safety must issue an administrative decision on the merits within 30 days of receipt of the petition. The Associate Administrator for Pipeline Safety's decision constitutes the agency's final decision.

(3) *Consolidation.* If the Associate Administrator for Pipeline Safety receives more than one petition for review of an emergency order, and those petitions share common issues of law or fact, the Associate Administrator for Pipeline Safety may consolidate those petitions for the purposes of complying with this section.

(4) *Agency authority to request a formal hearing.* In the event that a petitioner does not request a formal hearing, the Associate Administrator for Pipeline Safety may still reassign the petition to the Office of Hearings, DOT, when a reasonable basis exists for the reassignment.

(d) *Hearings.* Formal hearings must be conducted by an Administrative Law Judge assigned by the Chief Administrative Law Judge of the Office of Hearings. The Administrative Law Judge may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided by the appropriate agency regulations (49 CFR 190.7 and 49 U.S.C. 60117);

(3) Adopt the relevant Federal Rules of Civil Procedure for the United States District Courts for the procedures governing the hearings when appropriate;

(4) Adopt the relevant Federal Rules of Evidence for United States Courts and Magistrates for the submission of evidence when appropriate;

(5) Take or cause depositions to be taken;

(6) Examine witnesses at the hearing;

(7) Rule on offers of proof and receive relevant evidence;

(8) Convene, recess, adjourn or otherwise regulate the course of the hearing;

(9) Hold conferences for settlement, simplification of the issues, or any other proper purpose; and,

(10) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of an issue raised.

(e) *Parties.* The petitioner may appear and be heard in person or by an authorized representative. PHMSA will be represented by an attorney designated by the Office of Chief Counsel.

(f) *Filing and service.* (1) Each petition, pleading, motion, notice, order, or other document submitted in connection with an order issued under this subpart must be filed (commercially delivered or submitted electronically) with: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. All documents filed will be published on the Department's docket management Web site, *http://www.regulations.gov.* The emergency order must state the above filing requirements and the address of DOT Docket Operations.

(2) *Service.* Each document filed in accordance with paragraph (f)(1) of this section must be concurrently served upon the following persons:

(i) Associate Administrator for Pipeline Safety, OPS, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., East Building, Washington, DC 20590.

(ii) Chief Counsel, PHC, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., East Building, Washington, DC 20590 (facsimile: 202–366–7041).

(iii) If the petition for review requests a formal hearing, the Chief Administrative Law Judge, U.S. Department of Transportation, Office of Hearings, M–20, Room E12–320, 1200 New Jersey Avenue SE., Washington, DC 20590 (facsimile: 202–366–7536).

(iv) Service must be made personally, by commercial delivery service, or by electronic means if consented to in writing by the party to be served, except as otherwise provided herein. The emergency order must state all relevant service requirements and list the persons to be served and may be updated as necessary.

(3) *Certificate of service.* Each order, pleading, motion, notice, or other document must be accompanied by a certificate of service specifying the manner in which and the date on which service was made.

(4) If applicable, service upon a person's duly authorized representative,

agent for service, or an organization's president constitutes service upon that person.

(g) *Report and recommendation.* The Administrative Law Judge must issue a report and recommendation at the close of the record. The report and recommendation must:

(1) Contain findings of fact and conclusions of law and the grounds for the decision based on the material issues of fact or law presented on the record;

(2) Be served on the parties to the proceeding; and

(3) Be issued no later than 25 days after receipt of the petition for review by the Associate Administrator of Pipeline Safety.

(h) *Petition for reconsideration.* (1) A party aggrieved by the Administrative Law Judge's report and recommendation, may file a petition for reconsideration with the Associate Administrator of Pipeline Safety within one day of service of the report and recommendation. The opposing party may file a response to the petition for reconsideration within one day of service of a petition for reconsideration.

(2) The Associate Administrator of Pipeline Safety must issue a final agency decision within three days of service of the final pleading outlined in paragraph (h)(1) of this section, but no later than 30 days after receipt of the original petition for review.

(3) The Associate Administrator of Pipeline Safety's decision on the merits of a petition for reconsideration constitutes the agency's final decision.

(i) *Judicial review.* After the issuance of a final agency decision pursuant to paragraph (c)(2) or (h)(3) of this section, or the issuance of a written determination by the Administrator pursuant to paragraph (j) of this section, a person subject to, and aggrieved by, an emergency order issued under section 190.236 may seek judicial review of the order in the appropriate District Court of the United States. The filing of an action seeking judicial review does not stay or modify the force and effect of the agency's final decision under paragraph (c)(2) or (h)(3) of this section, or the written determination under paragraph (j) of this section, unless stayed or modified by the Administrator.

(j) *Expiration of order.* If the Associate Administrator of Pipeline Safety, or the Administrative Law Judge, where appropriate, has not disposed of the petition for review within 30 days of receipt, the emergency order will cease to be effective unless the Administrator issuing the emergency order determines, in writing, that the imminent hazard providing a basis for the emergency order continues to exist.

(k) *Time.* In computing any period of time prescribed by this part or by an order issued by the Administrative Law Judge, the day of filing of the petition for review or of any other act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days.

Issued in Washington, DC, on October 6, 2016, under authority delegated in 49 CFR 1.97.

Marie Therese Dominguez,

Administrator.

[FR Doc. 2016–24788 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 192

[Docket No. PHMSA–2011–0009; Amdt. No 192–121]

RIN 2137–AE71

Pipeline Safety: Expanding the Use of Excess Flow Valves in Gas Distribution Systems to Applications Other Than Single-Family Residences

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: Excess flow valves (EFV), which are safety devices installed on natural gas distribution pipelines to reduce the risk of accidents, are currently required for new or replaced gas service lines servicing single-family residences (SFR), as that phrase is defined in 49 CFR 192.383(a). This final rule makes changes to part 192 to expand this requirement to include new or replaced branched service lines servicing SFRs, multifamily residences, and small commercial entities consuming gas volumes not exceeding 1,000 Standard Cubic Feet per Hour (SCFH). PHMSA is also amending part 192 to require the use of either manual service line shut-off valves (*e.g.,* curb valves) or EFVs, if appropriate, for new or replaced service lines with meter capacities exceeding 1,000 SCFH. Lastly, this final rule requires operators to notify customers of their right to request installation of an EFV on service lines that are not being newly installed or replaced. PHMSA has left the question of who bears the cost of installing EFVs on service lines not being newly installed or replaced to the operator's rate-setter.

DATES: This final rule is effective April 14, 2017.

FOR FURTHER INFORMATION CONTACT:

Technical questions: Vincent Holohan, General Engineer, by telephone at 202–366–1933 or by electronic mail at *vincent.holohan@dot.gov.*

General information: Robert Jagger, Technical Writer, by telephone at 202–366–4361 or by electronic mail at *robert.jagger@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

EFVs can reduce the risk of explosions in natural gas distribution pipelines by shutting off unplanned, excessive gas flows. These events are primarily the result of excavation damage to service lines that occurs between the gas main and the customer's building. Based on the comments to this rulemaking, PHMSA experience, and various studies, PHMSA has determined that the safety benefits of expanding the use of EFVs to new or entirely replaced distribution branch services (gas service lines that begin at an existing service line or that are installed concurrently with primary service lines but serve separate residences), multifamily facilities, and small commercial facilities is appropriate from a technical, economical, and operational feasibility standpoint.

B. Summary of the Major Provisions of the Regulatory Action

Pursuant to Section 22 of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, this final rule amends the Federal pipeline safety regulations by adding four new categories of service for which EFV installation will be required. These four new categories are for new and entirely replaced services. The existing EFV installation requirement for SFRs served by a single service line remains unchanged. The new categories of service are as follows:

- Branched service lines to a SFR installed concurrently with the primary SFR service line (a single EFV may be installed to protect both lines);
- Branched service lines to a SFR installed off a previously installed SFR service line that does not contain an EFV;

- Multifamily installations, including duplexes, triplexes, fourplexes, and other small multifamily buildings (*e.g.,* apartments, condominiums) with known customer loads at time of service installation, based on installed meter capacity, up to 1,000 SCFH per service; [1] and
- A single, small commercial customer served by a single service line, with a known customer load at time of service installation, based on installed meter capacity, of up to 1,000 SCFH per service.

Operators will be required to give all customers notice of the option to request an EFV installation, except where such installation is not required under § 192.383(c) (*i.e.,* where the service line does not operate at a pressure of 10 psig or greater through the year, the operator has experienced contaminants in the gas stream that could interfere with EFV operation, an EFV could interfere with operation and maintenance activities, or an EFV meeting performance standards in § 192.381 is not available).

Finally, this final rule also amends the Federal pipeline safety regulations by requiring curb valves, or EFVs, if appropriate, for applications operating above 1,000 SCFH.

C. Costs and Benefits

PHMSA estimates a total impacted community of 4,448 operators for this rule (3,119 master meter/small LPG operators who will need to comply with notification requirements and 1,329 natural gas distribution operators who will need to install valves and comply with notification requirements) and 222,114 service lines per year on average. It is expected to generate safety benefits in the form of reduced fatalities, injuries, lost product, and other property damage from certain types of preventable incidents in gas distribution pipelines. The overall benefits over a 50-year period were estimated at the annual equivalent of $5.5 million per year versus $10.6 million in compliance costs when calculated using a 7 percent discount rate. When using a 3 percent discount rate, the total benefits of the rule were estimated at $10.5 million while the costs were estimated at $12.0 million.

II. Background

A. Excess Flow Valves and Curb Valves

An EFV is a mechanical safety device installed inside a natural gas distribution service line between the street and residential meter. If there is a significant increase in the flow of gas (*e.g.,* due to a damaged line), the EFV will ''trip'' or close to minimize the flow of gas through the line and thus, the amount of gas escaping into the atmosphere. During normal use, the valve is kept pushed open against oncoming gas flow by a spring. EFVs are designed so that general usage, such as turning on appliances, will not shut the valve. However, during a significant increase in the flow of gas (*e.g.,* due to a damaged line), the spring cannot overcome the force of gas, and the valve will close and stay closed until the correct pressure is restored. When the correct pressure is restored, the EFV automatically resets itself.

Curb valves are installed below grade in a service line at or near the property line with a protective curb box or standpipe for quick subsurface access and are operated by use of a removable key or specialized wrench.

B. The South Riding, VA, Incident

On July 7, 1998, in South Riding, VA, an explosion stemming from a residential service line resulted in one death and three injuries. It is not known if the explosion occurred on a branched or non-branched service line, but PHMSA believes that this final rule or PHMSA's previous rule requiring EFVs on single lines serving SFRs [1] would, at a minimum, have mitigated the consequences of the explosion.

An investigation by the National Transportation Safety Board (NTSB) found the explosion likely would not have occurred if an EFV had been installed on the service line leading to this single-family home. As a result of its investigation, on June 22, 2001, the NTSB issued Safety Recommendation P–01–2, recommending that PHMSA ''require that EFVs be installed in all new and renewed gas service lines, regardless of a customer's classification (*i.e.,* not just lines serving single-family residences), when the operating conditions are compatible with readily available valves.''

C. PHMSA's EFV Studies and Evaluation Report

In December 2005, a multi-stakeholder group convened by PHMSA published a report titled: ''Integrity Management for Gas Distribution: Report of Phase I Investigations.'' [2] The report recommended that ''[A]s part of its distribution integrity management plan, an operator should consider the mitigative value of EFVs. EFVs meeting performance criteria in § 192.381 and installed in accordance with § 192.383 may reduce the need for other mitigation options.''

In an effort to study the possible benefits of expanding EFVs beyond SFR applications, PHMSA began development of an Interim Evaluation in early 2009. In June and August of that year, PHMSA held public meetings on NTSB Recommendation P–01–2 with participants from the following major stakeholder groups: the National Association of Regulatory Utility Commissioners, the National Association of Pipeline Safety Representatives, the International Association of Fire Chiefs, the National Association of State Fire Marshals, natural gas distribution operators, trade associations, manufacturers, and the Pipeline Safety Trust.

On December 4, 2009, PHMSA amended the pipeline safety regulations to require the use of EFVs for new or replaced gas lines servicing SFRs.[3] While this requirement met the mandate of the Pipeline Inspection, Protection, Enforcement, and Safety Act enacted in 2006, other distribution lines, including those that served branched SFRs, apartment buildings, other multi-residential dwellings, commercial properties, and industrial service lines, were still not required to use EFVs. These structures are susceptible to the same risks as SFR service lines.

PHMSA, already aware of this risk, issued a report in 2010 titled: ''Interim Evaluation: NTSB Recommendation P–01–2 Excess Flow Valves in Applications Other Than Service Lines Serving One SFR'' (Interim Evaluation),[4] which studied the possible expansion of EFVs beyond SFRs and the challenges involved with such expansion. The Interim Evaluation also addressed other

[1] The average single-family home uses about 200 standard cubic feet of gas per day and individual apartment units use even less.

[1] ''Pipeline Safety: Integrity Management Programs for Gas Distribution Pipelines,'' 74 FR 63906 (December 4, 2009), RIN 2137–AE15.

[2] *http://www.regulations.gov/contentStreamer?documentId=PHMSA-RSPA-2004-19854-0070&attachmentNumber=1&disposition=attachment&contentType=pdf*

[3] ''Pipeline Safety: Integrity Management Programs for Gas Distribution Pipelines,'' December 4, 2009, (74 FR 63906) RIN 2137–AE15.

[4] The purpose of the Interim Evaluation was to respond to NTSB Safety Recommendation P–01–02 and evaluate the possibility of expansion of EFVs to applications other than service lines serving one single-family residence (above 10 psig). The report also built a foundation for an economic analysis, considered the need for enhanced technical standards or guidelines, and suggested that any new technical standards include criteria for pressure drops across the EFV. The Interim Evaluation can be found at the following link: *http://www.regulations.gov/contentStreamer?documentId=PHMSA-2011-0009-0002&attachmentNumber=1&disposition=attachment&contentType=pdf.* The Interim Evaluation was finalized in 2015 based on comments to the Interim Report.

practical alternatives, such as the use of manual isolation devices (*e.g.,* curb valves) to quickly cut off the uncontrolled flow of gas in an emergency. The Interim Evaluation also identified challenges related to the feasibility and practicality of the proposed solutions, as well as significant cost and benefit factors. The report found that there were no other devices or viable options to shut off gas supply quickly when gas service lines ruptured.

The Evaluation [5] was finalized in 2015, based on comments to the Interim Evaluation, input from the meetings, and comments to the Advance Notice of Proposed Rulemaking (ANPRM) discussed below. Both reports can be found in Docket PHMSA–2011–0009.

D. Advance Notice of Proposed Rulemaking

PHMSA published an ANPRM for gas pipelines on November 25, 2011 (76 FR 72666), asking the public to comment on the findings of the Interim Evaluation and issues relating to the expanded use of EFVs in gas distribution systems. PHMSA also sought comments from gas distribution operators on their experiences using EFVs, including:

- Technical challenges of installing EFVs on services other than SFRs;
- Categories of service to be considered for expanded EFV use;
- Cost factors;
- Data analysis in the Interim Evaluation;
- Technical standards for EFV devices; and
- Potential safety and societal benefits, small-business and environmental impacts, and the costs of modifying the existing regulatory requirements.

PHMSA reviewed all of the comments received in response to the ANPRM. The comments received from the trade associations largely supported expanded EFV use, with certain limitations. Individual operators raised concerns about expanded EFV use that were generally related to logistics and implementation. Comments from municipalities reflected a concern that State laws that were already in place could conflict with new Federal requirements. The NTSB expressed strong support for increased EFV use. The ANPRM comments collectively helped PHMSA finalize the Interim Evaluation and determine what regulatory changes to propose in the Notice of Proposed Rulemaking (NPRM).

[5] *http://www.regulations.gov/contentStreamer?documentId=PHMSA-2011-0009-0027&attachmentNumber=1&disposition=attachment&contentType=pdf.*

E. Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011

In January of 2012, President Obama signed the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, which required PHMSA to study the possibility of expanding the use of EFVs beyond SFRs and issue a final report to Congress on the evaluation of the NTSB's recommendation on EFVs within 2 years after enactment of the Act. PHMSA was also required to issue regulations, if appropriate, requiring the use of EFVs or equivalent technology for new or entirely replaced gas distribution branch services, multifamily facilities, and small commercial facilities if economically, technically and operationally feasible.

F. Notice of Proposed Rulemaking

PHMSA published an NPRM (80 FR 41460) on July 15, 2015, asking the public to comment on the findings of the finalized Evaluation and PHMSA's proposals relating to the expanded use of EFVs in gas distribution systems. PHMSA proposed a rule that would:

- Expand the EFV requirement to include new or replaced branched service lines servicing SFRs, multifamily residences, and small commercial entities consuming gas volumes not exceeding 1,000 SCFH;
- Require the use of manual service line shut-off valves (*e.g.,* curb valves) for new or replaced service lines with meter capacities exceeding 1,000 SCFH;
- Require operators to notify customers of their right to request installation of an EFV on existing service lines; and
- Leave the question of who bears the cost of installing EFVs on service lines not being newly installed or replaced to the operator, customer, and the appropriate State regulatory agency.

III. Gas Pipeline Advisory Committee

The Technical Pipeline Safety Standards Committee (otherwise commonly referred to as the Gas Pipeline Advisory Committee (GPAC)) is a statutorily mandated advisory committee that advises PHMSA on proposed safety standards, risk assessments, and safety policies for natural gas pipelines. The GPAC was established under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1–16) and the Federal Pipeline Safety Statutes (49 U.S.C. Chap. 601). The committee consists of 15 members, with membership equally divided among Federal and State agencies, the regulated industry, and the public. The GPAC advises PHMSA on the technical feasibility, practicability, and cost-effectiveness of each proposed natural gas pipeline safety standard.

On December 17, 2015, the GPAC met via a teleconference facilitated by PHMSA at PHMSA's headquarters in Washington, DC. During the meeting, the GPAC considered the specific regulatory proposals set forth in the NPRM and discussed the various comments and edits to the NPRM proposed by the pipeline industry and the public. The GPAC, in a unanimous 8–0 vote, found the NPRM, as published in the **Federal Register**, and the Draft Regulatory Evaluation to be technically feasible, reasonable, cost-effective, and practicable, if (1) changes were made relative to § 192.385 paragraphs (a) and (c), as amended during the meeting; and (2) PHMSA incorporated the preamble language regarding documentation of customer notification in § 192.383(f).

The GPAC recommended that PHMSA adopt the following changes:

- *Curb Valve Accessibility for First Responders:* PHMSA's proposal in the NPRM stated that manual service line shut-off valves are ''a curb valve or other manually operated valve located near the service main or a common source of supply that is accessible to first responders and operator personnel [. . .] in the event of an emergency.'' The GPAC recommended that the final rule remove language requiring proposed manual service line shut-off valves be accessible to ''first responders and operator personnel.'' Instead, the GPAC suggested that the rule require such valves be ''accessible to operator personnel or other personnel authorized by the operator.'' Several members of the GPAC shared the concerns of industry commenters that first responders would attempt to operate these manual service line shut-off valves without operator consent or authorization, which might lead to further or otherwise unforeseen consequences, including service outages. By allowing such valves to be used by ''other personnel authorized by the operator,'' operators could have discretion to ensure that people familiar with the gas distribution systems in question be qualified and authorized to operate manual service line shut-off valves, which might include properly trained emergency responders.
- *Curb Valve Maintenance:* PHMSA's proposal in the NPRM defined a manual service line shut-off valve as ''a curb valve or other manually operated valve located near the service main or a common source of supply that is accessible to first responders and

operator personnel to manually shut off gas flow to the service line in the event of an emergency.'' Several commenters noted that this definition could cause confusion and the potential misinterpretation that these curb valves would be subject to the maintenance requirements at § 192.747, which states that ''each valve, the use of which may be necessary for the safe operation of a distribution system, must be checked and serviced at intervals not exceeding 15 months but at least once each calendar year.'' The GPAC recommended that manual service line shut-off valves installed under section § 192.385 be subject to regular, but less prescriptive, scheduled maintenance, as documented by the operator and consistent with the valve manufacturer's specification.

- Documentation of Customer Notification: PHMSA's proposal in the NPRM stated operators ''must provide written notification to the customer of their right to request the installation of an EFV,'' and that ''each operator must maintain a copy of the customer EFV notice for three years.'' Several commenters noted that the term ''written'' seemed to exclude forms of electronic notification, and they also noted that documenting individual notifications would be a costly, overly burdensome task. The GPAC recommended that PHMSA incorporate language from the NPRM preamble indicating broader options for stakeholder communication, including statements printed on customer bills or mailings or certain forms of electronic communication, including Web site postings, would satisfy the customer notification requirement, and that operators could keep a single copy of a particular method of communication for purposes of fulfilling the documentation requirement.

This final rule adopts all three recommendations of the GPAC. Additional discussion of the amendments and associated comments of the GPAC are provided below as a part of the comment discussion.

IV. Comment Summary and Discussion

In the NPRM published July 15, 2015, PHMSA solicited public comment on whether the proposed amendments would enhance the safety of natural gas distribution systems, as well as the cost and benefit figures associated with these proposals. PHMSA received 12 comments from a broad array of stakeholders, including trade organizations, pipeline operators, a government agency, and a public citizen safety watchdog group. Below is a list of organizations that submitted comments in response to the NPRM as well as the individual docket number for each comment. All comments and corresponding rulemaking materials received may be viewed on the *www.regulations.gov* Web site under docket ID PHMSA–2011–0009.

The majority of the comments specifically supported expanding EFV installation requirements. Major concerns included whether first responders should have access to curb valves, whether curb valves required inspection and maintenance, and what methods were being proposed for customer notification and documentation. Minor concerns included EFV installation, the effective date of the rule, and exceptions to EFV installation and notification. The substantive comments received on the proposed regulations are organized by topic and are discussed in the appropriate sections below, along with PHMSA's responses.

Pipeline Operators (5)

- New Mexico Gas Company (NMG) PHMSA–2011–0009–0032
- Southwest Gas Corporation (SWG) PHMSA–2011–0009–0044
- NiSource (NS) PHMSA–2011–0009–0042
- Sierra Pacific Power Company (SPPC) PHMSA–2011–0009–0041
- MidAmerican Energy Company (MAE) PHMSA–2011–0009–0034

Trade Associations (5)

- American Gas Association (AGA) PHMSA–2011–0009–0037
- National Propane Gas Association (NPGA) PHMSA–2011–0009–0045
- Gas Piping Technology Committee (GPTC) PHMSA–2011–0009–0036
- American Public Gas Association (APGA) PHMSA–2011–0009–0024
- Northeast Gas Association (NGA) PHMSA–2011–0009–0039

Government/Municipalities (1)

- National Transportation Safety Board (NTSB) PHMSA–2011–0009–0035

Public Citizen Groups (1)

- Pipeline Safety Trust (PST) PHMSA–2011–0009–0040

A. Expansion of EFVs to Multifamily Residences, Branch Service Lines, and Small Commercial Buildings

Proposal: EFVs can reduce the risks of explosions by shutting off unplanned, excessive gas flows, primarily from excavation damage to service lines between gas mains and buildings. Gas distribution pipeline operators are currently required to install EFVs in new and replacement service lines supplying SFRs, per the final rule titled ''Integrity Management Programs for Gas Distribution Pipelines,'' issued on December 4, 2009. In the NPRM, PHMSA proposed adding four new categories of service for which EFV installation will be required on new and entirely replaced gas distribution services. These four new categories are as follows:

- Branched service lines to an SFR installed concurrently with the primary SFR service line (a single EFV may be installed to protect both lines);
- Branched service lines to an SFR installed off a previously installed SFR service line that does not contain an EFV;
- Multifamily installations, including duplexes, triplexes, fourplexes, and other small multifamily buildings (*e.g.,* apartments, condominiums) with known customer loads at time of service installation, based on installed meter capacity, up to 1,000 SCFH per service; and
- A single, small commercial customer, served by a single service line, with known customer load at time of service installation, based on installed meter capacity, up to 1,000 SCFH per service.

Comments: The majority of the commenters from trade associations, industry, citizen groups, and government entities explicitly supported the expanded use of EFVs in all categories and recognized the benefits of their use. The NTSB was ''pleased that PHMSA is now proposing to expand the requirements for installing EFVs'' and understood ''that the expanded coverage is based on a comprehensive examination of the practical operating limits of EFVs and comments on the ANPRM.'' The NTSB stated that it ''supports the measures proposed in the NPRM and believes that they will improve the safety of natural gas distribution pipeline systems.'' The PST noted the publication ''fulfill[s] the NTSB's recommendation from 2001 to its full scope,'' and they ''join[ed] with the NTSB in supporting this proposed expansion.''

Industry trade associations, such as the AGA, which represents more than 200 local energy companies throughout the United States and provides gas to 94 percent of U.S. customers, stated in their comments that they and ''their member utilities completely support expanding EFV installation to multifamily residential service lines and small commercial services.'' The APGA, the national, non-profit association of publicly owned natural gas distribution

systems with over 700 members serving 37 States, also supported the expansion of EFVs, stating that ''EFVs are the one tool that distribution operators can use to reduce the risk posed when natural gas service lines are ruptured by excavation.'' The APGA also noted that ''in written comments submitted in response to PHMSA's ANPRM published November 25, 2011, APGA and other commenters suggested EFV installation requirements virtually identical to what PHMSA has proposed,'' and ''commend[ed] PHMSA for adopting APGA's recommendation.''

NMGC ''commend[ed] and support[ed] expanding the use of excess flow valves to new and fully replaced branch services, small multifamily facilities, and small commercial facilities where economically, technically, and operationally feasible.'' SWG ''support[ed] the practical and reasonable expansion of EFVs to new and fully replaced service lines beyond single family residential applications,'' in part ''evident by its EFV installation policy and number of EFVs installed [on its existing system].'' Likewise, the NGA ''support[ed] PHMSA's proposal to expand the use of excess flow valves in gas distribution services for newly constructed applications other than single-family residences and when existing services are excavated or replaced,'' recognizing that ''installing EFVs, under conditions where they are effective, when new services are installed, or existing services are exposed, repaired or replaced, is a cost-effective measure to improve pipeline safety.'' The NGA also noted that it ''supported this proposal in its initial comments to the advanced notice of proposed rulemaking related to this issue in 2012.''

PHMSA Response: PHMSA has been attempting to address issues involving the broad installation of EFVs since at least 1990, and the NTSB has issued several recommendations to PHMSA and the regulated industry regarding the installation of EFVs on particular services as far back as the 1970s. NTSB Recommendation P–01–2, which asks PHMSA to ''require that excess flow valves be installed in all new and renewed gas service lines, regardless of a customer's classification, when the operating conditions are compatible with readily available valves,'' is one of PHMSA's oldest, unclosed NTSB recommendations.

Prior attempts to require the installation of EFVs on certain gas distribution services were not supported by both industry and State pipeline safety partners; for years, EFVs were perceived as unreliable, costly pieces of equipment that might accidentally close and interfere with normal service, interfere with maintenance activities, or be difficult to size and use at varying line pressures. Further, in the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, Congress provided PHMSA with a mandate to focus its resources on requiring EFV installation on service lines serving single-family residences as part of PHMSA's gas distribution integrity management program (DIMP) rulemaking. Following the issuance of the DIMP rulemaking and the EFV regulations in 2009, EFVs became more technologically feasible and cost-effective to a point where it became a realistic possibility for PHMSA to address fully the NTSB recommendation. PHMSA performed several studies and surveys to evaluate the feasibility of its position on high-volume EFVs and used its experience in the prior EFV rulemaking to assist in formulating this proposal. PHMSA is pleased that there is now such widespread support, both from industry and public groups, for expanding the installation of EFVs beyond SFRs. Accordingly, this final rule amends the Federal Pipeline Safety Regulations by adding the proposed four new categories of service to require EFV installation on branched service lines (both branched lines to SFRs installed concurrently with the primary SFR service line and branched lines to SFRs installed off a previously installed SFR service lines not containing an EFV), lines serving multifamily installations, and lines serving small commercial and industrial customers.

B. Curb Valve Accessibility to First Responders

Proposal: In the NPRM, PHMSA proposed requiring operators to install curb valves for applications that operate above 1,000 SCFH, are not suitable for EFV installation, and do not meet the exemptions in the existing § 192.383. Curb valves are the most feasible alternative to EFVs in locations that exceed 1,000 SCFH or have other issues that prevent EFV use. Although they cannot be operated instantaneously like EFVs, curb valves can still mitigate the effects of gas line explosions and are an effective safety measure. Therefore, PHMSA proposed that any curb valves installed under this section be accessible to first responders. PHMSA's experience indicates that, frequently, first responders arrive at the scene of an incident before operator personnel do. If first responders have access to a curb valve during an emergency and can operate it, the valve can be closed to mitigate further consequences.

Comments: The NTSB was pleased to note that PHMSA's proposal to require that operators ''install a manual service line shut-off valve on new or replaced service lines in such a manner that emergency personnel can access the valve [. . .] goes beyond the original intent of [the NTSB's] recommendation, to further ensure safety.'' The PST joined the NTSB in supporting this measure.

Several of the commenters representing trade associations and operators supported the use of curb valves where EFVs are not feasible but strongly opposed requiring that curb valves always be accessible to first responders. These commenters generally indicated that it should be the operator's responsibility to operate these select portions of gas distribution systems and that it should be up to the operator's discretion to allow other personnel to operate these valves, if needed. Certain operators noted the ''Pipeline Emergencies'' training manual, a document developed by a team of respected emergency response and industry experts in partnership with the National Association of Fire Marshals and PHMSA, states that emergency responders should consult the local gas company to determine local procedures for fire department use of curb valves. The AGA indicated there are a few unique situations where operators have properly trained first responders to operate curb valves, but such a practice is not followed by most utilities. Certain industry operators, including the SPPC, commented that they specifically train first responders in their service territories, for safety reasons, *not* to manually shut off gas flows. If manual service line shut-off valves are accessible to first responders, first responders may operate the wrong valve, may not have the proper equipment to operate the valve, or may incorrectly operate the valve.

Operators and trade associations also asserted that, given the complexity of gas distribution systems, emergency shut-off valves should only be operated by operator-qualified personnel who are familiar with the specific gas distribution system in question. NS suggested that, as operators have engineering records indicating the location of all valves and which ones they control, operator personnel can verify the location and purpose of a valve, thereby eliminating the possibility of operating the wrong one and creating a greater hazard.

The AGA noted there are many accounts of first responders who,

without the approval of the gas company, have inadvertently closed the wrong valve or opened a valve that should have been closed. Several operators argued that allowing first responders to operate manual service line shut-off valves would create additional inconveniences or safety risks, including loss of service to other customers or additional property damage, injuries, or even deaths.

Some operators indicated that giving first responders immediate access to curb valves would distract them from their primary mission, which is to perform safety assessments, make locations safe for people, and conduct evacuations from areas of danger. Instead, they would suddenly have responsibility for locating valves, determining which valves should be closed, and closing them—tasks which could potentially interfere with their primary mission and for which they might not be trained.

At the GPAC meeting, members of the committee expressed concerns similar to those raised by industry regarding unauthorized or improper manual service line shut-off valve usage. The committee debated whether there could be a requirement authorizing first responders to operate those particular valves or whether operators could give discretion to certain first responders to operate valves. One question that was brought up was whether eliminating ''first responders'' from the proposed language (which would leave ''accessible to operator personnel'' remaining) would unintentionally create a requirement that would make manual service line shut-off valves accessible to only company personnel. The committee eventually suggested revising the paragraph by striking the reference to first responders and inserting ''other personnel authorized by the operator.'' The committee believed this would give operators the primacy they sought for operating their own distribution systems while, at the same time, making the valves accessible and usable by non-operator personnel with the operator's consent.

PHMSA Response: PHMSA disagrees with those commenters who argued that curb valves should not be accessible to first responders. Many comments PHMSA received seemed to equate valve accessibility with authority or expectation to operate those valves without consent. PHMSA is in no way implying that first responders should have complete autonomy in deciding whether to operate valves on a given gas distribution system.

In PHMSA's experience, there have been accidents where the consequences have grown due to operator delays in shutting off curb valves. As a part of an operator's regular liaison with first responders, operators can, if they wish, train first responders to use curb valves properly through regular exercises and communications. Further, if the valve cover plate is clearly marked, there should not be any confusion regarding the operation of the valve in an emergency. However, PHMSA is not advocating the unauthorized operation of these valves. Unless they believe there is imminent threat to human life or extensive property damage, first responders should not operate curb valves without operator input or consent.

In this final rule, PHMSA is adopting the language recommended by the GPAC, which would make curb valves accessible to operators and other personnel authorized by the operator to manually shut off gas flow, if needed, in the event of an emergency. PHMSA appreciates the work of the GPAC in proposing a consensus solution that enables first responders, if qualified and authorized, to operate valves if needed, yet retains the operators' right to make decisions regarding the operation of their own systems.

C. Curb Valve Maintenance

Proposal: In its NPRM, PHMSA proposed requiring operators to install curb valves for applications that operate above 1,000 SCFH, are not suitable for EFV installation, and do not meet the exemptions in the existing § 192.383. Curb valves are the most feasible alternative to EFVs in locations that exceed 1,000 SCFH or have other issues that prevent EFV use. Although they cannot be operated instantaneously like EFVs, curb valves can still mitigate the effects of gas line explosions and are an important safety measure. Under the proposed amendment to § 192.385(c), manual service line shut-off valves for any new or replaced service line must be installed in such a way as to allow accessibility during emergencies.

Comments: Just as it supported the proposal to ensure the accessibility of curb valves to first responders, the NTSB also supported this proposal. Comments from industry and trade associations, however, were unified in their concern that this requirement would create confusion regarding maintenance requirements based on earlier PHMSA interpretations.

Specifically, operators noted that the addition of § 192.385, as proposed in the NPRM, might lead to the mistaken inference that manual service line shut-off valves would be subject to the valve maintenance requirements set forth in § 192.747, ''Valve maintenance: Distribution systems.'' The AGA, NMGC, SWG, and APGA all noted that PHMSA has issued many letters of interpretation affirming that § 192.747 does not apply to curb valves, but the proposed § 192.385 could be misconstrued to require such annual inspections. The AGA and NMGC support PHMSA's historical position that manual curb valves are not considered a ''critical valve'' for inspection purposes, suggesting that if these valves were to be designated as critical valves, operators would have to hire and train a significantly larger staff to inspect and maintain these valves, which would significantly increase operating costs and impose an administrative burden. The AGA and APGA noted that if it was PHMSA's intent to change its position and require annual inspections on these manual curb valves, this is not indicated in the NPRM, the estimated cost of the rule, or the estimated paperwork burden. Operators suggested PHMSA clearly state in the final rule that curb valves installed under this proposal would not be subject to the requirements at § 192.747.

At the GPAC meeting, members of the committee discussed this proposal and whether these valves should be inspected and maintained according to the requirements at § 192.747. Several members agreed that inspecting and maintaining these valves would be an important safety measure, although several suggested that requiring these valves to be inspected and maintained would require an increase in staffing and operator qualification.

Other members of the committee expressed concerns about operating these valves for inspection purposes, arguing that testing curb valves could knock out service in areas if they were operated improperly, and that testing could potentially present more risk than reward. Members of the committee also agreed that requiring annual inspection and maintenance of these valves would be unreasonable and perhaps unnecessary. Some suggested that if these valves were to be inspected and maintained, then perhaps those requirements could be tied to existing maintenance activities, such as leak surveys and patrolling, meter-change programs, or other times when service lines would be shut off.

Ultimately, the committee suggested requiring valves installed under this section to be subject to regularly scheduled and documented maintenance consistent with the valve manufacturer's specifications. While some GPAC members expressed concern

that valve manufacturers might specify overly stringent inspection and maintenance intervals for particular curb valves, other GPAC members noted that manufacturer specifications are an important part of the industry's operation and maintenance considerations.

PHMSA Response: PHMSA believes that curb valves installed under this section must be accessible (*e.g.,* clear of debris) and occasionally operated to ensure they are working properly. A curb valve does not provide any safety benefit if it is inoperable. Therefore, to ensure the safe operation of a particular gas distribution system, it is imperative that these valves function as intended. PHMSA concluded that the burden of inspecting and maintaining these valves would be minimal, as operator personnel can meet these requirements by simply ensuring the valves are free of debris that could prevent operation and by ensuring the valves are able to turn and operate. Further, these requirements can be quickly performed and will not be an undue burden on operators, as operators can choose to coordinate them with other activities, such as leak surveys, patrolling, meter-change programs, as well as other actions where service would be shut off and properly qualified personnel are present.[6] PHMSA also agrees with the GPAC discussion regarding manufacturer specifications. Not only are manufacturer specifications important to consider in the context of operating a safe gas transportation system, but market forces typically ensure reasonable operation and maintenance standards.

PHMSA appreciates the work of the GPAC in debating this proposal and chooses to adopt the language the GPAC recommended, as the amendment strikes a good balance between limiting any potential burden imposed on operators and performing necessary activities to ensure operability and safety. Therefore, the final rule amends the Federal Pipeline Safety Regulations to require that manual service shut-off valves installed under this section be subject to regular scheduled maintenance as documented by the operator and consistent with the valve manufacturer's specifications.

[6] Nonetheless, if there is minimal increase in time spent on the order of 5 minutes per visit for curb valve maintenance, PHMSA estimates costs would be approximately $113,416 annually for an estimated 40,955 curb valves per year based on a fully loaded hourly wage rate for natural gas distribution meter readers ($33.23 per hour per Bureau of Labor Statistics information (*http://www.bls.gov/oes/current/oes435041.htm*) and a total of 3,413 hours.

D. Customer Notification

Proposal: PHMSA proposed in the NPRM that operators must notify customers of their right to request the installation of EFVs. Specifically, each operator must provide written notification to the customer of their right to request the installation of an EFV within 90 days of the customer first receiving gas at a particular location. Operators of master-meter systems may continually post a general notification in a prominent location frequented by customers.

Comments: PHMSA received several comments on the proposed notification requirement regarding the frequency of notification, method of notification, notification content, and the persons who should receive notification. The NTSB was ''pleased that PHMSA is proposing to require the operator to inform customers of their right to request an EFV be installed on an existing service line,'' and the PST joined the NTSB in that support. Operators and trade associations nearly universally supported notifying all existing customers of their right to request an EFV through broad communication methods rather than the proposed individual, dedicated notification method, which those commenters argued would have created a significant administrative burden.

Some commenters questioned the effectiveness of the requirement for notification to customers within 90 days of new service. The APGA felt it was unclear what was meant by ''notification must occur within 90 days of the customer first receiving gas at a particular location.'' This could be interpreted to apply when the operator changed the name of the person to whom it sends gas bills. This could also be interpreted not to require notification of existing customers who have been receiving gas for more than 90 days. MAE noted it appears the intent studied in the Evaluation was for a single annual notification to all customers and customer classes, based on a 1-hour level of burden. Several operators, including MAE and SPPC, as well as trade organizations, argued that establishing a 90-day requirement per customer would cause a significant increase in costs, documentation efforts, and a tangible administrative burden. MAE concurs with the idea of notifying owners of the option for an EFV and its potential benefits but believes this could be done with a new customer packet that could be acted upon by customers who want to initiate installation. This could then be inspected as a part of the public awareness program.

Many operators and trade associations suggested that notifying all existing customers through a broad notification, such as ''bill stuffers,'' ''new customer'' packets, and Web site postings, would be a better use of operator resources and provide greater benefits. SWG noted that allowing operators to provide EFV notification through broad means would be consistent with the way PHMSA proposed the notification requirement for master-meter operators. Further, the AGA mentioned that the NPRM's ''Section-by-Section'' analysis indicated PHMSA was open to other forms of notification, such as a printed statement on a customer bill or mailings, but that was not evident in the actual proposed regulatory text. Members of the GPAC echoed this statement when the committee meeting was held and wanted PHMSA to clarify which methods of notification were acceptable. The AGA suggested that given the number of customers that have migrated to online billing and have opted to receive notifications electronically from their natural gas service provider, operators should be able to satisfy the notification requirement through electronic notifications to customers, postings on the company's Web site, and other forms of electronic communications. Satisfying the proposed requirement through these methods as well as traditional communications would allow effective communication at a lower cost and in a more efficient manner. The AGA urged PHMSA to make it clear in the final rule that individual communications to each customer would not be required, and that an annual general EFV communication would suffice. The APGA noted that, as many operators may elect to use bill stuffers to notify all customers about EFVs, PHMSA should allow, as an alternative to notification within 90 days of a customer receiving gas, operators to notify all customers annually of their right to request an EFV. For many APGA members, this would be the least administratively burdensome method of notifying customers and have the added benefit of providing customers who may have overlooked the original notice with additional opportunities to choose to have an EFV installed on their service lines.

Several commenters had miscellaneous concerns on what the customer notification should contain. SPPC suggested providing a description of EFVs and their safety benefits as well as advice on how to request one, a notification that could be inspected as part of an operator's public awareness

program. The AGA recommended that PHMSA require operators include general information in their public communications on the cost associated with retrofitting an existing service line to accommodate an EFV. NS suggested PHMSA adapt and incorporate language similar to that issued in the 1998 EFV customer notification rule, including language discussing the potential safety benefits, a description of installation and replacement costs, and an explanation of when a requested EFV would be installed.

PHMSA Response: PHMSA appreciates the comments received on this topic and the industry's support for a broad annual notification requirement that would provide customers with important safety information. When outlining the proposal in the NPRM, PHMSA did not intend to suggest that customer EFV notifications needed to be non-electronic or otherwise individually carried out. PHMSA has no objection to the method by which operators notify their customers as long as the operator can be sure of reaching all customers who have a right to request an EFV. Therefore, a combination of methods, including Internet Web site postings, bill stuffers, new customer packets, statements on billing materials, et cetera, can be used to notify all customers. PHMSA has determined that, as many of the commenter-proposed methods would theoretically notify, on a regular basis, all customers about their potential right to request an EFV, a broad, electronic method of communication would meet the intent of the regulation and be acceptable.

PHMSA has also determined that, as operators appear to be willing to notify all existing customers about their potential right to request an EFV, the specific 90-day customer notification window for new services is unnecessary. PHMSA has removed this language from the final regulatory text. A broad notification to all customers will also address any concerns about reaching customers who are not eligible for EFV installation or who have already had EFVs installed.

As for the specific content of a notification, PHMSA has determined it would be beneficial to include language that was previously required in the 1998 EFV notification rule, especially considering that operators would already be familiar with the previous requirements. In line with comments from SPPC, AGA, and NS, PHMSA will require that operators include general information on the cost associated with EFV installation, the potential safety benefits that may be derived from installing an EFV, and conditions for installation. The operator may choose how to word the specific information as long as they provide sufficient information to give customers a rational basis for deciding whether they want to request an EFV installation. The notification should also be written in plain language.

E. Customer Documentation

Proposal: PHMSA proposed in the NPRM that each operator must maintain a copy of the customer EFV notice for 3 years. This notice must be available during PHMSA inspections or State inspections conducted under a pipeline safety program certified or approved by PHMSA under 49 U.S.C. 60105 or 60106.

Comments: The majority of the comments submitted by industry and trade associations were an extension of the concerns regarding customer notification and focused on the idea that documenting individual notifications would be a major undertaking and a poor use of resources. While many operators and trade associations seemed to agree that using and documenting broad methods of communications (*e.g.,* statements printed on customer bills, mailings, or electronic Web pages) would be reasonable, there were some differing opinions on how notifications should be documented.

The AGA recommended that the final rule allow retention of a single copy of any notice, accompanied by a listing of the customers who received the mailing, or by documenting the electronic communication itself. The APGA noted that in the proposed rule's preamble, PHMSA stated that evidence of notification could include such items as a statement printed on customer bills or mailing. The APGA further noted that PHMSA did not propose to require operators to keep records showing that individual customers had been notified. SWG stated that while the section-by-section analysis indicated that operator evidence of notification could include such items as a statement printed on customer bills or mailings, the proposed regulatory text did not include such language.

Some operators and trade associations discussed other issues pertaining to the 3-year recordkeeping requirement. SPPC and NGA noted that customer properties with frequent turnover would have multiple records for the same address that would need to be maintained and sorted for a period that could extend beyond the 3 years required by the regulations. The NPGA argued that PHMSA's recordkeeping requirement presented a greater burden than estimated. For large liquefied petroleum gas (LPG) operators, it would be a considerable clerical task to collect and review all EFV installation notifications to maintain a record spanning 3 years. The NPGA suggested that PHMSA permit the recordkeeping as an option rather than a requirement, which would allow LPG operators to choose best practices for their businesses and customers.

PHMSA Response: PHMSA determined that several of the concerns raised by commenters in this section could be addressed through clarifying the proposed language and through revisions to the customer notification method.

It was not PHMSA's intent to suggest that operators would need to transmit and document individual notifications to eligible customers. As a few of the commenters pointed out, PHMSA had indicated that a statement printed on customer bills or mailings would suffice as evidence for customer notification, but this language and intent was not incorporated into the proposed regulatory text. As PHMSA is allowing operators to notify customers through a broad range of electronic and traditional communications, the agency will also allow operators to retain a copy of the broad annual notification or notifications they are using to communicate with customers their right to request an EFV. In line with the 2008 Federal Pipeline Safety Regulations regarding operator evidence of customer notification, operators will be required to make a copy of the notice currently in use available during PHMSA inspections or inspections conducted under a program certified or approved by PHMSA under 49 U.S.C. 60105 or 60106 without any further recordkeeping requirement or timeframe.

F. Installation Flexibility

Proposal: PHMSA proposed in the NPRM that operators must install a manual service line shut-off valve for any new or replaced service line with an installed meter capacity exceeding 1,000 SCFH.

Comments: Overall, operators and trade associations supported installing curb valves where EFVs are not feasible due to operational concerns. However, many operators and trade associations noted that the language, as proposed, did not allow operators flexibility for installing EFVs where possible on lines operating at greater than 1,000 SCFH and also might require operators to install both an EFV and a manual service line shut-off valve on the same line.

Several operators and trade associations, including SPPC, NMGC, AGA, NS, MAE, APGA, and SWG, suggested PHMSA revise the proposed regulatory text to give operators the option to install either an EFV or a manual service line shut-off valve based on sound engineering analysis and the availability of larger-format EFVs. The NMGC verified with EFV manufacturers, such as GasBreaker Inc., that EFVs are available and will meet the requirements necessary for operating on single-family residences above 1,000 SCFH. NS saw an opportunity to encourage operators to install EFVs on loads in excess of 1,000 SCFH, as NS has had success with installing EFVs in service lines for loads greater than 1,000 SCFH. The APGA believed the technology of EFVs and products available would continue to evolve, and in the future, some operators may test and become comfortable installing EFVs on some services operating above 1,000 SCFH. The APGA noted the rule should state that an operator need not install a curb valve if the operator installs an EFV on a service line instead. Further, SPPC noted that this requirement should be flexible enough to ensure that operators can account for increased loads in the future, such as being able to install a curb valve on a new service line with an initial load less than 1,000 SCFH but that might later exceed 1,000 SCFH so as to avoid the additional cost of replacing an EFV with a curb valve in the future.

Additionally, NMGC, SWG, NGA, and AGA determined that under no circumstances should operators be required to install both an EFV and a manual service line shut-off valve on the same service line. The AGA noted that, as currently proposed, the regulations would require both a manual curb valve and an EFV on (1) any SFR operating at greater than 1,000 SCFH or (2) a non-SFR operating at greater than 1,000 SCFH where an operator installed an EFV under DIMP. Further, as proposed, the rule could prohibit further innovation on EFVs that might be able to operate above 1,000 SCFH.

The GPTC expressed a similar view on the issue, noting that the rule, as proposed, would not give an operator sufficient flexibility to use sound engineering practices to design an EFV on service lines with loads greater than 1,000 SCFH, in lieu of a manual curb valve. In the proposed § 192.383(b)(4) and (5), PHMSA established a threshold of 1,000 SCFH customer load over which an EFV was not required. However, there is no threshold limit of 1,000 SCFH for proposed § 192.383(b)(1), (2), and (3). The result is that a large SFR or branch to two large SFRs with a service line load greater than 1,000 SCFH would have both an EFV and a curb valve, but a multifamily residence with a service line load greater than 1,000 SCFH would require only an emergency curb valve, even if an EFV were available and suited for the application. The GPTC asked PHMSA to modify this section to allow greater flexibility.

PHMSA Response: PHMSA did not intend to require that operators install both a curb valve and an EFV on the same service line and would like to give operators the flexibility to choose the proper safety valve. PHMSA has no objection to operators installing EFVs on lines with capacities over 1,000 SCFH, as long as that decision is reached through sound engineering analysis. To clarify, if an operator cannot or chooses not to install an EFV on an applicable service line with capacity over 1,000 SCFH, it must install a curb valve.

PHMSA notes that it originally wanted to require operators install EFVs on service lines with loads up to 5,000 SCFH, as PHMSA knows that valves are available for these applications, and manufacturers have indicated they have sold EFVs for these load sizes. PHMSA chose the 1,000 SCFH threshold, which was accepted by the GPAC, as a compromise based on comments from industry. Having operators perform a sound engineering analysis will allow PHMSA to verify operators are taking into account maximum loads and the capabilities of EFVs, if available, to handle those loads. An operator's engineering analysis for sizing an EFV should be based on maximum expected load throughout the year, including snap loads, critical supply applications, system configuration, and future anticipated loads (*e.g.,* when commercial facilities in a shopping center change, gas loads would also change). In many instances, operators size EFVs based on meter capacity at the service. Operators must use caution in expanding EFV use to other larger commercial and multifamily dwelling applications due to the complexity of service line design and usage patterns.

In response to SPPC's comment, PHMSA is not allowing manual valve installation for loads below 1,000 SCFH, even when future anticipated loads may exceed that threshold. In this final rule, PHMSA is allowing operators to install EFVs in lieu of manual valves in instances where loads exceed 1,000 SCFH. As operators already consider anticipated design loads and work with distribution system designers to determine proper system configurations and valve sizing when installing systems, operators should be able to install appropriate valves for future anticipated loads.

PHMSA also considered the GPTC's comment. In the best professional judgment of PHMSA's subject matter experts, a SFR service line combined with a branch service to another SFR isn't known to exceed 1,000 SCFH, and typical houses consume anywhere from 100–250 SCF per day. However, commercial and industrial facilities can exceed 1,000 SCFH, and therefore the threshold is needed. Accordingly, in this final rule, PHMSA has amended the Federal Pipeline Safety Regulations at § 192.385(b) to require that operators install either a manual shut-off valve or, if possible, based on sound engineering analysis and availability, an EFV on lines operating at capacities exceeding 1,000 SCFH.

G. Cost Recovery and Other Cost-Benefit Issues

Proposal: In its NPRM, PHMSA proposed that existing service line customers who desire an EFV on service lines not exceeding 1,000 SCFH and not meeting one of the exceptions contained in paragraph (c) of § 192.383 may request an EFV on their service lines. If a service line customer requests EFV installation, an operator must install the EFV at a mutually agreeable date. The appropriate State regulatory agency would determine who would bear the cost of installation and how the cost would be distributed.

Comments: Operators and trade associations were strongly opposed to the final sentence in PHMSA's proposal that designated the appropriate State regulatory agency as the entity that would determine who would bear the cost of the requested EFV. Most of the comments questioned whether PHMSA had the legal authority to make such a statement and whether a State regulatory agency would be the appropriate authority for all cases. Specifically, the AGA, APGA, and GPTC noted that PHMSA lacked the jurisdiction to codify and regulate the manner by which utilities handle charges to customers.

The NPGA noted that PHMSA's proposal to permit State regulatory authorities to determine what party is responsible for installation costs when a customer requests installation of an EFV presents particular concerns for LPG systems and businesses. PHMSA's deference to State agencies would impose disproportionately negative effects on operators of LPG systems compared to other utilities, since LPG pipeline operators are not regulated in

the same manner as natural gas utilities. The NPGA asked that PHMSA modify the proposal to assign the cost of EFV installation performed at a customer's request to the customer itself, as LPG businesses are not positioned to pass along additional costs to customers in the same manner as locally regulated utilities.

NS noted that in previous amendments to § 192.383 (EFV customer notification, Feb 3, 1998), the Research and Special Programs Administration, PHMSA's predecessor agency, acknowledged that the cost of installing an EFV on an existing line was to be the responsibility of the customer. Therefore, if PHMSA wishes to address who is to pay for the installation of EFVs on existing service lines, NS proposed that PHMSA adopt its previous requirement that the service line customer bear the cost. NS also believed this requirement would also be best addressed under § 192.383(e).

The APGA was vehemently opposed to the proposed language stating that the appropriate State regulatory agency would determine to whom and how the costs of the requested EFVs would be distributed, indicating that of the approximately 1,000 public gas utilities subject to the Federal Pipeline Safety Regulations, only a few have a State agency determining how the cost of gas service is distributed among customers. Whereas State public utility commissions (PUC) typically review and approve the rates charged by investor-owned and privately owned operators (which represent less than 25 percent of distribution operators regulated by PHMSA), rates for public distribution systems are typically approved by the municipality, utility board, or similar local oversight body. The APGA noted the preamble of the NPRM made clear that PHMSA did not intend to regulate how EFV costs would be recovered and did not believe it was PHMSA's intent to require public gas distribution operators to become subject to PUC review for EFV cost recovery. Rather, the APGA believed it was PHMSA's intent to ''leave the determination of how the cost of installing an EFV at customer request to the operator and whatever body approves the operator's gas rates.''

Apart from PHMSA's proposal for determining cost recovery, some commenters discussed additional cost-benefit issues related to EFV installation on existing service lines. The APGA noted that operators should only be required to install EFVs if requesting customers also agree to whatever cost-recovery mechanism has been included in the operator's approved rates. The AGA, SWG, and NGA noted that the cost of retrofitting an EFV on an existing service line could be significant, with SWG adding that this cost was not included in PHMSA's cost-benefit analysis. The NGA further indicated that offering customers the option of installing EFVs on existing services not planned for replacement, excavation, or repair was not a cost-effective safety measure, and installing EFVs on existing services should be evaluated by each operator as a part of its integrity management planning.

MAE requested a further analysis of the value and costs of installation, operations and maintenance, and leak rates on curb valves to determine whether there are more cost-efficient methods of emergency shut-off. A member of the GPAC also expressed concerns about PHMSA's cost-benefit numbers related to curb valves, suggesting that PHMSA reconsider including curb valve maintenance in the cost-benefit analysis and further analyze whether the incidents PHMSA used when examining the effectiveness and usefulness of curb valves were applicable to the analysis. Specifically, the GPAC member questioned whether, for the incidents PHMSA selected applicable to curb valves in its analysis, a curb valve on the line would have actually prevented fatalities, injuries, or property damage, noting that the narrative of a few of the accidents indicated some of the fatalities and injuries were actually caused by car crashes and not the subsequent gas incidents.

PHMSA Response: It was not PHMSA's intent in the proposal to specifically delegate cost-recovery duties to State regulatory agencies, especially where certain operators do not have their rates set by these entities. In the Section-by-Section analysis of the NPRM, PHMSA noted it ''has no jurisdiction concerning natural gas rates or any costs incurred due to installation of an optional EFV at a consumer's request.'' PHMSA was only trying to indicate that it would defer to the existing rate-setting and cost-recovery structure under which operators currently operate. Therefore, PHMSA has removed the reference to ''State regulatory authority'' in the regulatory text applicable to cost recovery and has inserted ''The operator's rate-setter'' to reflect this intent.

PHMSA understands that the cost of installing an EFV on an existing line at the customer's request is more expensive than if the line were new or being replaced due to excavation and additional labor costs and determined it was not cost-effective to require the fitting of an EFV on all existing services.

A 2007 National Regulatory Research Institute (NRRI) study titled ''Survey on Excess Flow Valves: Installations, Cost, Operating Performance, and Gas Operator Policy,'' suggests that customer-initiated EFV installations are quite rare, even in locations where they are currently allowed by local policy, and would not be a circumstance operators would be dealing with in significant numbers. However, without this provision, customers on existing lines without an EFV would essentially have no option to install an EFV, even if they highly valued the risk reduction that it provided and were willing to pay the full installation cost. These foregone transactions would represent deadweight loss. Although PHMSA determined that mandatory installation on all existing lines would not be cost-effective due to excavation and labor costs, some individual households might have a high willingness-to-pay for EFVs due to differences in risk aversion, rate of time preference, and other factors.

Further, it is PHMSA's understanding that customers would typically be required to pay for these installations. From an economic standpoint, an EFV requested and paid for by a customer would actually increase the overall net benefit of the final rule, as PHMSA can infer from the customer's choice that they value the EFV's protection at a level greater than the cost they pay.[7] Therefore, PHMSA has chosen to retain the right for existing customers to request an EFV installation if they are eligible.

As for the concern of whether applicable incidents were chosen to analyze the costs and benefits for curb valves, PHMSA applied reasonable filters to its data to choose appropriate and applicable incidents for analysis but there can be some level of uncertainty in such incident data. PHMSA is also aware of incidents that might have been prevented by the use of a curb valve, but these incidents were excluded from the analysis due to data limitations or for other reasons.

In light of this particular comment, however, PHMSA reexamined and revised the incident set pertaining to curb valves in order to provide a more conservative cost-benefit analysis. For some of the incidents in question (*e.g.,* where drivers crashed cars into meter sets), it is unlikely a curb valve would

[7] For retrofits, the benefits per valve would be essentially the same as calculated in the accompanying Regulatory Impact Analysis (a range of $4 to $44 at a 7 percent rate, depending on the customer type).

have been effective in preventing the incident following impact, and these incidents were removed from the data set. The final Regulatory Impact Analysis is available in the docket.

PHMSA notes that because a curb valve can allow gas flow to be shut off quickly, a curb valve could still be effective in mitigating the consequences of these incidents by shortening their duration, especially where property damage is concerned. Further, PHMSA's data is limited and often does not indicate clearly whether fatalities, if not caused by the initial impact, are due to injuries sustained during the crash or by the subsequent pipeline incident. For example, quickly shutting off the flow of gas at the site of an incident may be able to save the life of someone who has been knocked unconscious or has been otherwise incapacitated. Because of this, PHMSA still believes that installing EFVs and curb valves on service lines can provide a tangible safety benefit to the public and the environment.

H. Miscellaneous Comments

Effective Date

Proposal: The NPRM proposed that each operator must install an EFV on any new or replaced service line for the services listed in the proposed § 192.383(b) before those lines were activated and prior to January 3, 2014.

Comments: Several operators and trade associations, including AGA, NS, and APGA, noted that the effective date for the proposed rule would impose the installation requirement retroactively. These commenters requested that operators be given at least 6 months to prepare for complying with the rule, including time to establish cost allocation with the appropriate rate-setter and to source the valves.

PHMSA Response: This portion of the rule was drafted with the 2012 statutory mandate in mind and did not necessarily indicate a retroactive requirement. PHMSA has revised the effective date in the final rule to allow operators 6 months to comply.

Exceptions to the Right To Request an EFV

Proposal: The NPRM proposed that operators need not install an EFV if one or more of the following conditions were present: (1) The service line does not operate at a pressure of 10 psig or greater throughout the year; (2) the operator has prior experience with contaminants in the gas stream that could interfere with the EFV's operation or cause loss of service to a customer; (3) an EFV could interfere with necessary operation or maintenance activities, such as blowing liquids from the line; or (4) an EFV meeting performance standards in § 192.381 is not commercially available to the operator.

Comments: The AGA and APGA noted that because of these exemptions, operators should not be required to provide an individual notification to customers of their right to request an EFV if it is not feasible to install an EFV on that customer's service line. The APGA also noted that if most operators chose to satisfy the notification requirement through customer bills or other mass communication, every customer would still receive notification, regardless of whether EFV installation were impossible or impractical. The APGA also believed that PHMSA should reconsider applying the proposed requirements for the right to request an EFV and customer notification to master-meter operators. As master-meter operators typically serve ''garden-style'' apartments, mobile home parks, universities, public housing, et cetera, the ''customer'' is typically a renter and not an owner, which could potentially cause confusion as to who has the right to request an EFV.

The AGA and SPPC asked that PHMSA consider exempting service lines that already had manual valves on them or lines where an operator might expect the load to increase beyond 1,000 SCFH and would install a manual valve instead.

PHMSA Response: PHMSA noted that the AGA and APGA comments were submitted under the assumption that PHMSA was requiring individual communications to all customers. As the APGA noted, because PHMSA is allowing broad and electronic communication methods regarding EFV installation, all customers, regardless of their eligibility for EFV installation, will be receiving a form of notice. Further, PHMSA has determined that master-meter operators will largely be held to the same standards as other operators as far as EFV installation is concerned.

PHMSA does not wish to include any further exceptions to the ones that were proposed. PHMSA is concerned that operators might interpret the fact that a service line already has a manual valve to mean that an EFV does not need to be installed. This would be an incorrect assumption. Applicable new and replaced service lines with loads not exceeding 1,000 SCFH must have EFVs installed on them. Moreover, as PHMSA is allowing installation flexibility for lines operating above 1,000 SCFH, the agency believes it is unnecessary to provide a specific exemption for installing an EFV when the line could be expected to operate above 1,000 SCFH.

Definitions

Comments: Several commenters requested definitions or clarification for a few terms in the NPRM. Specifically, SPPC asked PHMSA to add a definition of ''branch service line'' to § 192.383(a). The APGA noted that SFR is not defined in part 192 and that PHMSA should add it to the definitions or spell out the term when used. The APGA also noted that PHMSA does not define who the ''customer'' is whom the operator must notify and who has the right to request an EFV. The APGA noted that, in the preamble, PHMSA states that messages on bills would satisfy the notification requirement, which appears to intend that the customer is the person to whom the utility sends the gas bill. The APGA urged PHMSA to clarify this definition if this is the case, as the term ''customer'' might also be interpreted to mean the consumer of the gas, a resident at a rented property, or perhaps the owner of a property. These could all be different people. The GPTC recommended adding a reference to proposed § 192.385(b) and (c) to refer back to § 192.383 and PHMSA's definition of replaced service line. MAE recommended PHMSA revise § 192.381(a) to clarify whether EFVs are required for systems that normally operate at 10 psig but that have minimum design pressures of 5–6 psig for anticipated heavy-load conditions.

PHMSA Response: PHMSA has added a definition of ''branch service line'' to the definitions paragraph of § 192.383 and spelled out ''SFR'' the first time it is used.

While PHMSA does not delineate who the ''customer'' is in the regulatory text, the APGA is correct in that PHMSA intends the ''customer'' to be the person to whom the utility sends the gas bill.

PHMSA declined to add a reference in proposed § 192.385(b) and (c) back to § 192.383 regarding PHMSA's definition of a replaced service line. PHMSA intends curb valves installed under § 192.385 to be appropriate substitutes for EFVs and are not otherwise considered manual valves within the distribution network.

Regarding MAE's comment, the language indicating that EFVs are to be used on service lines operating continuously throughout the year at a pressure not less than 10 p.s.i. (69 kPa) gage has been in the regulations since 1996. The only change that has been made since that time is the removal of the term ''single-family'' from ''service lines.'' PHMSA is aware, however, there

are service lines that experience pressure drops below 10 psig during heavy loading conditions. These lines are not required to have EFVs installed on them.

Editorial Comments

Comments: NS suggested that proposed language concerning a mutually agreeable installation date should be moved to proposed § 192.383(e), which deals with notification requirements. The APGA was not clear on what ''EFV measures'' the reporting requirement refers to. The APGA suggested this is not a new reporting requirement but rather refers to the existing EFV reporting requirements in § 191.11 and should either be deleted or clarified to make clear that it only applies to operators that are required to file annual reports.

PHMSA Response: PHMSA considered these changes and made edits to the regulatory text where appropriate.

EFV Standard Development

Comments: The GPTC noted that while it appreciated PHMSA's reference to the GPTC and its work, it still sought to clarify that the GPTC's Guide Material Appendix 192–8, which provides operators with guidance for developing a distribution integrity management program and compliance with certain sections of part 192, does not include information on the selection, sizing, or installation of EFVs. They noted that helpful guidance to assist operators in addressing EFV performance, selection, and installation considerations is found in MSS SP–115, ASTM F1802, and ASTM F2138. The GPTC also suggested that if PHMSA wants specific standards to be developed, then PHMSA should approach those organizations to develop such standards.

The NGA commented that it did not believe that development of EFV standards was needed and that the development of design considerations would best be performed by the utilities themselves or by standards-setting organizations, based on EFV manufacturer specifications considering customer load, meter size, service pipe size, and pressures.

PHMSA Response: PHMSA solicited comments in the gas pipeline ANPRM on whether standards should be developed for EFVs. In the NPRM, PHMSA noted that it would not be incorporating by reference any new standards for EFVs into the Pipeline Safety Regulations but might do so in the future if the need arose.

V. Regulatory Notices and Analysis

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal pipeline safety laws (49 U.S.C. 60101 *et seq.*). Section 60102 of title 49, U.S.C., authorizes the Secretary of Transportation to issue regulations governing the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline service lines. Further, Section 60109(e)(3)(B) states that ''the Secretary, if appropriate, shall by regulation require the use of excess flow valves, or equivalent technology, where economically, technically, and operationally feasible on new or entirely replaced distribution branch services, multifamily facilities, and small commercial service facilities.''

B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This final rule is a non-significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not reviewed by the Office of Management and Budget. This final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) because of substantial stakeholder interest in pipeline safety.

Executive Orders 12866 and 13563 require agencies regulate in the most cost-effective manner, make a reasoned determination that the benefits of the intended regulations justify its costs, and develop regulations that impose the least burden on society. PHMSA is providing the final Regulatory Impact Analysis (RIA) simultaneously with this rule, and it is available in the docket. The final RIA does not address the benefits and costs of the proposal to require operators to install EFVs on branched service lines providing gas service to SFRs because the benefits and costs of this proposal were addressed in the regulatory impact analysis for a previous rulemaking.[8] The final RIA found that the estimated monetized benefits do not exceed the monetized costs in all cases. For the requirement of installing EFVs on new or replaced service lines providing gas service to multifamily residences, the monetized costs exceeded monetized benefits, even when using lower-bound cost estimates. PHMSA believes that the amendments are nevertheless justified by significant unquantifiable benefits, such as avoided evacuations and environmental damage from EFV-preventable incidents, including incidents that could not be included in the analysis because they do not meet PHMSA's reporting criteria. EFVs also provide protection against a low-probability but high-consequence incident that could inflict mass casualties.

PHMSA estimates a total impacted community of 4,448 operators for this rule (3,119 master meter/small LPG operators who will need to comply with notification requirements and 1,329 natural gas distribution operators who will need to install valves and comply with notification requirements) and 222,114 service lines per year on average. PHMSA assumed that valves do not have network effects; in other words, each EFV operates independently, and the costs and benefits of EFV installation simply scale linearly. The total annualized benefits of the rule are $5.5 million when discounted at 7 percent, while the total annualized costs are $10.6 million. At the 3 percent discount rate, the total benefits of the rule are $10.6 million, while the costs are $12.0 million.

The following table summarizes the annualized benefits and costs of this final rule:

TABLE ES–1—SUMMARY OF ESTIMATED BENEFITS AND COSTS ($ MILLIONS) [1]

Customer category	Annualized benefit	Annualized cost
Branched Line Single Family	See note	See note.
Multifamily Residence	1.0	6.2
Small Commercial	1.6	1.1
Industrial/Other curb valve	3.0	3.0

[8] ''Pipeline Safety: Integrity Management Programs for Gas Distribution Pipelines.'' December 4, 2009, (74 FR 63906) (RIN 2137–AE15.

TABLE ES–1—SUMMARY OF ESTIMATED BENEFITS AND COSTS ($ MILLIONS) [1]—Continued

Customer category	Annualized benefit	Annualized cost
All classifications: Notification & recordkeeping	Not estimated	0.3
Total	5.5	10.6

Note: Benefits and costs for branched SFR services accounted for in economic analysis of previous rulemaking (Distribution Integrity Management Program).

[1] 50-year present value converted to annual equivalent using 7% discount rate.

Additional unquantified benefit areas include:

- Equity: Provides a fair and equal level of safety to members of society who do not live in SFRs;
- Additional incident costs avoided for which no PHMSA incident data are available:
- Mitigates the consequences (death, injury, property damage) of incidents when customer piping or equipment is involved and thus the incident would not be reflected in PHMSA records;
- Additional incident costs that are not recorded in incident reports, including costs of evacuations, emergency response costs, and business downtime;
- Environmental externalities associated with methane releases (discussed in the RIA Appendix);
- Peace of mind for operators and customers; and
- Protection against seismic events and intentional tampering.

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866, Regulatory Planning and Review, of September 30, 1993. Additionally, Executive Order 13563 specifically requires agencies to: (1) Involve the public in the regulatory process; (2) promote simplification and harmonization through interagency coordination; (3) identify and consider regulatory approaches that reduce burden and maintain flexibility; (4) ensure the objectivity of any scientific or technological information used to support regulatory action; and (5) consider how to best promote retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome. When developing this rule, PHMSA involved the public in the regulatory process in a variety of ways. Specifically, PHMSA considered public comments based on the proposals in the NPRM, addressed those comments in the docket, and discussed the proposals with the members of the GPAC and any public representatives in attendance.

This final rule is expected to produce a safety benefit that addresses a congressional mandate and a NTSB safety recommendation and which can be implemented at relatively minor cost; similar regulations have been effective when applied to single-family residences. Further, industry has already shown a willingness to expand EFV applications, recognizing that EFVs have the potential to avert high-cost, low-probability events that, while absent in the dataset for multifamily residences, can still occur.

C. Executive Order 13132: Federalism

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). PHMSA issues pipeline safety regulations applicable to interstate and intrastate pipelines. The requirements in this rule apply to operators of distribution pipeline systems, which are primarily intrastate pipeline systems. Under 49 U.S.C. 60105, a State may regulate an intrastate pipeline facility or intrastate pipeline transportation after submitting a certification to PHMSA. Thus, State pipeline safety regulatory agencies with valid certifications on file with PHMSA will be the primary enforcers of the safety requirements proposed in this NPRM. Under 49 U.S.C. 60107, PHMSA provides grant money to participating States to carry out their pipeline safety enforcement programs. Although a few States choose not to participate in the natural gas pipeline safety grant program, every State has the option to participate. This grant money is used to defray additional costs incurred by enforcing the pipeline safety regulations.

PHMSA has concluded this final rule does not include any regulation that: (1) Has substantial direct effects on States, relationships between the national government and the States, or distribution of power and responsibilities among various levels of government; (2) imposes substantial direct compliance costs on States and local governments; or (3) preempts State law. Therefore, the consultation and funding requirements of Executive Order 13132 (August 10, 1999; 64 FR 43255) do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule will not have a significant impact on a substantial number of small entities. This final rule has been developed in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of rules on small entities are properly considered.

This final rule requires gas pipeline operators to comply with the new EFV installation requirements. The Small Business Administration (SBA) criteria for defining a small business in the natural gas pipeline distribution industry is one that employs less than 1000 employees as specified in the North American Industry Classification System (NAICS) codes. The RFA defines ''small governmental jurisdiction'' as the government of a city, county, town, township, village, school district, or special district with a population less than 50,000.

To identify gas distribution operators affected by the proposed requirements that are small businesses or small governmental jurisdictions, PHMSA used information provided by Dun and Bradstreet. Dun and Bradstreet provides PHMSA with estimates of small business classifications based on SBA size standards for operators that file an annual report, along with a flag for public sector entities that is based on information such as entity name and NAICS code. These data indicate that approximately 60 percent of affected operators are public entities; among these, the share that are small governmental jurisdictions is not known. Among the private sector entities, approximately one-third are small entities according to the SBA size definition for their NAICS code. The most common of these is NAICS

221210, natural gas distribution, for which the standard is 1,000 employees. Overall, while the number of small entities is not known with precision, it appears to be substantial when considering gas distribution operators that are small businesses or small governmental jurisdictions, as well as the master meter and small LPG operators that are presumed to be small entities.

However, PHMSA determined that this rule does not have a significant economic impact on a substantial number of small entities. While the natural gas distribution industry includes many small entities, including both small businesses and small governmental jurisdictions, the impacts of the rule are clearly *de minimus,* both in relation to operator revenues and to the utility rate-payers to whom the incremental costs would ultimately be allocated. PHMSA's Regulatory Flexibility Analysis, which reached this determination, is available in the docket for this rulemaking.

Accordingly, the head of the agency certifies under Section 605(b) of the RFA that this final rule will not have a significant economic impact on a substantial number of small entities because the additional costs are minimal.

E. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $147.6 million, adjusted for inflation, or more in any one year to State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the final rule. Installation of EFVs and curb valves significantly protects the safety of the public and is technically and economically feasible.

F. National Environmental Policy Act

PHMSA analyzed this final rule in accordance with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and DOT Order 5610.1C, and has determined that this action will not significantly affect the quality of the human environment. An environmental assessment of this final rule, which explains this determination, is available in the docket.

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

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

H. Executive Order 13211: Energy Supply, Distribution, or Use

This final rule is not a ''significant energy action'' under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). It is not likely to have a significant adverse effect on supply, distribution, or energy use. Further, the Office of Information and Regulatory Affairs has not designated this final rule as a significant energy action.

I. Paperwork Reduction Act

Pursuant to 5 CFR 1320.8(d), PHMSA is required to provide interested members of the public and affected agencies with an opportunity to comment on information collection and recordkeeping requests. As a result of the requirements of this rulemaking, the following information collection impacts are expected:

Gas Distribution Annual Report Revision

PHMSA is revising § 192.383 to require the installation of EFVs on applications beyond SFRs that are currently required. Further, PHMSA is adding § 192.385, which would require the installation of manual service line shut-off valves. As a result, PHMSA wants to track the number of new installations related to these provisions on an annual basis. This will change the Gas Distribution Annual Report, which is contained in the currently approved information collection, titled ''Annual Reports for Gas Distribution Operators,'' identified under OMB Control Number 2137–0629. PHMSA is revising the Gas Distribution Annual Report to collect the number of EFVs installed on multifamily dwellings and small commercial businesses and the number of manual service line shut-off valves installed. Currently, operators are required to submit the total number of EFVs installed on SFRs and the total number of EFVs within their systems. Therefore, PHMSA does not expect operators to experience an increase in burden beyond that already incurred for the Gas Distribution Annual Report. PHMSA has submitted an information collection revision request to OIRA to cover the components of this data collection. The request is under review and pending approval. PHMSA will publish a subsequent notice in the **Federal Register** upon the approval of this collection.

Customer Notification

Section 192.383 of this final rule will require operators to notify customers of their right to request the installation of EFVs. Operators have multiple options for fulfilling this requirement, including adding a short statement to customer bills, incorporating a public awareness message on the company Web site, incorporating the notification on bill stuffers or in new customer packets, and posting a notice in a prominent location (for master-meter/small LPG operators). PHMSA estimates that approximately half of the 6,237 operators categorized as either master-meter operators or small LPG systems will be impacted, resulting in 3,119 affected operators. This estimate is based on the premise that only half of these operators have systems that can accommodate an EFV. PHMSA also estimates that 1,329 gas distribution operators will be impacted. Therefore, PHMSA estimates a total impacted community of 4,448 (3,119 master-meter/small LPG operators and 1,329 gas distribution operators). PHMSA estimates that each impacted operator will take approximately 1 hour per year to create and complete this notification. PHMSA expects a vast majority of notifications to be made electronically, and, as such, expects the recordkeeping of these documents to be automatic and self-executing upon saving such documents. Consequently, PHMSA expects there to be no additional burden to the operator for saving the notifications for recordkeeping purposes. PHMSA estimates the total annual cost of this provision at $280,713 per year (4,448 operators * 1 hour/operator * $63.11/hour [9]). PHMSA has submitted a new information collection request to OIRA to cover the components of this data collection. The request is under review and pending approval. PHMSA will publish a subsequent notice in the **Federal Register** upon the approval of this collection.

As a result of the changes listed above, PHMSA is submitting an

[9] Bureau of Labor Statistics, Occupational Employment Statistics, May 2015. Occupation code 13–041, industry code 221200. *http://www.bls.gov/oes/current/oes131041.htm.*

information collection revision request as well as a new information collection request to OMB for approval based on the requirements in this final rule. These information collections are contained in the pipeline safety regulations, 49 CFR parts 190–199. The following information is provided for these information collections: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity including a description of the changes applicable to the rulemaking action; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection. The information collection burden for the following information collection is requested as follows:

1. Title: Annual Reports for Gas Distribution Operators.
OMB Control Number: 2137–0629.
Current Expiration Date: May 31, 2018.
Type of Request: Revision.
Abstract: This information covers the collection of annual report data for gas distribution pipeline operators. This information collection will only be revised to reflect the amendment to the Gas Distribution Annual Report, which will allow operators to submit the number of EFVs that are installed in multifamily dwellings and small commercial businesses and the number of manual service line shut-off valves installed. PHMSA does not expect this revision to result in a burden-hour increase.
Affected Public: Gas Pipeline Operators.
Annual Reporting and Recordkeeping Burden:
Total Annual Responses: 1,446.
Total Annual Burden Hours: 23,136.
Frequency of Collection: On occasion.

2. Title: Customer Notifications for Installation of Excess Flow Valves.
OMB Control Number: TBD.
Current Expiration Date: Not Applicable.
Type of Request: New Information Collection.
Abstract: This new information collection will cover the reporting and recordkeeping requirements for gas pipeline operators associated with the requirement of operators to notify customers of their right to request the installation of excess flow valves.
Affected Public: Gas Pipeline Operators.
Annual Reporting and Recordkeeping Burden:
Total Annual Responses: 4,448 responses.
Total Annual Burden Hours: 4,448 hours.
Frequency of Collection: On occasion.

Requests for a copy of this information collection should be directed to Angela Dow, Office of Pipeline Safety (PHP–30), Pipeline and Hazardous Materials Safety Administration (PHMSA), 2nd Floor, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Telephone 202–366–4595.

J. Privacy Act Statement

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.*

K. Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 192

Excess flow valve installation, Excess flow valve performance standards, Pipeline safety, Service lines.

In consideration of the foregoing, PHMSA is amending 49 CFR part 192 as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, 60118, 60137, and 49 CFR 1.97.

■ 2. In § 192.381, paragraph (a) introductory text is revised to read as follows:

§ 192.381 Service lines: Excess flow valve performance standards.

(a) Excess flow valves (EFVs) to be used on service lines that operate continuously throughout the year at a pressure not less than 10 p.s.i. (69 kPa) gage must be manufactured and tested by the manufacturer according to an industry specification, or the manufacturer's written specification, to ensure that each valve will:

* * * * *

■ 3. Section 192.383 is revised to read as follows:

§ 192.383 Excess flow valve installation.

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

Branched service line means a gas service line that begins at the existing service line or is installed concurrently with the primary service line but serves a separate residence.

Replaced service line means a gas service line where the fitting that connects the service line to the main is replaced or the piping connected to this fitting is replaced.

Service line serving single-family residence means a gas service line that begins at the fitting that connects the service line to the main and serves only one single-family residence (SFR).

(b) *Installation required.* An EFV installation must comply with the performance standards in § 192.381. After April 17, 2016, each operator must install an EFV on any new or replaced service line serving the following types of services before the line is activated:

(1) A single service line to one SFR;

(2) A branched service line to a SFR installed concurrently with the primary SFR service line (*i.e.,* a single EFV may be installed to protect both service lines);

(3) A branched service line to a SFR installed off a previously installed SFR service line that does not contain an EFV;

(4) Multifamily residences with known customer loads not exceeding 1,000 SCFH per service, at time of service installation based on installed meter capacity, and

(5) A single, small commercial customer served by a single service line with a known customer load not exceeding 1,000 SCFH, at the time of meter installation, based on installed meter capacity.

(c) *Exceptions to excess flow valve installation requirement.* An operator need not install an excess flow valve if one or more of the following conditions are present:

(1) The service line does not operate at a pressure of 10 psig or greater throughout the year;

(2) The operator has prior experience with contaminants in the gas stream that could interfere with the EFV's operation or cause loss of service to a customer;

(3) An EFV could interfere with necessary operation or maintenance activities, such as blowing liquids from the line; or

(4) An EFV meeting the performance standards in § 192.381 is not commercially available to the operator.

(d) *Customer's right to request an EFV.* Existing service line customers who desire an EFV on service lines not exceeding 1,000 SCFH and who do not qualify for one of the exceptions in paragraph (c) of this section may request an EFV to be installed on their service lines. If an eligible service line customer requests an EFV installation, an operator must install the EFV at a mutually agreeable date. The operator's rate-setter determines how and to whom the costs of the requested EFVs are distributed.

(e) *Operator notification of customers concerning EFV installation.* Operators must notify customers of their right to request an EFV in the following manner:

(1) Except as specified in paragraphs (c) and (e)(5) of this section, each operator must provide written or electronic notification to customers of their right to request the installation of an EFV. Electronic notification can include emails, Web site postings, and e-billing notices.

(2) The notification must include an explanation for the service line customer of the potential safety benefits that may be derived from installing an EFV. The explanation must include information that an EFV is designed to shut off the flow of natural gas automatically if the service line breaks.

(3) The notification must include a description of EFV installation and replacement costs. The notice must alert the customer that the costs for maintaining and replacing an EFV may later be incurred, and what those costs will be to the extent known.

(4) The notification must indicate that if a service line customer requests installation of an EFV and the load does not exceed 1,000 SCFH and the conditions of paragraph (c) are not present, the operator must install an EFV at a mutually agreeable date.

(5) Operators of master-meter systems and liquefied petroleum gas (LPG) operators with fewer than 100 customers may continuously post a general notification in a prominent location frequented by customers.

(f) *Operator evidence of customer notification.* An operator must make a copy of the notice or notices currently in use available during PHMSA inspections or State inspections conducted under a pipeline safety program certified or approved by PHMSA under 49 U.S.C. 60105 or 60106.

(g) *Reporting.* Except for operators of master-meter systems and LPG operators with fewer than 100 customers, each operator must report the EFV measures detailed in the annual report required by § 191.11.

■ 4. Section 192.385 is added to subpart H to read as follows:

§ 192.385 Manual service line shut-off valve installation.

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

Manual service line shut-off valve means a curb valve or other manually operated valve located near the service line that is safely accessible to operator personnel or other personnel authorized by the operator to manually shut off gas flow to the service line, if needed.

(b) *Installation requirement.* The operator must install either a manual service line shut-off valve or, if possible, based on sound engineering analysis and availability, an EFV for any new or replaced service line with installed meter capacity exceeding 1,000 SCFH.

(c) *Accessibility and maintenance.* Manual service line shut-off valves for any new or replaced service line must be installed in such a way as to allow accessibility during emergencies. Manual service shut-off valves installed under this section are subject to regular scheduled maintenance, as documented by the operator and consistent with the valve manufacturer's specification.

Issued in Washington, DC, on October 7, 2016, under authority delegated in 49 CFR Part 1.97.

Marie Therese Dominguez,

Administrator.

[FR Doc. 2016–24817 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 350

[Docket No. FMCSA–2016–0149]

RIN 2126–AB91

Amendments To Implement Grants Provisions of the Fixing America's Surface Transportation Act

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) adopts, as final, certain regulations required by the Fixing America's Surface Transportation Act (FAST Act) enacted on December 4, 2015. The involved statutory changes went into effect on October 1, 2016, and require that FMCSA make conforming changes to its regulations to ensure they are current and consistent with the statutory requirements. Adoption of these rules is a nondiscretionary, ministerial action that FMCSA may take without issuing a notice of proposed rulemaking and receiving public comment, in accordance with the good cause exception available to Federal agencies under the Administrative Procedure Act.

DATES: This final rule is effective October 14, 2016. Petitions for Reconsideration must be received by the Agency no later than November 14, 2016.

FOR FURTHER INFORMATION CONTACT: Kathryn Sinniger, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; by telephone at (202) 493–0908, or by electronic mail at *kathryn.sinniger@dot.gov.* If you have questions regarding the grants program, please contact: Thomas Liberatore, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; by telephone at (202) 366–3030, or by electronic mail at *thomas.liberatore@dot.gov.* If you have questions regarding the docket, call Docket Services, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose and Summary of the Major Provisions

This rule makes nondiscretionary, ministerial changes to FMCSA regulations that are required by the FAST Act (Pub. L. 114–94, 129 Stat. 1312, December 4, 2015). The FAST Act made several notable changes to the grant programs administered by FMCSA. For example, it consolidated the Border Enforcement, New Entrant, and Performance and Registration Information Systems Management (PRISM) grants into the formula Motor Carrier Safety Assistance Program (MCSAP) grant. Each State is now required to fully participate in the PRISM program by October 1, 2020, as a condition to receive funding under MCSAP. The FAST Act also created a standalone High Priority financial assistance (High Priority) Program with two major purposes: activities related to motor carrier safety and Innovative Technology Deployment (ITD). The ITD program modifies and replaces the FMCSA's Commercial Motor Vehicle Information Systems and Networks (CVISN) program. Also, the Safety Data Improvement Program, which was previously a standalone grant program,

has been merged into the High Priority Program. A full explanation of all changes made in this rule is included below in section III. FAST Act Provisions Implemented by this Rulemaking. A copy of the FAST Act has been placed in the docket for this rulemaking for reference.

B. Benefits and Costs

The impact of the FAST Act provisions to certify eligibility and allocate MCSAP and High Priority Program funds considered both individually and in the aggregate does not cross the threshold of economic significance; therefore a cost-benefit analysis is not required.[1]

The economic impact of changes to make FMCSA's regulations consistent with the FAST Act provisions will not exceed the $100 million annual threshold specified by Executive Order 12866.[2] FMCSA determines that any costs associated with this action are attributable to the non-discretionary statutory provisions. FMCSA's consideration of the net impact of the FAST Act provisions suggests that reimbursements for technology, staffing, enforcement, maintenance, and training activities related to FMCSA regulations should ease the economic burden on regulated entities. Consequently net impacts of these provisions are expected to be small and affect a small number of individuals and businesses.

II. Legal Basis for the Rulemaking

A. FAST Act

This rule is based on the FAST Act. Certain provisions of the FAST Act made mandatory, non-discretionary changes to FMCSA programs. The majority of these statutory changes went into effect retroactively on October 1, 2015; the Agency published a final rule on July 22, 2016 (81 FR 47714) which made these changes. However, the changes made in sections 5101 and 5106 of the FAST Act, which affect the Agency's MCSAP grants, did not take effect until October 1, 2016. This final rule makes the nondiscretionary, conforming changes required by FAST Act sections 5101 and 5106, which also relate to the MCSAP. Publication of today's rule triggers the 3-year window for the States to adopt compatible provisions under FMCSA's MCSAP program. 49 CFR 350.331(d), 350.335(a)(2), and part 355, App. A.

It is necessary to make conforming changes to ensure that FMCSA's regulations are current and consistent with the applicable statutes. The provisions implemented in this final rule are required by the following sections of the FAST Act:

1. Section 5101 Grants to States.
2. Section 5106 Motor Carrier Safety Assistance Program Allocation.

FMCSA is authorized to implement these statutory provisions by delegation from the Secretary of Transportation in 49 CFR 1.87.

B. Administrative Procedure Act

Generally, agencies may promulgate final rules only after issuing a notice of proposed rulemaking and providing an opportunity for public comment under procedures required by the APA, as provided in 5 U.S.C. 553(b) and (d). Section 553(b)(3)(B), allows an exception from these requirements when notice and public comment procedures are ''impracticable, unnecessary, or contrary to the public interest.'' FMCSA finds that prior notice and opportunity for comment are unnecessary because the changes to the regulations found in this final rule are statutorily mandated, and the Agency is performing a nondiscretionary, ministerial act. For the same reason, FMCSA also finds that providing 30 day of advance notice prior to this rule becoming effective are unnecessary, pursuant to 5 U.S.C. 553 (d)(3).

C. FAST Act Waiver of Advance Notice of Proposed Rulemaking/Negotiated Rulemaking

FMCSA is aware of the regulatory reform requirements imposed by section 5202 of the FAST Act concerning public participation in rulemaking (49 U.S.C. 31136(g)). These requirements pertain to certain major rules, but because this final rule is not major, they are not applicable. In addition, the Agency finds that publication of an advance notice of proposed rulemaking under 49 U.S.C. 31136(g)(1)(A) or completion of a negotiated rulemaking under 49 U.S.C. 31136(g)(1)(B), is unnecessary and contrary to the public interest in accordance with the waiver provision in 49 U.S.C. 31136(g)(3).

III. FAST Act Provisions Implemented by This Rulemaking

This section describes the conforming changes required due to the FAST Act changes. Today's rule focuses on portions of the FAST Act that are non-discretionary.

FMCSA is also including here a table of affected sections of the Code of Federal Regulations (CFR), which will cross-reference corresponding requirements of the FAST Act. This table will make it easier for the reader to move back and forth between the revised regulations and the corresponding section(s) of the FAST Act.

TABLE OF CFR SECTIONS AFFECTED

CFR Section	FAST Act section	49 U.S.C. §
350.101	5102 [129 Stat. 1312, 1526]	31102(l)(2) and (3).
350.103	5102 [129 Stat. 1312, 1526]	31102(l)(2) and (3).
350.105	5101 [129 Stat. 1312, 1514]	31102(c)(2)(U), (Y), (AA), (BB) 31102(l).
350.107	5101 [129 Stat. 1312, 1514]	31102(c) and 31102(l)(2) and (3).
350.110 (new)	5101 [129 Stat. 1312, 1514]	31102 (l)(2) and (3).
350.201	5101 [129 Stat. 1312, 1514]	31102(c)(2)(U), (Y), (AA), (BB).
350.203 (new)	5101 [129 Stat. 1312, 1514]	31102 (l)(2) and (3).
350.206 (new)	5101 [129 Stat. 1312, 1514]	31104.
350.207	5101 [129 Stat. 1312, 1514]	31102(ii).
350.208 (new)	5101 [129 Stat. 1312, 1514]	31104(a).
350.210 (new)	5101 [129 Stat. 1312, 1514]	31102(l)(2).
350.213	5101 [129 Stat. 1312, 1514]	31102((c)(2)(O)).
350.215	5101 [129 Stat. 1312, 1514]	31102(k)(2).

[1] Section 3(f) of Executive Order 12866 defines a ''significant'' regulatory action as one that satisfies any of four conditions: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order. Rules fitting the first of these conditions are often referred to as ''economically significant'' regulatory actions.

TABLE OF CFR SECTIONS AFFECTED—Continued

CFR Section	FAST Act section	49 U.S.C. §
350.301	5101 [129 Stat. 1312, 1514]	31102(f).
350.303	5101 [129 Stat. 1312, 1514]	31104(b).
350.308 (new)	5101 [129 Stat. 1312, 1514]	31102(l)(2) and (3).
350.309	5101 [129 Stat. 1312, 1514]	31102(h).
350.310 (new)	5101 [129 Stat. 1312, 1514]	31102(l)(2) and (3).
350.311	5101 [129 Stat. 1312, 1514]	31102(l)(2) and (3), 31102(c)(2), and 31104.
350.313	5101 [129 Stat. 1312, 1514]; 5106 [129 Stat. 1312, 1530].	31102(j).
350.319	5101 [129 Stat. 1312, 1514]	31102(l).
350.321	5101 [129 Stat. 1312, 1514]	31102.
350.323	5101 [129 Stat. 1312, 1514]; 5106 [129 Stat. 1312, 1530].	31102(j), 31107, 31144(g).
350.329	5101 [129 Stat. 1312, 1514]	31102(l)(2) and (3).
350.331	5101 [129 Stat. 1312, 1514]	31102(e).
350.335	5101 [129 Stat. 1312, 1514]	31102(e), and (k)(2)

Section 5101 Grants to States

Section 5101 of the FAST Act made several revisions to existing provisions found in title 49 of the United States Code (U.S.C.). Section 5101(a) enacted a new version of 49 U.S.C. 31102, renamed ''Motor Carrier Assistance Program.'' The changes made to section 31102 are outlined below. The FAST Act added the terms ''Federally recognized Indian tribes and other persons'' as those who could work in partnership with the Agency in 49 U.S.C. 31102(b)(1), so we are making corresponding changes in §§ 350.101, 350.103, and 350.107 of the regulations.

In 49 U.S.C. 31102(c)(2)(B), the FAST Act replaced the reference to the State motor vehicle safety agency with reference to a ''lead State commercial motor vehicle safety agency.'' FMCSA makes this change throughout part 350. In addition, the FAST Act changed section 31102(c)(2) by revising the order of subsections (A) through (Y) and added new subsections (Z) through (BB). These changes are reflected in §§ 350.201 and 350.211. Of particular note is subsection (Z), which requires ''that the State agrees to fully participate in the Performance and Registration Information System Management under 49 U.S.C. 31106(b) not later than October 1, 2020'' or ''an alternative approach for identifying and immobilizing a motor carrier with serious safety deficiencies in a manner that provides an equivalent level of safety.'' This provision is reflected in § 350.201(aa) and § 350.211(x).

The Fast Act moved the existing language of 49 U.S.C. 31102(b)(3) on disapproval of a State plan to subsection (i)(2) of U.S.C. 31102. The Agency updated the regulatory language in § 350.207 to reflect the changes.

The FAST Act added 49 U.S.C. 31102(f)(4)(B), which creates additional allowances for the States when determining their average levels of expenditure for purposes of maintenance of effort. States are allowed to exclude expenditures for activities related to border enforcement and new entrant safety audits. This addition is reflected in § 350.301(b)(2).

The FAST Act also added paragraph (h) of 49 U.S.C. 31102 (existing 31102(c)), to describe an additional area where the grants may be used to enforce other laws. Subsection (1)(B) includes the ''detection of and enforcement actions taken as a result of criminal activity including the trafficking of human beings, in a commercial motor vehicle or by any occupant, including the operator.'' The Agency updated the language in § 350.309 to reflect this change.

Section 31102(k)(2)(B)(i–iv) now specifies what percentage of MCSAP funds may be withheld when a State does not follow its submitted plan or fails to enforce State regulations adequately. These criteria are reflected in § 350.215.

Section 31102(l) is added by the FAST Act, and it describes the High Priority Program funded for the purposes of improved motor carrier safety and Innovative Technology Deployment. This is a financial assistance program, and, is available to a wider audience and described throughout part 350. For reference, the current Safety Data Improvement Program falls under this new High Priority program.

Section 31104 is revised by the FAST Act section 5101(c), and paragraph (b) describes the Federal and recipient shares of Federal financial assistance agreements as at least 85 percent. Paragraph (e) provides that the Secretary shall establish eligible activities for each Federal financial assistance agreement in a notice of funding availability. Paragraph (f) describes the period of availability for the Federal financial assistance agreements. Paragraph (g) describes the initial date of availability for the Federal financial assistance agreements.

Paragraphs (b) and (d)–(g) of section 5101 of the FAST Act do not require corresponding changes in the regulations at this time.

Section 5106 Motor Carrier Safety Assistance Program Allocations [3]

Section 5106 of the FAST Act requires the establishment of a working group to recommend a new MCSAP allocation formula reflecting certain factors specified in the statute. However, paragraph (d) of section 5106 outlines interim funding rules to be used until the new formula is established. The interim amount, calculated by utilizing the MCSAP allocation formula used in fiscal year 2016 plus the average of the funding awarded (or other equitable amounts) to a State in fiscal years 2013, 2014, and 2015 for border enforcement and new entrant grants, is reflected in § 350.323. Likewise, § 350.323 has been revised to include the caveat, also found in section 5106(d), that the initial amounts resulting from the calculation described above be adjusted to ensure that, subject to the availability of funding, for each State, the amount shall

[3] The effective date for section 5106 was October 1, 2015 (see FAST Act section 1003, 129 Stat. 1312, 1322), which differs from the October 1, 2016, effective date for section 5101 (see FAST Act section 5101(f), 129 Stat. 1312, 1526). The Agency opted to include Section 5106 in this final rule, and not its earlier final rule implementing other nondiscretionary FAST Act changes made by the FAST Act that also went into effect on October 1, 2015. This is due to the fact that the subject matter of section 5106 more closely aligned with that of section 5101. Additionally, as there have not yet been grants made according to the formula outlined in section 5106 (and being implemented in this final rule), accordingly, there has been no harm in delaying regulatory implementation of section 5106.

not be less than 97 percent of the average amount of funding received or other equitable amounts in fiscal years 2013, 2014, and 2015 for MCSAP grants, border enforcement grants, and new entrant grants.

V. Section-by-Section Analysis

The following is a description of the changes to Part 350 as a result of the requirements of the FAST Act. These changes are described in numerical order by CFR citation. FMCSA also made conforming changes to the regulatory language as well as editorial corrections, so that the regulations do not conflict with the FAST Act.

A. Part 350, Subpart A

Section 350.101 What is the Motor Carrier Safety Assistance Program (MCSAP) and High Priority Program?

In accordance with the FAST Act, section 5101(a), adding section 31102(l), FMCSA changes the heading of § 350.101 to add a reference to a High Priority Program. Paragraph (a) is changed by adding the word ''State'' to clarify that it is referencing State safety rules, regulations and standards. Paragraph (b) is added to describe the High Priority Program.

Section 350.103 What is the purpose of this part?

In the undesignated introductory text of § 350.103, FMCSA adds a reference to ''States, local government agencies, other political jurisdictions, federally recognized Indian tribes, and other organizations and persons'' which are eligible for the High Priority Program, as stated in the FAST Act, section 5101(a), adding 49 U.S.C. 31102(l).

Section 350.105 What definitions are used in this part?

FMCSA removes the definitions of ''High Priority Activity Funds,'' and ''New Entrant Funds'' Definitions are added for ''Innovative Technology Deployment Funds,'' ''Lead State Agency,'' ''Level of effort,'' ''Maintenance of effort,'' and ''Plan.''

In the definitions of ''10-year average accident rate'' and ''Accident rate,'' the reference to FMCSA is changed to Federal Highway Administration.

In the definition for ''Basic Program Funds,'' the references for High Priority Activity Funds and New Entrant Funds are removed.

FMCSA adds the words ''or the Plan'' to the definition of ''Commercial Vehicle Safety Plan (CVSP).''

FMCSA adds a definition for ''New Entrant Safety Audits'' to describe the requirement under the FAST Act, section 5101(a), amending 49 U.S.C. 31102(c)(2)(Y).

In the definition of ''Operating Authority,'' a reference to 49 U.S.C. 31144 is added.

''State or States,'' is moved here from § 350.107 since it applies to all of part 350.

Section 350.107 What entities are eligible for funding under this part?

The heading for § 350.107 is changed to replace the word ''jurisdictions'' with ''entities,'' to add ''under this part,'' and to remove the reference to MCSAP.

The Agency redesignates the existing section as paragraph (a) and adds a reference to MCSAP at the beginning of the paragraph. The definition of ''State or States,'' is moved to the definition section in § 350.105.

In accordance with the FAST Act, section 5101(a), adding 49 U.S.C. 31102(l), we added a new paragraph (b) to section 350.107 that describes the entities eligible for funding in the High Priority Program.

Section 350.109 What are the national Motor Carrier Safety Assistance Program (MCSAP) elements?

FMCSA adds ''*Motor Carrier Safety Assistance Program (MCSAP)''* to the heading of § 350.109 to clarify that the elements apply to the MCSAP Program.

Section 350.110 What are the national High Priority Program elements?

In accordance with the FAST Act, section 5101(a), adding 49 U.S.C. 31102(l), the Agency adds § 350.110 to describe the national High Priority Program elements.

B. Section 350, Subpart B

Section 350.201 What conditions must a State meet to qualify for MCSAP Funds?

The FAST Act, section 5101(a), adding 49 U.S.C. 31102(c)(2)(A–BB) requires amendments to the conditions a State must qualify for MCSAP funds.

In § 350.201, the adjective MCSAP is added to the heading. In paragraph (a) the words ''standards, and orders'' are added. Paragraph (b) is not changed. The word ''Lead'' is added to paragraph (c) to reflect the agency responsible for the plan throughout the States. In paragraphs (d) and (e), the words ''standards, and orders'' are added to reflect the statutory language.

Paragraph (f) is rewritten to cross-reference the maintenance of effort requirements now re-codified in § 350.301 in accordance with FAST Act section 5101(a), adding 49 U.S.C. 31102(f). In paragraph (g), the words ''legal authority for'' are removed. The Agency removes the words ''prepare and submit'' and replaces them with ''provide'' in paragraph (h). Paragraph (i) is changed to reflect the language of the FAST Act, section 5101(a), adding 49 U.S.C. 31102(c)(2)(G).

In paragraph (j) the word ''declare'' is replaced with ''demonstrate.'' Paragraph (k) has no changes. In paragraph (l) the words ''other CMV safety enforcement programs'' are replaced with ''development and implementation of the programs to improve motor carrier, CMV, and driver safety.'' Paragraph (m) is unchanged.

Paragraph (n) reflects the addition of the words ''and data systems'' to ''FMCSA information technology.'' No changes are made to paragraphs (o) and (p). Paragraph (q)(1) and (2) are the same, however, section 5101(a) of the FAST Act adding 49 U.S.C. 31102(c)(2)(O), required a change to (3) to reflect ''activities related to criminal interdiction,'' not only those ''affecting the transportation of controlled substances.''

Existing paragraph (r) is removed. Existing paragraph (s) becomes new paragraph (r) and is not changed. Existing paragraph (t) becomes new paragraph (s) and is changed by updating the citations. New paragraph (t) is moved from existing paragraph (u) and simplified. Existing paragraph (v) becomes new paragraph (u) and removes the words ''MCSAP agencies have policies that stipulate.'' New paragraph (v) is existing paragraph (w) revised. Existing paragraph (x) is now new paragraph (w) with introduction of ''provide that the State will.'' In making these changes, paragraphs (r) and (v) are no longer conditions of participation.

New paragraph (x) is derived from existing paragraph (y) with the addition of ''excluding a weigh station,'' as required by the FAST Act, section 5101(a), adding 49 U.S.C. 31102(c)(2)(W). New paragraph (y) is existing paragraph (z) with changed CFR citations and one additional U.S.C. citation. New paragraphs (z), (aa), (bb), and (cc) are copied directly from the FAST Act, section 5101(a), adding 49 U.S.C. 31102(c)(2)(Y–BB).

Section 350.203 What conditions must an applicant meet to qualify for High Priority Program Funds?

The contents of existing § 350.329 are moved to new § 350.203. The changes and the reorganization conform to the requirements of the FAST Act, section 5101(a), adding 49 U.S.C. 31102(l). The heading of the section is changed; it uses the term ''applicant,'' clarifying that High Priority program funding is available to other entities identified in

§ 31102(l)(2), in addition to ''a State or local agency,'' Paragraph (a) is unchanged. FMCSA changes the introductory text of paragraph (b), using the term ''applicants'' rather than ''local agencies'' and providing a cross reference. Paragraphs (b)(1) through (4) and (b)(6) through (9) are mostly unchanged from the existing rule; however, clarifying language was added to expand the range of entities eligible for High Priority Program funds. As required by section 31104(b), as amended by the FAST Act section 5101(c), in paragraph (b)(5), FMCSA lowered the amount that an applicant must agree to fund from 20 percent to 15 percent.

Section 350.205 How and when does a State apply for MCSAP funding?

FMCSA requires the State to submit its commercial vehicle safety plan ''to FMCSA,'' instead of to ''the Division Administrator/State Director.''

Section 350.206 How and when does one apply for High Priority Program funding?

As stated in the FAST Act section 5101(c), amending 49 U.S.C. 31104(e), FMCSA adds a new § 350.206 to demonstrate that FMCSA will publish a Notice of Funding Availability (NOFA) to establish criteria for eligible activities to be funded under the High Priority Program, paralleling § 350.205.

Section 350.207 What response does a State receive to its CVSP submission?

To conform to the language of the FAST Act, section 5101(a), adding 49 U.S.C. 31102(i), FMCSA changes paragraph (b) by adding that FMCSA will give the State a written explanation for withholding approval and allow the State to modify and resubmit the Plan. In paragraph (c), FMCSA adds that disapproval of the Plan is final only for ''that fiscal year.'' Paragraph (d) is unchanged.

Section 350.208 What response will the applicant for a High Priority Program receive?

The FAST Act did not amend the current process, but separated the MCSAP and High Priority Programs (section 5101(a), adding 49 U.S.C. 31102(l)). FMCSA adds a new § 350.208 to state the response an applicant will receive to a grant application, paralleling § 350.207 to demonstrate the separation of the MCSAP and High Priority Grant Programs. Paragraph (a) covers grant approvals, and paragraph (b) covers grant denials.

Section 350.210 How does an applicant demonstrate it satisfies the conditions for High Priority Program Funding?

FMCSA adds new § 350.210 to refer applicants for High Priority Program Funding to new § 350.203, which describes the conditions the applicant must meet to qualify, which were established in 49 U.S.C. 31102(l), and to parallel existing § 350.209.

Section 350.211 What is the format of the certification required by § 350.209?

Section 350.211 describes the format of the certification required by § 350.209. It is revised and reorganized to conform to the language of the FAST Act, section 5101(a), amending 49 U.S.C. 31102. The introductory text is unchanged. In paragraph ((a), FMCSA added references to ''standards and orders'' and ''the standards and orders of the Federal Government.'' In ((b), the language was changed to include references to ''Lead State Agency'' and standards and orders. Paragraph (c) is changed by adding a reference to standards and orders. In paragraph (d), FMCSA adds ''or other method a State may use that is adequate to obtain the necessary information'' as an alternative to right of entry. Paragraph (e) is not changed. In (f), FMCSA adds a reference to ''investigations.'' Paragraph (g) is modified by substituting the word ''demonstrate'' for ''declare.'' Paragraph (h) is based on existing paragraph 8, but completely changed to conform to the FAST Act, section 5101(a), creating 49 U.S.C. 31102(f). A new paragraph (i) is added to ensure States protect the effectiveness of programs to improve safety.

Existing paragraphs 9 through 14 are redesignated as new paragraphs (j) through (o), and conformed to the language of the FAST Act, section 5101(a), adding 31102(c)(2)(J)–(O). New paragraph (j) is unchanged. In new paragraph (k), the word ''fines'' is changed to the word ''sanctions''; and the word ''equitable'' is changed to the word ''reasonable'' per section 5101(c) of the FAST Act. New paragraph (l) is changed by adding the requirement that the State ''dedicate sufficient resources'' to a program that provides FMCSA with information. In new paragraph (m), FMCSA adds a new reference to 23 U.S.C. 148(c). FMCSA adds ''regulations'' to the list of items a State should enforce in new paragraph (n). In new paragraph (o), FMCSA removes the reference to MCSAP Agencies. Existing paragraph 15 is removed.

New paragraph (p) is the same as existing paragraph 16. New paragraph (q) substitutes the word ''registration'' for the phrase ''operating authority'' throughout, and adds a reference to the U.S. Code. In paragraph (r), FMCSA states that the State ''will cooperate in the enforcement of financial responsibility'' rather than ''enforce the financial responsibility requirements.'' It also adds a reference to the U.S. Code and removes a cross reference to § 392.9a. Paragraphs (s) and (t) remain the same. Paragraph 21, new paragraph (u), is changed by adding language to clarify that station means bus station. The phrase ''excluding a weigh station'' is added to clarify that planned stops do not include weigh stations, as required by the FAST Act, section 5101(a), adding 49 U.S.C. 31102(c)(2)(W). In paragraph (v), cross references to the CFR are added.

Paragraphs (w) through (z) are new and required by the FAST Act, section 5101(a), adding 49 U.S.C. 31102(c)(2)(Y)–(Z). Paragraph (w) requires the State to conduct safety audits of new entrant motor carriers. The State must also verify the work of third parties that conduct safety audits on the State's behalf. Paragraph (x) provides that the State must certify that it either participates in the PRISM or demonstrates an alternative approach for identifying and taking action on out of service motor carriers.

As amended by the FAST Act, section 5101(a), adding 49 U.S.C. 31102(c)(2)(AA), paragraph (y) provides that a border State must conduct a border CMV safety program or forfeit MCSAP funds based on border-related activities. In accordance with the FAST Act, section 5101(a) adding 49 U.S.C. 31102(c)(2)(BB), if a State meets all the MCSAP requirements and funds operations and maintenance costs associated with innovative technology deployment, paragraph (z) requires the State to certify that it agrees to comply with ''all MCSAP requirements and funds operation and maintenance costs associated with Innovative Technology Deployment with MCSAP funds'' and ''Innovative Technology Deployment requirements established pursuant to 49 CFR 350.310 and 350.311.''

Section 350.213 What must a State CVSP include?

As required by the FAST Act, section 5101(a), creating 49 U.S.C. 31102(c)(2)(O), section 350.213(b)(3) is changed by adding the word ''Criminal,'' clarifying the type of interdiction activities, and changing the paragraph so it no longer covers only the transportation of controlled substances. The changes to paragraph (b)(4) include adding a reference to 49

U.S.C. 31134 and removing a reference to 49 CFR part 365. The paragraph now requires an applicant to certify that it will ''cooperate in the enforcement of'' financial responsibility requirements.

Section 350.215 What are the consequences for a State that fails to perform according to an approved CVSP or otherwise fails to meet the conditions of this part?

Pursuant to section 5101(a) of the FAST Act, adding 49 U.S.C. 31102(k), section 350.215(e) is completely revised. It now provides that an adverse decision will result in withdrawing approval of the plan and withholding all MCSAP funding or finding the State in noncompliance and withholding between 5 and 50 percent of the funding over the years of noncompliance. The remainder of the regulation remains unchanged.

Section 350.301 What level of effort must a State maintain to qualify for MCSAP funding?

Section 350.301(a) clarifies that the requirements apply each fiscal year to the ''Lead State Agency.'' It also clarifies that by ''average aggregate expenditure'' it means ''level of effort.'' Paragraph (b) is restated to allow States to exclude expenditures for federally sponsored demonstration and pilot CMV safety programs, strike forces, activities related to border enforcement, and for new entrant safety audits. However the State must exclude State matching funds, as currently required. Paragraph (c) contains language changes to conform to the FAST Act.

To comply with the FAST Act section 5101(a), adding 49 U.S.C. 31102(f), paragraphs (d) and (e) are added and paragraphs (a)–(c) are revised. Paragraph (d) allows States to use certain amounts as part of the State's maintenance of effort. Paragraph (e) provides that FMCSA may waive or modify the requirements of § 350.301 at the request of the State. Paragraph (e) provides that a State may request, and FMCSA may make, a reasonable adjustment to the level of effort required.

Section 350.303 What are the State and Federal shares of expenses incurred under the MCSAP and High Priority Programs?

The heading of § 350.303 is revised to clarify that this section refers to both the MCSAP and High Priority Program. As required by FAST Act, section 5101(c), amending 49 U.S.C. 31104(b), new paragraph (a) increases the percent of eligible costs that FMCSA will reimburse from 80 percent to at least 85 percent. It changes the reference to ''costs incurred in the administration of an approved CVSP'' to ''costs incurred under the MCSAP and High Priority Program.'' Paragraph (b) makes language changes and also changes the cross reference from 49 CFR part 18, which has been removed, to 2 CFR part 200, the Office of Management and Budget provision dealing with ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.'' FMCSA adds paragraph (c) to provide that, when ''. . . the amounts are not applied to the maintenance of effort required under § 350.301,''States may use amounts generated under 49 U.S.C. 14504a as part of the State's match required for MCSAP, as required in the FAST Act section 5101(a) which revised 49 U.S.C. 31102(g).

Section 350.305 Are U.S. Territories subject to the MCSAP matching funds requirement?

Section 350.305, including the heading, is changed by adding references to MCSAP to clarify that this section refers to MCSAP matching funds. The rest of the provision remains unchanged.

Section 350.308 How long are High Priority Program funds available?

As required by the FAST ACT section 5101(c), amending 49 U.S.C. 31104(f), FMCSA adds a new § 350.308 to specify how long High Priority Program funds are available, paralleling existing § 350.307. Paragraph (a) describes how long funds for CMV safety activities will be available. Paragraph (b) states how long funds for Innovative Technology Deployment activities will be available.

Section 350.309 What activities are eligible for reimbursement under the MCSAP?

In § 350.309, existing paragraph (c) becomes paragraph (c)(1), and the language is changed to conform to the FAST Act, section 5101(a), adding 49 U.S.C. 31102(h), In paragraph (c)(1)(ii), the reference to ''controlled substance'' is replaced with ''criminal activity, including the trafficking of human beings.''

FMCSA moves the content of existing paragraph (d) to paragraph (c)(2), and revises it. In paragraph (c)(2)(i), the reference to fiscal year 2003 is removed. In paragraph (c)(2)(ii), the percent of MCSAP Basic funds available for enforcement activities related to non-CMVs is raised from 5 percent to 10 percent. FMCSA removes existing paragraph (d).

Section 350.310 What types of activities and projects are eligible for reimbursement under the High Priority Program?

FMCSA adds new § 350.310 to describe the activities and programs eligible for funding under the new High Priority Program, in parallel with § 350.309. New § 350.310 contains some of the information in existing § 350.319, but has been revised and reorganized to reflect the FAST Act, section 5101(a), adding 49 U.S.C. 31102(l). Paragraphs (a) through (e) provide a list of eligible activities. Paragraph (f) makes both Non-Lead State Agencies and Lead State Agencies supporting PRISM eligible for High Priority Program funding. Paragraph (g) states that the conduct of Safety Data Improvement Projects is an eligible activity for some entities and references the requirements for such a project. Paragraph (h) includes the improvement of CMV safety and compliance with regulations on the list of eligible activities. Paragraph (i) authorizes reimbursement for the implementation and maintenance of Innovative Technology Deployment of CMV information systems and networks.

Section 350.311 What specific items are eligible for reimbursement under the MCSAP and High Priority Program?

FMCSA adds § 350.311(a) to provide that FMCSA shall establish criteria for eligible activities and publish those criteria in accordance with the FAST Act, section 5101(c), amending 49 U.S.C. 31104(e). Existing § 350.311 becomes new § 350.311(b), and language and cross references are changed from 49 CFR part 18, which has been removed, to 2 CFR part 200, the Office of Management and Budget provision dealing with ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.''

Section 350.313 How are MCSAP funds allocated?

FMCSA completely revises § 350.313 to reflect the new organization of grants under the FAST Act. Because of grant program consolidation under sections 5101(a) and 5101(c) of the FAST Act, MCSAP funds are now only allocated in two ways, so paragraphs (a) (1) and (2), (b) and (c) are deleted. The remaining language is unchanged but renumbered. Paragraph (a) provides that Basic Program Funds are allocated in accordance with § 350.323. Paragraph (b) specifies that Incentive Funds are allocated in accordance with § 350.327.

Section 350.319 [Removed]

Existing § 350.319 is removed consistent with the FAST Act's revision of the High Priority Program, section 5101(a), adding 49 U.S.C. 31102(l). Some elements of this section are moved to § 350.310.

Section 350.321 [Removed]

Section 350.321 is removed, consistent with section 5101(e) of the FAST Act's removal of New Entrant Funds as a separate grants program and inclusion of them under the general MCSAP funds.

Section 350.323 What criteria are used in the Basic Program Funds allocation?

FMCSA alters paragraph (a) by adding the word ''First'' to indicate the order in which these procedures occur. As required by the FAST Act, section 5106(d), paragraphs (b)–(d) are added. FMCSA adds a new paragraph (b) to provide that the funding for certain grants awarded to a State will be averaged. New paragraph (c) provides that the total amount of MCSAP Basic funding is the sum of the amounts in paragraphs (a) and (b). In new paragraph (d), FMCSA explains how and why the Agency will adjust the total amount of MCSAP Basic funding. New paragraph (e) includes part of existing paragraph (b), and the language remains unchanged by the FAST Act, but the table has been removed.

Section 350.329 [Removed]

The contents of existing § 350.329 are moved to § 350.203 and revised. Existing § 350.329 is removed.

Section 350.331 How does a State ensure its laws and regulations are compatible with the FMCSRs and HMRs?

Section 331(a) is clarified and changed to provide that the State must submit copies of any new or amended State law or regulation on CMV safety to FMCSA, as well as review them. Existing paragraph (b) is removed, as it pertains to the review of a State law or regulation. Existing paragraphs (c) and (d) become new paragraphs (b) and (c). New paragraph (b) is changed by revising the introduction to remove the references to the ''annual review'' and the ''annual CVSP,'' instead referencing just the review and CVSP.

Section 350.335 What are the consequences if a State has laws or regulations incompatible with the Federal regulations?

In accordance with the FAST Act, section 5101(a), adding 49 U.S.C. 31102(k), in § 350.335, FMCSA combines existing paragraph (a), (b), and (d) into a new paragraph (a) and adds an introductory paragraph. In new paragraphs (a)(1) and (2), FMCSA removes the references to Basic Program Funds and Incentive Funds. In new paragraph (a)(3) the reference to Basic Program is changed to MCSAP Basic Program. Existing paragraph (c) is removed. Existing paragraph (e) becomes new paragraph (b)

VI. Rulemaking Analyses

Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined that this final rule is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). As explained above, this final rule is strictly ministerial in that it incorporates nondiscretionary statutory requirements. These statutory changes went into effect on October 1, 2016. The regulatory changes included in this rule are necessary to make FMCSA's regulations consistent with the FAST Act, and their economic impact will not exceed the $100 million annual threshold. Any costs associated with this action are attributable to the nondiscretionary statutory provisions. This final rule is not expected to generate substantial congressional or public interest. Therefore, a full regulatory impact analysis has not been conducted, nor has there been a review by the Office of Management and Budget (OMB).

Although a full regulatory evaluation is unnecessary because the level of economic significance does not exceed the $100 million annual threshold, FMCSA considered the net impact of the FAST Act provisions implemented by this final rule. This rule's provisions provide reimbursements for technology, staffing, enforcement, maintenance, and training activities related to FMCSA regulations and should ease the economic burden on regulated entities. The net impacts of these provisions are expected to be small and affect a small number of individuals and businesses.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the Agency has not issued a notice of proposed rulemaking prior to this action. FMCSA has determined that it has good cause to adopt the rule without notice and comment.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Thomas Liberatore, listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the SBA's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $155 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2014 levels) or more in any 1 year.

Paperwork Reduction Act

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), nor does it revise any existing approved collections of information.

E.O. 13132 (Federalism)

A rule has implications for Federalism under section 1(a) of

Executive Order 13132 if it has ''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.''

FMCSA has determined that this rule would not impose substantial direct costs on States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

E.O. 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988 to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules to include an evaluation of the regulation's environmental health and safety effects on children, if the agency has reason to believe the regulation may disproportionately affect children. FMCSA has determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, this regulatory action could not pose an environmental or safety risk that would disproportionately affect children.

E.O. 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have takings implications.

Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of personally identifiable information (PII), and the Agency therefore finds that there will be no impact on the privacy of individuals.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002, Public Law 107–347, 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. FMCSA has therefore not conducted a privacy impact assessment.

E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA analyzed this action under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA determined that it is not a ''significant energy action'' under that E.O. because it is not economically significant and is not likely to have an adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

E.O. 13175 (Indian Tribal Governments)

This final rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and FMCSA's *NEPA Implementing Procedures and Policy for Considering Environmental Impacts,* Order 5610.1 (FMCSA Order), March 1, 2004 (69 FR 9680). FMCSA's Order states that ''[w]here FMCSA has no discretion to withhold or condition an action if the action is taken in accordance with specific statutory criteria and FMCSA lacks control and responsibility over the effects of an action, that action is not subject to this Order.'' *Id.* at chapter 1(D). Because Congress required the actions taken in this final rule, leaving the Agency no discretion or responsibility for its effects, this rulemaking is exempt from further analysis.

In addition to the NEPA requirements to examine impacts on air quality, the Clean Air Act (CAA) as amended (42 U.S.C. 7401, *et seq.*) also requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. This non-discretionary action falls within the CAA *de minimis* standards and is not subject to the Environmental Protection Agency's General Conformity Rule (40 CFR parts 51 and 93).

Additionally, FMCSA evaluated the effects of this final rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impacts resulting from its promulgation. Environmental justice issues would be raised if there were a ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations.

List of Subjects for 49 CFR Part 350

Grant programs-transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

PART 350—MOTOR CARRIER SAFETY ASSISTANCE PROGRAM AND HIGH PRIORITY PROGRAM

■ 1. The authority citation for part 350 continues to read as follows:

Authority: 49 U.S.C. 13902, 31101–31104, 31108, 31136, 31141, 31161, 31310–31311, 31502; and 49 CFR 1.87.

■ 2. The heading for part 350 is revised as set out above.

■ 3. Section 350.101 is revised to read as follows:

§ 350.101 What is the Motor Carrier Safety Assistance Program (MCSAP) and High Priority Program?

(a) *What is the MCSAP?* The MCSAP is a Federal grant program that provides financial assistance to States to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles (CMVs). The goal of the MCSAP is to reduce CMV-involved accidents, fatalities, and injuries through consistent, uniform, and effective CMV safety programs. Investing grant monies in appropriate safety programs will increase the likelihood that safety defects, driver deficiencies, and unsafe motor carrier practices will be detected and corrected before they become contributing factors to accidents. The MCSAP also sets forth the conditions for participation by States and local jurisdictions and promotes the adoption and uniform enforcement of State safety rules, regulations, and standards compatible with the Federal Motor Carrier Safety Regulations (FMCSRs) and Federal Hazardous Material Regulations (HMRs) for both interstate and intrastate motor carriers and drivers.

(b) *What is the High Priority Program?* The High Priority Program is a discretionary financial assistance program that supports, enriches, and augments State CMV safety programs through partnerships with States, local governments, federally recognized Indian tribes, other political jurisdictions, and other persons to carry out high priority activities and projects that augment motor carrier safety activities and, projects planned in accordance with the MCSAP. It also promotes the deployment of innovative technology for the CMV information systems and networks.

■ 4. Amend § 350.103 by revising the introductory text and paragraph (d) to read as follows:

§ 350.103 What is the purpose of this part?

The purpose of this part is to ensure that the Federal Motor Carrier Safety Administration (FMCSA), and States, local government agencies, other political jurisdictions, federally recognized Indian tribes, and other organizations and persons work in partnership to establish programs to improve motor carrier, CMV, and driver safety to support a safe and efficient transportation system by—

* * * * *

(d) Assessing and improving Statewide performance by setting program goals and meeting performance standards, measures, and benchmarks.

■ 5. Amend § 350.105 by:

■ a. Revising the definitions of ''10-year average accident rate,'' ''Accident rate,'' ''Basic Program Funds,'' and ''Commercial Vehicle Safety Plan (CVSP);''

■ b. Removing the definition of ''High Priority Activity Funds;''

■ c. Adding definitions for ''Innovative Technology Deployment funds,'' ''Lead State Agency,'' ''Level of effort,'' and ''Maintenance of effort'' in alphabetical order;

■ d. Revising the definition of ''Operating Authority;''

■ e. Adding a definition for ''Plan'' in alphabetical order;

■ f. Removing the definition of ''New Entrant Funds;'' and

■ g. Adding a definition for ''State or States'' in alphabetical order.

The revisions and additions read as follows:

§ 350.105 What definitions are used in this part?

10-year average accident rate means for each State, the aggregate number of large truck-involved fatal crashes (as reported in the Fatality Analysis Reporting System (FARS)) for a 10-year period divided by the aggregate vehicle miles traveled (VMT) as defined by the Federal Highway Administration (FHWA) for the same 10-year period.

Accident rate means for each State, the total number of fatal crashes involving large trucks (as measured by the FARS for each State) divided by the total Vehicles Miles Traveled (VMT) as defined by the Federal Highway Administration (FHWA) for each State for all vehicles.

* * * * *

Basic Program Funds means total MCSAP funds less the Administrative Takedown and Incentive Funds.

* * * * *

Commercial vehicle safety plan (CVSP) or the Plan means the document outlining the State's CMV safety objectives, strategies, activities, and performance measures.

Innovative Technology Deployment funds means funds provided to States for carrying out the deployment of innovative technology that support commercial vehicle information systems and networks.

* * * * *

Lead State Agency means the State CMV safety agency designated by the Governor to be responsible for administering the Plan throughout the State.

Level of effort—see Maintenance of effort.

Maintenance of effort means the level of effort Lead State Agencies are required to maintain each fiscal year in accordance with 49 CFR 350.301. Maintenance of effort is also referred to as ''maintenance of expenditure'' and ''level of effort.''

New Entrant Safety Audits means the safety audits of interstate, and, at the State's discretion, intrastate, new entrant motor carriers under 49 U.S.C. 31144(g) that are required as a condition of MCSAP eligibility under § 350.201(z).

* * * * *

Operating authority means the registration required by 49 U.S.C. 13902 and 31144, 49 CFR parts 365 and 368, and § 392.9a.

Plan—see Commercial Vehicle Safety Plan or CVSP.

State or States means all of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the Virgin Islands.

■ 6. Section 350.107 is revised to read as follows:

§ 350.107 What entities are eligible for funding under this part?

(a) *For MCSAP,* all of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the Virgin Islands are eligible to receive MCSAP grants directly from FMCSA.

(b) *For the High Priority Program,* the Administrator may make discretionary grants to and enter into cooperative agreements with States, local governments, federally recognized Indian tribes, other political jurisdictions as necessary, and any person to carry out high priority activities and projects that augment motor carrier safety activities and to States for projects planned in accordance with the Innovative Technology Deployment Program.

■ 7. The heading for § 350.109 is revised to read as follows:

§ 350.109 What are the national Motor Carrier Safety Assistance Program (MCSAP) elements?

* * * * *

■ 8. Add § 350.110 to read as follows:

§ 350.110 What are the national High Priority Program elements?

FMCSA may generally use these funds to support, enrich, or evaluate State CMV safety programs and to accomplish the objectives listed below:

(a) Increase public awareness and education on commercial motor vehicle safety.

(b) Target unsafe driving of commercial motor vehicles and noncommercial motor vehicles in areas identified as high risk crash corridors.

(c) Improve the safe and secure movement of hazardous materials.

(d) Improve safe transportation of goods and persons in foreign commerce.

(e) Demonstrate new technologies to improve commercial motor vehicle safety.

(f) Support participation in performance and registration information systems management developed under 49 U.S.C. 31106—

(1) For entities not responsible for submitting the CVSP under this part, or

(2) For entities responsible for submitting the CVSP under this part—

(i) Before October 1, 2020, to achieve compliance with the requirements of participation; and

(ii) Beginning October 1, 2020, or once compliance is achieved, whichever is sooner, for special initiatives or projects that exceed routine operations required for participation.

(g) Conduct Safety Data improvement Projects—

(1) That complete or exceed the requirements of the program developed to meet § 350.201(r) of this part for entities not responsible for submitting the CVSP under this part; or

(2) That exceed the requirements of the program developed to meet § 350.201(r) of this part for entities that are responsible for submitting the CVSP under this part.

(h) Otherwise improve commercial motor vehicle safety regulations.

■ 9. Revise § 350.201 to read as follows:

§ 350.201 What conditions must a State meet to qualify for MCSAP Funds?

To qualify for MCSAP Funds, each State must:

(a) Assume responsibility for improving motor carrier safety by adopting and enforcing State safety laws and regulations, standards, and orders that are compatible with Federal regulations, the FMCSRs (49 CFR parts 390–397) and the HMRs (49 CFR parts 107 (subparts F and G only), 171–173, 177, 178 and 180), and standards, and orders of the Federal Government, except as may be determined by the Administrator to be inapplicable to a State enforcement program.

(b) Implement performance-based activities, including deployment and maintenance of technology to enhance the efficiency and effectiveness of CMV safety programs.

(c) Designate a Lead State Agency responsible for administering the CVSP throughout the State.

(d) Give satisfactory assurances that the Lead State Agency has or will have the legal authority, resources, and qualified personnel necessary to enforce the FMCSRs and HMRs or compatible State laws or regulations, standards and orders in the CVSP.

(e) Give satisfactory assurances that the State will devote adequate resources to the administration of the CVSP including the enforcement of the FMCSRs, HMRs, or compatible State laws, regulations, standards, and orders throughout the State.

(f) Provide that the total expenditure of amounts of the Lead State Agency responsible for administering the Plan will be maintained at a level of effort each fiscal year in accordance with 49 CFR 350.301.

(g) Provide a right of entry (or other method a State may use that is adequate to obtain necessary information) and inspection to carry out the CVSP.

(h) Provide that all reports required in the CVSP under this section be available to FMCSA upon request.

(i) Provide that the Lead State Agency adopt the reporting standards and use the forms for recordkeeping, inspections, and investigations that FMCSA prescribes.

(j) Require all registrants of CMVs to demonstrate their knowledge of applicable FMCSRs, HMRs, or compatible State laws or regulations, standards, and orders.

(k) Grant maximum reciprocity for inspections conducted under the North American Inspection Standards through the use of a nationally accepted system that allows ready identification of previously inspected CMVs.

(l) Ensure that activities described in 49 CFR 350.309, if financed through MCSAP funds, will not diminish the effectiveness of the development and implementation of the programs to improve motor carrier, CMV, and driver safety.

(m) Ensure that the Lead State Agency will coordinate the CVSP, data collection and information systems, with the State highway safety improvement program under 23 U.S.C. 148(c).

(n) Ensure participation in appropriate FMCSA information technology and data systems and other information systems by all appropriate jurisdictions receiving funding under this section.

(o) Ensure information is exchanged with other States in a timely manner.

(p) Provide satisfactory assurances that the State will undertake efforts that will emphasize and improve enforcement of State and local traffic laws and regulations related to CMV safety.

(q) Provide satisfactory assurances that the State will address activities in support of the national program elements listed in § 350.109, including the following three activities:

(1) Activities aimed at removing impaired CMV drivers from the highways through adequate enforcement of regulations on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment.

(2) Activities aimed at providing training to MCSAP personnel to recognize drivers impaired by alcohol or controlled substances.

(3) Activities related to criminal interdiction, including human trafficking, when conducted with an appropriate CMV inspection, and appropriate strategies for carrying out those interdiction activities, including interdiction activities that affect the transportation of controlled substances (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) and listed in part 1308 of title 21, Code of Federal Regulations) by any occupant of a CMV.

(r) Establish and dedicate sufficient resources to a program to ensure that accurate, complete, and timely motor carrier safety data are collected and reported, and to ensure the State's participation in a national motor carrier safety data correction system prescribed by FMCSA.

(s)(1) Provide that the State will enforce registration (*i.e.,* operating authority) requirements under 49 U.S.C. 13902 and 31134, and 49 CFR 392.9a by prohibiting the operation of (*i.e.,* placing out of service) any vehicle discovered to be operating without the required operating authority or beyond the scope of the motor carrier's operating authority.

(2) Ensure that the State will cooperate in the enforcement of financial responsibility requirements under 49 U.S.C. 13906, 31138, 31139, and 49 CFR part 387.

(t) Ensure consistent, effective, and reasonable sanctions.

(u) Ensure that roadside inspections will be conducted at locations that are adequate to protect the safety of drivers and enforcement personnel.

(v) Provide that the State will include in the training manual for the licensing examination to drive a CMV and the training manual for the licensing examination to drive a non–CMV information on best practices for driving

safely in the vicinity of non–CMVs and CMVs.

(w) Provide that the State will conduct comprehensive and highly visible traffic enforcement and CMV safety inspection programs in high-risk locations and corridors.

(x) Except in the case of an imminent or obvious safety hazard, ensure that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a bus station, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned stop (excluding a weigh station).

(y) Ensure that it transmits to roadside inspectors the notice of each Federal exemption under 49 U.S.C. 31315(b) and 49 CFR 390.23 and 390.25 provided to the State by FMCSA, including the name of the person granted the exemption and any terms and conditions that apply to the exemption.

(z) Except for a territory of the United States, conduct new entrant safety audits of interstate and, at the State's discretion, intrastate new entrant motor carriers under 49 U.S.C. 31144(g). The State must verify the quality of the work conducted by a third party authorized to conduct new entrant safety audits under 49 U.S.C. 31144(g) on its behalf and the State remains solely responsible for the management and oversight of the activities.

(aa) Agree to fully participate in performance and registration information systems management under 49 U.S.C. 31106(b) not later than October 1, 2020, by complying with the conditions for participation under paragraph (3) of that section, or demonstrate to the FMCSA an alternative approach for identifying and immobilizing a motor carrier with serious safety deficiencies in a manner that provides an equivalent level of safety.

(bb) In the case of a State that shares a land border with another country, conduct a border CMV safety program focusing on international commerce that includes enforcement and related projects or forfeit all funds based on border-related activities.

(cc) Comply with the requirements of the innovative technology deployment program in 49 U.S.C. 31102(l)(3) if the State funds operation and maintenance costs associated with innovative technology deployment with its MCSAP funding.

■ 10. Add § 350.203 to read as follows:

§ 350.203 What conditions must an applicant meet to qualify for High Priority Program Funds?

(a) States must meet the requirements of § 350.201, as applicable.

(b) If applicable, other applicants, as described in § 350.107, must meet the following conditions:

(1) Prepare a proposal in accordance with § 350.213, and coordinate the proposal with the Lead State Agency to ensure the proposal is consistent with State and national CMV safety program priorities.

(2) Prepare a proposal that is responsive to the notice of funding availability.

(3) Certify that the applicant has the legal authority, resources, and trained and qualified personnel necessary to perform the functions specified in the proposal.

(4) Designate a person who will be responsible for implementation, reporting, and administering the approved proposal and will be the primary contact for the project.

(5) Agree to fund up to 15 percent of the proposed request.

(6) Agree to prepare and submit all reports required in connection with the proposal or other conditions of the grant or cooperative agreement.

(7) Agree to use the forms and reporting criteria required by the Lead State Agency and/or the FMCSA to record work activities to be performed under the proposal.

(8) Certify that the local agency will impose sanctions for violations of CMV and driver laws and regulations that are consistent with those of the State.

(9) Certify participation in national databases appropriate to the project.

■ 11. Amend § 350.205 by revising paragraph (a) to read as follows:

§ 350.205 How and when does a State apply for MCSAP funding?

(a) The Lead State Agency must submit the State's CVSP to FMCSA, on or before August 1 of each year.

* * * * *

■ 12. Add § 350.206 to read as follows:

§ 350.206 How and when does one apply for High Priority Program funding?

The FMCSA establishes and publishes application instructions and criteria for eligible activities to be funded with financial assistance agreements under this section in a notice of funding availability which is published at least 30 days before the financial assistance program application period closes.

■ 13. Revise § 350.207 to read as follows:

§ 350.207 What response does a State receive to its CVSP submission?

(a) FMCSA will notify the State, in writing, within 30 days of receipt of the CVSP whether FMCSA—

(1) Approves the CVSP; or

(2) Withholds approval of the CVSP because it does not meet the requirements of this part, or is not adequate to ensure effective enforcement of the FMCSRs and HMRs or compatible State laws and regulations.

(b) If FMCSA withholds approval—

(1) FMCSA will give the State a written explanation of the reasons for withholding approval of the CVSP and allow the State to modify and resubmit the CVSP for approval.

(2) The State will have 30 days from the date of the notice to modify and resubmit the CVSP.

(c) Disapproval of a resubmitted CVSP is final for that fiscal year.

(d) Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. chapter 7.

■ 14. Add § 350.208 to read as follows:

§ 350.208 What response will the applicant for a High Priority Program receive?

(a) If the grant or cooperative agreement is approved, the applicant will receive a grant agreement to execute.

(b) If the grant or cooperative agreement is denied, the applicant will receive a letter of denial from the Agency.

■ 15. Add § 350.210 to read as follows:

§ 350.210 How does an applicant demonstrate it satisfies the conditions for High Priority Program Funding?

An applicant for a High Priority Program Grant or cooperative agreement should refer to § 350.203. There is no separate certification for this program.

■ 16. Revise § 350.211 to read as follows:

§ 350.211 What is the format of the certification required by § 350.209?

The State's certification must be consistent with the following content: I (name), (title), on behalf of the State (or Commonwealth) of (State), as requested by the Administrator as a condition of approval of a grant under the authority of 49 U.S.C. 31102, as amended, do hereby certify as follows:

(a) The State has adopted commercial motor carrier and highway hazardous materials safety regulations, standards and orders that are compatible with the FMCSRs and the HMRs, and the standards and orders of the Federal Government.

(b) The State has designated (name of Lead State Agency) as the Lead State Agency to administer the Commercial Vehicle Safety Plan throughout the State for the grant sought and (names of agencies) to perform defined functions under the CVSP. The Lead State Agency has the legal authority, resources, and qualified personnel necessary to enforce the State's commercial motor carrier, driver, and highway hazardous materials safety laws, regulations, standards, and orders.

(c) The State will obligate the funds or resources necessary to provide a matching share to the Federal assistance provided in the grant to administer the Plan submitted and to enforce the State's commercial motor carrier safety, driver, and hazardous materials laws, regulations, standards, and orders in a manner consistent with the approved Plan.

(d) The laws of the State provide the State's enforcement officials right of entry (or other method a State may use that is adequate to obtain the necessary information) and inspection sufficient to carry out the purposes of the CVSP, as approved, and provide that the State will grant maximum reciprocity for inspections conducted pursuant to the North American Standard Inspection procedure, through the use of a nationally accepted system allowing ready identification of previously inspected CMVs.

(e) The State requires that all reports relating to the program be submitted to the appropriate State agency or agencies, and the State will make these reports available, in a timely manner, to the FMCSA on request.

(f) The State has uniform reporting requirements and uses FMCSA-designated forms for record keeping, inspection, investigations, and other enforcement activities.

(g) The State has in effect a requirement that all registrants of CMVs demonstrate their knowledge of the applicable Federal or State CMV safety laws or regulations.

(h) The State must ensure that the total expenditure of amounts of the Lead State Agency will be maintained at a level of effort each fiscal year in accordance with 49 CFR 350.301.

(i) The State will ensure that MCSAP-funded enforcement of activities under 49 CFR 350.309 will not diminish the effectiveness of the development and implementation of the programs to improve motor carrier, CMV, and driver safety.

(j) The State will ensure that CMV size and weight enforcement activities funded with MCSAP funds will not diminish the effectiveness of other CMV safety enforcement programs.

(k) The State will ensure that violation sanctions imposed and collected by the State are consistent, effective, and reasonable.

(l) The State will:

(1) Establish and dedicate sufficient resources to a program to provide FMCSA with accurate, complete, and timely reporting of motor carrier safety information that includes documenting the effects of the State's CMV safety programs;

(2) Participate in a national motor carrier safety data correction program (DataQs);

(3) Participate in appropriate FMCSA systems including information technology and data systems and other information systems; and

(4) Ensure information is exchanged in a timely manner with other States.

(m) The State will ensure that the Plan, data collection, and information data systems are coordinated with the State highway safety improvement program under sec. 148(c) of title 23, U.S. Code. The name of the Governor's highway safety representative (or other authorized State official through whom coordination was accomplished) is ____________. (Name)

(n) The State has undertaken efforts to emphasize and improve enforcement of State and local traffic laws and regulations as they pertain to CMV safety.

(o) The State will ensure that it has departmental policies stipulating that roadside inspections will be conducted at locations that are adequate to protect the safety of drivers and enforcement personnel.

(p) The State will ensure that MCSAP-funded personnel, including sub-grantees, meet the minimum Federal standards set forth in 49 CFR part 385, subpart C, for training and experience of employees performing safety audits, compliance reviews, or driver/vehicle roadside inspection.

(q) The State will enforce registration (*i.e.,* operating authority) requirements under 49 U.S.C 13902, 31134, and 49 CFR 392.9a by prohibiting the operation of any vehicle discovered to be operating without the required registration or beyond the scope of the motor carrier's registration.

(r) The State will cooperate in the enforcement of financial responsibility requirements under 49 U.S.C. 13906, 31138, 31139, and 49 CFR part 387.

(s) The State will include, in the training manual for the licensing examination to drive a non–CMV and the training manual for the licensing examination to drive a CMV, information on best practices for safe driving in the vicinity of noncommercial and commercial motor vehicles.

(t) The State will conduct comprehensive and highly visible traffic enforcement and CMV safety inspection programs in high-risk locations and corridors.

(u) The State will ensure that, except in the case of an imminent or obvious safety hazard, an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a bus station, terminal, border crossing, maintenance facility, destination, or other location where motor carriers may make planned stops (excluding a weigh station).

(v) The State will transmit to roadside inspectors the notice of each Federal exemption under 49 U.S.C. 31315(b) and 49 CFR 390.23 and 390.25 as provided to the State by FMCSA, including the name of the entity granted the exemption and any terms and conditions that apply to the exemption.

(w) Except for a territory of the United States, the State will conduct safety audits of interstate and, at the State's discretion, intrastate new entrant motor carriers under 49 U.S.C. 31144(g). The State will verify the quality of the work conducted by a third party authorized to conduct safety audits under 49 U.S.C. 31144(g) on its behalf and the State remains solely responsible for the management and oversight of the activities.

(x) The State fully participates in the performance and registration information systems management under 49 U.S.C. 31106(b) not later than October 1, 2020, or demonstrates to FMCSA an alternative approach for identifying and immobilizing a motor carrier with serious safety deficiencies in a manner that provides an equivalent level of safety.

(y) In the case of a State that shares a land border with another country, the State will conduct a border CMV safety program focusing on international commerce that includes enforcement and related projects or it will forfeit all MCSAP funds based on border-related activities.

(z) If a State meets all MCSAP requirements and funds operation and maintenance costs associated with innovative technology deployment with MCSAP funds, the State agrees to comply with the Innovative Technology Deployment requirements established pursuant to 49 CFR 350.310 and 350.311.

Date ____________________

Signature ____________________

■ 17. Amend § 350.213 by revising paragraphs (b)(3) and (4) to read as follows:

§ 350.213 What must a State CVSP include?

* * * * *

(b) * * *

(3) Criminal interdiction activities, including human trafficking, and appropriate strategies for carrying out those interdiction activities, including interdiction activities affecting the transportation of controlled substances by any occupant of a CMV.

(4) Activities to enforce registration requirements under 49 U.S.C. 13902 and 31134 and to cooperate in the enforcement of financial responsibility requirements under 49 U.S.C. 13906, 31138 and 31139 and 49 CFR part 387.

* * * * *

■ 18. Amend § 350.215 by revising paragraph (e) to read as follows:

§ 350.215 What are the consequences for a State that fails to perform according to an approved CVSP or otherwise fails to meet the conditions of this part?

* * * * *

(e) Any adverse decision will result in FMCSA—

(1) Withdrawing approval of the Plan and withholding all MCSAP funding; or

(2) Finding the State in noncompliance and withholding—

(i) Up to 5 percent of MCSAP funds during the fiscal year that the FMCSA notifies the State of its noncompliance;

(ii) Up to 10 percent of MCSAP funds for the first full fiscal year of noncompliance;

(iii) Up to 25 percent of MCSAP funds for the second full fiscal year of noncompliance; and

(iv) Not more than 50 percent of MCSAP funds for the third and any subsequent full fiscal year of noncompliance.

* * * * *

■ 19. Revise § 350.301 to read as follows:

§ 350.301 What level of effort must a State maintain to qualify for MCSAP funding?

(a) Each fiscal year, the State must maintain the average aggregate expenditure (level of effort) of the Lead State Agency, exclusive of Federal funds and State matching funds, for CMV safety programs eligible for funding under this part at a level at least equal to the average level of that expenditure for fiscal years 2004 and 2005.

(b) In determining a State's average level of effort, FMCSA—

(1) May allow the State to exclude State expenditures for federally sponsored demonstration and pilot CMV safety programs and strike forces.

(2) May allow the State to exclude expenditures for activities related to border enforcement and new entrant safety audits;

(3) Shall require the State to exclude Federal funds; and

(4) Shall require the State to exclude State matching funds.

(c) The State must include costs associated with activities performed during the base period by the Lead State Agency that receives funds under this part. It must include only those activities which meet the current requirements for funding eligibility under the grant program.

(d) States may use amounts generated under 49 U.S.C. 14504a as part of the State's maintenance of effort, provided the amounts are not applied to the match required under 49 CFR 350.303.

(e) Waivers and Modifications—Upon the request of a State, FMCSA may waive or modify the requirements of this section for a total of 1 fiscal year per request if FMCSA determines that the waiver or modification is reasonable, based on circumstances described by the State.

■ 20. Revise § 350.303 to read as follows:

§ 350.303 What are the State and Federal shares of expenses incurred under the MCSAP and High Priority Program?

(a) FMCSA will reimburse at least 85 percent of the eligible costs incurred under the MCSAP and High Priority Program.

(b) In-kind contributions are acceptable in meeting the matching share if they represent eligible costs as established by 2 CFR part 200 or FMCSA policy.

(c) States may use amounts generated under 49 U.S.C. 14504a as part of the State's match required for MCSAP, provided the amounts are not applied to the maintenance of effort required under § 350.301.

■ 21. Revise § 350.305 to read as follows:

§ 350.305 Are U.S. Territories subject to the MCSAP matching funds requirement?

The Administrator waives the requirement for matching funds under the MCSAP for the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

■ 22. Add § 350.308 to read as follows:

§ 350.308 How long are High Priority Program funds available?

(a) Funds for CMV safety activities under 49 CFR 350.310(a)–(h) obligated to an entity will remain available for the rest of the fiscal year in which they were obligated and the next 2 full fiscal years.

(b) Funds for Innovative Technology Deployment activities under 49 CFR 350.310(i) obligated to a State will remain available for the rest of the fiscal year in which they were obligated and the next 4 full fiscal years.

■ 23. Amend § 350.309 by revising paragraph (c) and removing paragraph (d).

The revision reads as follows:

§ 350.309 What activities are eligible for reimbursement under the MCSAP?

* * * * *

(c) The following activities are also eligible for reimbursement when part of the approved Plan

(1) When accompanied by an appropriate North American Standard Inspection and inspection report—

(i) Enforcement of CMV size and weight limitations at locations, excluding fixed-weight facilities, such as near steep grades or mountainous terrains, where the weight of a CMV can significantly affect the safe operation of the vehicle, or at ports were intermodal shipping containers enter and leave the United States; and

(ii) Detection of and enforcement activities taken as a result of criminal activity, including the trafficking of human beings, in a CMV or by any occupant, including the operator of the CMV; and

(2) For documented enforcement of State traffic laws and regulations designed to promote the safe operation of CMVs, including documented enforcement of such laws and regulations relating to non-CMVs when necessary to promote the safe operation of CMVs, if—

(i) The number of motor carrier safety activities, including roadside safety inspections is maintained at a level at least equal to the average level of such activities conducted in the State in fiscal years 2004 and 2005; and

(ii) The State does not use more than 10 percent of the MCSAP Basic funds for enforcement activities relating to non-CMVs necessary to promote the safe operation of CMVs, unless the Administrator determines that a higher percentage will result in significant increases in CMV safety.

■ 24. Add § 350.310 to read as follows:

§ 350.310 What types of activities and projects are eligible for reimbursement under the High Priority Program?

The types of activities eligible for reimbursement under the High Priority Program include:

(a) Increasing public awareness and education about CMV safety;

(b) Targeting unsafe driving of CMVs and non-CMVs in areas identified as high risk crash corridors;

(c) Improving the safe and secure movement of hazardous materials;

(d) Improving safe transportation of goods and persons in foreign commerce;

(e) Demonstrating new technologies to improve CMV safety;

(f) Supporting participation in performance and registration information systems management (PRISM) under 49 U.S.C. 31106(b)—

(1) For Non-Lead State Agencies; or

(2) For Lead State Agencies—

(i) Before October 1, 2020, to achieve compliance with the requirements of participation; and

(ii) Beginning on October 1, 2020, or once compliance is achieved, whichever is sooner, for special initiatives or projects that exceed routine operations required for participation;

(g) Conducting safety data improvement projects—

(1) That complete or exceed the requirements under 49 U.S.C. 31102(c)(2)(P) for Non-Lead State Agencies; or

(2) That exceed the requirements under 49 U.S.C. 31102(c)(2)(P) for Lead State Agencies;

(h) Improving CMV safety and compliance with CMV safety regulations; and

(i) Implementing and maintaining the Innovative Technology Deployment of CMV information systems and networks in accordance with 49 U.S.C. 31102(l)(3).

■ 25. Revise § 350.311 to read as follows:

§ 350.311 What specific items are eligible for reimbursement under the MCSAP and High Priority Program?

(a) FMCSA shall establish criteria for eligible activities to be funded and publish those criteria in a notice of funding availability before the MCSAP and High Priority Program application periods.

(b) All reimbursable items must be necessary, reasonable, allocable and allowable under this part and 2 CFR part 200. The eligibility of specific items is subject to review by FMCSA. The following types of expenses are eligible for reimbursement:

(1) Personnel expenses, including recruitment and screening, training, salaries and fringe benefits, and supervision.

(2) Equipment and travel expenses, including per diem, directly related to the enforcement of safety regulations, including vehicles, uniforms, communications equipment, special inspection equipment, vehicle maintenance, fuel, and oil.

(3) Indirect expenses as allowed by 2 CFR part 200.

(4) Expenses related to data acquisition, storage, and analysis that are specifically identifiable as program-related to develop a data base to coordinate resources and improve efficiency, including operation and maintenance costs related to innovative technology deployment.

(5) Clerical and administrative expenses, to the extent necessary and directly attributable to the MCSAP.

(6) Expenses related to the improvement of real property (*e.g.,* installation of lights for the inspection of vehicles at night). Acquisition of real property, land, or buildings are not eligible costs.

■ 26. Revise § 350.313 to read as follows:

§ 350.313 How are MCSAP funds allocated?

After deducting administrative expenses authorized in 49 U.S.C. 31104(c), the MCSAP funds are allocated among States with approved CVSPs in two ways:

(a) As Basic Program Funds in accordance with § 350.323 of this part,

(b) As Incentive Funds in accordance with § 350.327 of this part.

§ 350.319 [Removed]

■ 27. Remove § 350.319:

§ 350.321 [Removed]

■ 28. Remove § 350.321

■ 29. Revise § 350.323 to read as follows:

§ 350.323 What criteria are used in the Basic Program Funds allocation?

(a) First, the funds are distributed proportionally to the States using the following four, equally weighted (25 percent), factors.

(1) 1997 Road miles (all highways) as defined by the FHWA.

(2) All vehicle miles traveled (VMT) as defined by the FHWA.

(3) Population—annual census estimates as issued by the U.S. Census Bureau.

(4) Special fuel consumption (net after reciprocity adjustment) as defined by the FHWA.

(b) Next, the FMCSA will average the funding awarded to a State, or other equitable amounts, in fiscal years 2013, 2014, and 2015 for—

(1) Border enforcement grants under 49 U.S.C. 31107; and

(2) New entrant audit grants under 49 U.S.C. 31144(g)(5).

(c) FMCSA will add the amount in paragraph (a) of this section to the amount in paragraph (b) of this section to calculate the total amount of MCSAP Basic funding.

(d) Subject to the availability of funding and notwithstanding fluctuations in the data elements used by FMCSA, the initial amounts resulting from the calculation in paragraph (c) of this section shall be adjusted to ensure that, for each State, the amount shall not be less than 97 percent of the average amount of funding received or other equitable amounts in fiscal years 2013, 2014, and 2015 for—

(1) MCSAP funds under 49 U.S.C. 31102;

(2) Border enforcement grants under 49 U.S.C. 31107; and

(3) New entrant audit grants under 49 U.S.C. 31144(g)(5).

(e) Distribution of Basic Program Funds for Puerto Rico and the U.S. territories is subject to allocation as follows:

(1) U.S. territories receive a fixed amount of $350,000;

(2) Puerto Rico receives a maximum allocation of 4.944 percent or a minimum allocation of 0.44 percent or $350,000, whichever is greater.

§ 350.329 [Removed]

■ 30. Remove § 350.329.

■ 31. Amend § 350.331 by:

■ a. Revising paragraph (a);

■ b. Removing paragraph (b);

■ c. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c); and

■ d. Revising newly redesignated paragraph (b) introductory text.

The revisions read as follows:

§ 350.331 How does a State ensure its laws and regulations are compatible with the FMCSRs and HMRs?

(a) States must submit a copy of new or amended State laws or regulations on CMV safety immediately after the enactment or issuance.

(b) A State must conduct a review of its laws and regulations for compatibility and report the results of that review in the CVSP in accordance with § 350.213(l), along with a certification of compliance, no later than August 1 of each year. The report must include the following two items:

* * * * *

■ 32. Revise § 350.335 to read as follows:

§ 350.335 What are the consequences if a State has laws or regulations incompatible with the Federal regulations?

(a) FMCSA may initiate a proceeding to withdraw Plan approval or withhold MCSAP funds in accordance with 49 CFR 320.215 in the following situations:

(1) When a State that currently has compatible CMV safety laws and regulations pertaining to interstate commerce (*i.e.,* rules identical to the

FMCSRs and HMRs or have the same effect as the FMCSRs and identical to the HMRs) and intrastate commerce (*i.e.,* rules identical to or within the tolerance guidelines for the FMCSRs and identical to the HMRs) enacts a law or regulation which results in an incompatible rule;

(2) When a State fails to adopt a new FMCSR or HMR or an amendment to an FMCSR or HMR within 3 years of its effective date; or

(3) Upon a finding by FMCSA, based upon its own initiative or upon a petition of any person, including any State, that a State law, regulation or enforcement practice pertaining to CMV safety, in either interstate or intrastate commerce, is incompatible with the FMCSRs or HMRs.

(b) Any decision regarding the compatibility of State law or regulation with the HMRs that requires an interpretation will be referred to the Pipeline and Hazardous Materials Safety Administration of the DOT for such interpretation before proceeding under § 350.215.

Issued under the authority of delegation in 49 CFR 1.87: September 19, 2016.

T.F. Scott Darling, III,

Administrator.

[FR Doc. 2016–24925 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 382 and 383

RIN 2126–AB95

General Technical, Organizational, Conforming, and Correcting Amendments to the Federal Motor Carrier Safety Regulations; Correction

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Correcting amendment.

SUMMARY: The Federal Motor Carrier Safety Administration corrects an inadvertent error in the October 4, 2016 final rule ''General Technical, Organizational, Conforming, and Correcting Amendments to the Federal Motor Carrier Safety Regulations.'' Due to an error, the rule unintentionally did not include the word ''and'' at the end of the next to last condition for a farm vehicle driver to take advantage of the farm vehicle driver exceptions to commercial driver's license standards and alcohol and drug testing requirements. Today's correction makes it clear that all four conditions in each farm vehicle driver exception must be met in order for the exception to be used.

DATES: *Effective:* October 13, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, Federal Motor Carrier Safety Administration, Regulatory Development Division, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202) 366–5370. Office hours are from 9:00 a.m. to 5:00 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Federal Motor Carrier Safety Administration published a document in the **Federal Register** on October 4, 2016 (81 FR 68336). This correction updates the amendments published on October 4, 2016. In rule FR Doc. 2016–22996, published on October 4, 2016 (81 FR 68336).

List of Subjects

49 CFR Part 382

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

Accordingly, 49 CFR part 382 is corrected by making the following correcting amendments:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.,* 31502; sec. 32934 of Public Law 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 2. In § 382.103, revise paragraph (d)(3)(i)(C) to read as follows:

§ 382.103 Applicability. * * * * *

(d) * * *

(3) * * *

(i) * * *

(C) Not used in the operations of a for-hire motor carrier, except for an exempt motor carrier as defined in § 390.5 of this subchapter; and

* * * * *

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 3. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Public Law 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Public Law 107–56, 115 Stat. 272, 297, sec. 4140 of Public Law 109–59, 119 Stat. 1144, 1746; sec. 32934 of Public Law 112–141, 126 Stat. 405, 830; sec. 7208 of Public Law 114–94, 129 Stat. 1312, 1593; and 49 CFR 1.87.

■ 4. In § 383.3, revise paragraph (d)(1)(iii) to read as follows:

§ 383.3 Applicability.

* * * * *

(d) * * *

(1) * * *

(iii) Not used in the operations of a for-hire motor carrier, except for an exempt motor carrier as defined in § 390.5 of this subchapter; and

* * * * *

Issued on: October 6, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–24922 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 81, No. 199
Friday, October 14, 2016

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2016–BT–STD–0004]

RIN 1904–AD61

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Open Meetings for the Circulator Pumps Working Group To Negotiate a Notice of Proposed Rulemaking (NOPR) for Energy Conservation Standards and Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meetings and webinars.

SUMMARY: Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) has granted the Circulator Pumps Working Group an extension to allow for more time for discussion on economic analysis and negotiations on standard levels. The Department of Energy (DOE) is announcing additional open meetings have been scheduled for the Circulator Pumps Working Group.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting dates. Individuals will also have the opportunity to participate by webinar. To register for the webinars and receive call-in information, please register at DOE's Web site: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=66.*

FOR FURTHER INFORMATION CONTACT: Mr. Joe Hagerman, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–4549. Email: *asrac@ee.doe.gov.*

Ms. Johanna Jochum, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6307. Email: *Johanna.Jochum@Hq.Doe.Gov.*

SUPPLEMENTARY INFORMATION: DOE published a notice of public meeting in the **Federal Register** on April 20, 2016 (81 FR 23198) announcing Appliance Standards and Rulemaking Federal Advisory Committee: Notice Open Meetings for the Circulator Pumps Working Group to Negotiate a Notice of Proposed Rulemaking for Energy Conservation Standards and Test Procedures. On January 20, 2016, ASRAC met and unanimously passed the recommendation to form a Circulator Pumps Working Group. The purpose of the working group is to discuss and, if possible, reach consensus regarding definitions, test procedures, and energy conservation standards, to form the basis of proposed energy conservation standards and test procedures. The Working Group consists of representatives of parties having a defined stake in the outcome of the proposed standards, and will consult as appropriate with a range of experts on technical issues. Per the ASRAC Charter, the Working Group is expected to make a concerted effort to negotiate a final term sheet by December 31, 2016.

This notice announces the next series of meetings for this working group. DOE will host public meetings and webinars on the below dates.

- *November 3, 2016; 9:00 a.m.–5:00 p.m.* at Navigant 1200 19th St. NW., Washington, DC
- *November 4, 2016; 8:00 a.m.–3:00 p.m.* at Navigant 1200 19th St. NW., Washington, DC
- *November 30, 2016; 9:00 a.m.–5:00 p.m.* at Navigant 1200 19th St. NW., Washington, DC
- *December 1, 2016; 8:00 a.m.–3:00 p.m.* at Navigant 1200 19th St. NW., Washington, DC

Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *asrac@ee.doe.gov.* In the email, please indicate your name, organization (if appropriate), and contact information.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

Issued in Washington, DC, on October 6, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2016–24867 Filed 10–13–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9159; Airspace Docket No. 13–AAL–7]

Proposed Establishment of Class E Airspace, Healy, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Healy River Airport, Healy, AK, to support the development of Instrument Flight Rules (IFR) operations under standard instrument approach and departure procedures at the airport, and for the safety and management of controlled airspace within the National Airspace System.

DATES: Comments must be received on or before November 28, 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–2016–9159; Airspace Docket No. 13–

AAL–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.

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: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Healy River Airport, Healy, AK.

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 and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2016–9159/Airspace Docket No. 13–AAL–7.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be 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 the **ADDRESSES** section for the 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 Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Availability and Summary of Documents Proposed 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 document. 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 by establishing Class E airspace extending upward from 700 feet above the surface at Healy River Airport, Healy, AK. This airspace is necessary to support the development of IFR operations in standard instrument approach and departure procedures at the airport. Class E airspace would be established within a 3.5-mile radius of the Healy River Airport, with segments extending from the 3.5-mile radius to 11.5 miles northwest of the airport, and 10.5 miles south of the airport.

Class E airspace designations are published in paragraph 6005 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 Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the

Environmental Review

This proposal will criteria of the Regulatory Flexibility Act 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

Accordingly, pursuant to the authority delegated to me, 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 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. 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 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Healy, AK [New]

Healy River Airport, Alaska
(Lat. 63°52′03″ N., long. 148°58′08″ W.)

That airspace extending upward from 700 feet above the surface within a 3.5-mile radius of Healy River Airport, and that airspace 2 miles either side of the 333° bearing from the airport extending from the 3.5 mile radius to 11.50 miles northwest of the airport, and that airspace 0.6 miles west and 2.5 miles east of the 169° bearing from the airport extending from the 3.5 mile radius to 10.5 miles south of the airport.

Issued in Seattle, Washington, on October 5, 2016.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–24773 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 159 and 173

[USCBP–2016–0065]

RIN 1515–AE16

Electronic Notice of Liquidation

AGENCY: U.S. Customs and Border Protection; Department of the Treasury.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document proposes to amend the U.S. Customs and Border Protection (CBP) regulations to reflect that official notice of liquidation, suspension of liquidation, and extension of liquidation will be posted electronically on the CBP Web site. This document also proposes regulatory revisions to reflect that official notice of liquidation will no longer be posted at the customhouses or stations and that official notices of suspension of liquidation and extension of liquidation will no longer be mailed. Additionally, this document proposes to make certain technical corrections to the CBP regulations.

DATES: Comments must be received on or before November 14, 2016.

ADDRESSES: You may submit comments identified by *docket number,* by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2016–0065.
- *Mail:* Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, Attention: Trade and Commercial Regulations Branch, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on this rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Virginia McPherson, ACE Business Office, Office of Trade, 571–468–5181, or *virginia.h.mcpherson@cbp.dhs.gov.* Randy Mitchell, Trade Policy and Programs, Office of Trade, 202–863–6532, or *randy.mitchell@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this regulatory change. Comments that will provide the most assistance to CBP will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information or authority that support such recommended change. *See* **ADDRESSES** above for information on how to submit comments.

I. Background

A. Statutory Authority

Section 500 of the Tariff Act of 1930, as amended (19 U.S.C. 1500), provides CBP with the authority, under rules and regulations prescribed by the Secretary, to, among other things, give or transmit notice of liquidation pursuant to an electronic data interchange system. *See* 19 U.S.C. 1500(e). Similarly, CBP is authorized to give notice of extension of liquidation in such form and manner (which may include electronic transmittal) as prescribed by regulation and notice of suspension of liquidation in such manner as considered appropriate. *See* 19 U.S.C. 1504(b) and (c). Additionally, the National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, December 8, 1993), to provide for, among other things, the electronic status of liquidation. *See* 19 U.S.C. 1411.

B. Current Regulations and Procedures

CBP defines ''liquidation'' in section 159.1 of title 19 of the Code of Federal Regulations (CFR) as the final computation or ascertainment of duties on entries for consumption or drawback entries. *See* 19 CFR 159.1. Currently, notices of liquidation for formal entry, including notices of liquidation by operation of law, are physically posted in the customhouse or station at the port of entry on CBP Form 4333, and this physical posting is deemed the legal evidence of liquidation and provides the date of liquidation. *See* 19 CFR 159.9(a)–(c). The date of liquidation is important if an importer chooses to protest CBP's decision as to the final computation or ascertainment of duties on entries for consumption or drawback entries. The protest must be filed within a specified number of days from the date of liquidation. *See* 19 CFR 174.12(e).

Generally, the bulletin notice of liquidation is prepared on Thursday afternoons and is placed in the public area at the customhouse or station for display so that the public may view it beginning each Friday morning. Each port has a sign posted in a conspicuous place, in accordance with 19 CFR 159.9(b), directing the public to the bulletin notice.

Courtesy notices of liquidation are sent via a CBP-authorized electronic data interchange system or physically mailed on CBP Form 4333–A. *See* 19 CFR 159.9(d). CBP generally sends the electronic courtesy notice before the posting of official notice. However, because a paper courtesy notice may be received at or about the time the bulletin notice of liquidation has been physically posted, there may be a delay between the official date of liquidation and when the paper courtesy notice is received. Liquidation of an entry may be extended or suspended. *See* 19 U.S.C. 1504; 19 CFR 159.12 and 159.51. When extension or suspension occurs, official notices are mailed on an appropriately modified CBP Form 4333–A, in accordance with 19 CFR 159.12(b) and (c), and courtesy notices of extension or suspension are provided electronically for electronic filers.

Individuals interested in perusing the bulletin notices must physically go to the customhouse. In most instances, CBP liquidates entries without changing the duties, fees or charges asserted by the importer; therefore there is generally no need to know the exact date of liquidation for most entries. However, as stated above, the exact date of liquidation is important if an importer wishes to timely file a protest challenging any of the decisions about an entry that are subsumed into the liquidation and enumerated in 19 U.S.C. 1514(a). CBP estimates that protesters or their representatives take 2,500 trips to U.S. customhouses or stations each year to physically view the official bulletin notice. In addition, physically posting the bulletin notice of liquidation, repeated at each customhouse every week, is laborious and time-consuming.

II. Modernizing Notice of Liquidation

A. Electronic Notice

In this document, CBP is proposing to post official notice of liquidation for all entries, including entries filed in paper form, as well as official notices regarding the extension or suspension of liquidation, at *www.cbp.gov.* This proposed electronic posting will replace both the physical posting or lodging of bulletin notices in the customhouse as the legal evidence of liquidation and the mailed notices of extension or suspension as official notice. The information will be accessible via a conspicuous link on the *www.cbp.gov* Web site, labeled *Bulletin Notices of Liquidation.* Accordingly, upon the effective date of these regulations, CBP would no longer physically post bulletin notice of liquidation in the customhouse or station or mail notices of suspension or extension.

The electronic bulletin notices will be searchable on the CBP Web site by using two or more of the following data elements:

1. Entry Number
2. Filer
3. Importer of Record Number
4. Port of Entry
5. Liquidation Date (with searchable date range)
6. Posted Date (date of posting of event with searchable date range)
7. Entry Date (with searchable date range)
8. Event Type (such as, Liquidated, Re-liquidated, Suspended, Extended)
9. Basis (Reason for the liquidation, suspension or extension)
10. Action (CBP's final determination of the duties, taxes, and fees due on the entry, *i.e.,* No Change; Change Increase; Change Decrease)

For example, conducting a search by entering the port of entry and selecting a posted date would return results for all notices posted for that port for that date. However, searching with the fields specific to an interested party, such as entry number or importer of record number, will return more targeted results. When viewing the results of a search, importer of record numbers will not be displayed on the CBP Web site. CBP may add more search fields as additional capabilities are deployed.

The liquidation information posted electronically will be updated daily. When liquidation notices are posted on *www.cbp.gov,* there will no longer be a need for importers or their representatives to go to the customhouse or station to obtain the official date of liquidation. Once it has been posted electronically, the information will be available on *www.cbp.gov* for a minimum of 15 months. Notices that are no longer available on the CBP Web site will be accessible by CBP personnel. Requests for notices that have been removed from the CBP Web site may be directed to the relevant port of entry.

Electronic filers, using their ACE Portal Account, would be able to access historical liquidation information that is no longer available on the CBP Web site, run queries for information on recent liquidations, extensions, and suspensions, run targeted reports to conduct in-house audits, identify systemic errors, and provide insight into entries under review by CBP, all in support of improved compliance with trade laws. Obtaining an ACE Portal Account is free, and registration information is available at: *https://www.cbp.gov/document/guidance/ace-secure-data-portal-account-application.* For more general information on ACE Portal Accounts, please see: *https://www.cbp.gov/trade/automated/getting-started/using-ace-secure-data-portal.*

In addition to posting the official notice of liquidation on *www.cbp.gov,* CBP intends to continue sending electronic courtesy notices of liquidation, extension, and suspension via a CBP-authorized electronic data interchange system to the electronic filer when entries liquidate or are extended or suspended. However, paper courtesy notices of liquidation and paper notices of extension or suspension of liquidation will no longer be mailed.

B. Explanation of Proposed Amendments

This section of the document explains the proposed amendments to various parts of title 19 of the Code of Federal Regulations (19 CFR) to implement the above-described changes regarding the electronic posting of notice. Accordingly, the following sections are proposed to be revised as follows:

CBP is proposing to amend section 159.9 throughout, with one exception in paragraph (c)(2)(iii), discussed below, to provide for the proposed changes discussed above by replacing references to the physical posting or lodging bulletin notice of liquidation, CBP Form 4333, with references to electronic notice provided on *www.cbp.gov,* including for entries liquidated by operation of law. We propose to amend paragraph (c)(1) by removing the last sentence stating that ''CBP will endeavor to provide the filer with electronic notification of this date as an informal, courtesy notice of liquidation'' because this sentence is redundant as paragraph (d) deals with courtesy notices of liquidation. This document proposes to also amend paragraph (c)(2)(i) by adding the phrase ''and will be posted on *www.cbp.gov* within a reasonable period after each liquidation by operation of law and will be dated with the date of liquidation by operation of law'' at the end of the paragraph. CBP further proposes deleting paragraph (c)(2)(ii) because the proposed changes to paragraph (c)(2)(i) make it redundant. This document proposes to renumber paragraph (c)(2)(iii) as (c)(2)(ii) and to revise it by adding the phrase ''For liquidation notices posted or lodged in the customhouse,'' to the beginning of

the paragraph to ensure protestants are clear on the responsibility to file a timely protest based on the method of posting of notice of liquidation if posted in the customhouse prior to the effective date of these proposed amendments.

CBP is proposing to add a new paragraph (c)(2)(iii) for liquidation notices posted on *www.cbp.gov* regarding protests of decisions of entries liquidated by operation of law. Further, we propose to amend paragraph (d) of section 159.9 to state that courtesy notice of liquidation will be provided electronically only for entries that were filed electronically.

Because bulletin notices of liquidation will not be physically posted at the customhouse or the station, CBP is proposing to amend section 159.10 by removing the words ''posting or lodging of'' in paragraph (b), removing the words ''on CBP Form 4333 posted or lodged'' in paragraph (c)(1), and by removing the words ''on a bulletin notice of liquidation, CBP Form 4333,'' in paragraph (c)(3).

Also, because bulletin notices of liquidation will not be physically posted at the customhouse or the station, we propose to amend section 159.11 at paragraph (a) by replacing the words ''on the bulletin notice of liquidation, CBP Form 4333,'' with ''electronically''.

Additionally, CBP proposes to amend section 159.12 at paragraphs (b) and (c) to state that official notice of extension and suspension, and the reasons therefor, will be posted on *www.cbp.gov* and that courtesy notice will be sent through a CBP-authorized electronic data interchange system. This document proposes to amend paragraph (d)(2) of section 159.12 to state that, if the port director finds good cause, notice of extension will be posted on *www.cbp.gov* and a courtesy notice will be sent through a CBP-authorized electronic system. CBP further proposes to amend paragraph (f)(1) of section 159.12 by removing the word ''bulletin'' from the last sentence. This document proposes to remove paragraph (g) of section 159.12 because sections 159.9 and 159.10 already deal with notice of liquidation.

C. Technical Corrections

CBP is also proposing to make certain technical corrections in this document. These proposed amendments update the regulatory language to reflect statutory changes.

Sections 159.11(a) and 159.12(f) refer to the timing of liquidation. In addition to the changes made to these sections regarding the electronic posting of notice, these sections are also being modified to reflect updated language that aligns with 19 U.S.C. 1504, which was amended in 2004 by the Miscellaneous Trade and Technical Corrections Act (Pub. L. 108–429, 118 Stat. 683, December 3, 2004) to provide that entries are deemed liquidated based on the rate of duty, value, quantity, and amount of duties asserted by the importer of record regardless of when asserted. The current regulations state that an entry may only be deemed liquidated based on the rate, duty, value, quantity, and amount of duties asserted by the importer *at the time of entry.* Accordingly, this document proposes to update the regulatory language of §§ 159.11(a) and 159.12(f)(1) to reflect this amendment. Also, as 19 U.S.C. 1504(d) no longer requires CBP, when liquidation of an entry continues to be suspended beyond four years due to a statute or court order, to liquidate the entry within 90 days from when the suspension is removed, CBP is proposing to remove section 159.12(f)(2).

Section 173.4a provides for the correction of clerical errors prior to liquidation. The section implements section 520 of the Tariff Act of 1930, as amended (19 U.S.C. 1520). Section 1635 of the Pension Protection Act of 2006 (Pub. L. 109–280, 170 Stat. 780, August 17, 2006) modified 19 U.S.C. 1520. Prior to this amendment, 19 U.S.C. 1520 authorized refunds prior to liquidation of an entry or reconciliation, whenever it is ascertained that excess duties, fees, or exactions have been deposited or paid by reason of clerical error. Under the 2006 amendment, the clause, ''by reason of clerical error,'' was deleted from the statute. This document proposes to revise the section heading for § 173.4a and updates the regulatory language to reflect this amendment.

III. Statutory and Regulatory Requirements

A. Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has not reviewed this regulation.

B. Regulatory Flexibility Act

This section examines the impact of this rule on small entities per the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. The Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires agencies to assess the impact of regulations on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

Background

Most goods imported into the United States are subject to duty assessments, which CBP conducts during a process known as liquidation. During this liquidation process, CBP performs a final computation of duties (not including vessel repair duties) on the entry covering the imported merchandise and then closes out the entry. In accordance with current regulations, CBP officially notifies importers,[1] as well as the public, of a formal entry's liquidation by posting a weekly bulletin notice of liquidation in a readily-located and consulted place in the customhouse or station at each port of entry.[2] These notices are available for importers and the public to peruse for nearly two weeks before they are placed in CBP storage. CBP provides the same official notice of liquidation for informal entries where a duty cannot be determined at the time of entry and for reliquidated dutiable entries.[3] For other informal, mail, and baggage entries, CBP furnishes official notice of liquidation to an importer (and their sureties when required) by a suitable printed statement appearing on the receipt issued for duties collected, by release of the merchandise under a free entry, or by acceptance of the free entry after release under a special permit for immediate delivery.[4] Once CBP provides official notice of liquidation or reliquidation, importers generally have 180 days to file a protest challenging certain aspects of

[1] For the purposes of this analysis, ''importers'' can also refer to agents, such as brokers, who act on behalf of importers.

[2] *See* 19 CFR 159.9(b).

[3] *See* 19 CFR 159.10.

[4] *See* 19 CFR 159.10.

their entry's liquidation.[5] In addition to these official notices, CBP endeavors to provide importers (and their sureties) informal, courtesy notices of liquidation and reliquidation for entries scheduled to be liquidated or deemed liquidated by operation of law. For the majority of importers filing entries, who actually file electronically, CBP generally sends these filers (and their sureties) courtesy notices of liquidation and reliquidation via a CBP-authorized electronic data interchange system before the official notice (and protest period's start date). For the small portion of importers who file entries by paper, CBP typically mails paper courtesy notices of liquidation and reliquidation using CBP Form 4333–A to these filers on or around the date of the official notice's posting. These courtesy notices are not direct, formal, and decisive notices of liquidation or reliquidation; however, based on anecdotal evidence, most importers rely on these courtesy notices to determine liquidations and reliquidations to avoid the time and resource costs incurred to view official bulletin notices at U.S. customhouses or stations.

Some liquidations may be extended or suspended. If liquidation is extended or suspended, CBP officially notifies the importer and his/her surety by mail using CBP Form 4333–A, as appropriately modified.[6] CBP also provides importers who file entries electronically and their sureties with electronic courtesy notices of extension and suspension, which are generally sent in advance of mailed notifications. Although these courtesy notices are not direct, formal, and decisive notices of extension or suspension, CBP believes that most importers (and all sureties) rely on them to determine extensions and suspensions because importers receive them before the official notice and they contain the same information. Importers who file entries by paper do not receive electronic or paper courtesy notices of extension and suspension.

In an effort to modernize the liquidation, reliquidation, extension, and suspension notification processes, CBP, through this rulemaking, proposes to discontinue physically posting official bulletin notices of liquidation and reliquidation at U.S. port of entry customhouses and stations. Instead, CBP would post these official notices in a readily-located, conspicuous place on the CBP Web site: *www.cbp.gov.* Additionally through this rule, CBP would begin posting electronically on *www.cbp.gov* official notices of extension and suspension that are currently mailed. CBP would tie all electronic notices directly to an already-developed, automated process by which entries are liquidated, reliquidated, extended, or suspended, ensuring that these actions and CBP's official notifications of these actions occur simultaneously. This rule would not change the method in which CBP provides *electronic* courtesy notices of liquidation, reliquidation, extension, or suspension, but it would discontinue the practice of mailing any paper notices. For other informal, mail, and baggage entries, CBP would continue to furnish official notices of liquidation and reliquidation to importers (and their sureties when required) by a suitable printed statement appearing on the receipt issued for duties collected, by release of the merchandise under a free entry, or by acceptance of the free entry after release under a special permit for immediate delivery. As described next, these regulatory changes would introduce benefits and costs to importers, including small entities.

For most importers (and their sureties), this rule would simply change the way in which they can access official notices of liquidation, reliquidation, extension, and suspension. Instead of posting weekly official bulletin notices of liquidation and reliquidation at each U.S. customhouse and station and mailing official notices of extension and suspension, CBP would publish these notices on the CBP Web site once this rule is in effect. CBP would also discontinue mailing all paper courtesy notices of liquidation and reliquidation with this rule. Because the vast majority of importers (and all their sureties) already rely on the electronic courtesy notices of liquidation, reliquidation, extension, and suspension that CBP provides, this rule's transition to electronic official notice publications would presumably only affect a small portion of importers. Specifically, this transition to electronic notice publications would only affect those importers who currently rely on official bulletin notices physically posted at U.S. customhouses and stations and those importers who receive and rely on paper courtesy notifications of liquidation and reliquidation and paper official notices of extension and suspension due to their paper entry filings.

Number of Small Entities Affected by Rule

Using historical data, CBP estimates that importers took an average of 2,500 trips to U.S. customhouses or stations each year for the single purpose of viewing official bulletin notices because the official bulletin notice's posting date was significant to a protest that importer planned to file.[7] CBP also estimates that CBP mailed an average of 23,500 paper courtesy notices of liquidation and reliquidation and 3,100 paper notices of extension and suspension each year to importers who filed paper entries.[8] Considering this historical data, CBP estimates that this rule could affect up to approximately 29,100 importers per year. To the extent that the same importer took more than one trip to the U.S. customhouse or station to view an official bulletin notice or received and relied on more than one paper notice, the number of importers affected by this rule would be lower. Nonetheless, because the majority of importers are small businesses, CBP believes this rule would affect a substantial number of small entities.

Impacts of Rule on Small Entities

This rule's transition to fully electronic notices would require the estimated 29,100 importers who currently rely on official bulletin notices physically posted at U.S. customhouses and stations and those who rely on paper notices of liquidation, reliquidation, extension, and suspension to visit the CBP Web site to determine entry liquidations, reliquidations, extensions, and suspensions.[9] To view this rule's official

[5] For entries filed before December 18, 2004, the time limit is within 90 days after liquidation, but for entries filed on or after that date, it is now 180 days (*see* CFR part 174; *see* 19 U.S.C. 1514(c)(3) as amended by section 2103(2)(B), Pub. L. 108–429).

[6] *See* 19 CFR 159.12.

[7] Based on the 2,500 Applications for Further Review (AFRs) filed with protests in 2015. Importers or their attorneys who file AFRs depend on the exact dates of liquidation or reliquidation to file a timely protest, and thus likely travel to a U.S. customhouse or station to physically view official bulletin notices with the official dates of liquidation and reliquidation. Using the 2015 AFR filings as a proxy for trips taken to view official bulletin notices, CBP estimates that importers or their attorneys took 2,500 trips to U.S. customhouses or stations each year for the single purpose of viewing official bulletin notices. Sources: 19 CFR 174.12(e) and email correspondence with CBP's Office of Trade on July 15, 2016.

[8] Based on data received through email correspondence with CBP's Office of Trade on May 26, 2016; June 22–24, 2016; August 29, 2016; and September 21, 2016.

[9] Importers could set up an Automated Commercial Environment (ACE) account to receive electronic courtesy notices of liquidation, reliquidation, extension, and suspension, but the time cost to do so is likely longer than the time it takes to view official notices on the CBP Web site. As such, CBP assumes that importers who receive and rely on paper notices of liquidation, reliquidation, extension, and suspension now would visit the CBP Web site for official notice rather than set up an ACE account to receive

bulletin notices on the CBP Web site, CBP assumes that these importers would spend an added 4 minutes (0.0667 hours) [10] navigating the CBP Web site to find a liquidation, reliquidation, extension, or suspension notice, at a time cost of $2.01 based on the assumed hourly wage rate for importers.[11] Most affected importers would presumably visit the CBP Web site once per year to view an entry's official notice of liquidation, reliquidation, extension, or suspension, for a total cost of $2.01 per year.[12] However, some affected importers, such as those who receive extension and suspension notices that are in effect for an unknown amount of time, could visit the CBP Web site more than once per year for an entry, incurring the access cost of $2.01 each time they visit the CBP Web site. Even if an importer accesses the CBP Web site twice a month for an entry, or 24 times per year, he/she would incur only a $48.24 cost to do so. The average value per entry was $69,300 in FY 2015.[13] The range of annual importer costs for this rule ($2.01 to $48.24) amounts to between 0.003 percent and 0.07 percent of this average entry value. Likewise, if an importer processes multiple entries per year, his/her total costs from this rule would be higher but the value of their entries would also be higher, meaning that the average cost to the importer would be between 0.003 percent and 0.07 percent of the entry value regardless of the number of entries the importer files per year. CBP does not consider this to be a significant economic impact.

Along with the minor Web site access cost imposed by this rule, this rule would provide benefits to importers who currently rely on official bulletin notices physically posted at U.S. customhouses and stations. This rule's electronic publication of official bulletin notices of liquidation and reliquidation would allow these importers to avoid visiting U.S. customhouses and stations for formal entry liquidation and reliquidation information, which typically occur 2,500 times a year. For each trip to a U.S. customhouse or station avoided, importers would save an estimated 45 minutes (0.75 hours), which would result in a time cost saving of $22.57 using the average hourly wage for importers of $30.09.[14] Importers would also save $16.20 in travel costs per trip based on the estimated distance members sustain from traveling to and from a U.S. customhouse or station—30 miles—and the IRS's $0.54 standard mileage rate for business purposes.[15] To the extent that some trips are taken for multiple purposes, not just for viewing an official bulletin notice of liquidation or reliquidation, fewer costs would be avoided and the benefits of this rule per trip would be lower.

The electronic bulletin notices introduced with this rule would also provide benefits of eased access, relatively quicker notification, and extended viewing to importers. In particular, this electronic transition would allow importers to easily view and query a complete, consolidated list of U.S. entry liquidations, reliquidations, extensions, and suspensions, thus facilitating the process by which these individuals obtain such entry information. For importers who typically rely on paper courtesy notices for liquidation and reliquidation information, which they receive by mail after the official notice's posting, this electronic posting would provide the added benefit of more timely notice and additional protest time. Importers who receive and rely on paper courtesy notices would also benefit from this rule's consolidated electronic notice posting. This change would allow importers and their agents to view liquidation, reliquidation, extension, and suspension notices

electronic courtesy notices once this rule is effective.

[10] The 4-minute added time burden represents the incremental change in the time burden over the current paper notification process. Source: Email correspondence with CBP's Office of Trade on April 26, 2016.

[11] The time cost estimate is equal to the assumed hourly wage for importers ($30.09) multiplied by the hourly time burden for a trade member to navigate the CBP Web site to find a liquidation, reliquidation, extension, or suspension notice (0.0667 hours), and then rounded. CBP bases the $30.09 hourly wage rate for importers on the Bureau of Labor Statistics' (BLS) 2015 median hourly wage rate for Cargo and Freight Agents ($20.13), which CBP assumes best represents the wage for importers, by the ratio of BLS' average 2015 total compensation to wages and salaries for Office and Administrative Support occupations (1.4799), the assumed occupational group for importers, to account for non-salary employee benefits. CBP then adjusted this figure, which was in 2015 U.S. dollars, to 2016 U.S. dollars by applying a 1.0 percent annual growth rate to the figure, as recommended by the U.S. Department of Transportation's value of travel time guidance.

Source of median wage rate: U.S. Bureau of Labor Statistics. Occupational Employment Statistics, ''May 2015 National Occupational Employment and Wage Estimates, United States- Median Hourly Wage by Occupation Code: 43–5011.'' Updated March 30, 2016. Available at *http://www.bls.gov/oes/2015/may/oes435011.htm.* Accessed June 1, 2016.

The total compensation to wages and salaries ratio is equal to the calculated average of the 2015 quarterly estimates (shown under Mar., June, Sep., Dec.) of the total compensation cost per hour worked for Office and Administrative Support occupations ($24.9475) divided by the calculated average of the 2015 quarterly estimates (shown under Mar., June, Sep., Dec.) of wages and salaries cost per hour worked for the same occupation category ($16.8575). Source of total compensation to wages and salaries ratio data: U.S. Bureau of Labor Statistics. Employer Costs for Employee Compensation. *Employer Costs for Employee Compensation Historical Listing March 2004—March 2016,* ''Table 3. Civilian workers, by occupational group: employer costs per hours worked for employee compensation and costs as a percentage of total compensation, 2004–2016 by Respondent Type: Office and administrative support occupations.'' June 9, 2016. Available at *http://www.bls.gov/ncs/ect/sp/ececqrtn.pdf.* Accessed June 14, 2016.

Source of suggested growth rate: U.S. Department of Transportation, Office of Transportation Policy. *The Value of Travel Time Savings: Departmental Guidance for Conducting Economic Evaluations Revision 2 (2015 Update),* ''Table 4 (Revision 2-corrected): Recommended Hourly Values of Travel Time Savings.'' April 29, 2015. *http://www.transportation.gov/sites/dot.gov/files/docs/Revised%20Departmental%20Guidance%20on%20Valuation%20of%20Travel%20Time%20in%20Economic%20Analysis.pdf.* Accessed June 1, 2016.

[12] Importers would likely access the CBP Web site once a year to determine whether CBP has officially liquidated, reliquidated, extended, or suspended their entry. If CBP liquidates or reliquidates an entry, which would be the case for the importers who currently take 2,500 trips to U.S. customhouses or stations to view official bulletin notices and who receive 23,500 paper courtesy notices of liquidation and reliquidation annually, the importer would likely not have to access the CBP Web site again after the initial Web site visit to determine the entry's liquidation status. However, in a small number of cases, an importer may have to access the Web site more than once per year, over the course of more than one year to determine his/her entry's reliquidation status. If CBP extends or suspends an entry, which would be the case for the importers who receive 3,100 paper notices of extension and suspension annually, the importer may have to access the CBP Web site more than once per year, over the course of more than one year to determine the status of his/her entry's extension or suspension. However, considering the typical timeframes of extensions and suspensions, importers are most likely to access the CBP Web site only once per year for information on their entry's extension or suspension. Moreover, importers would likely receive information from CBP indicating whether CBP has reliquidated their entry or their extension or suspension has ended.

[13] Based on fiscal year 2015 U.S. entry and import value data. Source of entry data: U.S. Customs and Border Protection. *Summary of Performance and Financial Information Fiscal Year 2015.* May 2016. Available at *https://www.cbp.gov/sites/default/files/assets/documents/2016-May/summary-performance-financial-info-2015.pdf.* Accessed September 22, 2016. Source of import value data: U.S. Census Bureau. *FT920: U.S. Merchandise Trade Selected Highlights—October 2014 through September 2015 Releases,* ''Exhibit 3: U.S. Imports—U.S. Customs District of Entry—Total General Customs Value by Month.'' December 5, 2014-November 4, 2015. Available at *https://www.census.gov/foreign-trade/Press-Release/ft920_index.html.* Accessed September 22, 2016.

[14] The time cost estimate is equal to the assumed hourly wage for importers ($30.09) multiplied by the estimated hourly time burden for a trade member to travel to and from a U.S. customhouse or station (0.75 hours), and then rounded.

[15] Source of miles traveled: Based on estimates from CBP's Office of Trade on May 2, 2016. Source of mileage rate: Internal Revenue Service. *2016 Standard Mileage Rates for Business, Medical and Moving Announced.* IR–2015–137, December 17, 2015. Available at *https://www.irs.gov/uac/Newsroom/2016-Standard-Mileage-Rates-for-Business-Medical-and-Moving-Announced.* Accessed April 19, 2016.

simultaneously instead of individually as they currently do through paper notices. Furthermore, importers would have almost 14 more months to view official liquidation, reliquidation, extension, and suspension notices before having to request access to the notices through CBP.

Conclusion

Although CBP believes that this rule would affect a substantial number of small entities, specifically importers, CBP does not believe that the (negative) economic impact of this rule on small entities would be significant. Accordingly, CBP certifies that this regulation would not have a significant economic impact on a substantial number of small entities. CBP welcomes any comments on this conclusion.

C. Paperwork Reduction Act

As there is no collection of information proposed in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 159

Antidumping, Countervailing duties, Customs duties and inspection, Foreign currencies.

19 CFR Part 173

Administrative practice and procedure, Customs duties and inspection.

Proposed Amendments to the CBP Regulations

For the reasons given above, parts 159 and 173 of title 19 of the Code of Federal Regulations (19 CFR parts 159 and 173) are proposed to be amended as set forth below:

PART 159—LIQUIDATION OF DUTIES

■ 1. The general authority citations for part 159 continues to read as follows:

Authority: 19 U.S.C. 66, 1500, 1504, 1624.

* * * * *

■ 2. Section 159.9 is revised to read as follows:

§ 159.9 Notice of liquidation and date of liquidation for formal entries.

(a) *Notice of liquidation.* Notice of liquidation of formal entries will be provided on CBP's public Web site, *www.cbp.gov.*

(b) *Posting of notice.* The notice of liquidation will be posted for the information of importers in a conspicuous place on *www.cbp.gov* in such a manner that it can readily be located and consulted by all interested persons.

(c) *Date of liquidation*—(1) *Generally.* The notice of liquidation will be dated with the date it is posted electronically on *www.cbp.gov* for the information of importers. This electronic posting will be deemed the legal evidence of liquidation.

(2) *Exception: Entries liquidated by operation of law.* (i) Entries liquidated by operation of law at the expiration of the time limitations prescribed in section 504, Tariff Act of 1930, as amended (19 U.S.C. 1504), and set out in §§ 159.11 and 159.12, will be deemed liquidated as of the date of expiration of the appropriate statutory period and will be posted on *www.cbp.gov* within a reasonable period after each liquidation by operation of law and will be dated with the date of liquidation by operation of law.

(ii) For liquidation notices posted or lodged in the customhouse, pursuant to section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) and part 174 of this chapter, a protest of a decision relating to an entry made before December 18, 2004, must be filed within 90 days from the date of liquidation of an entry by operation of law or within 90 days from the date the bulletin notice thereof is posted or lodged in the customhouse, or, in the case of a protest of a decision relating to an entry made on or after December 18, 2004, within 180 days from the date of liquidation of an entry by operation of law.

(iii) For liquidation notices posted on *www.cbp.gov,* pursuant to section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) and part 174 of this chapter, a protest of a decision relating to an entry made before December 18, 2004, must be filed within 90 days from the date of liquidation of an entry by operation of law or within 90 days from the date notice thereof is posted on *www.cbp.gov,* or, in the case of a protest of a decision relating to an entry made on or after December 18, 2004, within 180 days from the date of liquidation of an entry by operation of law.

(d) *Courtesy notice of liquidation.* CBP will endeavor to provide importers or their agents with a courtesy notice of liquidation for all electronically filed entries liquidated by CBP or deemed liquidated by operation of law. The courtesy notice of liquidation that CBP will endeavor to provide will be electronically transmitted pursuant to a CBP authorized electronic data interchange system if the entry was filed electronically in accordance with part 143 of this chapter. This notice will serve as an informal, courtesy notice and not as a direct, formal, and decisive notice of liquidation.

§ 159.10 [amended]

■ 3. Section 159.10 is amended as follows:

■ a. By removing the words ''posting or lodging of'' from the last sentence in paragraph (b);

■ b. By removing the words ''on CBP Form 4333 posted or lodged'' from the last sentence of paragraph (c)(1); and

■ c. By removing the words ''on a bulletin notice of liquidation, CBP Form 4333,'' from the last sentence of paragraph (c)(3).

■ 4. Paragraph (a) of § 159.11 is revised to read as follows:

§ 159.11 Entries liquidated by operation of law.

(a) *Time limit generally.* Except as provided in § 159.12, an entry not liquidated within one year from the date of entry of the merchandise, or the date of final withdrawal of all merchandise covered by a warehouse entry, will be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duties asserted by the importer of record. Notice of liquidation will be given electronically as provided in §§ 159.9 and 159.10(c)(3). CBP will endeavor to provide a courtesy notice of liquidation in accordance with § 159.9(d).

* * * * *

■ 5. In § 159.12, remove paragraph (g) and revise paragraphs (b), (c), (d)(2), and (f) to read as follows:

§ 159.12 Extension of time for liquidation.

* * * * *

(b) *Notice of extension.* If the port director extends the time for liquidation, as provided in paragraph (a)(1) of this section, the official notice of extension and reasons therefor will be posted on *www.cbp.gov.* The port director will also endeavor to transmit a courtesy notice of extension to the entry filer and surety through a CBP-authorized electronic data interchange system.

(c) *Notice of suspension.* If the liquidation of an entry is suspended as required by statute or court order, as provided in paragraph (a)(2) of this section, the official notice of suspension

will be posted on *www.cbp.gov.* The port director will also endeavor to transmit a courtesy notice of suspension to the entry filer and surety through a CBP-authorized electronic data interchange system.

(d) * * *

(1) * * *

(2) *At importer's request.* If the statutory period has been extended for one year at the importer's request, and the importer thereafter determines that additional time is necessary, it may request another extension in writing before the original extension expires, giving reasons for its request. If the port director finds that good cause (as defined in paragraph (a)(1)(ii) of this section) exists, the official notice of extension extending the time for liquidation for an additional period not to exceed one year will be posted on *www.cbp.gov,* and CBP will endeavor to transmit a courtesy notice of the extension through a CBP-authorized electronic data interchange system.

* * * * *

(f) *Time limitation.* An entry not liquidated within four years from either the date of entry, or the date of final withdrawal of all the merchandise covered by a warehouse entry, will be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duty asserted by the importer of record, unless liquidation continues to be suspended by statute or court order. CBP will endeavor to provide a courtesy notice of liquidation, in accordance with § 159.9(d), in addition to the notice specified in § 159.9(c)(2)(ii).

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

■ 6. The general authority citations for part 173 continues to read as follows:

Authority: 19 U.S.C. 66, 1501, 1520, 1624.

■ 7. Revise § 173.4a to read as follows:

§ 173.4a Refund of excess duties, fees, charges, or exaction paid prior to liquidation.

Pursuant to section 520(a)(4), Tariff Act of 1930, as amended (19 U.S.C. 1520(a)(4)), whenever an importer of record declares or it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid, the port director may, prior to liquidation of an entry or reconciliation, take appropriate action to refund the deposit or payment of excess duties, fees, charges, or exactions.

R. Gil Kerlikowske,

Commissioner, U.S. Customs and Border Protection.

Approved: October 11, 2016.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2016–24858 Filed 10–13–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–126452–15]

RIN 1545–BN06

Certain Transfers of Property to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of a public hearing on notice of proposed rulemaking.

SUMMARY: This document provides a notice of a public hearing on proposed IRS regulations that are affecting the repeal of the *General Utilities* doctrine by the Tax Reform Act of 1986.

DATES: The public hearing is being held on Wednesday, November 9, 2016, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Wednesday, October 26, 2016.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Send Submissions to CC:PA:LPD:PR (REG–126452–15), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–126452–15), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–126452–15).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Austin M. Diamond-Jones (202) 317–5363; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–126452–15) that was published in the **Federal Register** on Wednesday, June 8, 2016 (81 FR 36816).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submit written comments by October 26, 2016, must submit an outline of the topics to be addressed and the amount of time to be devoted to each topic by Wednesday, October 26, 2016.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or by contacting the Publications and Regulations Branch at (202) 317–6901 (not a toll-free number).

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2016–24901 Filed 10–13–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–150992–13]

RIN 1545–BM03

Election To Take Disaster Loss Deduction for Preceding Year

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Proposed Rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal**

Register, the IRS is issuing temporary regulations under section 165(i) of the Internal Revenue Code (Code) relating to the election to take a disaster loss in the preceding year. The text of those temporary regulations also serves as the text of these proposed regulations. This document also invites comments from the public regarding these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by January 12, 2017.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–150992–13), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–150992–13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–150992–13).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Daniel Cassano at (202) 317–7011; concerning comments or a request for a public hearing, Oluwafunmilayo Taylor (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Final and temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 165(i) of the Code. The temporary regulations extend the due date by which a taxpayer may elect to treat an allowable loss occurring in a disaster area and attributable to a Federally declared disaster as sustained in the taxable year immediately prior to the taxable year in which the disaster occurred, as provided in section 165(i). The temporary regulations provide rules governing the time and manner of making a section 165(i) election, as well as the time and manner of revoking a section 165(i) election. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Department of the Treasury and the IRS request comments concerning the extension of the due date by which a taxpayer may make a section 165(i) election, as well as the time and manner in which a taxpayer may revoke a section 165(i) election. All comments will be available for public inspection and copying.

A public hearing will be scheduled if requested in writing by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Daniel Cassano and Christopher Wrobel of the Office of the Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the Department of the Treasury and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the Internal Revenue Service proposes to amend 26 CFR part 1 as follows:

PART 1— INCOME TAXES

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

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

■ 2. Section 1.165–11 is amended by:

■ a. Removing and reserving paragraphs (a) through (e) and

■ b. Adding reserved paragraphs (f) through (i).

The revisions and additions read as follows:

§ 1.165–11 Election in respect of losses attributable to a disaster.

(a) through (i) [Reserved]. [The text of proposed § 1.165–11(a) through (i) is the same as the text of § 1.165–11T(a) through (i) published elsewhere in this issue of the **Federal Register**].

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2016–24674 Filed 10–13–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 2

[NPS–WASO–21549; GPO Deposit Account 4311H2]

RIN 1024–AE32

General Regulations; Areas of the National Park System, Sale and Distribution of Printed Matter and Other Message Bearing Items

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to revise its general rule governing the sale and distribution of printed matter to include the free distribution of message-bearing items that do not meet the NPS regulatory definition of ''printed matter.'' This change would give visitors an alternative channel of communication while protecting the resources and values of the National Park System.

DATES: Comments must be received by December 13, 2016.

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number (RIN) 1024–AE32, by any of the following methods:

• *Electronically:* Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments after searching for ''RIN 1024–AE32''.

• *Hard copy:* Mail or hand-deliver to: Lee Dickinson, Special Park Uses National Manager, 1849 C St. NW., MS 2355, Washington, DC 20240.

Instructions: It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. All comments received must include the agency name and RIN for this rulemaking. Comments

received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Comments will not be accepted by fax, email, or in any way other than those specified above, and bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be considered. Organizations should direct their members to submit comments individually using one of the methods described above.

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. Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Please make your comments as specific as possible and explain the basis for them.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lee Dickinson, Special Park Use Program Manager, at (202) 513–7092 or *lee_dickinson@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

National Park System

Currently consisting of over 400 units in 50 states, the District of Columbia and multiple territories, the National Park System covers more than 84 million acres. These units are located in a wide range of environments as diverse as the United States itself. The size of these units also varies tremendously, ranging from Wrangell-St. Elias National Park and National Preserve, Alaska, at 13.2 million acres, to Thaddeus Kosciuszko National Memorial, Pennsylvania, at 0.02 acres.

About one-third of the units—such as Great Smoky Mountains National Park, Tennessee; Grand Canyon National Park, Arizona; Everglades National Park, Florida; and Hawaii Volcanoes National Parks, Hawaii—preserve nature's many and varied gifts to the nation. The other two-thirds of the units recognize benchmarks of human history in America. These units protect elements of great native cultures, far older than European exploration and settlement; present battle sites from the Revolutionary and Civil Wars—including the key surrender fields of both great conflicts; embrace Thomas Edison's New Jersey laboratories where he and his staff led a technological revolution more dramatic even than the coming of the computer age; and more. These historical park units reflect the development of both art and industry in America, along with landmarks of social and political change.

As a broader understanding of history took hold, the National Park System eventually grew to include the historic homes of civil rights, political, and corporate leaders, and the lands of the poor, struggling to build lives for themselves on a Nebraska homestead claim or in an urban community. It now embraces the birthplace, church, and grave of Dr. Martin Luther King at Martin Luther King, Jr. National Historical Site, Georgia; the birth of jazz at New Orleans Jazz National Historical Park, Louisiana; the flowering of a literary giant at the Eugene O'Neill National Historical Site, California; and the artistic grace of a great sculptor's studios at Saint-Gaudens National Historical Site, New Hampshire. Because of the lessons they help us remember, the National Park System also includes the Japanese American World War II internment camp in the desert at Manzanar National Historical Site, California, as well as Andersonville National Historical Site, Georgia, one of the very bleakest of the Civil War prison sites.

The National Park System is habitat for 247 threatened or endangered species, has more than 167 million items in museum collections, has 75,000 archaeological sites, and 27,000 historic and prehistoric structures. The National Park System also has an extensive physical infrastructure, which includes thousands of buildings, tens of thousands of miles of trails and roads, and almost 30,000 housing units, campgrounds, and picnic areas as well as 3,000 water and waste water treatment systems.

Over 307 million visitors visited the National Park System in 2015, where visitors find not only visual, educational, and recreational experiences but also inspirational, contemplative, and spiritual experiences. For Native Americans, certain national parks are also considered sacred religious sites, where the National Park Service (NPS) asks visitors to respect these long-held beliefs, such as by voluntarily not walking under a natural bridge.

Proposed Rule

First Amendment activities in units of the national park system are governed by longstanding but ever-evolving First Amendment jurisprudence; by the statutes and regulations governing the national park system as a whole; and by park-specific statutes and regulations.

Title 36 CFR 2.52 currently allows the sale or distribution only of printed matter and only in areas of a park designated by the superintendent. The regulation defines ''printed matter'' as ''message-bearing textual printed material such as books, pamphlets, magazines, and leaflets, provided that it is not solely commercial advertising.''

The NPS recognizes, however, that items other than ''printed matter'' may also contain or present speech, either literal or symbolic, that is not solely commercial and whose expression may be protected by the First Amendment. Accordingly, the NPS now proposes to allow the free distribution of message-bearing items other than printed matter in areas of a park designated by the superintendent, subject to compliance with the regulations at 36 CFR 2.51, 2.52, and 5.3. These items include readable electronic media like CDs, DVDs, and flash drives; articles of clothing like hats and accessories like buttons and pins; key chains; and bumper stickers.[1]

Under the proposed rule, message-bearing items other than printed matter may not be sold within a park unit; they may only be distributed free of charge. This restriction is necessary to prevent the proliferation of unregulated commercial activity that would be inconsistent with park resources and values, that would impinge upon and degrade park scenery, and that would disrupt the atmosphere of peace and tranquility that is an important part of the visitor experience in many park units.

The proposed revision to § 2.52 to allow the free distribution of other message-bearing items, is consistent with the NPS's National Capital Region (NCR) regulation, 36 CFR 7.96(k), that allows the free distribution of other message-bearing items. As discussed in the preambles to the proposed and final rules for the NCR regulation, 59 FR 25855 (1994) and 60 FR 17639 (1995), the NPS promulgated § 7.96 to resolve

[1] This proposed rule therefore enshrines in regulation NPS Policy Memorandum 14–01, (January 28, 2014), which requires superintendents to allow the free distribution of message-bearing items to the public other than printed matter, so long as the activity occurs within an area designated as available for First Amendment activities under 36 CFR 2.51(c)(l) and otherwise complies with 36 CFR 2.52.

serious issues created by unregulated sales of merchandise on NPS-administered lands that resulted in conflicting and excessive commercialism; degraded aesthetic values; had negative impacts on visitor circulation and contemplation and historic scenes; and inhibited the conservation of park property. In upholding the constitutionality of the NCR regulation limiting the sales of such items, the U.S. Court of Appeals for the District of Columbia Circuit found that the regulation was ''content neutral'' and ''narrowly tailored to serve significant government interests'' and offered ''ample alternative channels of communication'' insofar as ''members may display and give the audio tapes and [religious] beads to members of the public so long as they do not try to exact a payment or request a donation in exchange for them.'' *ISKCON of Potomac* v. *Kennedy,* 61 F.3d 949, 952, 958 (D.C. Cir. 1995).

Compliance With Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule expands opportunities for individuals and organizations to engage in small-group demonstrations and the sale or distribution of printed matter for which no permit need be issued. Other organizations with interest in the rule will not be effected economically.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This proposed rule only affects use of federally-administered lands and waters. It has no outside effects on other areas. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes.

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB has approved the information collection requirements associated with NPS Special Park Use Permits and has assigned OMB Control Number 1024–0026 (expires 10/31/16). An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. We have determined that the rule is categorically excluded under 516 DM 12.5(A)(10) as it is a modification of existing NPS regulations that does not increase public use to the extent of compromising the nature and character of the area or causing physical damage to it. Further, the rule will not result in the introduction of incompatible uses which might compromise the nature and characteristics of the area or cause physical damage to it. Finally, the rule will not conflict with adjacent ownerships or lands uses, or cause a nuisance to adjacent owners or occupants.

We have also determined that the rule does not involve any of the

extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of This Rule

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects in 36 CFR Part 2

Environmental protection, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 2 as set forth below:

PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION

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

Authority: 54 U.S.C. 100101, 100751, 320102.

■ 2. Amend § 2.52 as follows:

■ a. Revise the section heading.

■ b. Revise the paragraph (a) subject heading.

■ c. Add two sentences at the end of paragraph (a).

■ d. Revise paragraph (b) introductory text.

The revisions and additions to read as follows:

§ 2.52 Sale of printed matter and the distribution of printed matter and other message-bearing items.

(a) *Printed Matter and Other Message Bearing Items.* * * * The term ''other message-bearing items'' means a message-bearing item that is not ''printed matter,'' that is distributed free of charge and without asking for payment or a donation, and is not solely commercial advertising. Other message-bearing items include, but are not limited to: Readable electronic media such as CDs, DVDs, and flash drives; clothing and accessories such as hats and key chains; buttons; pins; and bumper stickers.

(b) *Permits and the small group permit exception.* The sale or distribution of printed matter, and the free distribution of other message-bearing items, is allowed within park areas if it occurs in an area designated as available under § 2.51(c)(2) and when the superintendent has issued a permit for the activity, except that:

* * * * *

Dated: October 4, 2016.

Michael Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–24641 Filed 10–13–16; 8:45 am]

BILLING CODE 4312–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0824; FRL–9952–75]

RIN 2070–ZA16

Tebufenozide; Proposed Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish tolerances for residues of tebufenozide in or on multiple commodities which are identified and discussed later in this document and amend the existing tolerance for almond, hulls under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: Comments must be received on or before December 13, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0824, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked

will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. This Proposal

EPA on its own initiative, under FFDCA section 408(e), 21 U.S.C. 346a(e), is proposing to establish tolerances for residues of the insect growth regulator tebufenozide, in or on bushberry subgroup 13–07B at 3.0 part per million (ppm); caneberry subgroup 13–07A at 3.0 ppm; fruit, citrus, group 10–10 at 2.0 ppm; fruit, pome group 11–10 at 1.0 ppm; nut, tree, group 14–12 at 0.1 ppm; sugarcane, cane at 1.0 ppm; sugarcane, molasses at 3.0 ppm; vegetable, fruiting, group 8–10 at 1.0 ppm. The Agency is also proposing to amend the existing tolerance for almond, hulls to raise the tolerance from 25 ppm to 30 ppm. Further, upon the establishment of these tolerances, the Agency is proposing to delete the existing tolerances for apple; berry, group 13; fruit, citrus, group 10; fruit, pome; nut, tree, group 14; pistachio; vegetable, fruiting, group 8; and walnut since they will be superseded by the newly established tolerances.

The EPA is proposing to establish tolerances on sugarcane, cane; and sugarcane, molasses since permanent tolerances established in a September 22, 1999 Final Rule in the **Federal Register** (64 FR 51251) were later inadvertently removed from 40 CFR 180.482. *See* 67 FR 35045 (May 17, 2002). Additionally, EPA is proposing to convert several existing crop group tolerances to updated crop group tolerances consistent with its policy as stated in its most recent crop group rulemaking. *See* 81 FR 26471, 26474 (May 3, 2016). EPA has stated that it will convert tolerances for any pre-existing crop group to tolerances with coverage under the revised crop group through the registration review process and in the course of evaluating new uses for a pesticide. *Id.* As part of the registration review for tebufenozide, EPA considered the pesticide exposures to commodities included in the updated crop groups and determined that they are safe. Finally, in order to harmonize with Codex, the following tolerance levels are proposed to be amended: fruit, citrus, group 10–10 will be increased from 0.80 to 2.0 ppm; fruit, pome, group 11–10 will be lowered from 1.5 to 1.0 ppm; and almond, hulls will be increased from 25 to 30 ppm.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with FFDCA section 408(b)(2), for tolerances for residues of tebufenozide. EPA's assessment of exposures and risks associated with establishing the tolerance follows:

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The toxic effects of tebufenozide in mammalian species arise primarily from methemoglobinemia associated with denaturation of hemoglobin and concomitant Heinz body formation in erythrocytes, resulting in a rapid turnover of red blood cells with increased hematopoiesis, splenic discoloration, and other spleen effects. This type of toxicity is often typical of compounds with a hydrazine moiety, and is consistent with the structure of tebufenozide. The hematologic effects have been observed in all mammalian species tested to date (rat, mouse, dog, and rabbit), with no indication of any significant differences between sexes. There is no evidence that tebufenozide is neurotoxic, or that it causes reproductive or developmental toxicity. There is no indication of increased susceptibility of fetuses or pups (effects occur above maternally toxic doses). There was no toxicity noted in a 21-day dermal toxicity study and no immunotoxicity was observed in immunotoxicity studies in both rats and mice. Tebufenozide is classified as ''not likely to be carcinogenic to humans'' based on lack of evidence of carcinogenicity in rats and mice and no evidence of mutagenicity.

Specific information on the studies received and the nature of the adverse effects caused by tebufenozide as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document ''Tebufenozide: Draft Human Health Risk Assessment for Registration Review'' on pages 18–24 in docket ID number EPA–HQ–OPP–2008–0824–0024.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicology study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.*

A summary of the toxicological endpoints for tebufenozide used for

human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR TEBUFENOZIDE FOR USE IN HUMAN RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations)	No appropriate endpoint attributable to a single dose was identified in the toxicity database.		
Chronic dietary (All populations)	NOAEL = 2.0 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.02 mg/kg/day cPAD = 0.02 mg/kg/day	90-day and 1-year dog studies (Cocritical) LOAEL = 8.7 mg/kg/day based on decreases in body weight gains, alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen, and liver.
Incidental oral short-term (1 to 30 days).	NOAEL = 2.0 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Residential LOC for MOE = 100.	90-day and 1-year dog studies (Cocritical) LOAEL = 8.7 mg/kg/day based on decreases in body weight gains, alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen, and liver.
Dermal (All durations)	No dermal endpoint was selected based on a lack of systemic toxicity in the dermal study and no concern for susceptibility.		
Inhalation (All durations)	Inhalation (or oral) study NOAEL= 2.0 mg/kg/day (inhalation toxicity assumed to be equivalent to oral toxicity 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	Occupational LOC for MOE = 100.	90-day and 1-year dog studies (Cocritical) LOAEL = 8.7 mg/kg/day based on decreases in body weight gains, alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen, and liver.
Cancer (Oral, dermal, inhalation).	Classification: This chemical is classified as ''not likely'' to be a human carcinogen. A cancer risk assessment is not required.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to tebufenozide, EPA considered exposure under the proposed tolerances as well as all existing tebufenozide tolerances in 40 CFR 180.482. EPA assessed dietary exposures from tebufenozide in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for tebufenozide; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16. This software uses 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA incorporated tolerance-level residues, average percent crop treated (PCT) estimates for some commodities, and DEEM 7.81 default processing factors as appropriate.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that tebufenozide is classified as ''Not Likely to be Carcinogenic to Humans.'' Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue information in the dietary assessment for tebufenozide; tolerance level residues were assumed for all food commodities.

The Agency did use some PCT information for the dietary assessment.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows: blueberries: 10%; cabbage, caneberries, cauliflower, celery, lettuce, parsley, pecans, peppers, tomatoes and walnuts: each at 5%; almonds, broccoli, pistachios, spinach, and turnip roots: each at 2.5%; apples, citrus, cotton, grapes and pears: each at 1%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6 to 7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which tebufenozide may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for tebufenozide in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of tebufenozide. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

The residues of concern in drinking water was recently updated to include parent and metabolite RH–112651 for ground water and parent plus 3 metabolites, RH–112651, RH–112703, and RH–96595 for surface water. The Total Toxic Residues (TTR) approach was used, assuming presence of parent tebufenozide plus all three of its major metabolites, RH–112651, RH–112703, and RH–9659 in both ground and surface water in its assessment of tebufenozide residues in drinking water. Based on the Surface Water Concentration Calculator (SWCC) with the Provisional Cranberry Model and Pesticide Root Zone Model for Groundwater (PRZM–GW) model, the estimated drinking water concentrations (EDWCs) of tebufenozide for chronic exposures are estimated to be 105.8 parts per billion (ppb) for surface water and 107.2 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 107 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Tebufenozide is currently registered for the following uses that could result in residential exposures: Ornamentals in outdoor residential areas. EPA assessed residential exposure using the following assumptions: For adult handlers, it is assumed that residential use will result in short-term (1 to 30 days) duration for dermal and inhalation exposures. However, since a dermal hazard was not identified, only the residential inhalation exposure from applications to garden/trees via backpack sprayer was assessed. Although an incidental oral endpoint was identified, incidental oral exposure is not expected based on the on application to ornamentals in outdoor residential areas.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA's Office of Pesticide Programs (OPP) has previously developed guidance documents for establishing common mechanism groups (CMGs) (Guidance for Identifying Pesticide Chemicals and Other Substances that have a Common Mechanism of Toxicity (1999)) and conducting cumulative risk assessments (CRAs) (Guidance on Cumulative Risk Assessment of Pesticide Chemicals that have a Common Mechanism of Toxicity (2002)). In 2016, EPA's Office of Pesticide Programs released another guidance document entitled Pesticide Cumulative Risk Assessment: Framework for Screening Analysis. All three of these documents can be found at *http://www.regulations.gov* in docket ID EPA–HQ–OPP–2015–0422.

The agency has utilized this framework for tebufenozide and determined that halofenozide, tebufenozide, and methoxyfenozide (diacylhydrazines) form a candidate CMG. This group of pesticides is

considered a candidate CMG because they share characteristics to support a testable hypothesis for a common mechanism of action. Following this determination, the Agency conducted a screening-level cumulative risk assessment consistent with the 2016 guidance document. This screening assessment indicates that that cumulative dietary and residential aggregate exposures for the diacylhydrazine candidate CMG, including tebufenozide, are below EPA's levels of concern. The Agency's screening level cumulative analysis can be found at *http://www.regulations.gov* in the document ''Diacylhydrazines Cumulative Screening Risk Assessment: Methoxyfenozide and Tebufenozide'' in docket ID number EPA–HQ–OPP–2008–0824.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The toxicology data for tebufenozide provides no indication of enhanced sensitivity of infants and children based on the results from developmental studies conducted with rats and rabbits as well as two-generation reproduction studies conducted with rats.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for tebufenozide is complete.

ii. There is no indication that tebufenozide is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that tebufenozide results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary exposure assessment used tolerance-level residues and was only partially refined by use of PCT information. EPA does not expect post-application exposures for infants and children. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to tebufenozide in drinking water, which includes the use of the TTR approach. These assessments will not underestimate the exposure and risks posed by tebufenozide.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, tebufenozide is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to tebufenozide from food and water will utilize 37% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of tebufenozide is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Tebufenozide is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to tebufenozide. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOE of 550 for adults. Because EPA's level of concern for tebufenozide is a MOE of 100 or below, this MOE is not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

An intermediate-term adverse effect was identified; however, tebufenozide is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for tebufenozide.

5. *Aggregate cancer risk for US population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, tebufenozide is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to tebufenozide residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography using ultraviolet detection (HPLC–UV)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize US tolerances with international standards whenever possible, consistent with US food safety standards and agricultural practices. EPA considers the international

maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established MRLs for tebufenozide in or on sugarcane; fruit, citrus, group 10–10; fruit, pome, group 11–10; and almond, hulls. The proposed US tolerances would be harmonized with the Codex MRLs.

C. International Trade Considerations

In this proposed rule, EPA is proposing to reduce the tolerance in or on fruit, pome, group 11–10 from 1.5 to 1.0 ppm. The Agency is proposing this reduction in order to harmonize with the Codex MRL. The reduction is appropriate based on available data and residue levels resulting from registered use patterns.

In accordance with the World Trade Organization's (WTO) Sanitary and Phytosanitary Measures (SPS) Agreement, EPA will notify the WTO of its intent to revise this tolerance. In addition, the SPS Agreement requires that Members provide a ''reasonable interval'' between the publication of a regulation subject to the Agreement and its entry into force in order to allow time for producers in exporting Member countries to adapt to the new requirement. Although the WTO has determined that six months would be a reasonable interval, it has also recognized that some circumstances may warrant implementation of a regulation without the de facto six month implementation delay, *e.g.,* where exporting countries can adapt to the new requirements within a shorter interval. (Ref. 1 at 100).

EPA is proposing not to provide a reasonable interval between the publication of this rule and the date it becomes effective because it believes that exporting countries do not need time to adjust to the new requirement. With very few exceptions, all of the global maximum residue levels for tebufenozide on pome fruits are already at or below EPA's proposed level of 1.0 ppm. Although Mexico allows 1.5 ppm on crabapple, pear, and quince, Mexico defaults to the US tolerance levels. Similarly, although Hong Kong has established a maximum residue level of 1.5 ppm for pear and Asian pear, it has not exported those fruits to the United States in the past 2 years. As a result, EPA believes that a reasonable interval between the publication of this rule and the effective date of these tolerances is not necessary and proposes to make the reduction effective upon publication of the final rule.

This proposed reduction in tolerance is not discriminatory; the same food safety standard contained in the FFDCA applies equally to domestically produced and imported foods.

V. Conclusion

EPA proposes to establish tolerances for residues of tebufenozide in bushberry subgroup 13–07B at 3.0 ppm; caneberry subgroup 13–07A at 3.0 ppm; fruit, citrus, group 10–10 at 2.0 ppm; fruit, pome group 11–10 at 1.0 ppm; nut, tree, group 14–12 at 0.1 ppm; sugarcane, cane at 1.0 ppm; sugarcane, molasses at 3.0 ppm; and vegetable, fruiting, group 8–10 at 1.0 ppm. The Agency is also proposing to amend the existing tolerance for almond, hulls to raise the tolerance from 25 ppm to 30 ppm. Further, upon the establishment of these tolerances, the Agency is proposing to delete the existing tolerances for apple; berry, group 13; fruit, citrus, group 10; fruit, pome; nut, tree, group 14; pistachio; vegetable, fruiting, group 8; and walnut since they will be superseded by the newly established tolerances.

VI. References

Appellate Body Report, *United States—Measures Affecting the Production and Sale of Clove Cigarettes,* 222–23, WT/DS406/AB/R (Apr. 4, 2012) (*adopted* Apr. 24, 2012) *available at http://www.wto.org/english/tratop_e/dispu_e/406abr_e.pdf.*

VII. Statutory and Executive Order Reviews

In this proposed rule in Unit II, EPA is proposing to establish tolerances under FFDCA section 408(e), and also modify and revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (*e.g.,* establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*). Nor does it require any special considerations as required by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This proposed rule does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published in the **Federal Register** of May 4, 1981 (46 FR 24950) and December 17, 1997 (62 FR 66020) (FRL–5753–1), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposed rule that would change EPA's previous analysis. Taking into account this analysis, and

available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed rule will not have a significant negative economic impact on a substantial number of small entities. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposed rule, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this proposed rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This proposed rule does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 30, 2016.

Michael L. Goodis,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend the table in § 180.482(a)(1) as follows:

■ a. Remove the entries for ''Apple''; ''Berry group 13''; ''Fruit, citrus, group 10''; ''Fruit, pome''; ''Nut, tree, group 14''; ''Pistachio''; ''Vegetable, fruiting, group 8''; and ''Walnut'';

■ b. Revise the entry for ''Almond, hulls''; and

■ c. Add alphabetically the entries for ''Bushberry subgroup 13–07B''; ''Caneberry subgroup 13–07A''; ''Fruit, citrus, group 10–10''; ''Fruit, pome, group 11–10''; ''Nut, tree, group 14–12''; ''Sugarcane, cane''; ''Sugarcane, molasses''; and ''Vegetable, fruiting, group 8–10''.

The revisions and additions read as follows:

§ 180.482 Tebufenozide; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
Almond, hulls	30
* * * *	*
Bushberry subgroup 13–07B	3.0
* * * *	*
Caneberry subgroup 13–07A	3.0
* * * *	*
Fruit, citrus, group 10–10	2.0
Fruit, pome, group 11–10	1.0
* * * *	*
Nut, tree, group 14–12	0.1
* * * *	*
Sugarcane, cane	1.0
Sugarcane, molasses	3.0
* * * *	*
Vegetable, fruiting, group 8–10	1.0

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[FR Doc. 2016–24650 Filed 10–13–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[LLCOF02000 L12200000.DU0000 16X]

Notice of Proposed Supplementary Rules for Public Lands in Colorado: Cache Creek Placer Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) in Colorado is proposing supplementary rules for 2,160 acres of public lands addressed in the Cache Creek Placer Area Management Plan, approved on February 23, 2016. These proposed supplementary rules would apply to public lands administered by the BLM Royal Gorge Field Office in Chaffee County, Colorado. The proposed rules would implement decisions found in the Cache Creek Placer Area Management Plan relating to the collection of mineral materials within the Cache Creek parcel.

DATES: Please send comments to the address below by December 13, 2016. Comments received or postmarked after this date may not be considered in the development of the final supplementary rules.

ADDRESSES: You may send comments by the following methods: Mail or hand deliver to Kalem Lenard, Outdoor Recreation Planner, BLM Royal Gorge Field Office, 3028 E. Main Street, Cañon City, CO 81212. You may also send comments via email to *rgfo_comments@blm.gov* (include ''Proposed Supplementary Rules'' in the subject line).

FOR FURTHER INFORMATION CONTACT: Kalem Lenard, Outdoor Recreation Planner, at the above address, by phone

at 719–269–8538, or by email at *jlenard@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 800–877–8339 to contact the above individual during normal business hours. The Service is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments on the proposed supplementary rules should be specific, confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the rules that the comment is addressing. The BLM is not obligated to consider or include in the Administrative Record for the final rules comments that the BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or comments delivered to an address other than one of the addresses listed above (see **ADDRESSES**). Comments, including names, street addresses and other contact information of respondents, will be available for public review at the BLM Royal Gorge Field Office, at the address above. 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.

II. Background

Cache Creek Placer Area is located immediately west and south of the town of Granite, Colorado, and includes Cache Creek, which flows into the Arkansas River. It was the site of one of the first large mining communities in Colorado during the late 1800s. In January 2000, the BLM acquired 2,160 acres through which Cache Creek flows, extending from the San Isabel National Forest boundary to Highway 24. The BLM acquired the parcel through a grant from the Land and Water Conservation Fund, a Federal program that conserves irreplaceable lands and improves outdoor recreation opportunities throughout the nation. The BLM purchased it to help protect crucial elk and riparian habitat as well as to provide recreational opportunities. Recreational mineral collection is one of the activities occurring in the area. Collection methods include gold panning and hand sluicing. The 2,160-acre parcel is not open to the General Mining Law of 1872. The rising price of gold has increased the interest in mineral collection, therefore increasing use at Cache Creek. Due to the high volume of soil that recreational mineral collectors are processing, excessive levels of sediment have collected at the Cache Creek stream, impacting a recovering fishery. The increase in use has also led to user conflicts and human safety hazards, such as unstable holes and large trees. Conflicts with off-leash dogs disturbing other visitors as well as pet waste left in the wetland area are also a common occurrence.

The Cache Creek parcel is not open to the General Mining Law. The parcel is regulated under 43 CFR 8365.1–5, which confines mineral extraction to only ''recreational'' mineral specimen collection. These regulations do not allow motorized or mechanical devices to aid in mineral specimen collection.

In 2012, the BLM began the public input process for a management plan for the 2,160-acre Cache Creek parcel to manage the increasing impacts and conflicts related to increased recreational use. The management strategy allows hobby recreational placer activities to continue, while mitigating impacts to resources. The public process included presentations and site tours with the Front Range Resource Advisory Council and collaboration with stakeholders and user groups. On March 3, 2014, the BLM held a 30-day public scoping period requesting public input. Based on feedback received during this process, the BLM developed a proposed action and draft Environmental Assessment (EA), which was released for a 30-day public review on December 5, 2014. The BLM incorporated comments into the Final EA and corresponding Decision Record signed on February 23, 2016.

The decision designated the Cache Creek parcel as a Special Area, defined as an area where the BLM ''determines that the resources require special management and control measures for their protection'' under 43 CFR 2932.5. The decision also provides that a Special Recreation Permit (SRP) will be required for recreational placer activities only. In addition, the decision requires a fee to obtain a permit from Memorial Day weekend to November 30.

III. Discussion of Proposed Supplementary Rules

The proposed supplementary rules would implement the Cache Creek Placer Area Management Plan as follows:

In accordance with 43 CFR subpart 2932, an SRP would be required for recreational mineral collection activities related to placer mining activities. As authorized by 43 CFR 2932.31(d), persons 16 years of age and older would be required to pay a fee of $5 per day or $25 annually. Digging within the Cache Creek parcel would be limited to a designated area. The SRP would allow in-situ gold panning (but not digging) in the Cache Creek stream throughout the parcel and outside of the designated area. Dogs and other animals would be required to be on leashes within the designated area. Additional terms and conditions can be found in DOI–BLM–CO–200–2012–0038 DN.

The planning area consists of approximately 2,160 acres of public lands within Chaffee County, Colorado, in the following described townships:

Colorado, Sixth Principal Meridian

T. 12 S., R. 80 W., Sections 1 and 2.
T. 11 S., R. 80 W., Sections 34–36.
T. 12 S., R. 79 W., Section 6.
T. 11 S., R. 79 W., Section 31.

The BLM has determined that these proposed supplementary rules are necessary to enhance public safety, protect natural and cultural resources, and reduce conflicts among public land users.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

The proposed supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. The proposed supplementary rules would not have an effect of $100 million or more on the economy and would not adversely affect in a material way productivity; competition; jobs; the environment; public health or safety; or State, local or tribal governments or communities. The proposed supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed supplementary rules do not materially alter the budgetary effects of entitlements; grants; user fees or loan programs; or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. These proposed supplementary rules would merely impose limitations on certain

recreational activities on certain public lands to protect natural resources and human health and safety.

National Environmental Policy Act

These proposed supplementary rules implement key decisions in the Cache Creek Placer Area Management Plan. During the National Environmental Policy Act (NEPA) review for the Management Plan, the BLM fully analyzed the substance of these proposed supplementary rules in an EA (DOI–BLM–CO–200–2012–0069 EA). The BLM signed the Decision Record for the EA on February 23, 2016, and found the proposed supplementary rules implementing the plan decisions would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of NEPA, 42 U.S.C. 4332(2)(C). A detailed statement under NEPA is not required. The Cache Creek Placer Area Management Plan EA, Finding of No Significant Impact, and Decision Record are on file in the BLM Royal Gorge Field Office at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The proposed supplementary rules would have no effect on business entities of any size. The proposed supplementary rules would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment and human health and safety. Therefore, the BLM certifies under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These proposed supplementary rules are not a ''major rule'' as defined at 5 U.S.C. 804(2). These proposed supplementary rules would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources, the environment and human health and safety. These proposed supplementary rules would not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies, or geographic regions; or

(3) Have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

The proposed supplementary rules would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor would they have a significant or unique effect on State, local, or tribal governments or the private sector. The proposed supplementary rules would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources, the environment and human health and safety. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules do not constitute a government action capable of interfering with constitutionally-protected property rights. The proposed supplementary rules would not address property rights in any form and would not cause the impairment of constitutionally-protected property rights. Therefore, the BLM has determined that these proposed supplementary rules would not cause a ''taking'' of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rules would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the BLM has determined that these proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of Sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these proposed supplementary rules do not include policies that have tribal implications and would have no bearing on trust lands or on lands for which title is held in fee status by Indian tribes or U.S. Government-owned lands managed by the Bureau of Indian Affairs.

Information Quality Act

In developing these proposed supplementary rules, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

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

These proposed supplementary rules do not comprise a significant energy action. These proposed supplementary rules would not have an adverse effect on energy supply, production or consumption and have no connection with energy policy.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that the proposed supplementary rules would not impede facilitating cooperative conservation; would take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources; would properly accommodate local participation in the Federal decision-making process; and would provide that the associated programs, projects and activities are consistent with protecting public health and safety.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501–3521), the Office of Management and Budget (OMB) has reviewed and approved the information collection requirements for special recreation permits. The relevant OMB control number is 1004–0119,

which expires December 31, 2016. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Proposed Supplementary Rules

Author

The principal author of these proposed supplementary rules is Kalem Lenard, Outdoor Recreation Planner, BLM, Royal Gorge Field Office.

For the reasons stated in the preamble and under the authorities for supplementary rules found at 43 U.S.C. 1740, 43 U.S.C. 315a, and 43 CFR 8365.1–6, the BLM Colorado State Director proposes supplementary rules for public lands within the BLM Royal Gorge Field Office to read as follows:

Supplementary Rules for the Cache Creek Placer Area Management Plan

Definitions

Cache Creek parcel is defined as the 2,160-acre parcel of public land in Chaffee County, Colorado within the 6th Principal Meridian T. 12 S., R. 80 W. Sections 1 and 2; T. 11 S., R. 80 W. Sections 34–36; T. 12 S., R. 79 W. Section 6; and T. 11 S., R. 79 W. Section 31.

Cache Creek Placer Area is defined as the area directly south and adjacent to the BLM Cache Creek parking area and shown on maps provided by the BLM along with on the ground signing, where possible.

Prohibited Acts

Unless otherwise authorized, the following acts are prohibited on all public lands, roads, trails and waterways administered by the BLM within the Cache Creek parcel:

1. No persons may collect minerals by any means within the Cache Creek parcel without a Special Recreation Permit (SRP).
2. Persons 16 years of age and over must pay a fee of $5 per day or $25 annually to obtain an SRP.
3. You must not violate terms and conditions of the SRP.
4. You must not bring an animal into the Cache Creek Placer Area between Memorial Day Weekend and November 30 unless the animal is on a leash not longer than 6 feet and secured to a fixed object or under control of a person, or is otherwise physically restricted at all times.

Exceptions

The following persons are exempt from these supplementary rules: Any Federal, State, local government officer or employee acting within the scope of their duties; members of any organized law enforcement, rescue, or firefighting force in performance of an official duty; and any persons, agencies, municipalities or companies whose activities are authorized in writing by the BLM.

Enforcement

Any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, State or local officials may also impose penalties for violations of Colorado law.

Ruth Welch,

Bureau of Land Management, Colorado State Director.

[FR Doc. 2016–24610 Filed 10–13–16; 8:45 am]

BILLING CODE 4310–JB–P

Notices

Federal Register

Vol. 81, No. 199

Friday, October 14, 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

Forest Service

Fremont-Winema National Forest; Bly and Chiloquin Ranger Districts; Oregon; East Hills Project Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of commercial and non-commercial vegetation management activities, prescribed burning, road activities, stream and aquatic habitat improvements, and other restoration activities. The project is located on the Bly and Chiloquin Ranger Districts, Fremont-Winema National Forest, Klamath County, Oregon.

DATES: Comments concerning the scope of the analysis must be received by November 14, 2016. The draft environmental impact statement is expected May 2017 and the final environmental impact statement is expected August 2017.

ADDRESSES: Send written comments to Eric Watrud, Acting Forest Supervisor, Fremont-Winema National Forest, c/o Jody Perozzi, PO Box 25, Bly, OR 97622. Comments may also be sent via email to *comments-pacificnorthwest-fremont-bly@fs.fed.us,* or via facsimile to 541–353–2750.

FOR FURTHER INFORMATION CONTACT: Jody Perozzi, Environmental Coordinator Bly Ranger District; PO Box 25, Bly, OR 97622. Phone: 541–353–2723. Email: *jperozzi@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 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The East Hills Project area encompasses approximately 169,000 acres, including 138,733 acres of National Forest System lands managed by the Forest Service, and approximately 30,500 acres of the Sycan Marsh Preserve owned and managed by The Nature Conservancy. The majority of the project is within the Klamath Tribes' former 1954 reservation. The project area is located approximately 10 miles northwest of the town of Bly, OR. The project area crosses two Ranger District boundaries: Bly (38%) and Chiloquin (62%), and is managed under two National Forest Land and Resource Management Plans (LRMP) as amended: the 1990 Winema LRMP and the 1989 Fremont LRMP. The Sycan Wild and Scenic River flows through the middle of the project area forming the boundary between lands managed under the Fremont LRMP and those managed under the Winema LRMP. The legal description of the project area includes Townships 31, 32, 33, 34, 35 South, and Ranges 10, 11, 12, 13, 14 East, Willamette Meridian, Klamath County, Oregon.

Purpose and Need for Action

The purpose of the project is to conduct restoration management activities to improve forest resiliency and sustainability, maintain and enhance habitat diversity, manage the road system, and restore hydrologic functioning, thereby moving the landscape towards the goals, objectives, and desired future conditions directed by the Fremont and Winema LRMPs, as amended by the Eastside Screens and INFISH. The underlying needs for the East Hills Project derive from the differences between the current landscape condition, and the goals, objectives, and desired future conditions directed by the Fremont and Winema LRMPs, as amended by the Eastside Screens and INFISH. To promote an ecologically resilient landscape consistent with the desired conditions outlined in the Forest Plans there is a need to: (1) Reduce stand densities to improve vigor and increase resilience to insects, disease, drought, and wildfire; (2) Maintain and promote development of late/old seral (LOS) habitat consistent with the historic range of variability (HRV); (3) Maintain LOS components, by protecting and releasing large and old trees from competition; (4) Restore dominance of ponderosa pine and other fire- and drought-tolerant species; (5) Create spatial heterogeneity within stands and across the landscape; (6) Create age class diversity in climax lodgepole pine stands; (7) Reduce fuel loads and reintroduce fire on the landscape; (8) Enhance and restore non-forested habitat diversity; (9) Conserve, improve, and restore habitat for wildlife and botanical species; (10) Improve mule deer habitat; (11) Conserve and restore cultural plants; (12) Maintain and restore aspen and other hardwoods; (13) Restore and enhance natural stream function and associated habitats; (14) Reduce road densities; (15) Maintain opportunities for sustainable recreation activities; and (16) Provide forest products as a by-product of meeting the above objectives.

Proposed Action

The Forest proposed action includes restoration activities for the following resources: vegetation management, stream and aquatic habitat, and road systems to address the purpose and need. These activities would occur over approximately the next 10 years.

Vegetation management will include a combination of commercial thinning, small tree thinning, prescribed burning, and other fuels treatments. The use of different methods would be determined by site conditions, accesibility and specific resource protection needs. The proposal includes four different vegetation restoration treatment emphasis areas: (1) Mixed conifer; (2) lodgepole pine; (3) meadow/riparian; (4) ponderosa pine.

The proposed action contains stream restoration and fish passage activities including repair of headcuts and incised stream channels, large wood addition, streambank stabilization, and culvert replacements.

Approximately 19 miles of roads are proposed to be closed and approximately 243 miles of roads are proposed for decommissioning post-implementation. Maintenance level increases are proposed for approximately 8 miles of roads to provide through routes of open roads.

The East Hill Project will also include a variety of project design and resource protection measures that serve to mitigate the impact of activities to resources, including air quality, cultural and heritage, wildlife, aquatic species,

soils, water, scenic, botanical species and invasive plant species prevention. The proposed action may also include project–specific amendments to the Fremont and Winema National Forest LRMPs.

Possible Alternatives

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative in which none of the proposed actions would be implemented. Additional alternatives may be considered in response to issues raised by the public during the scoping process or due to additional concerns for resource values identified by the interdisciplinary team.

Responsible Official

The Forest Supervisor of the Fremont-Winema National Forest, 1301 South G Street, Lakeview, OR 97630, is the Responsible Official. As the Responsible Official, I will decide if the proposed action will be implemented. I will document the decision and rationale for the decision in the Record of Decision. I have delegated the responsibility for preparing the draft EIS and final EIS to the District Ranger, Bly Ranger District.

Nature of Decision To Be Made

Based on the purpose and need, the Responsible Official reviews the proposed action, the other alternatives, the environmental consequences, and public comments on the analysis in order to make the following decision: (1) Whether to implement timber harvest and associated fuels treatments, prescribed burning, road management activities, and stream improvements, including design features and potential mitigation measures to protect resources; and if so, how much and at what specific locations; (2) What, if any, project-specific Forest Plan Amendments will be necessary to implement the project; (3) What, if any, specific project monitoring requirements are needed to assure design features and potential mitigation measures are implemented and effective, and to evaluate the success of the project objectives.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The interdisciplinary team will continue to seek information, comments, and assistance from Federal, State, and local agencies, Tribal governments, and other individuals or organizations that may be interested in, or affected by, the proposed action.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered.

Dated: October 7, 2016.

Eric Watrud,

Acting Forest Supervisor.

[FR Doc. 2016–24854 Filed 10–13–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

New Mexico Resource Advisory Committee; Notice of Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Northern New Mexico Resource Advisory Committee (RAC) will meet in Santa Fe, New Mexico. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/santafe/workingtogether/advisorycommittees.*

DATES: The meeting will be held November 17–18, 2016 starting at 10:00 a.m. on November 17 and 8:00 a.m. on November 18. All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Santa Fe National Forest Supervisor's Conference Room, 11 Forest Lane, Santa Fe, New Mexico 87508. 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 the Santa Fe National Forest Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Reuben Montes, RAC Coordinator, by phone at 505–438–5356 or via email at *rmontes@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and recommend funding of project 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 November 10, 2016 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Reuben Montes, RAC Coordinator, 11 Forest Lane, Santa Fe, NM 87508; by email to *rmontes@fs.ed.us* or via facsimile to 505 438 5391. Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: October 5, 2016.

Joseph Norrell,

Deputy Forest Supervisor, Santa Fe National Forest.

[FR Doc. 2016–24868 Filed 10–13–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Availability of the Mountain Valley Pipeline Project and Equitrans Expansion Project Draft Environmental Impact Statement and the USFS Draft Associated Land and Resource Management Plan Amendments

AGENCY: Forest Service, USDA; Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended; the Federal Land Policy and Management Act of 1976, as amended; and the National Forest Management Act of 1976, as amended (NFMA), the Bureau of Land Management (BLM), the U.S. Forest Service (USFS) and the U.S. Army Corps of Engineers (USACE) have participated as cooperating agencies with the Federal Energy Regulatory Commission (FERC) in the preparation of the Mountain Valley Pipeline Project (MVP) and Equitrans Expansion Project (Equitrans) Draft Environmental Impact Statement (EIS). The Draft EIS addresses the impacts of these projects, the associated draft Jefferson National Forest Revised Land and Resource Management Plan (LRMP) amendments of the USFS, and the application to the BLM for a right-of-way grant sought by Mountain Valley Pipeline LLC (Mountain Valley) for the MVP project. With this agency-specific Notice of Availability, the BLM and the USFS are announcing the opening of the FERC comment period. Comments need to be timely and specific, showing a direct relationship to the proposal and include supporting reasons.

DATES: To ensure that comments will be considered, the FERC must receive written comments on the MVP Project and Equitrans Project Draft EIS within 90 days following the date of publication of the FERC Notice of Availability (NOA) for the draft EIS in the **Federal Register**. The FERC's NOA also lists public meetings where interested groups and individuals can attend and present oral comments on the draft EIS.

ADDRESSES: You may submit comments related to the MVP Project and Equitrans Project Draft EIS, including any comments related to the BLM consideration of the issuance of a right-of-way grant to cross federal lands, the USFS consideration of LRMP amendments, and/or the USFS consideration of submitting a concurrence to BLM, to the FERC by any of the four methods listed below. The FERC 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 FERC'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 FERC'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 (CP16–10–000) 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, you can submit oral comments at any of the FERC-sponsored public sessions that are scheduled in the FERC Notice of Availability for the draft EIS.

Your comments must reference the FERC Docket number for the Mountain Valley Pipeline Project, LP, Docket No. CP16–10–000, to be correctly attributed to this specific project. Copies of the MVP Project and Equitrans Project Draft EIS are available for inspection in the office of the Forest Supervisor for the George Washington and Jefferson National Forests.

FOR FURTHER INFORMATION CONTACT: Additional information about the projects is available from the FERC's Office of External Affairs at 866–208–FERC (3372), or on the FERC Web site (*www.ferc.gov*). On the FERC's Web site, go to ''Documents & Filings,'' click on the ''eLibrary'' link, click on ''General Search'' and enter the docket number CP16–10. 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 issues by the FERC such as orders, notices, and rulemakings.

SUPPLEMENTARY INFORMATION: This NOA is specific to the BLM and the USFS and provides notice that these agencies have participated as cooperating agencies with FERC in the preparation of the MVP Project and Equitrans Project Draft EIS. The Mountain Valley Pipeline route would cross about 3.4 miles of lands managed by the USFS, the Jefferson National Forest, in Monroe County, West Virginia and Giles and Montgomery counties, Virginia. The Equitrans Expansion Project would not cross the Jefferson National Forest.

The FERC is the NEPA Lead Federal Agency for the environmental analysis of the construction and operation of the proposed MVP and Equitrans Projects. Under the Mineral Leasing Act (30 U.S.C. 185 *et seq.*), the BLM is the federal agency responsible for issuing right-of-way grants for natural gas pipelines across federal lands under the jurisdiction of two or more federal agencies. Therefore, the BLM is considering the issuance of a right-of-way grant to Mountain Valley for pipeline construction across the lands under the jurisdiction of the USFS and the USACE.

Before issuing the right-of-way grant, the BLM would acquire the written concurrences of the USFS and USACE. Through this concurrence process, the USFS would submit to the BLM any specific stipulations applicable to lands, facilities, water bodies, and easements for inclusion in the right-of-way grant.

In order for the potential actions to be consistent with the LRMP, the USFS would need to make several amendments to the LRMP. The amendments would provide for the construction and operation of the natural gas pipeline to occur on the Jefferson National Forest. The USFS would need to make these amendments before USFS could issue a letter of concurrence to the BLM.

The FERC's draft EIS includes the consideration of a BLM right-of-way grant across federal lands for the USFS and USACE and the associated USFS LRMP amendments. The BLM and USFS can adopt FERC's EIS for agency decisions if the analysis provides sufficient evidence to support the agencies' decisions and the agencies are satisfied that agency comments and suggestions have been addressed.

The BLM's purpose and need for the proposed action in FERC's draft EIS is to respond to a right-of-way grant

application submitted by the applicant to the BLM on April 5, 2016 to construct, operate, maintain, and eventually decommission a new 42-inch-diameter natural gas pipeline across approximately 3.4 miles of lands managed by the USFS and about 125 feet of federal lands managed by the USACE.

The USFS's purpose and need for the proposed action is to evaluate the following amendments to the LRMP for the Jefferson National Forest and to consider issuing a concurrence to the BLM for the right-of-way grant.

The first type of LRMP amendment would be a ''plan-level amendment'' that would change land allocations. This would change future management direction for the lands reallocated to the new management prescription (Rx) and is required by LRMP Standard FW–248.

Proposed Amendment 1: The LRMP would be amended to reallocate 186 acres to the Management Prescription 5C–Designated Utility Corridors from these Rxs: 4J–Urban/Suburban Interface (56 acres); 6C–Old Growth Forest Communities-Disturbance Associated (19 ac); and 8A1–Mix of Successional Habitats in Forested Landscapes (111 acres).

Rx 5C–Designated Utility Corridors contain special uses which serve a public benefit by providing a reliable supply of electricity, natural gas, or water essential to local, regional, and national economies. The new Rx 5C land allocation would be 500 feet wide (250 feet wide on each side of the pipeline), with two exceptions: (1) The area where the pipeline crosses Rx 4A–Appalachian National Scenic Trail Corridor would remain in Rx 4A; and (2) the new 5C area would not cross into Peters Mountain Wilderness so the Rx 5C area would be less than 500 feet wide along the boundary of the Wilderness.

The second type of amendment would be a ''project-specific amendment'' that would apply only to the construction and operation of this pipeline. The following standards would require a temporary ''waiver'' to allow the project to proceed. These amendments would not change LRMP requirements for other projects or authorize any other actions.

Proposed Amendment 2: The LRMP would be amended to allow construction of the Mountain Valley Pipeline to exceed restrictions on soil conditions and riparian corridor conditions as described in LRMP standards FW–5, FW–9, FW–13, FW–14 and 11–017, provided that mitigation measures or project requirements agreed upon by the Forest Service are implemented as needed.

Proposed Amendment 3: The LRMP would be amended to allow the removal of old growth trees within the construction corridor of the Mountain Valley Pipeline. (Reference LRMP Standard FW–77)

Proposed Amendment 4: The LRMP would be amended to allow the Mountain Valley Pipeline to cross the Appalachian National Scenic Trail on Peters Mountain. The Scenic Integrity Objective for the Rx 4A area and the Trail will be changed from High to Moderate. This amendment also requires the SIO of Moderate to be achieved within five to ten years following completion of the project to allow for vegetation growth. (Reference LRMP Standards 4A–021 and 4A–028)

The decision for a right-of-way grant across federal lands would be documented in a Record of Decision (ROD) issued by the BLM. The BLM's decision to issue, condition, or deny a right of way would be subject to BLM administrative review procedures established in 43 CFR 2881.10 and the procedures established in section 313(b) of the Energy Policy Act of 2005. The USFS concurrence to BLM to issue the right-of-way grant would not be a decision subject to the NEPA and therefore would not be subject to USFS administrative review procedures. The USFS would issue its own draft ROD for the LRMP amendments that would be subject to administrative review prior to final decision. Proposed Amendment 1 was developed in accordance to 36 CFR part 219 (2012 version) regulations and would be subject to the administrative review procedures under 36 CFR part 219 subpart B. Proposed Amendments 2, 3 and 4 were developed in accordance to 36 CFR part 219 (2012) regulations but would be subject to the administrative review procedures under 36 CFR part 218 regulations subparts A and B, per 36 CFR 219.59(b). Refer to the applicable administrative review regulations for eligibility requirements.

The BLM is requesting public comments on the issuance of a right-of-way grant that would allow the MVP to be constructed on Federal lands managed by the USFS and USACE. The USFS is requesting public comments on the consideration of submitting a concurrence to BLM and the draft amendments of the LRMP to allow for the MVP Project on the Jefferson National Forest. All comments must be submitted to the FERC, the Lead Federal Agency within the timeframe stated in FERC's Notice of Availability for their draft EIS. Refer to Docket CP16–10–000 (Mountain Valley Pipeline) in all correspondence to ensure that your comments are correctly filed in the record. You may submit comments to the FERC using one of the methods listed in the **ADDRESSES** section above. Only those who submit timely and specific written comments regarding the proposed project during a public comment period are eligible to file an objection with the USFS. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that the entire text of your comments—including your personal identifying information—would be publicly available through the FERC eLibrary system, if you file your comments with the Secretary of the FERC.

Responsible Official for USFS LRMP Amendments: The Forest Supervisor for the George Washington and Jefferson National Forests is the Responsible Official for the LRMP Amendments.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Dated: September 21, 2016.

Karen Mouritsen,

State Director, Eastern States.

Dated: September 13, 2016.

Joby P. Timm,

Forest Supervisor, George Washington and Jefferson National Forests.

[FR Doc. 2016–24833 Filed 10–13–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Pacific Northwest National Scenic Trail Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Pacific Northwest National Scenic Trail Advisory Council (Council) will meet in Sandpoint, Idaho. The Council is authorized under Section 5(d) of the National Trails System Act of 1968 (Act) and operates in compliance with the Federal Advisory Committee Act (FACA). Additional information concerning the Council, including the meeting summary/minutes, can be found by visiting the Council's Web site at: *http://www.fs.usda.gov/main/pnt/working-together/advisory-committees.*

DATES: The meeting will be held on the following dates and times:

• Wednesday, October 14, 2015 from 8:00 a.m. to 5:00 p.m. PDT

• Thursday, October 15, 2015 from 8:00 a.m. to 5:00 p.m. PDT

All meetings are subject to cancellation. For updated status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Best Western Edgewater Resort, 56 Bridge Street, Sandpoint, Idaho. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Pacific Northwest Regional Office of the United States Forest Service: 1220 SW 3rd Avenue, Portland, OR 97204. Please call ahead at 503–808–2468 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Matt McGrath, Pacific Northwest National Scenic Trail Program Manager, by phone at 425–583–9304, or by email at *mtmcgrath@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide:

1. Overview of legislation, policy, and interagency planning requirements for National Scenic Trails;
2. Discussion of planning approach, process, and schedule for the Pacific Northwest National Scenic Trail comprehensive plan; and
3. Recommendations regarding the work, priorities, and schedule for the Advisory Council.

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 submit a request in writing by October 2, 2015, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the Council may file written statements with the Council's staff before or after the meeting. Written comments and time requests for oral comments must be sent to Matt McGrath, Pacific Northwest National Scenic Trail Program Manager, 2930 Wetmore Avenue, Suite 3A, Everett, Washington 98201, or by email to *mtmcgrath@fs.fed.us*.

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 26, 2016.

Dianne C. Guidry,

Deputy Regional Forester.

[FR Doc. 2016–24828 Filed 10–13–16; 8:45 am]

BILLING CODE 3411–15–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

TIME AND DATE: October 20, 2016 1:00 p.m. EDT.

PLACE: U.S. Chemical Safety Board, 1750 Pennsylvania Ave. NW., Suite 910, Washington, DC 20006.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard Investigation Board (CSB) will convene a public meeting on October 20, 2016, starting at 1:00 p.m. EDT in Washington, DC, at the CSB offices located at 1750 Pennsylvania Avenue NW., Suite 910. The Board will discuss open investigations, the status of audits from the Office of the Inspector General; financial and organizational updates, and a review of the agency's action plan. An opportunity for public comment will be provided.

Additional Information

The meeting is free and open to the public. If you require a translator or interpreter, please notify the individual listed below as the ''Contact Person for Further Information,'' at least three business days prior to the meeting.

A conference call line will be provided for those who cannot attend in person. Please use the following dial-in number to join the conference: 1–888–862–6557 Confirmation Number 43587416.

The CSB is an independent federal agency charged with investigating accidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

Public Comment

The time provided for public statements will depend upon the number of people who wish to speak. Speakers should assume that their presentations will be limited to three minutes or less, but commenters may submit written statements for the record.

Contact Person for Further Information

Hillary Cohen, Communication Manager, at *public@csb.gov* or (202) 446–8094. Further information about this public meeting can be found on the CSB Web site at: *www.csb.gov.*

Dated: October 11, 2016.

Kara A. Wenzel,

Acting General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2016–24970 Filed 10–12–16; 11:15 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Questionnaire for Building Permit Official

AGENCY: U.S. Census Bureau, 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: To ensure consideration, written comments must be submitted on or before December 13, 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(s) and instructions should be directed to Erica Filipek, U.S. Census Bureau, MCD, CENHQ Room 7K057, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–5161 (or via the Internet at *Erica.Mary.Filipek@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request a three-year extension of the current Office of Management and Budget (OMB) clearance of the Questionnaire for Building Permit Official (SOC–QBPO). The Census Bureau uses the Computer-Assisted Personal Interviewing (CAPI) electronic questionnaire SOC–QBPO to collect information from state and local building permit officials on: (1) The types of permits they issue, (2) the length of time a permit is valid, (3) how they store permits, and (4) the geographic coverage of the permit system. We need this information to carry out the sampling for the Survey of Housing Starts, Sales, and Completions (OMB number 0607–0110), also known as Survey of Construction (SOC). The SOC provides widely used measures of construction activity, including the economic indicators Housing Starts, Housing Completions, and New Housing Sales.

The current OMB clearance is scheduled to expire on May 31, 2017. We will continue to use the current CAPI questionnaire with minor revisions to question verbiage and questionnaire flow. The overall length of the interview will not change. The sample size will slightly change due to an increase in the number of local governments that issue building permits.

II. Method of Collection

The Census Bureau uses its field representatives to obtain information on the operating procedures of a permit office using the SOC–QBPO. The field representative visits the permit office, conducts the interview, and completes this electronic form.

III. Data

OMB Control Number: 0607–0125.

Form Number: SOC–QBPO.

Type of Review: Regular submission.

Affected Public: State and local Government.

Estimated Number of Respondents: 1,017.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 254 hours.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 131 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental PRA Lead, Office of the Chief Information Officer.

[FR Doc. 2016–24819 Filed 10–13–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority

[Docket Number: 160929903–6903–01]

RIN 0660–XC032

Notice of Availability of a Draft Programmatic Environmental Impact Statement for the South Region of the Nationwide Public Safety Broadband Network and Notice of Public Meetings

AGENCY: First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Announcement of availability of a draft programmatic environmental impact statement and of public meetings.

SUMMARY: The First Responder Network Authority (''FirstNet'') announces the availability of the Draft Programmatic Environmental Impact Statement for the South Region (''Draft PEIS''). FirstNet also announces a series of public meetings to be held throughout the South Region to receive comments on the Draft PEIS. The Draft PEIS evaluates the potential environmental impacts of the proposed nationwide public safety broadband network in the South Region, composed of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.

DATES: Submit comments on the Draft PEIS for the South Region on or before December 13, 2016. FirstNet will also hold public meetings in each of the 13 states. See **SUPPLMENTARY INFORMATION** section for meeting dates.

ADDRESSES: At any time during the public comment period, members of the public, public agencies, and other interested parties are encouraged to submit written comments, questions, and concerns about the project for FirstNet's consideration or to attend any of the public meetings. Written comments may be submitted electronically via *www.regulations.gov,* FIRSTNET–2016–0005, or by mail to Genevieve Walker, Director of Environmental Compliance, First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192. Comments received will be made a part of the public record and may be posted to FirstNet's Web site (*www.firstnet.gov*) without change. Comments should be machine readable and should not be copy-protected. All personally identifiable information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. The Draft PEIS is available for download from *www.regulations.gov,* FIRSTNET–2016–0005. A CD containing the electronic files of this document is also available at public libraries (see Chapter 21 of the Draft PEIS for the complete distribution list). See **SUPPLMENTARY INFORMATION** section for public meeting addresses.

FOR FURTHER INFORMATION CONTACT: For more information on the Draft PEIS, contact Genevieve Walker, Director of Environmental Compliance, First Responder Network Authority, National Telecommunications and Information Administration, U.S. Department of Commerce, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192.

SUPPLEMENTARY INFORMATION:

Public Meetings

Attendees can obtain information regarding the project and/or submit a comment in person during public meetings. The meeting details are as follows:

- *Nashville, Tennessee:* October 24, 2016, from 4:00 p.m. to 8:00 p.m., Hermitage Hotel, 231 6th Avenue North, Nashville, TN 37219

• *Atlanta, Georgia:* October 25, 2016, from 4:00 p.m. to 8:00 p.m., Glenn Hotel, 110 Marietta Street NW., Atlanta, GA 30303
• *Frankfort, Kentucky:* October 25, 2016, from 4:00 p.m. to 8:00 p.m., Hampton Inn Frankfort, 1310 U.S. Highway 127S, Frankfort, KY 40601
• *Morrisville (Raleigh Area), North Carolina:* October 26, 2016, from 4:00 p.m. to 8:00 p.m., Morrisville Fire Station 1, 200 Town Hall Drive, Training Room, Morrisville, NC 27560
• *Montgomery, Alabama:* October 26, 2016, from 4:00 p.m. to 8:00 p.m., Renaissance Montgomery Hotel & Spa at the Convention Center, 201 Tallapoosa Street, Montgomery, AL 36104
• *Orlando, Florida:* October 27, 2016, from 4:00 p.m. to 8:00 p.m., Courtyard by Marriott Orlando Downtown, 730 N. Magnolia Avenue, Orlando, FL 32803
• *Columbia, South Carolina:* October 27, 2016, from 4:00 p.m. to 8:00 p.m., SpringHill Suites Columbia Downtown, 511 Lady Street, Columbia, SC 29201
• *Baton Rouge, Louisiana:* November 1, 2016, from 4:00 p.m. to 8:00 p.m., Louisiana State Police Training Academy, Classroom No. 5, 7919 Independence Boulevard, Baton Rouge, LA 70806
• *Sante Fe, New Mexico:* November 1, 2016, from 4:00 p.m. to 8:00 p.m., Hilton Sante Fe Historic Plaza, 100 Sandoval Street, Santa Fe, NM 87501
• *Jackson Mississippi:* November 2, 2016, from 4:00 p.m. to 8:00 p.m., Jackson Marriott, 200 E Amite Street, Jackson, MS 39201
• *Little Rock, Arkansas:* November 3, 2016, from 4:00 p.m. to 8:00 p.m., Arkansas State Capitol, 500 Woodlane Street, Room 130, Little Rock, AR 72201
• *Oklahoma City, Oklahoma:* November 3, 2016, from 4:00 p.m. to 8:00 p.m., OKC-County Health Department, Northeast Regional Health Wellness Campus, 2600 NE 63rd Street, Auditorium, Oklahoma City, OK 73111
• *Austin, Texas:* November 7, 2016, from 4:00 p.m. to 8:00 p.m., The W Austin Hotel, 200 Lavaca Street, Austin, TX 78701
• *Dallas, Texas:* November 9, 2016, from 4:00 p.m. to 8:00 p.m., Hyatt Regency Dallas, 300 Reunion Boulevard East, Dallas, TX 75207

Background

The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96, Title VI, 126 Stat. 156 (codified at 47 U.S.C. 1401 *et seq.*)) (the ''Act'') created and authorized FirstNet to take all actions necessary to ensure the building, deployment, and operation of an interoperable, nationwide public safety broadband network (''NPSBN'') based on a single, national network architecture. The Act meets a longstanding and critical national infrastructure need, to create a single, nationwide network that will, for the first time, allow police officers, fire fighters, emergency medical service professionals, and other public safety entities to effectively communicate with each other across agencies and jurisdictions. The NPSBN is intended to enhance the ability of the public safety community to perform more reliably, effectively, and safely; increase situational awareness during an emergency; and improve the ability of the public safety community to effectively engage in those critical activities.

The National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) (''NEPA'') requires federal agencies to undertake an assessment of environmental effects of their proposed actions prior to making a final decision and implementing the action. NEPA requirements apply to any federal project, decision, or action that may have a significant impact on the quality of the human environment. NEPA also establishes the Council on Environmental Quality (''CEQ''), which issued regulations implementing the procedural provisions of NEPA (see 40 CFR parts 1500–1508). Among other considerations, CEQ regulations at 40 CFR 1508.28 recommend the use of *tiering* from a ''broader environmental impact statement (such as a national program or policy statements) with subsequent narrower statements or environmental analysis (such as regional or basin wide statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.''

Due to the geographic scope of FirstNet (all 50 states, the District of Columbia, and five territories) and the diversity of ecosystems potentially traversed by the project, FirstNet has elected to prepare five regional PEISs. The five PEISs were divided into the East, Central, West, South, and Non-Contiguous Regions. The South Region includes Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. The Draft PEIS analyzes potential impacts of the deployment and operation of the NPSBN on the natural and human environment in the South Region, in accordance with FirstNet's responsibilities under NEPA.

Next Steps

All comments received by the public and any interested stakeholders will be evaluated and considered by FirstNet during the preparation of the Final PEIS. Once a PEIS is completed and a Record of Decision (ROD) is signed, FirstNet will evaluate site-specific documentation, as network design is developed, to determine if the proposed project has been adequately evaluated in the PEIS or warrants a Categorical Exclusion, an Environmental Assessment, or an Environmental Impact Statement.

Dated: October 11, 2016.

Elijah Veenendaal,

Attorney—Advisor, First Responder Network Authority.

[FR Doc. 2016–24906 Filed 10–13–16; 8:45 am]

BILLING CODE 3510–TL–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–68–2016]

Foreign-Trade Zone (FTZ) 277—Western Maricopa County, Arizona; Notification of Proposed Production Activity; IRIS USA, Inc. (Plastic Household Storage/Organizational Containers); Surprise, Arizona

IRIS USA, Inc. (IRIS) submitted a notification of proposed production activity to the FTZ Board for its facility in Surprise, Arizona, within FTZ 277. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 29, 2016.

The IRIS facility is located within Site 12 of FTZ 277. The facility is used to produce plastic household storage/organizational containers and pet carriers/pens. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt IRIS from customs duty payments on the foreign-status components used in export production. On its domestic sales, IRIS would be able to choose the duty rates during customs entry procedures that apply to plastic household storage/organizational containers and pet carriers/pens (duty rates range from free to 5.3%) for the foreign-status inputs noted below. Customs duties also could possibly be

deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: polypropylene resin; plastic handles/buckles; steel latch plates/drawer locks/hinges/latch sets; steel/plastic casters; aluminum tubes; and, rubber caps (duty rates range from 2.5% to 6.5%).

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 23, 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 Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: October 7, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–24900 Filed 10–13–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain lined paper products (CLPP) from India, covering the period September 1, 2014, through August 31, 2015. We preliminarily determine that mandatory respondent Navneet Education Ltd. (Navneet) made sales of subject merchandise at less than normal value (NV) during the period of review (POR) and that mandatory respondent Kokuyo Riddhi Paper Products Private Limited (Kokuyo Riddhi) did not. Interested parties are invited to comment on these preliminary results.

DATES: Effective October 14, 2016.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or George McMahon, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone (202) 482–3797 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 2015, the Department published a notice of initiation of an administrative review of the antidumping order on November 9, 2015.[1] On February 3, 2016, we subsequently rescinded the review, in part, with respect to two companies, SAB and Super Impex.[2]

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll all administrative deadlines due to a closure of the Federal Government. As a result, the revised deadline for the preliminary results of this review was June 7, 2016.[3] On May 3, 2016, the Department extended the deadline for the preliminary results to October 5, 2016.

On September 7, 2016, Petitioner submitted new factual information regarding Navneet's U.S. sales data.[4] Given the timing of the submission, the Department could not address this new factual information in these preliminary results. The Department invited interested parties to submit comments no later than October 24, 2016,[5] and will address the matter in the final results.

Scope of the Order

The merchandise covered by the *CLPP Order* is certain lined paper products. The merchandise subject to this order is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4811.90.9035, 4811.90.9080, 4820.30.0040, 4810.22.5044, 4811.90.9050, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, and 4820.10.4000. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.[6]

Preliminary Determination of No Shipments

In response to the Department's quantity and value questionnaire issued on November 9, 2015, Lodha Offset reported that it made no sales of subject merchandise during the POR.[7] On November 19, 2015, we issued a non-shipment inquiry instruction to U.S. Customs and Border Protection (CBP) to confirm Lodha Offset's claim of non-shipment.[8] We did not receive any contradictory information from CBP. Based on Lodha Offset's claim of no shipments and because no information to the contrary was received by the Department from CBP, we preliminarily determine that Lodha Offset had no shipments of the subject merchandise, and, therefore, no reviewable transactions, during the POR. For a full discussion of this determination, *see* the Preliminary Decision Memorandum.

Methodology

The Department is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export price or export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the

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[1] The Department initiated the review with regard to ten companies: Goldenpalm Manufacturers PVT Limited (Goldenpalm), Kokuyo Riddhi, Lodha Offset, Magic International Pvt. Ltd. (Magic), Marisa International (Marisa), Navneet, Pioneer Stationery Pvt Ltd (Pioneer), SAB International (SAB), SGM Paper Products, and Super Impex. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 69193 (November 9, 2015).

[2] *See Certain Lined Paper Products From India: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2014–2015,* 81 FR 5707 (February 3, 2016).

[3] *See* Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm 'Jonas,''' dated January 27, 2016. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day.

[4] *See* Letter titled, ''New Factual Information Filed by the Association of American School Paper Suppliers (Petitioner) and Extension of Deadline to Submit New Factual Information Pertaining to Navneet Education Ltd.'s (Navneet) Sales Reporting,'' dated September 27, 2016.

[5] *Id.*

[6] For a complete description of the Scope of the Order, *see* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Lined Paper Products from India; 2014–2015'' dated concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum).

[7] *See* Lodha Offset's certified Quantity and Value response, dated November 11, 2015.

[8] *See* CBP message number 5323301, dated November 19, 2015.

methodology underlying our preliminary results, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

As a result of this review, the Department calculated a *de minimis* dumping margin for Kokuyo Riddhi and a weighted-average dumping margin 2.54 percent for Navneet for the period September 1, 2014, through August 31, 2015. Therefore, in accordance with section 735(c)(5)(A) of the Act, the Department assigned the weighted-average dumping margin of 2.54 percent calculated for Navneet to the five non-selected companies in these preliminary results, as referenced below.

Producer/exporter	Weighted-average dumping margin (percent)
Kokuyo Riddhi Paper Products Private Limited	0.00/*de minimis*
Navneet Education Ltd	2.54
Goldenpalm Manufacturers PVT Limited	2.54
Magic International Pvt. Ltd	2.54
Marisa International (Marisa)	2.54
Pioneer Stationery Pvt Ltd (Pioneer)	2.54
SGM Paper Products	2.54

Assessment Rate

Upon issuance of the final results, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. If the weighted-average dumping margin for Kokuyo Riddhi or Navneet is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[9] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* 0.50 percent). Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review where applicable.

In accordance with the Department's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by each respondent for which they did not know that their merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for respondents noted above will be the rates established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.91 percent, the all-others rate established in the investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[10] Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[11] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[12] All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system within 30 days of publication of this notice.[13] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[14] Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs,

[9] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[10] *See* 19 CFR 351.224(b).

[11] *See* 19 CFR 351.309(d).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 351.310.

within 120 days after issuance of these preliminary results.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and increase the subsequent assessment of the antidumping duties by the amount of antidumping duties reimbursed.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h) and 351.221(b)(4).

Dated: October 5, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
A. Kokuyo Riddhi
B. Navneet
C. Extension of Preliminary Results
III. Scope of the Order
IV. Discussion of Methodology
A. Date of Sale
B. Product Comparisons
C. Comparisons to Normal Value
D. Determination of Comparison Method
E. Results of the Differential Pricing Analysis
F. Export Price
G. Normal Value
1. Home Market Viability
2. Level of Trade
3. Sales to Affiliated Customers
4. Cost of Production Analysis
a. Calculation of COP
b. Test of Comparison Market Prices and COP
c. Results of COP Test
d. Calculation of Normal Value Based on Comparison Market Prices
H. Margin for Company Not Selected for Individual Examination
I. Currency Conversion
V. Recommendation

[FR Doc. 2016–24823 Filed 10–13–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Investment Advisory Council: Meeting of the United States Investment Advisory Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The United States Investment Advisory Council (Council) will hold a meeting on Monday, October 31, 2016. The Council was chartered on April 6, 2016, to advise the Secretary of Commerce on matters relating to the promotion and retention of foreign direct investment in the United States. At the meeting, members will deliberate and vote on a set of recommendations to Secretary Pritzker on the facilitation of foreign direct investment into the United States, including data management and provision of information on workforce and investment opportunities across U.S. regions, facilitation of infrastructure investment, and mechanisms to increase investment competitiveness, in addition to other topics. The agenda may change to accommodate Council business. The final agenda will be posted on the Department of Commerce Web site for the Council at *http://trade.gov/IAC,* at least one week in advance of the meeting.

DATES: Monday, October 31, 2016, 1:30 p.m.–4:00 p.m. EDT. The deadline for members of the public to register, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5 p.m. EDT on October 24, 2016.

ADDRESSES: The meeting will be held at the Department of Commerce, 1401 Constitution Avenue NW., Washington, DC Requests to register (including to speak or for auxiliary aids) and any written comments should be submitted to: United States Investment Advisory Council, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, *IAC@trade.gov.* Members of the public are encouraged to submit registration requests and written comments via email to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Li Zhou, United States Investment Advisory Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: *IAC@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Council advises the Secretary of Commerce on matters relating to the promotion and retention of foreign direct investment in the United States.

Public Participation: The meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **DATES** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted, but may be impossible to fill. There will be fifteen (15) minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for public comments may be limited to three (3) minutes per person. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name and address of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks by 5:00 p.m. EDT on October 24, 2016, for inclusion in the meeting records and for circulation to the members of the Council.

In addition, any member of the public may submit pertinent written comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to Li Zhou at the contact information indicated above. To be considered during the meeting, comments must be received no later than 5:00 p.m. EDT on October 24, 2016, to ensure transmission to the Council members prior to the meeting. Comments received after that date and time will be distributed to the members but may not be considered during the meeting. Statements will be posted on the United States Investment Advisory Council Web site (*http://trade.gov/IAC*) without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make publicly available. Copies of Council meeting minutes will be available within 90 days of the meeting.

Dated: October 11, 2016.

Li Zhou,

Executive Secretary, United States Investment Advisory Council.

[FR Doc. 2016–24903 Filed 10–13–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–885]

Phosphor Copper From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that phosphor copper from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value (LTFV). The Department also preliminarily determines that critical circumstances do not exist with regard to imports of phosphor copper from Korea. The period of investigation (POI) is January 1, 2015, through December 31, 2015. Interested parties are invited to comment on this preliminary determination.

DATES: Effective October 14, 2016.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3797.

SUPPLEMENTARY INFORMATION:

Background

In response to petitions filed on March 9, 2016,[1] the Department published the notice of initiation of this LTFV investigation concerning imports of phosphor cooper from Korea on April 5, 2016.[2] On July 27, 2016, the Department received timely allegations, pursuant to sections 703(e)(l) and 733(e)(l) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.206, that critical circumstances exist with respect to imports of phosphor copper from Korea.[3] For a complete description of the events that followed the initiation of this investigation, *see* the memorandum that is dated concurrently with this determination and hereby adopted by this notice.[4] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The product covered by this investigation is phosphor copper from Korea. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,[5] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[6] No interested party submitted comments on the scope of this investigation.

Postponement of Deadline for Preliminary Determination

On August 5, 2016, the Department published the notice of postponement for the preliminary determination in this investigation in accordance with section 733(c)(1)(B) of the Act and 19 CFR 351.205(f)(1).[7] As a result of the 50-day postponement, the revised deadline for the preliminary determination of this investigation is October 5, 2016.[8]

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Export prices have been calculated in accordance with section 772 of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Negative Determination of Critical Circumstances

On July 27, 2016, Metallurgical Products Company (Petitioner) filed a timely critical circumstance allegation pursuant to section 733(e) of the Act and 19 CFR 351.206(c)(l), alleging that critical circumstances exist with respect to imports of phosphor copper from Korea.[9] In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination. Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist in a LTFV investigation if there is a reasonable basis to believe or suspect that: (A) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. We have conducted an analysis of critical circumstances in accordance with section 733(e) of the Act and 19 CFR 351.206, and preliminarily determine that critical circumstances do not exist with regard

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[1] *See* the Petition for the Imposition of Antidumping Duties on Imports of Phosphor Copper from the Republic of Korea, dated March 9, 2016 (the Petition).

[2] *See Phosphor Copper from the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation,* 81 FR 19552 (April 5, 2016) (*Initiation Notice*).

[3] *See* Petitioner's letter ''Phosphor Copper from the Republic of Korea: Petitioner's Critical Circumstances Allegation,'' (Critical Circumstances Allegation) dated July 27, 2016.

[4] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Phosphor Copper from the Republic of Korea'' (Preliminary Decision Memorandum), dated concurrently with this notice.

[5] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[6] *See Initiation Notice,* 81 FR at 19553.

[7] *See Phosphor Copper from the Republic of Korea: Postponement of Preliminary Determination of Antidumping Duty Investigation,* 81 FR 51858 (August 5, 2016).

[8] *Id.*

[9] *See* Petitioner's letter ''Phosphor Copper from the Republic of Korea: Petitioner's Critical Circumstances Allegation,'' dated July 27, 2016.

to imports of phosphor copper from Korea. For a full description of this issue, *see* the Preliminary Decision Memorandum.

All-Others Rate

Consistent with sections 733(d)(1)(A)(ii) and 735(c)(5) of the Act, the Department calculated an estimated all-others rate. Section 735(c)(5)(A) of the Act provides that the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Bongsan Co., Ltd. (Bongsan) is the only respondent for which the Department has calculated a company-specific rate. Therefore, for purposes of determining the ''all others'' rate and pursuant to section 735(c)(5)(A) of the Act, we are using the dumping margin calculated for Bongsan, as referenced in the ''Preliminary Determination'' section below.

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Producer and/or exporter	Weighted-average dumping margin (percent)
Bongsan Co., Ltd.	3.79
All-Others	3.79

Suspension of Liquidation

Because the Department has made an affirmative preliminary determination of sales at less than fair value, in accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of phosphor copper from Korea, as described in the ''Scope of the Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to section 733 (d)(1)(B) of the Act and 19 CFR 351.205(d), the Department will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds U.S. price as indicated in the chart above. The suspension of liquidation instructions and cash deposit requirements will remain in effect until further notice.

Disclosure and Public Comment

We will disclose the calculations performed to interested parties in this proceeding within five days after public announcement of the preliminary determination in accordance with 19 CFR 351.224(b).

Interested parties are invited to comment on this preliminary determination. 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 investigation, 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.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, 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 date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[11]

Verification

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 5, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is master alloys[12] of copper containing between five percent and 17 percent phosphorus by nominal weight, regardless of form (including but not limited to shot, pellet, waffle, ingot, or nugget), and regardless of size or weight. Subject merchandise consists predominantly of copper (by weight), and may contain other elements, including but not limited to iron (Fe), lead (Pb), or tin (Sn), in small amounts (up to one percent by nominal weight). Phosphor copper is frequently produced to JIS H2501 and ASTM B–644, Alloy 3A standards or higher; however, merchandise covered by this investigation includes all phosphor copper, regardless of whether the merchandise meets, fails to meet, or exceeds these standards.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7405.00.1000. This HTSUS subheading is provided for convenience and customs purposes; the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum:

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Scope Comments
VI. Respondent Selection
VII. Preliminary Determination of Critical Circumstances
VIII. Discussion of the Methodology
  A. Determination of the Comparison Method
  B. Results of the Differential Pricing Analysis
IX. Date of Sale
X. Product Comparisons
XI. Export Price and Constructed Export Price
XII. Normal Value
  A. Comparison Market Viability
  B. Level of Trade
  C. Cost of Production

[10] *See* 19 CFR 351.309.

[11] *See* 19 CFR 351.310(c).

[12] A ''master alloy'' is a base metal, such as copper, to which a relatively high percentage of one or two other elements is added.

1. Calculation of COP
2. Test of Comparison Market Sales Prices
3. Results of the COP Test
D. Calculation of NV Based on Comparison Market Prices
XIII. Currency Conversion
XIV. Verification
XV. Conclusion

[FR Doc. 2016–24818 Filed 10–13–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–040]

Truck and Bus Tires From the People's Republic of China: Amended Preliminary Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 6, 2016, the Department of Commerce (the Department) published the preliminary determination of sales at less than fair value (LTFV) in the LTFV investigation of truck and bus tires from the People's Republic of China (the PRC). We are amending our preliminary determination to correct two ministerial errors which are significant in combination.

DATES: Effective October 14, 2016.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Andre Gziryan, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5760 and (202) 482–2201, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 6, 2016, the Department published the preliminary determination that truck and bus tires from the PRC are being sold in the United States at LTFV, as provided in section 733 of the Tariff Act of 1930, as amended (the Act).[1] On September 6, 2016, the Department received timely filed allegations of ministerial errors in the *Preliminary Determination.*[2]

Period of Investigation

The period of investigation is July 1, 2015, through December 31, 2015.

Scope of the Investigation

The products covered by this investigation are truck and bus tires. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation'' in the Appendix of this notice.

Analysis of Significant Ministerial Error Allegation

The Department will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination according to 19 CFR 351.224(e). A ministerial error is defined as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' [3] A significant ministerial error is defined as a ministerial error, the correction of which, singly or in combination with other errors, would result in: (1) A change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa.[4]

Pursuant to 19 CFR 351.224(e) and (g)(1), the Department is amending the *Preliminary Determination* to reflect the correction of two ministerial errors it made in the calculation of the estimated weighted-average dumping margin for PCT, a mandatory respondent.[5] The combination of these two errors constitutes a significant ministerial error within the meaning of 19 CFR 351.224(g) because PCT's margin increased from 20.87 percent to 30.36 percent as a result of correcting these two ministerial errors, exceeding the significant threshold with a change of at least five absolute percentage points and more than 25 percent of the estimated weighted-average dumping margin.

Because PCT is the only mandatory respondent eligible for a separate rate, PCT is the only respondent for which we individually calculated an estimated weighted-average dumping margin. For this reason, we assigned PCT's calculated rate to all non-examined separate rate respondents. With this amended preliminary determination, the estimated weighted-average dumping margin for each non-examined separate rate respondent is also amended to 30.36 percent.

In the *Preliminary Determination,* because the rate individually calculated for PCT was lower than the highest dumping margin alleged in the petition, we used the highest petition rate of 22.57 percent as the adverse facts available (AFA) applied to the PRC-wide entity. Because PCT's amended preliminary estimated weighted-average dumping margin is now higher than the highest dumping margin alleged in the petition, the AFA rate applied to the PRC-wide entity will also be 30.36 percent.[6] Because we are relying on information obtained in the course of this investigation on which to base this rate, not on secondary information, it is not necessary to corroborate this calculated rate as AFA.[7]

Amended Cash Deposits and Suspension of Liquidation

The collection of cash deposits and suspension of liquidation will be revised accordingly, in accordance with section 733(d) and (f) of the Act and 19 CFR 351.224. The amended cash deposit rate will be 29.95 percent after the deduction of the export subsidy rate of 0.41 percent from 30.36 percent.[8] Because it is an increase from the *Preliminary Determination,* the amended cash deposit rate will be effective on the date of publication of this notice in the **Federal Register**.

Amended Preliminary Determination

The Department preliminarily determines that the following estimated

[1] *See Truck and Bus Tires From the People's Republic of China: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances, and Postponement of Final Determination,* 81 FR 61186 (September 6, 2016) (*Preliminary Determination*).

[2] *See* the ministerial error allegations from the petitioner and Prinx Chengshan (Shandong) Tire Co., Ltd. (PCT) dated September 6, 2016. The petitioner in this investigation is United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC.

[3] *See* section 735(e) of the Act.

[4] *See* 19 CFR 351.224(g).

[5] *See* Memorandum from Senior Director James Maeder to Deputy Assistant Secretary Christian Marsh entitled, ''Less-Than-Fair-Value Investigation of Truck and Bus Tires from the People's Republic of China: Allegations of Ministerial Errors in the Preliminary Determination,'' dated concurrently with and hereby adopted by this notice.

[6] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at 20 (''In an investigation, the Department's practice with respect to the assignment of an AFA rate is to select the higher of (1) the highest dumping margin alleged in the petition or (2) the highest calculated dumping margin of any respondent in the investigation.'') (citation omitted).

[7] *See 1,1,1,2-Tetrafluroethane From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 79 FR 62597 (October 20, 2014), and accompanying Issues and Decision Memorandum at 3. *See also* section 776(c) of the Act and 19 CFR 351.308(c) and (d).

[8] *See Preliminary Determination,* 81 FR at 61191.

weighted-average dumping margins exist:

Exporter	Producer	Weighted average dumping margin (percent)
Prinx Chengshan (Shandong) Tire Co., Ltd.	Prinx Chengshan (Shandong) Tire Co., Ltd.	30.36
Actyon Tyre Resources Co., Limited	Chao Yang Long March Tyre Co., Ltd.	30.36
Actyon Tyre Resources Co., Limited	Shandong Haohua Tires Co., Ltd.	30.36
Actyon Tyre Resources Co., Limited	Shandong Longyue Rubber Co., Ltd.	30.36
Aosen Tire Co., Ltd.	Qingdao Taifa Group Co., Ltd.	30.36
Aosen Tire Co., Ltd.	Shandong Chuanghua Tire Co., Ltd.	30.36
Aosen Tire Co., Ltd.	Shandong Hawk International Rubber Industry Co., Ltd.	30.36
Aosen Tire Co., Ltd.	Shandong Hugerubber Co., Ltd.	30.36
Aosen Tire Co., Ltd.	Shandong Yongsheng Rubber Group Co., Ltd.	30.36
Aosen Tire Co., Ltd.	Shandong Zhentai Group Co., Ltd.	30.36
Beijing BOE Commerce Co., Ltd.	China National Tyre & Rubber Guilin Co., Ltd.	30.36
Beijing BOE Commerce Co., Ltd.	Shandong Hawk International Rubber Industry Co., Ltd.	30.36
Best Choice International Trade Co., Ltd.	Aeolus Tyre Co., Ltd.	30.36
Best Choice International Trade Co., Ltd.	Qingdao Yellow Sea Rubber Co., Ltd.	30.36
Best Choice International Trade Co., Ltd.	Shan Dong Kaixuan Rubber Co., Ltd.	30.36
Best Choice International Trade Co., Ltd.	Sichuan Kalevei Technology Co., Ltd.	30.36
Best Choice International Trade Co., Ltd.	ZC Rubber Group Co., Ltd.	30.36
Bestyre International Industrial Limited	Chaoyang Long March Tyre Co., Ltd.	30.36
Bestyre International Industrial Limited	Chaoyang Long March Tyre New Co., Ltd.	30.36
BOE Commerce Co., Ltd.	Aeolus Tyre Co., Ltd.	30.36
BOE Commerce Co., Ltd.	China National Tyre & Rubber Guilin Co., Ltd.	30.36
BOE Commerce Co., Ltd.	Shandong Anchi Tyres Co., Ltd.	30.36
BOE Commerce Co., Ltd.	Shandong Hawk International Rubber Industry Co., Ltd.	30.36
BOE Commerce Co., Ltd.	Shandong Hengyu Rubber Co., Ltd.	30.36
BOE Commerce Co., Ltd.	Shandong Hengyu Science & Technology Co., Ltd.	30.36
BOE Commerce Co., Ltd.	Shandong Jinyu Tyre Co., Ltd.	30.36
BOE Commerce Co., Ltd.	Zhucheng Guoxin Rubber Co., Ltd.	30.36
Briway Tire Co., Ltd.	Shandong Kaixuan Rubber Co., Ltd.	30.36
Briway Tire Co., Ltd.	Shandong Province Sanli Tire Manufactured Co., Ltd.	30.36
Briway Tire Co., Ltd.	Shandong Vheal Group Co., Ltd.	30.36
Briway Tire Co., Ltd.	Shandong Wanda Boto Tyre Co., Ltd.	30.36
Briway Tire Co., Ltd.	Shandong Yinbao Tyre Group Co., Ltd.	30.36
Briway Tire Co., Ltd.	Shandong Yuelong Group	30.36
Briway Tire Co., Ltd.	Sichuan Tyre & Rubber Co., Ltd.	30.36
Briway Tire Co., Ltd.	Weifang Shunfuchang Rubber and Plastic Products Co., Ltd.	30.36
Briway Tire Co., Ltd.	Sichuan Kalevei Technology Co., Ltd.	30.36
Chonche Auto Double Happiness Tyre Corp. Ltd.	Chonche Auto Double Happiness Tyre Corp. Ltd.	30.36
Chongqing Hankook Tire Co., Ltd.	Chongqing Hankook Tire Co., Ltd.	30.36
Cooper Tire (China) Investment Co., Ltd.	Qingdao Ge Rui Da Rubber Co., Ltd.	30.36
Daking Industrial Co., Limited	Shandong Huasheng Rubber Co., Ltd.	30.36
Fleming Limited	Qingdao Doublestar Tire Industrial Co., Ltd.	30.36
Fleming Limited	Qingdao Yellow Sea Rubber Co., Ltd.	30.36
Fleming Limited	Shandong Wanshine Tire Co., Ltd.	30.36
Fleming Limited	Shandong Yinbao Tyre Group Co., Ltd.	30.36
Giti Tire (Anhui) Company Ltd.	Giti Tire (Anhui) Company Ltd.	30.36
Giti Tire (Anhui) Company Ltd.	Giti Tire (Fujian) Company Ltd.	30.36
Giti Tire (Anhui) Company Ltd.	Giti Tire (Yinchuan) Company Ltd.	30.36
Giti Tire (Fujian) Company Ltd.	Giti Tire (Anhui) Company Ltd.	30.36
Giti Tire (Fujian) Company Ltd.	Giti Tire (Fujian) Company Ltd.	30.36
Giti Tire (Fujian) Company Ltd.	Giti Tire (Yinchuan) Company Ltd.	30.36
Giti Tire (Yinchuan) Company Ltd.	Giti Tire (Anhui) Company Ltd.	30.36
Giti Tire (Yinchuan) Company Ltd.	Giti Tire (Fujian) Company Ltd.	30.36
Giti Tire (Yinchuan) Company Ltd.	Giti Tire (Yinchuan) Company Ltd.	30.36
Giti Tire Global Trading Pte. Ltd.	Giti Tire (Anhui) Company Ltd.	30.36
Giti Tire Global Trading Pte. Ltd.	Giti Tire (Fujian) Company Ltd.	30.36
Giti Tire Global Trading Pte. Ltd.	Giti Tire (Yinchuan) Company Ltd.	30.36
Goodyear Dalian Tire Co., Ltd.	Goodyear Dalian Tire Co., Ltd.	30.36
Hongkong Tiancheng Investment & Trading Co., Limited	Shandong Linglong Tyre Co., Ltd.	30.36
Hongtyre Group Co.	Prinx Chengshan (Shandong) Tire Co., Ltd.	30.36
Hongtyre Group Co.	Shandong Bayi Tyre Manufacture Co., Ltd.	30.36
Jiangsu General Science Technology Co., Ltd.	Jiangsu General Science Technology Co., Ltd.	30.36
Jiangsu Hankook Tire Co., Ltd.	Jiangsu Hankook Tire Co., Ltd.	30.36
Koryo International Industrial Limited	Chaoyang Long March Tyre Co., Ltd.	30.36
Koryo International Industrial Limited	Shandong Anchi Tyres Co., Ltd.	30.36
Koryo International Industrial Limited	Shandong Hugerubber Co., Ltd.	30.36

Exporter	Producer	Weighted average dumping margin (percent)
Koryo International Industrial Limited	Shandong Sangong Rubber Co., Ltd.	30.36
Koryo International Industrial Limited	Shandong Wanshine Tire Co., Ltd.	30.36
Koryo International Industrial Limited	Sichuan Tyre & Rubber Co., Ltd.	30.36
Kumho Tire Co., Inc.	Nanjing Kumho Tire Co., Ltd.	30.36
Longkou Xinglong Tyre Co., Ltd.	Longkou Xinglong Tyre Co., Ltd.	30.36
Maxon Int'l Co., Limited	Shandong Anchi Tyres Co., Ltd	30.36
Maxon Int'l Co., Limited	Triangle Tyre Co., Ltd.	30.36
Megalith Industrial Group Co., Ltd.	Ningxia Shenzhou Tire Co., Ltd.	30.36
Megalith Industrial Group Co., Ltd.	Shaanxi Yanchang Petroleum Group Rubber Co., Ltd.	30.36
Megalith Industrial Group Co., Ltd.	Shandong Hawk International Rubber Industry Co., Ltd.	30.36
Megalith Industrial Group Co., Ltd.	Shandong Huasheng Rubber Co., Ltd.	30.36
Megalith Industrial Group Co., Ltd.	Shandong Kaixuan Rubber Co., Ltd.	30.36
Megalith Industrial Group Co., Ltd.	Sichuan Kalevei Technology Co., Ltd.	30.36
Megalith Industrial Group Co., Ltd.	Xingyuan Tire Group Co., Ltd.	30.36
Michelin Asia-Pacific Export (HK) Limited	Michelin Shenyang Tire Co., Ltd.	30.36
Newland Tyre Int'l Limited	Shandong Hawk International Rubber Industry Co., Ltd.	30.36
Noble Manufacture Co., Ltd.	Qingdao Hongchi Tyre Co., Ltd.	30.36
Philixx Tyres and Accessories Limited	Shandong Huasheng Rubber Co., Ltd.	30.36
Philixx Tyres and Accessories Limited	Xingyuan Tire Group Co., Ltd.	30.36
Philixx Tyres and Accessories Limited	Shandong Vheal Group Co., Ltd.	30.36
Q&J Industrial Group Co., Limited	Chaoyang Langma Co., Ltd.	30.36
Q&J Industrial Group Co., Limited	Qiangdao Huanghai Rubber Co., Ltd.	30.36
Q&J Industrial Group Co., Limited	Shandong Hongsheng Rubber Co., Ltd.	30.36
Q&J Industrial Group Co., Limited	Shandong Huasheng Rubber Co., Ltd.	30.36
Q&J Industrial Group Co., Limited	Shandong Xingyuan Group	30.36
Q&J Industrial Group Co., Limited	Sichuan Kailiwei Technology Co., Ltd.	30.36
Qingdao Au-Shine Group Co., Ltd.	Shandong Gulun Rubber Co., Ltd.	30.36
Qingdao Champion International Trading Co., Ltd.	Shandong Cocrea Tyre Co., Ltd.	30.36
Qingdao Champion International Trading Co., Ltd.	Shandong Huasheng Rubber Co., Ltd.	30.36
Qingdao Champion International Trading Co., Ltd.	Zhucheng Sinoroad Rubber Co., Ltd.	30.36
Qingdao Fudong Tyre Co., Ltd.	Qingdao Fudong Tyre Co., Ltd.	30.36
Qingdao Fudong Tyre Co., Ltd.	Qingdao Xiyingmen Double Camel Tyre Co., Ltd.	30.36
Qingdao Fullrun Tyre Corp. Ltd.	Aeolus Tyre Co., Ltd.	30.36
Qingdao Fullrun Tyre Corp. Ltd.	Chaoyang Long March Tyre Co., Ltd.	30.36
Qingdao Fullrun Tyre Corp. Ltd.	Chonche Auto Double Happiness Tyre Corp. Ltd.	30.36
Qingdao Fullrun Tyre Corp. Ltd.	Double Coin Holdings Ltd.	30.36
Qingdao Fullrun Tyre Corp. Ltd.	Hangzhou Zhongce Rubber Co., Ltd.	30.36
Qingdao Fullrun Tyre Corp. Ltd.	Qingdao Yellow Sea Rubber Co., Ltd.	30.36
Qingdao Fullrun Tyre Corp. Ltd.	Qingdao Doublestar Tire Industrial Co., Ltd.	30.36
Qingdao Fullrun Tyre Corp. Ltd.	Shandong Xingyuan International Trading Co., Ltd.	30.36
Qingdao Ge Rui Da Rubber Co., Ltd.	Qingdao Ge Rui Da Rubber Co., Ltd.	30.36
Qingdao Honghua Tyre Factory	Qingdao Honghua Tyre Factory	30.36
Qingdao Jinhaoyang International Co., Ltd.	Double Coin Holdings Ltd.	30.36
Qingdao Jinhaoyang International Co., Ltd.	Qingdao Fudong Tyre Co., Ltd.	30.36
Qingdao Jinhaoyang International Co., Ltd.	Shaanxi Yanchang Petroleum Group Rubber Co., Ltd.	30.36
Qingdao Jinhaoyang International Co., Ltd.	Zhucheng Guoxin Rubber Co., Ltd.	30.36
Qingdao Keter International Co., Ltd.	Beijing Landy Tire & Tech Co., Ltd.	30.36
Qingdao Keter International Co., Ltd.	Chaoyang Long March Tyre Co., Ltd.	30.36
Qingdao Keter International Co., Ltd.	Chonche Auto Double Happiness Tyre Corp. Ltd.	30.36
Qingdao Keter International Co., Ltd.	Deruibo Tire Co., Ltd.	30.36
Qingdao Keter International Co., Ltd.	Qingdao Doublestar Tire Industrial Co., Ltd.	30.36
Qingdao Keter International Co., Ltd.	Shandong Huasheng Rubber Co., Ltd.	30.36
Qingdao Keter International Co., Ltd.	Shandong Huge Rubber Co., Ltd.	30.36
Qingdao Keter International Co., Ltd.	Shandong Kaixuan Rubber Co., Ltd.	30.36
Qingdao Lakesea Tyre Co., Ltd.	Chaoyang Long March Tyre Co., Ltd.	30.36
Qingdao Lakesea Tyre Co., Ltd.	Chonche Auto Double Happiness Tyre Corp. Ltd.	30.36
Qingdao Lakesea Tyre Co., Ltd.	Doublestar Dongfeng Tyre Co., Ltd.	30.36
Qingdao Lakesea Tyre Co., Ltd.	Qingdao Doublestar Tire Industrial Co., Ltd.	30.36
Qingdao Lakesea Tyre Co., Ltd.	Qingdao Yellow Sea Rubber Co., Ltd.	30.36
Qingdao Lakesea Tyre Co., Ltd.	Shandong Kaixuan Rubber Co., Ltd.	30.36
Qingdao Lakesea Tyre Co., Ltd.	Shandong Xingyuan International Trading Co., Ltd.	30.36
Qingdao Lakesea Tyre Co., Ltd.	Shandong Yinbao Tyre Group Co., Ltd.	30.36
Qingdao Lakesea Tyre Co., Ltd.	Sichuan Kalevei Technology Co., Ltd.	30.36
Qingdao Nama Industrial Co., Ltd.	Chaoyang Long March Tyre Co., Ltd.	30.36
Qingdao Nama Industrial Co., Ltd.	China National Tyre And Rubber Guilin Co., Ltd.	30.36
Qingdao Nama Industrial Co., Ltd.	Ningxia Shenzhou Tire Co., Ltd.	30.36
Qingdao Nama Industrial Co., Ltd.	Qingdao Doublestar Tire Industrial Co., Ltd.	30.36
Qingdao Nama Industrial Co., Ltd.	Shandong Hawk International Rubber Industry Co., Ltd.	30.36

Exporter	Producer	Weighted average dumping margin (percent)
Qingdao Nama Industrial Co., Ltd.	Shandong Hengfeng Rubber & Plastic Co., Ltd.	30.36
Qingdao Nama Industrial Co., Ltd.	Shandong Hengyu Science & Technology Co., Ltd.	30.36
Qingdao Nama Industrial Co., Ltd.	Shandong Huasheng Rubber Co., Ltd.	30.36
Qingdao Nama Industrial Co., Ltd.	Shandong Kaixuan Rubber Co., Ltd.	30.36
Qingdao Nama Industrial Co., Ltd.	Shandong Wanda Boto Tyre Co., Ltd.	30.36
Qingdao Nama Industrial Co., Ltd.	Shandong Wanshine Tyre Co., Ltd.	30.36
Qingdao Odyking Tyre Co., Ltd.	Weifang Shunfuchang Rubber And Plastic Products Co., Ltd.	30.36
Qingdao Qianzhen Tyre Co., Ltd.	Qingdao Qianzhen Tyre Co., Ltd.	30.36
Qingdao Qizhou Rubber Co., Ltd.	Qingdao Qizhou Rubber Co., Ltd.	30.36
Qingdao Rhino International Co., Ltd.	Dongying JinZheng Tyre Co., Ltd.	30.36
Qingdao Rhino International Co., Ltd.	Qingdao Aonuo Group	30.36
Qingdao Rhino International Co., Ltd.	Shandong Jinwangda Tire Co., Ltd.	30.36
Qingdao Rhino International Co., Ltd.	Weihai Ping'an Tyre Co., Ltd.	30.36
Qingdao Taihao Tyre Co., Ltd.	Qingdao Taihao Tyre Co., Ltd.	30.36
Qingdao Tanco Tire Industrial & Commercial Co., Ltd.	Hebei Tianrui Rubber Co., Ltd.	30.36
Qingdao Tanco Tire Industrial & Commercial Co., Ltd.	Shandong Hawk International Rubber Co., Ltd.	30.36
Qingdao Tanco Tire Industrial & Commercial Co., Ltd.	Xingyuan Tires Group	30.36
Qingdao Yellow Sea Rubber Co., Ltd.	Qingdao Yellow Sea Rubber Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Aeolus Tyre Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Bayi Rubber Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Chonche Auto Double Happiness Tyre Corp. Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Double Coin Holdings Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Guizhou Tyre Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Hangzhou Zhongce Rubber Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Qingdao Doublestar Tire Industrial Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Shandong Haohua Tire Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Shandong Hawk International Rubber Industry Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Shandong Hengfeng Rubber and Plastic Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Shandong Hengyu Science & Technology Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Shandong Huasheng Rubber Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Shandong Kaixuan Rubber Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Shandong Wosen Rubber Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Shandong Yongtai Group Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Shengtai Group Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	South China Tire & Rubber Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Weifang Goldshield Tire Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Weifang Shunfuchang Rubber & Plastic Products Co., Ltd.	30.36
Qingdao Yongdao International Trade Co., Ltd.	Xingyuan Tire Group Co., Ltd.	30.36
Rodeo Tire Ltd.	Shandong Province Sanli Tire Manufactured Co., Ltd.	30.36
Rodeo Tire Ltd.	Sichuan Tyre & Rubber Co., Ltd.	30.36
Rover Tire Co., Ltd.	Aeolus Tyre Co., Ltd	30.36
Rover Tire Co., Ltd.	Dongying Fangxing Rubber Co., Ltd.	30.36
Rover Tire Co., Ltd.	Double Coin Holdings Ltd.	30.36
Rover Tire Co., Ltd.	Qingdao Doublestar Tire Industrial Co., Ltd.	30.36
Rover Tire Co., Ltd.	Shandong Hengyu Science & Technology Co., Ltd.	30.36
Rover Tire Co., Ltd.	Shandong Huasheng Rubber Co., Ltd.	30.36
Rover Tire Co., Ltd.	Shandong Kaixuan Rubber Co., Ltd.	30.36
Rover Tire Co., Ltd.	Shandong Longyue Rubber Co., Ltd.	30.36
Rover Tire Co., Ltd.	Shandong Yongsheng Rubber Group Co., Ltd.	30.36
Rover Tire Co., Ltd.	Wanli Group Trade Limited	30.36
Rover Tire Co., Ltd.	Zhongce Rubber Group Company Limited	30.36
Sailun Jinyu Group Co., Ltd.	Sailun Jinyu Group Co., Ltd.	30.36
Sailun Jinyu Group Co., Ltd.	Shenyang Peace Radial Tyre Manufacturing Co., Ltd.	30.36
Shandong Anchi Tyres Co., Ltd.	Shandong Anchi Tyres Co., Ltd.	30.36
Shandong Haohua Tire Co., Ltd.	Shandong Haohua Tire Co., Ltd.	30.36
Shandong Haoyu Rubber Co., Ltd.	Shandong Haoyu Rubber Co., Ltd.	30.36
Shandong Hawk International Rubber Industry Co., Ltd.	Shandong Hawk International Rubber Industry Co., Ltd.	30.36
Shandong Hengfeng Rubber & Plastic Co., Ltd.	Shandong Hengfeng Rubber & Plastic Co., Ltd.	30.36
Shandong Hengyu Science & Technology Co., Ltd.	Shandong Hengyu Science & Technology Co., Ltd.	30.36
Shandong Hengyu Science & Technology Co., Ltd.	Shandong Hengyu Rubber Co., Ltd.	30.36
Shandong Homerun Tires Co., Ltd.	Good Friend Tyre Co., Ltd.	30.36
Shandong Homerun Tires Co., Ltd.	Shandong Kaixuan Rubber Co., Ltd.	30.36
Shandong Homerun Tires Co., Ltd.	Shandong Wosen Rubber Co., Ltd.	30.36
Shandong Homerun Tires Co., Ltd.	Shandong Yongsheng Rubber Group Co., Ltd.	30.36
Shandong Homerun Tires Co., Ltd.	Weifang Shunfuchang Rubber and Plastic Products Co., Ltd.	30.36
Shandong Huasheng Rubber Co., Ltd.	Shandong Huasheng Rubber Co., Ltd.	30.36
Shandong Hugerubber Co., Ltd.	Shandong Hugerubber Co., Ltd.	30.36
Shandong Huitong Tyre Co., Ltd.	Shandong Huitong Tyre Co., Ltd.	30.36

Exporter	Producer	Weighted average dumping margin (percent)
Shandong Kaixuan Rubber Co., Ltd.	Shandong Kaixuan Rubber Co., Ltd.	30.36
Shandong Linglong Tyre Co., Ltd.	Shandong Linglong Tyre Co., Ltd.	30.36
Shandong O'Green Tyres Co., Ltd.	Shandong O'Green Tyres Co., Ltd.	30.36
Shandong Province Sanli Tire Manufactured Co., Ltd.	Shandong Province Sanli Tire Manufactured Co., Ltd.	30.36
Shandong Sangong Rubber Co., Ltd.	Shandong Sangong Rubber Co., Ltd.	30.36
Shandong Transtone Tyre Co., Ltd.	Shandong Haohua Tire Co., Ltd.	30.36
Shandong Transtone Tyre Co., Ltd.	Shandong Hongyu Rubber Co., Ltd.	30.36
Shandong Transtone Tyre Co., Ltd.	Shandong Kaixuan Rubber Co., Ltd.	30.36
Shandong Transtone Tyre Co., Ltd.	Weifang Yuelong Rubber Co., Ltd.	30.36
Shandong Vheal Group Co., Ltd.	Shandong Vheal Group Co., Ltd.	30.36
Shandong Wanda Boto Tyre Co., Ltd.	Shandong Wanda Boto Tyre Co., Ltd.	30.36
Shandong Wanshine Tire Co., Ltd.	Shandong Wanshine Tire Co., Ltd.	30.36
Shandong Xingyuan Tire Group Co., Ltd.	Shandong Xingyuan Tire Group Co., Ltd.	30.36
Shandong Yinbao Tyre Group Co., Ltd.	Shandong Yinbao Tyre Group Co., Ltd.	30.36
Shandong Yongfeng Tyres Co., Ltd.	Shandong Yongfeng Tyres Co., Ltd.	30.36
Shandong Yongsheng Rubber Group Co., Ltd.	Shandong Yongsheng Rubber Group Co., Ltd.	30.36
Shandong Yongtai Group Co., Ltd.	Shandong Yongtai Group Co., Ltd.	30.36
Shanghai Durotyre International Trading Co., Ltd.	Chaoyang Long March Tyre Co., Ltd.	30.36
Shanghai Durotyre International Trading Co., Ltd.	Double Happiness Tyre Industrial Co., Ltd.	30.36
Shengtai Group Co., Ltd.	Shengtai Group Co., Ltd.	30.36
Shengtai Group Co., Ltd.	Shandong Zhushenghua Rubber Co., Ltd.	30.36
Shenzhen Zhongjin Import & Export Co., Ltd.	Hefei Wanli Tire Co., Ltd.	30.36
Shenzhen Zhongjin Import & Export Co., Ltd.	South China Tire & Rubber Co.	30.36
Shenzhen Zhongjin Import & Export Co., Ltd.	Weifang Shunfuchang Rubber And Plastics Products Co., Ltd.	30.36
Shifeng Juxing Tire Co., Ltd.	Shifeng Juxing Tire Co., Ltd.	30.36
Shuma Tyre International (Qingdao) Co., Ltd.	Shandong Wanshine Tire Co., Ltd.	30.36
Sichuan Kalevei Technology Co., Ltd.	Sichuan Kalevei Technology Co., Ltd.	30.36
Sinotyre International Group Co., Ltd.	Dongying City Fangxing Rubber Co., Ltd.	30.36
Sinotyre International Group Co., Ltd.	Shandong Hawk International Rubber Industry Co., Ltd.	30.36
Sportrak Tire Group Limited	Bayi Rubber Co., Ltd.	30.36
Sportrak Tire Group Limited	Shaanxi Yanchang Petroleum Group Rubber Co., Ltd.	30.36
Sportrak Tire Group Limited	Shandong Hawk International Rubber Industry Co., Ltd.	30.36
Tianjin Leviathan International Trade Co., Ltd.	NDI Tire (Qingdao) Co., Ltd.	30.36
Tianjin Leviathan International Trade Co., Ltd.	Qingdao Nama Industrial Co., Ltd.	30.36
Tianjin Leviathan International Trade Co., Ltd.	Shandong Haohua Tire Co., Ltd.	30.36
Tianjin Leviathan International Trade Co., Ltd.	Shandong Hawk International Rubber Industry Co., Ltd.	30.36
Tianjin Leviathan International Trade Co., Ltd.	Xingyuan Tire Group Co., Ltd.	30.36
Top Tyre Industry Co., Limited	Shandong Hawk International Rubber Industry Co., Ltd.	30.36
Toyo Tire (Zhucheng) Co., Ltd.	Toyo Tire (Zhucheng) Co., Ltd.	30.36
Triangle Tyre Co., Ltd.	Triangle Tyre Co., Ltd.	30.36
Tyrechamp Group Co., Limited	South China Tire & Rubber Co., Ltd.	30.36
Tyrechamp Group Co., Limited	Zhongce Rubber Group Company Limited	30.36
Wanli Group Trade Limited	South China Tire & Rubber Co., Ltd.,	30.36
Weifang Shunfuchang Rubber And Plastic Products Co., Ltd.	Weifang Shunfuchang Rubber And Plastic Products Co., Ltd.	30.36
Weihai Ping'an Tyre Co., Ltd.	Weihai Ping'an Tyre Co., Ltd.	30.36
Weihai Zhongwei Rubber Co., Ltd.	Weihai Zhongwei Rubber Co., Ltd.	30.36
Wendeng Sanfeng Tyre Co., Ltd.	Wendeng Sanfeng Tyre Co., Ltd.	30.36
Xuzhou Xugong Tyres Co., Ltd.	Xuzhou Xugong Tyres Co., Ltd.	30.36
Xuzhou Xugong Tyres Co., Ltd.	Armour Rubber Company Ltd.	30.36
Yokohama Rubber Co., Ltd.	Suzhou Yokohama Tire Co., Ltd.	30.36
Yongsheng Group Co., Ltd.	Shandong Yongsheng Rubber Group Co., Ltd.	30.36
Zhongce Rubber Group Co., Ltd.	Zhongce Rubber Group Co., Ltd.	30.36
Zhucheng Guoxin Rubber Co., Ltd.	Zhucheng Guoxin Rubber Co., Ltd.	30.36
PRC-Wide Entity		30.36

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after public announcement of the amended preliminary determination in accordance with 19 CFR 351.224(b).

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, we will notify the U.S. International Trade Commission of our amended preliminary determination.

This amended preliminary determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.224(e).

Dated: October 6, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigation

The scope of the investigation covers truck and bus tires. Truck and bus tires are new pneumatic tires, of rubber, with a truck or bus size designation. Truck and bus tires covered by this investigation may be tube-type, tubeless, radial, or non-radial.

Subject tires have, at the time of importation, the symbol ''DOT'' on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have one of the following suffixes in their tire size designation, which also appear on the sidewall of the tire:

TR—Identifies tires for service on trucks or buses to differentiate them from similarly sized passenger car and light truck tires;
MH—Identifies tires for mobile homes; and
HC—Identifies a 17.5 inch rim diameter code for use on low platform trailers.

All tires with a ''TR,'' ''MH,'' or ''HC'' suffix in their size designations are covered by this investigation regardless of their intended use.

In addition, all tires that lack one of the above suffix markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the ''Truck-Bus'' section of the *Tire and Rim Association Year Book,* as updated annually, unless the tire falls within one of the specific exclusions set out below.

Truck and bus tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes truck and bus tires produced in the subject country whether mounted on wheels or rims in the subject country or in a third country. Truck and bus tires are covered whether or not they are accompanied by other parts, *e.g.,* a wheel, rim, axle parts, bolts, nuts, etc. Truck and bus tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope of this investigation are the following types of tires: (1) Pneumatic tires, of rubber, that are not new, including recycled and retreaded tires; and (2) non-pneumatic tires, such as solid rubber tires.

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1015 and 4011.20.5020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.4520, 4011.99.4590, 4011.99.8520, 4011.99.8590, 8708.70.4530, 8708.70.6030, and 8708.70.6060. On August 26, 2016, the Department included HTSUS subheadings 4011.69.0020, 4011.69.0090, and 8716.90.5059 to the case reference files, pursuant to requests by U.S. Customs and Border Protection and the petitioner.[9]

While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

[FR Doc. 2016–24815 Filed 10–13–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–913]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of new pneumatic off-the-road tires (OTR Tires) from the People's Republic of China (PRC). The period of review (POR) is January 1, 2014, through December 31, 2014. Interested parties are invited to comment on these preliminary results.

DATES: Effective October 14, 2016.

FOR FURTHER INFORMATION CONTACT: Toni Page, Kathryn Wallace, or Chien-Min Yang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1398, (202) 482–6251, or (202) 482–5484 respectively.

Scope of the Order

The products covered by the order are new pneumatic tires designed for off-the-road (OTR) and off-highway use. For a full description of the scope of this order, *see* the Preliminary Decision Memorandum.

Methodology

On September 4, 2008, the Department issued a countervailing duty order on new pneumatic tires designed for OTR and off-highway use.[1] The Department is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily find that there is a subsidy, (*i.e.,* a financial contribution from an authority that gives rise to a benefit to the recipient) and that the subsidy is specific.[2] In making this preliminary determination, the Department relied, in part, on facts otherwise available, with the application of adverse inferences.[3] For further information, *see* ''Use of Facts Otherwise Available and Application of Adverse Inferences'' in the accompanying Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is provided at Appendix I to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

As a result of this review, we preliminarily determine the countervailable subsidy rates to be:

Company	Subsidy rate (percent)
Guizhou Tyre Co., Ltd	38.19
Xuzhou Xugong Tyres Co., Ltd	70.20
Non Selected Companies	54.20

Preliminary Rate for Non-Selected Companies Under Review

There are 44 companies for which a review was requested that were not selected as mandatory respondents. We preliminarily based the non-selected rate on an average of Guizhou Tyre's and Xuzhou Xugong's subsidy rates. For a list of these companies, please see Appendix II.

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[9] *See* Memorandum to the File entitled, ''Requests from Customs and Border Protection and the Petitioner to Update the ACE Case Reference File,'' dated August 26, 2016.

[1] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Countervailing Duty Order,* 73 FR 51627 (September 4, 2008) (*OTR CVD Order*).

[2] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[3] *See* section 776(a) of the Act.

Disclosure and Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[4] Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[5] Rebuttal briefs must be limited to issues raised in the case briefs.[6] Parties who submit case or rebuttal briefs are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[7]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system.[8] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined.[9] Parties should confirm by telephone the date, time, and location of the hearing. Issues addressed at the hearing will be limited to those raised in the briefs.[10] All briefs and hearing requests must be filed electronically and received successfully in their entirety through ACCESS by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

Assessment Rates and Cash Deposit Requirement

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of review.

Pursuant to section 751(a)(2)(C) of the Act, the Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for each of the respective companies shown above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

These preliminary results of review are issued and published in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: October 5, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Use of Facts Otherwise Available and Application of Adverse Inferences
V. Application of the Countervailing Duty Law to Imports From the PRC
VI. Subsidies Valuation Information
VII. Interest Rate Benchmarks, Discount Rates, Input, Electricity, and Land Benchmarks
VIII. Analysis of Programs
IX. Disclosure and Public Comment
X. Verification
XI. Conclusion

Appendix II

Companies Not Selected for Review

1. Air Sea Transport Inc.
2. Beijing Kang Jie Kong Intl Cargo Agent Co Ltd.
3. C&D Intl Freight Forward Inc.
4. Caesar Intl Logistics Co Ltd.
5. CD Intl Freight Forwarding.
6. Cheng Shin Rubber (Xiamen) Ind Ltd.
7. China Intl Freight Co Ltd.
8. Chonche Auto Double Happiness Tyre Corp Ltd.
9. City Ocean Logistics Co Ltd.
10. Consolidator Intl Co Ltd.
11. CTS Intl Logistics Corp.
12. De Well Container Shipping Inc.
13. England Logistics (Qingdao) Co Ltd.
14. Extra Type Co Ltd.
15. Fedex International Freight Forwarding Services Shanghai Co Ltd.
16. FG Intl Logistic Ltd.
17. JHJ Intl Transportation Co.
18. Kendra Rubber (China) Co Ltd.
19. Landmax Intl Co Ltd.
20. Orient Express Container Co Ltd.
21. Pudong Prime Intl Logistics Inc.
22. Qingdao Aotai Rubber Co Ltd.
23. Qingdao Chengtai Handtruck Co Ltd.
24. Qingdao Chuangtong Founding Co Ltd.
25. Qingdao Ftz Full-World Intl Trading Co Ltd.
26. Qingdao Haomai Hongyi Mold Co Ltd.
27. Qingdao Kaoyoung Intl Logistics Co Ltd.
28. Qingdao Milestone Tyres Co Ltd.
29. Qingdao Nexten Co Ltd.
30. Qingdao Wonderland.
31. Schenker China Ltd.
32. SGL Logistics South China Ltd.
33. Shanghai Grand South Intl Transportation Co Ltd.
34. Shanghai Hua Shen Imp & Exp Co Ltd.
35. Shanghai Part-Rich Auto Parts Co Ltd.
36. Thi Group (Shanghai) Ltd.
37. Tianjin United Tire & Rubber International Co., Ltd.
38. Toll Global Forwarding China Ltd.
39. Translink Shipping Inc.
40. Trelleborg Wheel Systems Hebei Co.
41. Universal Shipping Inc.
42. UTI China Ltd.
43. Weiss-Rohlig China Co Ltd.
44. World Bridge Logistics Co Ltd.

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[4] *See* 19 CFR 351.224(b).
[5] *See* 19 CFR 351.309(c)(l)(ii) and 351.309(d)(l).
[6] *See* 19 CFR 351.309(d)(2).
[7] *See* 19 CFR 351.309(c)(2) and (d)(2).
[8] *See* 19 CFR 351.310(c).
[9] *See* 19 CFR 351.310.
[10] *See* 19 CFR 351.310(c).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–844]

Narrow Woven Ribbons With Woven Selvedge From Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on narrow woven ribbons with woven selvedge from Taiwan. The review covers four producers/exporters of the subject merchandise. The period of review (POR) is September 1, 2014, through August 31, 2015. We preliminarily determine that sales of subject merchandise to the United States have been made at prices below normal value (NV). We invite all interested parties to comment on these preliminary results.

DATES: Effective October 14, 2016.

FOR FURTHER INFORMATION CONTACT: David Crespo or Alice Maldonado, AD/

CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3693 and (202) 482–4682, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to this order covers narrow woven ribbons with woven selvedge.[1] The merchandise subject to this order is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050; and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9889. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise covered by this order is dispositive.

Methodology

The Department is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. Because mandatory respondent A-Madeus failed to respond to the Department's questionnaire, we preliminarily determine to apply adverse facts available (AFA) to this respondent, in accordance with sections 776(a) and (b) of the Act and 19 CFR 351.308. For a full discussion of the rationale underlying our preliminary results, as well as a description of the methodology used, *see* the Preliminary Decision Memorandum.

A list of the topics included in the Preliminary Decision Memorandum is attached as an Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and it is available to all parties in the Central Records Unit, room B–8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Determination of No Shipments

On November 24, 2015, both Xiamen Yi He and Fujian Rongshu timely filed statements reporting that they made no shipments of subject merchandise to the United States during the POR. Subsequently, we received information from U.S. Customs and Border Protection (CBP) confirming Xiamen Yi He's and Fujian Rongshu's no shipment claims. Based on the foregoing, the Department preliminarily determines that Xiamen Yi He and Fujian Rongshu did not have any reviewable transactions during the POR. For additional information regarding this determination, *see* the Preliminary Decision Memorandum. Consistent with our practice, we are not preliminarily rescinding the review with respect to Xiamen Yi He and Fujian Rongshu but, rather, we will complete the review with respect to these companies and issue appropriate instructions to CBP based on the final results of this review.[2]

Preliminary Results of the Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

Producer/Exporter	Dumping margin (percent)
Roung Shu Industry Corporation	0.00
A-Madeus Textile Ltd	137.20

Disclosure and Public Comment

The Department intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[3] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to the Department no later than seven days after the date of the final verification report issued in this review. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[4] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[5] Case and rebuttal briefs should be filed using ACCESS.[6]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice.[7] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to issues raised in the respective case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[8]

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h), unless this deadline is extended.

Assessment Rates

Upon issuance of the final results, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[9]

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate

[1] For a complete description of the scope of the order, *see* the memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, entitled, ''Decision Memorandum for the Preliminary Results of the (2014–2015) Administrative Review of the Antidumping Duty Order on Narrow Woven Ribbons with Woven Selvedge from Taiwan'' (Preliminary Decision Memorandum), dated concurrently with and hereby adopted by this notice.

[2] *See e.g., Certain Frozen Warmwater Shrimp From Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR at 51306 (August 28, 2014).

[3] *See* 19 CFR 351.224(b).

[4] *See* 19 CFR 351.309(d).

[5] *See* 19 CFR 351.309(c)(2) and (d)(2).

[6] *See* 19 CFR 351.303.

[7] *See* 19 CFR 351.310(c).

[8] *See* 19 CFR 351.310(c) and (d).

[9] *See* 19 CFR 351.212(b)(1).

calculated in the final results of this review is not zero or *de minimis.* Where the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. Where assessments are based upon total facts available, including AFA, we instruct CBP to assess duties at the AFA margin rate. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[10]

Consistent with the Department's refinement of its assessment practice, for any entries of subject merchandise during the POR produced by Roung Shu for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[11] Further, if we continue to find in the final results that Xiamen Yi He and Fujian Rongshu had no shipments of subject merchandise during the POR, we will instruct CBP to liquidate any suspended entries that entered under their antidumping duty case numbers (*i.e.,* at that exporter's rate) at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be equal to the dumping margins established in the final results of this administrative review, unless the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.37 percent, the all-others rate determined in the less-than-fair-value investigation.[12] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 3, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
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V. Discussion of the Methodology
a. Comparisons to Normal Value
b. Determination of Comparison Method
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e. Date of Sale
f. Export Price
g. Normal Value
i. Home Market Viability
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iv. Calculation of Normal Value Based on Comparison Market Prices
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h. Currency Conversion
i. Use of Facts Otherwise Available
i. Use of Facts Available
ii. Application of Facts Available with an Adverse Inference
iii. Selection and Corroboration of Adverse Facts Available Rate
VI. Recommendation

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[10] *See* section 751(a)(2)(C) of the Act.

[11] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[12] *See Narrow Woven Ribbons With Woven Selvedge From Taiwan and the People's Republic of China: Amended Antidumping Duty Orders,* 75 FR 56982, 56985 (September 17, 2010).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–858]

Certain Oil Country Tubular Goods From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain oil country tubular goods (OCTG) from India for the period of review (POR) December 23, 2013 through December 31, 2014. We preliminarily determine that Jindal SAW Ltd. (Jindal SAW) received countervailable subsidies during the POR. *See* the ''Preliminary Results of Review'' section, below. Interested parties are invited to comment on these preliminary results.

DATES: Effective October 14, 2016.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Alexander Cipolla, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0197, and (202) 482–4956, respectively.

SUPPLEMENTARY INFORMATION:

Partial Rescission of Administrative Review

The Department initiated a review of four companies in this segment of the proceeding.[1] In response to timely filed withdrawal requests, we are rescinding this administrative review with respect to GVN Fuels Limited., Oil Country Tubular Ltd., and United Seamless Tubulaar Pvt. Ltd. pursuant to 19 CFR 351.213(d)(1). The remaining company

[1] *See* ''Initiation of Antidumping and Countervailing Duty Administrative Reviews,'' 80 FR 69193, 69197 (November 9, 2015) (*Initiation Notice*).

subject to the instant review is Jindal SAW Ltd. (Jindal SAW), which the Department has selected as the mandatory respondent.[2]

Scope of the Order

The merchandise covered by the order is certain oil country tubular goods (OCTG), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.*, whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock. For a complete description of the scope of the order, *see* Appendix I to this notice.

Methodology

The Department is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we preliminarily determine that there is a subsidy, *i.e.*, a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[3] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, dated concurrently with, and hereby adopted by, this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://trade.gov/enforcement/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine the total estimated net countervailable subsidy rate for the period December 23, 2013 through December 31, 2014[4] to be:

Manufacturer/Exporter	Subsidy rate (percent *ad valorem*)
Jindal SAW Ltd.	43.95

Disclosure and Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[5] Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[6] Rebuttal briefs must be limited to issues raised in the case briefs.[7] Parties who submit case or rebuttal briefs are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[8]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system.[9] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[10] Parties should confirm by telephone the date, time, and location of the hearing. Issues addressed at the hearing will be limited to those raised in the briefs.[11] All briefs and hearing requests must be filed electronically and received successfully in their entirety through ACCESS by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

Assessment Rates and Cash Deposit Requirement

Upon issuance of the final results, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of review.

Pursuant to section 751(a)(2)(C) of the Act, the Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for each of the respective companies shown above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

These preliminary results of review are issued and published in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: October 5, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Order

The merchandise covered by the order is certain oil country tubular goods (''OCTG''), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or

[2] *See* ''Decision Memorandum for the Preliminary Results and Partial Rescission of the Countervailing Duty (CVD) Administrative Review of Certain Oil Country Tubular Goods (OCTG) from India,'' (Preliminary Decision Memorandum).

[3] *See* Sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[4] *See* Memorandum to All Interested Parties From Elfi Bum: Countervailing Duty Administrative Review of Oil Country Tubular Goods from India; Period of Rate Calculation for the First Administrative Review, dated August 24, 2016. The Department invited parties to comment on its stated intention to base the assessment rate on subsidy information provided for calendar year 2014. The Department received no comments.

[5] *See* 19 CFR 351.224(b).

[6] *See* 19 CFR 351.309(c)(l)(ii) and 351.309(d)(l).

[7] *See* 19 CFR 351.309(d)(2).

[8] *See* 19 CFR 351.309(c)(2) and (d)(2).

[9] *See* 19 CFR 351.310(c).

[10] *See* 19 CFR 351.310.

[11] *See* 19 CFR 351.310(c).

threaded and coupled) whether or not conforming to American Petroleum Institute (''API'') or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock.

Excluded from the scope of the order are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Partial Rescission of Administrative Review
4. Scope of the Order
5. Subsidies Valuation Information
6. Analysis of Programs
7. Disclosure and Public Comment
8. Recommendation

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DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: Effective October 14, 2016.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of 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 has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with August anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://access.trade.gov* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''the Act''). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on the Department's service list.

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 30 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments five days after the deadline for the initial comments.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (''Q&V'') Questionnaire for purposes of respondent selection, in general each

company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 30 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than August 31, 2017.

	Period to be reviewed
Antidumping Duty Proceedings	
Italy: Granular Polytetrafluorethylene Resin,[4] A–475–703	8/1/15–7/18/16
Polis S.r.l.	
Malaysia: Polyethylene Retail Carrier Bags, A–557–813	8/1/15–7/31/16
Euro SME Sdn Bhd	
Mexico: Light-Walled Rectangular Pipe and Tube, A–201–836	8/1/15–7/31/16

[2] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[3] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Productos Laminados de Monterrey S.A. de C.V. LSIS Co., Ltd.	
Republic of Korea: Certain Steel Nails,[5] A–580–874	12/29/14–6/30/16
Linyi Double Moon Hardware Products Co., Ltd. Tianjin M&C Electronics Co., Ltd.	
Republic of Korea: Large Power Transformers, A–580–867	8/1/15–7/31/16
Hyosung Corporation	
Hyundai Heavy Industries Co., Ltd.	
ILJIN	
Iljin Electric Co., Ltd.	
Romania: Carbon and Alloy Seamless Standard, Line and Pressure Pipe (under 4 ½ inches), A–485–805	8/1/15–7/31/16
S.C. Silcotub S.A.	
Socialist Republic of Vietnam: Frozen Fish Fillets, A–552–801	8/1/15–7/31/16
An Giang Agriculture and Food Import-Export Joint Stock Company (also known as	
An Giang Fisheries Import and Export Joint Stock Company (also known as Agifish or	
AnGiang Fisheries Import and Export)	
An My Fish Joint Stock Company (also known as Anmyfish or Anmyfishco)	
An Phat Seafood Co. Ltd. (also known as An Phat Import-Export Seafood Co., Ltd.)	
An Phu Seafood Corporation (also known as ASEAFOOD or An Phu Seafood Corp.)	
Anvifish Joint Stock Company (ANVIFISH)	
Asia Commerce Fisheries Joint Stock Company (also known as Acomfish JSC or Acomfish)	
Asia Pangasius Company Limited	
Basa Joint Stock Company (BASACO)	
Ben Tre Aquaproduct Import and Export Joint Stock Company (also known as Bentre Aquaproduct, Bentre Aquaproduct Import & Export Joint Stock Company or Aquatex Bentre)	
Bentre Forestry and Aquaproduct Import Export Joint Stock Company (also known as	
Ben Tre Forestry and Aquaproduct Import-Export Company or Ben Tre Forestry Aquaproduct Import-Export Company or Ben Tre Frozen Aquaproduct Export Company or Faquimex)	
Bien Dong Seafood Company Ltd. (also known as Bien Dong, Bien Dong Seafood, Bien Dong Seafood Co., Ltd., or Biendong Seafood Co., Ltd.)	
Binh An Seafood Joint Stock Company (also known as Binh An or Binh An Seafood Joint Stock Co.)	
C.P. Vietnam Corporation	
Cadovimex II Seafood Import-Export and Processing Joint Stock Company (also known as Cadovimex II or Cadovimex II Seafood Import-Export)	
Cafatex Corporation (also known as Cafatex)	
Can Tho Animal Fishery Products Processing Export Enterprise (also known as Cafatex)	
Cantho Import-Export Seafood Joint Stock Company (also known as CASEAMEX, Can Tho Import-Export Seafood Joint Stock Company, Cantho Import-Export Joint Stock Company, or Can Tho Import-Export Joint Stock Company)	
Cuu Long Fish Import-Export Corporation (also known as CL Panga Fish)	
Cuu Long Fish Joint Stock Company (also known as CL-Fish or Cuu Long Fish Joint Stock Company)	
Da Nang Seaproducts Import-Export Corporation (also known as Da Nang)	
Dai Thanh Seafoods (also known as DATHACO or Dai Thanh Seafoods Co., Ltd.)	
East Sea Seafoods LLC (also known as ESS LLC, ESS, East Sea Seafoods Limited Liability Company, East Sea Seafoods Joint Venture Co., Ltd.)	
Europe Joint Stock Company	
Fatifish Company Limited (also known as FATIFISH)	
GODACO Seafood Joint Stock Company (also known as GODACO or GODACO Seafood J.S.C.)	
Golden Quality Seafood Corporation (also known as Golden Quality, GOLDENQUALITY, or GoldenQuality, Seafood Corporation)	
Green Farms Seafood Joint Stock Company (also known as Green Farms, GreenFarm SeaFoods Joint Stock Company or Green Farms Seafoods Joint Stock Company).	
Hai Huong Seafood Joint Stock Company (also known as HHFish, HH Fish, or Hai Huong Seafood)	
Hiep Thanh Seafood Joint Stock Company (also known as Hiep Thanh or Hiep Thanh Seafood Joint Stock Co.)	
Hoa Phat Seafood Import-Export and Processing J.S.C. (also known as HOPAFISH or Hoa Phat Seafood Import-Export and Processing Joint Stock Company)	
Hoang Long Seafood Processing Company Limited (also known as HLS, Hoang Long Seafood, or Hoang Long Seafood Processing Co., Ltd.)	
Hung Vuong Corporation (Hung Vuong)	
Hung Vuong Joint Stock Company	
Hung Vuong Mascato Company Limited	
Hung Vuong Seafood Joint Stock Company	
Hung Vuong-Sa Dec Co., Ltd.	
Hung Vuong-Vinh Long Co., Ltd.	
Lian Heng Investment Co., Ltd. (also known as Lian Heng or Lian Heng Investment)	
Lian Heng Trading Co., Ltd. (also known as Lian Heng or Lian Heng Trading)	
Nam Viet Corporation (also known as NAVICO)	
Ngoc Ha Co. Ltd. Food Processing and Trading (also known as Ngoc Ha or Ngoc Ha Co., Ltd. Foods Processing and Trading)	
Nha Trang Seafoods, Inc. (also known as Nha Trang Seafoods-F89, Nha Trang Seafoods, or Nha Trang Seaproduct Company)	
NTSF Seafoods Joint Stock Company (also known as NTSF or NTSF Seafoods)	
Quang Minh Seafood Company Limited (also known as Quang Minh, Quang Minh Seafood Co., Ltd., or Quang Minh Seafood Co.)	
QVD Dong Thap Food Co., Ltd. (also known as Dong Thap)	
QVD Food Company, Ltd. (also known as QVD)	

	Period to be reviewed
Saigon-Mekong Fishery Co., Ltd. (also known as SAMEFICO or Saigon Mekong Fishery Co., Ltd.)	
Seafood Joint Stock Company No. 4 Branch Dongtam Fisheries Processing Company (also known as DOTASEAFOODCO or Seafood Joint Stock Company No. 4—Branch Dong Tam Fisheries Processing Company)	
Southern Fishery Industries Company, Ltd. (also known as South Vina, South Vina Co., Ltd., or Southern Fisheries Industries Company, Ltd.)	
Sunrise Corporation	
TG Fishery Holdings Corporation (also known as TG)	
Thuan An Production Trading and Service Co., Ltd. (also known as TAFISHCO, Thuan An Production Trading and Services Co., Ltd., or Thuan An Production & Trading Service Co., Ltd.)	
Thuan Hung Co., Ltd. (also known as THUFICO)	
To Chau Joint Stock Company (also known as TOCHAU)	
Van Duc Food Export Joint Stock Company	
Van Duc Tien Giang Food Export Company	
Viet Hai Seafood Company Limited (also known as Viet Hai or Vietnam Fish-One Co., Ltd.)	
Viet Phu Foods & Fish Co., Ltd.	
Viet Phu Foods and Fish Corporation (also known as Vietphu, Viet Phu, Viet Phu Food and Fish Corporation, or Viet Phu Food & Fish Corporation)	
Vinh Hoan Corporation (also known as Vinh Hoan or Vinh Hoan Co.)	
Vinh Quang Fisheries Corporation (also known as Vinh Quang, Vinh Quang Fisheries Joint-Stock Company, or Vinh Quang Fisheries Co., Ltd.)	
Thailand: Polyethylene Retail Carrier Bags, A–549–821	8/1/15–7/31/16
Apple Film Company, Ltd.	
Dpac Inter Corporation Co., Ltd.	
Elite Poly and Packaging Co., Ltd.	
Film Master Co., Ltd.	
Inno Cargo Co., Ltd.	
Innopack Industry Co., Ltd.	
K. International Packaging Co., Ltd.	
King Bag Co., Ltd.	
King Pac Industrial Co., Ltd.	
Landblue (Thailand) Co., Ltd.	
M & P World Polymer Co., Ltd.	
Minigrip (Thailand) Co., Ltd.	
Multibax Public Co., Ltd.	
Naraipak Co., Ltd.	
PMC Innopack Co., Ltd.	
Poly Plast (Thailand) Co., Ltd.	
Poly World Co., Ltd.	
Prepack Thailand Co., Ltd.	
Print Master Co., Ltd.	
Sahachit Watana Plastic Ind. Co., Ltd.	
Siam Best Products Trading Limited Partnership	
Sun Pack Inter Co., Ltd.	
Super Grip Co., Ltd.	
Superpac Corporation Co., Ltd.	
Thai Origin Co., Ltd.	
Thantawan Industry Public Co., Ltd.	
Triple B Pack Co.,Ltd.	
Two Path Plaspack Co. Ltd.	
Wing Fung Adhesive Manufacturing (Thailand) Co., Ltd.	
The People's Republic of China: Certain Steel Nails, A–570–909	8/1/15–7/31/16
Aironware (Shanghai) Co., Ltd.	
Certified Products Taiwan Inc.	
Chiieh Yung Metal Ind. Corp.	
Dezhou Hualude Hardware Products Co., Ltd.	
Faithful Engineering Products Co., Ltd.	
Hebei Cangzhou New Century Foreign Trade Co., Ltd.	
Hebei Minmetals Co., Ltd.	
Huanghua Xionghua Hardware Products Co., Ltd.	
Mingguang Ruifeng Hardware Products	
Nanjing Caiqing Hardware Co., Ltd.	
Nanjing Toua Hardware & Tools Co., Ltd.	
Qingdao D&L Group Ltd.	
SDC International Aust. PTY. LTD.	
SDC International Australia Pty Ltd.	
Shandong Dinglong Import & Export Co., Ltd.	
Shandong Oriental Cherry Hardware Group Co., Ltd.	
Shandong Oriental Cherry Hardware Import & Export Co., Ltd.	
Shandong Qingyun Hongyi Hardware Products Co., Ltd.	
Shanghai Curvet Hardware Products Co., Ltd.	
Shanghai Yueda Nails Industry Co., Ltd.	
Shanxi Hairui Trade Co., Ltd.	
Shanxi Pioneer Hardware Industrial	

	Period to be reviewed
Shanxi Tianli Industries Co., Ltd.	
S-Mart (Tianjin) Technology Development Co., Ltd. Suntec Industries Co., Ltd.	
The Stanley Works (Langfang) Fastening Systems Co., Ltd.	
Tianjin Jinchi Metal Products Co., Ltd.	
Tianjin Jinghai County Hongli Industry & Business Co., Ltd.	
Tianjin Lianda Group Co., Ltd.	
Tianjin Universal Machinery Imp. & Exp. Corp.	
Tianjin Zhonglian Metals Ware Co., Ltd.	
Xi'An Metals Minerals Imp & Exp Co., Ltd.	
The People's Republic of China: Passenger Vehicle and Light Truck Tires, A–570–016	1/27/15–7/31/16
Actyon Tyre Resource Co., Limited	
American Pacific Industries, Inc.	
BC Tyre Group Limited	
Best Choice International Trade Co., Limited	
Briway Tire Co., Ltd.	
Cheng Shin Tire & Rubber (China) Co., Ltd.	
Cooper (Kunshan) Tire Co., Ltd.	
Cooper Chengshan (Shandong) Tire Co., Ltd.	
Cooper Tire & Rubber Company	
Crown International Corporation	
Dynamic Tire Corp.	
Fleming Limited	
Giti Radial Tire (Anhui) Company Ltd.	
Giti Tire (Fujian) Company Ltd.	
Giti Tire (Hualin) Company Ltd.	
Giti Tire (USA) Ltd.	
Giti Tire Global Trading Pte. Ltd.	
Guangrao Taihua International Trade Co., Ltd.	
Guangzhou Pearl River Rubber Tyre Ltd.	
Hankook Tire China Co., Ltd.	
Haohua Orient International Trade Ltd.	
Hebei Tianrui Rubber Co., Ltd.	
Highpoint Trading, Ltd.	
Hong Kong Tiancheng Investment & Trading Co., Limited	
Hong Kong Tri-Ace Tire Co., Limited	
Hongtyre Group Co.	
Husky Tire Corp.	
Hwa Fong Rubber (Hong Kong) Ltd.	
ITG Voma Corporation	
Jiangsu Hankook Tire Co., Ltd.	
Jilin Jixing Tire Co., Ltd.	
Jinyu International Holding Co., Limited	
Kenda Rubber (China) Co., Ltd.	
Koryo International Industrial Limited	
Kumho Tire Co., Inc.	
Liaoning Permanent Tyre Co., Ltd.	
Macho Tire Corporation Limited	
Mayrun Tyre (Hong Kong) Limited	
Maxo Int'l Co., Limited	
Nankang (Zhangjiagang Free Trade Zone) Rubbber Industrial Co., Ltd.	
Pirelli Tyre Co., Ltd.	
Prinx Chengshan (Shandong) Tire Co., Ltd.	
Qingdao Crown Chemical Co., Ltd.	
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.	
Qingdao Fullrun Tyre Corp. Ltd.	
Qingdao Fullrun Tyre Tech Corp., Ltd.	
Qingdao Goalstar Tire Co., Ltd.	
Qingdao Honghua Tyre Factory	
Qingdao Jinhaoyang International Co., Ltd.	
Qingdao Keter International Co., Limited	
Qingdao Lakesea Tyre Co., Ltd.	
Qingdao Nama Industrial Co., Ltd.	
Qingdao Nexen Tire Corporation	
Qingdao Odyking Tyre Co., Ltd.	
Qingdao Qianzhen Tyre Co., Ltd.	
Qingdao Qihang Tyre Co., Ltd.	
Qingdao Qizhou Rubber Co., Ltd.	
Qingdao Sentury Tire Co., Ltd.	
Qingzhou Detai International Trading Co., Ltd.	
Riversun Industry Limited	
Roadclaw Tyre (Hong Kong) Limited	
Safe&Well (HK) International Trading Limited	
Sailun Group Co., Ltd. (aka Saliun Jinyu Group Co., Ltd.)	

	Period to be reviewed
Sailun Tire International Corp.	
Saliun Jinyu Group (Hong Kong) Co., Limited	
Seatex International Inc.	
Seatex PTE. Ltd.	
Shandong Anchi Tyres Co., Ltd.	
Shandong Changfeng Tyres Co., Ltd.	
Shandong Changhong Rubber Tech	
Shandong Duratti Rubber Corporation Co., Ltd.	
Shandong Good Forged Alum Wheel	
Shandong Guofeng Rubber Plastics Co., Ltd.	
Shandong Haohua Tire Co., Ltd.	
Shandong Haolong Rubber Tire Co., Ltd.	
Shandong Hawk International Rubber Industry Co., Ltd.	
Shandong Hengyu Science & Technology Co., Ltd.	
Shandong Huitong Tyre Co., Ltd.	
Shandong Jinyu Industrial Co., Ltd.	
Shandong Linglong Tyre Co., Ltd.	
Shandong Longyue Rubber Co., Ltd.	
Shandong New Continent Tire Co., Ltd.	
Shandong Province Sanli Tire Manufactured Co., Ltd.	
Shandong Sangong Rubber Co., Ltd.	
Shandong Shuangwang Rubber Co., Ltd.	
Shandong Wanda Boto Tyre Co., Ltd.	
Shandong Yongtai Group Co., Ltd. (formerly known as Shandong Yongtai Chemical Co., Ltd.)	
Shandong Yonking Rubber Co., Ltd.	
Shandong Zhongyi Rubber Co., Ltd.	
Shangong Ogreen International Trade Co., Ltd.	
Shengtai Group Co., Ltd.	
Shifeng Juxing Tire Co., Ltd.	
Shounguang Firemax Tyre Co., Ltd.	
Southeast Mariner International Co., Ltd.	
Techking Tires Limited	
Toyo Tire (Zhangjiagang) Co., Ltd.	
Triangle Tyre Co., Ltd.	
Tyrechamp Group Co., Limited	
Wanli Group Trade Limited	
Weihai Ping'an Tyre Co., Ltd.	
Weihai Zhongwei Rubber Co., Ltd.	
Wendeng Sanfeng Tyre Co., Ltd.	
Windforce Tyre Co., Limited	
Winrun Tyre Co., Ltd.	
Xiamen Sunrise Wheel Group Co., Ltd.	
Xiamen Topu Import	
Zenith Holdings (HK) Limited	
Zhaoqing Junhong Co., Ltd.	
Zhejiang Jingu Company Limited	
Zhejiang Qingda Rubber Co., Ltd.	
The People's Republic of China: Polyethylene Retail Carrier Bags, A–570–886	8/1/15–7/31/16
Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. (collectively Nozawa)	
The People's Republic of China: Tow-Behind Lawn Groomers and Parts Thereof, A–570–939	8/1/15–7/31/16
Jiashan Superpower Tools Co., Ltd.	
Ukraine: Silicomanganese, A–823–805	8/1/14–7/31/15
PJSC Nikopol Ferroalloy Plant	
PJSC Zaporozhye Ferrolloy Plant	
Countervailing Duty Proceedings	
The People's Republic of China: Passenger Vehicle and Light Truck Tires, C–570–017	12/1/14–12/31/15
American Pacific Industries, Inc.	
BC Tyre Group Limited	
Best Choice International Trade Co., Limited	
Cooper (Kunshan) Tire Co., Ltd.	
Crown International Corporation	
Dynamic Tire Corp.	
Fleming Limited	
Giti Radial Tire (Anhui) Company Ltd.	
Giti Tire (Fujian) Company Ltd.	
Giti Tire (Hualin) Company Ltd.	
Giti Tire (USA) Ltd.	
Giti Tire Global Trading Pte. Ltd.	
Guangrao Taihua International Trade Co., Ltd.	
Guangzhou Pearl River Rubber Tyre Ltd.	
Haohua Orient International Trade Ltd.	
Hong Kong Tiancheng Investment & Trading Co., Limited	
Husky Tire Corp.	

	Period to be reviewed
Jilin Jixing Tire Co., Ltd.	
Jinyu International Holding Co., Limited	
Kenda Rubber (China) Co., Ltd.	
Liaoning Permanent Tyre Co., Ltd.	
Macho Tire Corporation Limited	
Maxon Int'l Co., Limited	
Qingdao Crown Chemical Co., Ltd.	
Qingdao Goalstar Tire Co., Ltd.	
Qingdao Jinhaoyang International Co., Ltd.	
Qingdao Keter International Co., Limited	
Qingdao Lakesea Tyre Co., Ltd.	
Qingdao Nama Industrial Co., Ltd.	
Qingdao Odyking Tyre Co., Ltd.	
Qingdao Sentury Tire Co., Ltd.	
Qingzhou Detai International Trading Co., Ltd.	
Riversun Industry Limited	
Safe&Well (HK) International Trading Limited	
Sailun Jinyu Group Co., Ltd.,	
Sailun Jinyu Group (Hong Kong) Co., Limited	
Sailun Tire International Corp.	
Seatex International Inc.	
Shandong Anchi Tyres Co., Ltd.	
Shandong Changhong Rubber Technology Co., Ltd.	
Shandong Guofeng Rubber Plastics Co., Ltd.	
Shandong Haohua Tire Co., Ltd.	
Shandong Hawk International Rubber Industry Co., Ltd.	
Shandong Hengyu Science & Technology Co., Ltd.	
Shandong Jinyu Industrial Co., Ltd.	
Shandong Linglong Tyre Co., Ltd.	
Shandong Longyue Rubber Co., Ltd.	
Shandong New Continent Tire Co., Ltd.	
Shandong Province Sanli Tire Manufactured Co., Ltd.	
Shandong Wanda Boto Tyre Co., Ltd.	
Shandong Yongtai Group Co., Ltd. (formerly known as Shandong Yongtai Chemical Co., Ltd.)	
Shandong Zhongyi Rubber Co., Ltd.	
Shangong Shuangwang Rubber Co., Ltd.	
Shengtai Group Co., Ltd.	
Shouguang Firemax Tyre Co., Ltd.	
Southeast Mariner International Co., Ltd.	
Tyrechamp Group Co., Limited	
Windforce Tyre Co., Limited	
Winrun Tyre Co., Ltd.	
Zhaoqing Junhong Co., Ltd.	
Zhongce Rubber Group Company Limited	
Suspension Agreements	
None	

[4] On August 11, 2016, the Department revoked the antidumping duty order on *Granular Polytetrafluorethylene Resin from Italy, effective July 18, 2016. See: Granular Polytetrafluorethylene Resin from Italy: Final Results of Sunset Review and Revocation of Antidumping Duty Order* (81 FR 53119).

[5] The companies listed above were misspelled in the initiation notice that published on September 12, 2016 (81 FR 62720). The correct spelling of the companies names are listed in this notice.

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this

notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Revised Factual Information Requirements

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to antidumping and countervailing duty proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all segments initiated on or after May 10, 2013. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.[6] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[7] The Department intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

[6] *See* section 782(b) of the Act.

Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in antidumping and countervailing duty proceedings: *Final Rule,* 78 FR 57790 (September 20, 2013). The modification clarifies that parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning U.S. Customs and Border Protection data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

[7] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule''*); *see also* the frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: October 6, 2016.

Christian Marsh,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–24809 Filed 10–13–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on certain new pneumatic off-the-road tires (''OTR tires'') from the People's Republic of China (''PRC''). The period of review (''POR'') is September 1, 2014, through August 31, 2015. The Department preliminarily finds that Xuzhou Xugong Tyres Co., Ltd. (''Xugong''), Xuzhou Armour Rubber Company Ltd. (''Armour'') and Xuzhou Hanbang Tyre Co., Ltd. (''Hanbang'') (collectively, ''Xugong''), made sales of subject merchandise at less than normal value (''NV'') and that Trelleborg Wheel Systems Hebei Co. (''TWS Hebei'') had no shipments during the POR. The Department invites interested parties to comment on this preliminary determination.

DATES: Effective October 14, 2016.

FOR FURTHER INFORMATION CONTACT: Keith Haynes or Mandy Mallott, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5139 or (202) 482–6430, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 2015, the Department initiated the seventh administrative review of the antidumping duty order on OTR tires from the PRC.[1] As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government.[2] Accordingly, all deadlines in this segment of the proceeding have been extended by four business days.[3] On May 3, 2016, we extended the time limit for the preliminary results of review by 120 days, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''Act''), to October 5, 2016.[4] For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[5] A list of topics included in the Preliminary Decision Memorandum is included as Appendix I.

Scope of the Order [6]

The merchandise covered by this order includes new pneumatic tires designed for off-the-road and off-highway use, subject to certain exceptions. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.

Preliminary Determination of No Shipments

On November 17, 2015, TWS Hebei submitted a timely-filed certification indicating that it had no shipments of subject merchandise to the United States during the POR.[7] Consistent with our practice, the Department asked Customs and Border Protection (''CBP'') to conduct a query on potential shipments made by TWS Hebei.[8] Based on TWS Hebei's certifications and our analysis of CBP data and rebuttal information, we preliminarily determine that TWS Hebei did not have any reviewable transactions during the POR. For additional information regarding this determination, *see* the Preliminary Decision Memorandum. Consistent with our assessment practice in non-market economy (''NME'') cases, the Department is not rescinding this review of the company, but intends to complete the review and issue appropriate instructions to CBP based on the final results of the review.[9]

Separate Rates

The Department preliminarily determines that information placed on the record by the mandatory respondent Xugong,[10] as well as nine other separate rate applicants, Shiyan Desizheng Industry & Trade Co., Ltd. (''Desizheng''), Qingdao Jinhaoyang International Co., Ltd. (''Jinhaoyang''), Weifang Jintongda Tyre Co., Ltd. (''Jintongda''), Sailun Jinyu Group Co., Ltd. (''Sailun''), Qingdao Free Trade Zone Full-World International Trading Co., Ltd. (''Qingdao FTZ''), Qingdao Qihang Tyre Co. (''Qihang''), Trelleborg Wheel Systems (Xingtai) China, Co. Ltd. (''TWS Xingtai''), Weihai Zhongwei Rubber Co., Ltd. (''Zhongwei''), and Zhongce Rubber Group Company Limited (''Zhongce''), demonstrates that these companies are entitled to separate rate status. For additional information, *see* the Preliminary Decision Memorandum.

Rate for Non-Examined Companies Which Are Eligible for a Separate Rate

The statute and the Department's regulations do not address the establishment of a rate to be applied to respondents not selected for individual examination when the Department limits its examination of companies subject to the administrative review pursuant to section 777A(c)(2)(B) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not individually examined in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference for not calculating an all-others rate using rates which are zero, *de minimis* or based entirely on adverse facts available (''AFA'').[11] Accordingly, the Department's usual practice has been to determine the dumping margin for companies not individually examined by averaging the weighted-average dumping margins for the individually examined respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available.[12] Consistent with this practice, in this review, we preliminarily calculated a weighted-average dumping margin for Xugong that is above *de minimis* and not based entirely on AFA; therefore, the Department preliminarily assigns to Desizheng, Jinhaoyang, Jintongda, Sailun, Qingdao FTZ, Qihang, TWS Xingtai, Zhongwei, and Zhongce the weighted-average margin calculated for Xugong as the separate rate for this review.

PRC-Wide Entity

The Department's change in policy regarding conditional review of the

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Review,* 80 FR 69193 (November 9, 2016) (''*Initiation Notice''*).

[2] *See* Memorandum to the File from Ron Lorentzen, Acting A/S for Enforcement & Compliance, ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas'' dated January 27, 2016.

[3] *Id.*

[4] *See* Memorandum to Christian Marsh, ''Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Extension of Deadline for Preliminary Results of 2014–2015 Antidumping Duty Administrative Review,'' dated May 3, 2016.

[5] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; 2014–2015'' (''Preliminary Decision Memorandum''), dated concurrently with and hereby adopted by this notice.

[6] For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.

[7] *See* Letter from TWS Hebei, ''Trelleborg Wheel Systems Hebei Co. Statement of No Shipments during the POR: New Pneumatic Off-The-Road Tires from the People's Republic of China,'' dated November 17, 2015.

[8] *See* CBP Message Number 6207309, dated July 25, 2016.

[9] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) and the ''Assessment Rates'' section, below.

[10] The Department previously collapsed Xugong and its affiliates Armour and Hanbang into a single entity, *see Certain New Pneumatic Off-The-Road Tires From The People's Republic Of China: Preliminary Results Of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 61166, 61167 (October 9, 2015), unchanged in *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014,* 81 FR 23272 (April 20, 2016). This decision is unchallenged in the instant review; thus the Department continues to treat Xugong, Armour, and Hanbang as a single entity.

[11] *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

[12] *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

PRC-wide entity applies to this administrative review.[13] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review and the entity's rate is not subject to change (*i.e.,* 105.31 percent).[14] Aside from the no shipments and separate rate companies discussed above, the Department considers all other companies for which a review was requested, were not found eligible for a separate rate based on information provided, including Guizhou Tyre Co., Ltd. (''GTC''),[15] Aeolus Tyre Co., Ltd., and Tianjin Leviathan International Trade Co., Ltd., to be part of the PRC-wide entity.[16] For additional information, *see* the Preliminary Decision Memorandum.

Methodology

The Department is conducting this review in accordance with section 751(a)(1)(B) and 751(a)(2)(A) of the Act. Export and constructed export prices were calculated in accordance with sections 772(a) and (b) of the Act. Because the PRC is a nonmarket economy within the meaning of section 771(18) of the Act, normal value (''NV'') has been calculated in accordance with section 773(c).

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *https://access.trade.gov*, and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist for the period September 1, 2014, through August 31, 2015:

Exporter	Weighted-average dumping margin (percent)
Xuzhou Xugong Tyres Co., Ltd., Armour Rubber Company Ltd., or Xuzhou Hanbang Tyre Co., Ltd.	33.58
Shiyan Desizheng Industry & Trade Co., Ltd.	33.58
Qingdao Jinhaoyang International Co., Ltd.	33.58
Sailun Jinyu Group Co., Ltd.	33.58
Weifang Jintongda Tyre Co., Ltd.	33.58
Zhongce Rubber Group Company Limited	33.58
Weihai Zhongwei Rubber Co., Ltd.	33.58
Qingdao Qihang Tyre Co.	33.58
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.	33.58
Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.	33.58

Additionally, the Department preliminarily determines that GTS, Aeolus Tyre CO., Ltd., and Tianjin Leviathan International Trade Co., Ltd., to be a part of the PRC-wide entity.

Disclosure, Public Comment and Opportunity to Request a Hearing

The Department intends to disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs within 30 days after the date of publication of these preliminary results of review in the **Federal Register**.[17] Rebuttals to case briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the time limit for filing case briefs.[18] Parties who submit arguments are requested to submit with the argument (a) a statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[19] Parties submitting briefs should do so pursuant to the Department's electronic filing system, ACCESS.[20]

Any interested party may request a hearing within 30 days of publication of this notice.[21] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.[22]

The Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

[13] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[14] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 20197 (April 15, 2015).

[15] The Department notes that it previously collapsed GTC and Guizhou Tyre Import and Export Corporation (''GTCIE''), into a single entity and that that decision is unchallenged in the instant review. *See Certain New Pneumatic Off-The-Road Tires From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 73 FR 9278, 9283 (February 20, 2008), unchanged in *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 40485 (July 15, 2008).

[16] *See* Preliminary Decision Memorandum. *See also* Memorandum to the File, ''Preliminary Denial of Separate Rates in the Antidumping Duty Administrative Review of New Pneumatic Off-the-Road Tires from the People's Republic of China,'' dated concurrently with and hereby adopted by this notice.

[17] *See* 19 CFR 351.309(c)(1)(ii).

[18] *See* 19 CFR 351.309(d)(1)–(2).

[19] *See* 19 CFR 351.309(c)(2), (d)(2).

[20] *See* 19 CFR 351.303 (for general filing requirements).

[21] *See* 19 CFR 351.310(c).

[22] *See* 19 CFR 351.310(d).

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[23] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

For assessment purposes, the Department applied the assessment rate calculation method adopted in *Assessment Rate Modification.*[24] For any individually examined respondent whose weighted average dumping margin is above *de minimis* (*i.e.,* 0.50 percent) in the final results of this review, the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis,* the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[25] Where either a respondent's weighted average dumping margin is zero or *de minimis,* or an importer- (or customer-) specific *ad valorem* rate is zero or *de minimis,* the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[26] For the respondents that were not selected for individual examination in this administrative review and that qualified for a separate rate, the assessment rate will be based on the average of the mandatory respondents.[27]

Pursuant to the Department's practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during the administrative review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. Additionally, if the Department determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.[28]

[23] *See* 19 CFR 351.212(b).

[24] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (''*Assessment Rate Modification''*) in the manner described in more detail in the Preliminary Decision Memorandum.

[25] *See* 19 CFR 351.212(b)(1).

[26] *See* 19 CFR 351.106(c)(2).

[27] *See* Preliminary Decision Memorandum.

[28] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: October 5, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Preliminary Determination of No Shipments
V. Discussion of Methodology
  A. Non-Market Economy Country
  B. Surrogate Country and Surrogate Value Data
  C. Surrogate Country
  D. Separate Rates
  E. Margin for the Companies Individually Examined
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VII. Recommendation

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–817]

Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from SEAH Steel VINA Corporation (SSV), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on certain oil country tubular goods (OCTG) from the Socialist Republic of Vietnam (Vietnam) for the period (POR) February 25, 2014, through August 31, 2015. The Department preliminarily determines that SSV did not sell subject merchandise in the United States at prices below normal value (NV) during the period of review (POR). Interested parties are invited to comment on these preliminary results.

DATES: Effective October 14, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Baker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone 202–482–2924.

SUPPLEMENTARY INFORMATION:

Background

On November 9, 2015, the Department initiated an administrative review of the

antidumping order[1] on OCTG from Vietnam.[2] Between November 2015 and June 2016, the Department sent AD questionnaires and supplemental questionnaires to SSV, to which SSV responded in a timely manner. As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government.[3] Accordingly, all deadlines in this segment of the proceeding have been extended by four business days. On June 6, 2016, the Department partially extended the deadline for issuing the preliminary results until September 21, 2016.[4] On September 20, 2016, the Department fully extended the deadline for issuing the preliminary results until October 5, 2016.[5]

Scope of the Order

The merchandise covered by the order is certain oil country tubular goods (OCTG).

The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

While the HTSUS subheadings above are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[6]

Methodology

The Department conducted this review in accordance with sections 751(a)(1)(B) and 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). Constructed export prices have been calculated in accordance with section 772(b) of the Act. Because Vietnam is a non-market economy (NME) within the meaning of section 771(18) of the Act, NV has been calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov*, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Application of Separate Rates in NME Proceedings

In the *Initiation Notice*, the Department notified parties of the application process by which exporters may obtain separate rate status in an NME proceeding.[7] It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,[8] as further developed by *Silicon Carbide*.[9] However, if the Department determines that a company is wholly foreign-owned, then an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.[10]

Vietnam-Wide Entity

The Department's policy regarding conditional review of the Vietnam-wide entity applies to this administrative review.[11] Under this policy, the

[1] *See Certain Oil Country Tubular Goods From India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Social Republic of Vietnam: Antidumping Duty Orders; and Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 53691 (September 10, 2014) and *Certain Oil Country Tubular Goods From India, the Republic of Korea, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Notice of Correction to the Antidumping Duty Orders With Respect to Turkey and the Socialist Republic of Vietnam*, 79 FR 59740 (October 3, 2014).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 80 FR 69193 (November 9, 2015) (*Initiation Notice*).

[3] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' dated January 27, 2016.

[4] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Oil Country Tubular Goods from Vietnam: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated June 6, 2016.

[5] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Oil Country Tubular Goods from Vietnam: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated September 20, 2016.

[6] *See* Memorandum from Christian Marsh to Ronald K. Lorentzen, ''Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review,'' dated October 5, 2016 (Preliminary Decision Memorandum).

[7] *See Initiation Notice*.

[8] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*'').

[9] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*'').

[10] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

[11] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

Vietnam-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the Vietnam-wide entity in this review, the entity is not under review and the entity's rate (*i.e.*, 111.47 percent) [12] is not subject to change.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margin exists for the period February 25, 2014, through August 31, 2015:

Exporter	Weighted-average margin (percent)
SeAH Steel VINA Corporation	0.00

Disclosure, Public Comment, and Opportunity To Request a Hearing

The Department will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs within 30 days after the date of publication of these preliminary results of review in the **Federal Register**.[13] Rebuttals to case briefs, which must be limited to issues raised in the case briefs, may be filed within five days after the time limit for filing case briefs.[14] Parties who submit arguments are requested to submit with the argument: (a) A statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[15] Parties submitting briefs should do so pursuant to the Department's electronic filing system, ACCESS.[16]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a date and time to be determined.[17] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

The Department intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[18] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

For assessment purposes, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*.[19] For any individually examined respondent whose weighted average dumping margin is above *de minimis* (*i.e.*, 0.50 percent) in the final results of this review, the Department will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis*, the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[20] Where either a respondent's weighted average dumping margin is zero or *de minimis*, or an importer- (or customer-) specific *ad valorem* is zero or *de minimis*, the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[21]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from the Vietnam entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, then zero cash deposit will be required); (2) for previously investigated or reviewed Vietnamese and non-Vietnamese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Vietnamese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the Vietnamese-wide entity; and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporter that supplied that non-Vietnamese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 5, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Case History
3. Scope of the Order
4. Discussion of the Methodology
   a. Non-Market Economy Country Status
   b. Separate Rates
   c. Vietnam-Wide Entity
   d. Surrogate Country

[12] *See Amended Final Determination*, FR 79 at 53694.

[13] *See* 19 CFR 351.309(c)(1)(ii).

[14] *See* 19 CFR 351.309(d)(1)–(2).

[15] *See* 19 CFR 351.309(c)(2), (d)(2).

[16] *See* 19 CFR 351.303 (for general filing requirements).

[17] *See* 19 CFR 351.310(d).

[18] *See* 19 CFR 351.212(b).

[19] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012) in the manner described in more detail in the Preliminary Decision Memorandum.

[20] *See* 19 CFR 351.212(b)(1).

[21] *See* 19 CFR 351.106(c)(2).

e. Comparisons to Normal Value
f. Determination of Comparison Method
g. Results of Differential Pricing Analysis
h. Date of Sale
i. U.S. Price
j. Normal Value
k. Factor Valuations
l. Currency Conversion
5. Recommendation

[FR Doc. 2016–24797 Filed 10–13–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–870]

Certain Oil Country Tubular Goods From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain oil country tubular goods (OCTG) from the Republic of Korea (Korea). The period of review (POR) is July 18, 2014, through August 31, 2015. The Department preliminarily determines that the producers or exporters subject to the review, including the mandatory respondents NEXTEEL Co. Ltd. (NEXTEEL) and SeAH Steel Corporation (SeAH), made sales of subject merchandise at less than normal value. We invite interested parties to comment on these preliminary results.

DATES: Effective October 14, 2016.

FOR FURTHER INFORMATION CONTACT: Victoria Cho or Deborah Scott, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5075 or (202) 482–2657, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2015, we published in the **Federal Register** a notice of opportunity to request an administrative review of the order.[1] As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines by four business days due to the closure of the Federal Government during Snowstorm Jonas.[2] On February 12, 2016, we selected as mandatory respondents the two exporters or producers accounting for the largest volume of OCTG from Korea during the POR (*i.e.,* in alphabetical order, NEXTEEL and SeAH).[3] On May 31, 2016, we fully extended the preliminary results by 120 days.[4]

Scope of the Order

The merchandise covered by the order is certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.[5]

Methodology

The Department is conducting this administrative review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as Appendix 1 to this notice.

Preliminary Determination of No Shipments

Among the companies under review, certain companies properly filed statements reporting that they made no shipments of subject merchandise to the United States during the POR.[6] Based on the certifications submitted by these companies and our analysis of information from U.S. Customs and Border Protection (CBP), we preliminarily determine that the following companies had no shipments during the POR: Hyundai Glovis, Hyundai Mobis, Hyundai RB, Kolon Global, POSCO Plantec, and Samsung C&T Corporation.

For a full explanation of the Department's analysis, *see* the Preliminary Decision Memorandum. The Department finds that it is not appropriate to preliminarily rescind the review with respect to these companies but, rather, intends to complete the review with respect to these companies and issue appropriate instructions to CBP based on the final results of this review.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 80 FR 52741 (September 1, 2015).

[2] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' dated January 27, 2016.

[3] *See* the Department's Memorandum entitled, ''Antidumping Duty Administrative Review of Certain Oil Country Tubular Goods from the Republic of Korea: Respondent Selection Memorandum,'' dated February 12, 2016 (Respondent Selection Memo).

[4] *See* the Memoradum to Christian Marsh entitled, ''Oil Country Tubular Goods from the Republic of Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,'' dated May 31, 2016.

[5] *See* the accompanying Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods from the Republic of Korea, dated October 5, 2016 (Preliminary Decision Memorandum).

[6] *See* Letter from Hyundai Steel Company to the Department (certifying that its affiliates Hyundai Glovis, Hyundai Mobis, and Hyundai RB had no exports, sales or entries of subject merchandise to the United States during the POR), dated December 9, 2015; Letter from Kolon Global to the Department, dated December 9, 2015; Letter from POSCO Plantec to the Department, dated December 9, 2015; and Letter from Samsung C&T Corporation to the Department, dated December 9, 2015. One other company, POSCO Processing & Service Co., Ltd., submitted a letter stating that it had no exports, sales or entries of subject merchandise to the United States during the POR. *See* Letter from POSCO Processing & Service Co., Ltd. to the Department, dated December 9, 2015. However, no company with this specific name was listed in the *Initiation Notice. See Initiation Notice,* 80 FR at 69195–6.

Rates for Non-Examined Companies

The statute and the Department's regulations do not address the establishment of a rate to be applied to companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this review, we have preliminarily calculated weighted-average dumping margins for NEXTEEL and SeAH that are not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, the Department preliminarily has assigned to the companies not individually examined (see Appendix 2 for a full list of these companies) a margin of 5.92 percent, which is the simple average [7] of NEXTEEL's and SeAH's calculated weighted-average dumping margins.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter or producer	Weighted-average dumping margin (percent)
NEXTEEL Co., Ltd.	8.04
SeAH Steel Corporation	3.80
Non-examined companies	5.92

Public Comment on Allegations of a Particular Market Situation

The Department intends to further consider allegations of a particular market situation in this proceeding. We invite parties to submit comments and arguments on these allegations no later than 14 days after the date of publication of this notice. Rebuttal comments will be due no later than five days after the deadline for submission of affirmative comments.

Disclosure, Public Comment, and Opportunity To Request a Hearing

We intend to disclose the calculations performed for these preliminary results of review to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[8] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[9]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically *via* the Department's electronic records system, ACCESS. An electronically filed request must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[10] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

For any individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the examined sales made to each importer and the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1). Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If a respodent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [11]

For entries of subject merchandise during the POR produced by NEXTEEL or SeAH for which the producer did not know its merchandise was destined for the United States or for any respondent for which we have a final determination of no shipments, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[12]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of this review for all shipments of OCTG from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for the companies listed in the final results of review, will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published from a completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, the cash deposit rate will be the rate established from a completed segment for the most recent period for the producer of the merchandise; (4) the

[7] We calculated the all-others rate using a simple average of the dumping margins calculated for the mandatory respondents because complete publicly ranged sales data were not available.

[8] *See* 19 CFR 351.309(d).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See* 19 CFR 351.310(c).

[11] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[12] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

cash deposit rate for all other producers or exporters will continue to be 5.24 percent,[13] the all-others rate established in the less-than-fair-value investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

The Department is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 5, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix 1

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of Order
4. Preliminary Determination of No Shipments
5. Rates for Non-Examined Companies
6. Affiliation
7. Discussion of the Methodology
8. Currency Conversion
9. Recommendation

Appendix 2

List of Companies Not Individually Examined

A.R. Williams Materials
AJU Besteel Co., Ltd.
AK Steel
BDP International
Cantak Corporation
Daewoo International Corporation
Dong-A Steel Co., Ltd.
Dong Yang Steel Pipe
Dongbu Incheon Steel
Dongbu Steel Co., Ltd.
Dongkuk S and C
DSEC
EEW Korea
Erndtebruecker Eisenwerk and Company
GS Global
H K Steel
Hansol Metal
HG Tubulars Canada Ltd.
Husteel Co., Ltd.
Hyundai HYSCO[14]
Hyundai HYSCO Co., Ltd.
Hyundai Steel Company
Hyundai Steel Co., Ltd.
ILJIN Steel Corporation
Kukbo Logix
Kukje Steel
Kumkang Industrial Co., Ltd.
McJunkin Red Man Tubular
NEXTEEL Q&T
Nippon Arwwl and Aumikin Vuaan Korea Co., Ltd.
Phocennee
POSCO Processing and Acy Service
Samson
Sedae Entertech
Steel Canada
Steel Flower
Steelpia
Sung Jin
TGS Pipe
Toyota Tsusho Corporation
UNI Global Logistics
Yonghyun Base Materials

[13] *See Certain Oil Country Tubular Goods From the Republic of Korea: Notice of Court Decision Not in Harmony With Final Determination,* 81 FR 59603 (August 30, 2016).

[14] On September 21, 2016, the Department published the final results of a changed circumstances review with respect to OCTG from Korea, finding that Hyundai Steel is the successor-in-interest to Hyundai HYSCO for purposes of determining antidumping duty cash deposits and liabilities. *See Notice of Final Results of Antidumping Duty Changed Circumstances Review: Oil Country Tubular Goods From the Republic of Korea,* 81 FR 64873 (September 21, 2016). Hyundai Steel Company is also known as Hyundai Steel Corporation and Hyundai Steel Co. Ltd.

[FR Doc. 2016–24800 Filed 10–13–16; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD990

Atlantic Highly Migratory Species; Essential Fish Habitat

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

ACTION: Notice of public hearings.

SUMMARY: On September 8, 2016, NMFS published a notice of availability of the Draft Environmental Assessment for Amendment 10 to the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP). The purpose of this Draft Amendment is to update Atlantic HMS Essential Fish Habitat (EFH) with recent information following the EFH delineation methodology established in Amendment 1 to the 2006 Consolidated Atlantic HMS FMP (Amendment 1); update and consider new Habitat Areas of Particular Concern (HAPCs) for Atlantic bluefin tuna and sandbar, lemon, and sand tiger sharks based on recent information, as warranted; minimize to the extent practicable the adverse effects of fishing and non-fishing activities on EFH; and identify other actions to encourage the conservation and enhancement of EFH. NMFS announces two public hearing conference calls/webinars to allow opportunities for interested members of the public from all geographic areas to submit verbal comments on Draft Amendment 10.

DATES: NMFS will host public hearing conference calls/webinars on November 10, 2016, from 3 to 5 p.m. EST and November 18, 2016, from 10 a.m. to 12 p.m. EST. Written comments on Draft Amendment 10 will be accepted until December 22, 2016.

ADDRESSES: Two public hearing conference calls/webinars will be conducted. See **SUPPLEMENTARY INFORMATION** for information on how to access the conference calls/webinars. More information about Draft Amendment 10, including how to submit written comments, may be found at *http://www.fisheries.noaa.gov/sfa/hms/documents/fmp/am10/index.html.*

FOR FURTHER INFORMATION CONTACT: Jennifer Cudney or Randy Blankinship at (727) 824–5399.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) includes provisions concerning the identification and conservation of EFH (16 U.S.C. 1801 *et seq.*). EFH is defined at 50 CFR 600.10 as ''those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.'' NMFS must identify and describe EFH, minimize to the extent practicable the adverse effects of fishing on EFH, and identify actions to encourage the conservation and enhancement of EFH (§ 600.815(a)). Federal agencies that authorize, fund, or undertake actions that may adversely affect EFH must consult with NMFS (§ 600.920(a)), and NMFS must provide comments and EFH conservation recommendations to Federal or state agencies regarding any such actions (§ 600.905).

In addition to identifying and describing EFH for managed fish species, a review of EFH must be completed every 5 years, and EFH provisions must be revised or amended, as warranted, based on the best available scientific information. NMFS announced the initiation of this review and solicited information for compilation for the draft review from the public in a **Federal Register** notice

on March 24, 2014 (79 FR 15959). The initial public review/submission period ended on May 23, 2014. The Draft Atlantic HMS EFH 5-Year Review was made available on March 5, 2015 (80 FR 11981), and the public comment period ended on April 6, 2015. NMFS analyzed the information gathered through the EFH review process, and the Notice of Availability for the Final Atlantic HMS EFH 5-Year Review was published on July 1, 2015 (80 FR 37598). As a result of this review, NMFS determined that a revision of HMS EFH was warranted, and that an amendment to the 2006 Consolidated Atlantic HMS FMP would be developed as Amendment 10.

On September 8, 2016 (81 FR 62100), NMFS published a notice of availability of the Draft Environmental Assessment for Amendment 10 to the 2006 Consolidated Atlantic HMS FMP. Specific actions analyzed included the update and revision of existing HMS EFH, as warranted; modification of existing HAPCs or designation of new HAPCs for bluefin tuna and sandbar, lemon, and sand tiger sharks, as warranted; and analysis of fishing and non-fishing impacts on EFH by considering environmental and management changes and new information since 2009.

Public Hearing Conference Calls/ Webinars

NMFS will conduct two public hearing conference calls/webinars to allow members of the public from all geographic areas to submit verbal comments on Draft Amendment 10. To participate in those calls, use the following information:

TABLE 1—DATE, TIME, AND ACCESS INFORMATION FOR PUBLIC CONFERENCE CALLS/WEBINARS

Date and time	Access information
November 10, 2016, 3–5 p.m. EST	To participate in the conference call, call: (888) 455–5378 Passcode: 6522610. To participate in the webinar, go to: *https://noaaevents3.webex.com/noaaevents3/onstage/g.php?MTID=e767babee686fc6fae2441d750ab3338c.* Meeting Number: 396 375 761. Meeting Password: NOAA.
November 18, 2016, 10 a.m.–12 p.m. EST	To participate in the conference call, call: (888) 455–5378 Passcode: 6522610. To participate in the webinar, go to: *https://noaaevents3.webex.com/noaaevents3/onstage/g.php?MTID=ecebbb5a35ab25a56d9ef800370c24af6.* Meeting Number: 392 481 985. Meeting Password: NOAA.

Participants are strongly encouraged to log/dial in 15 minutes prior to the meeting to allow time to address any technical issues. NMFS will show a brief presentation via webinar followed by public comment. To participate in the webinars online, enter your name and email address, and click the ''JOIN'' button. Participants that have not used WebEx before will be prompted to download and run a plug-in program that will enable them to view the webinar. Presentation materials and other supporting information will be posted on the HMS Web site at *www.nmfs.noaa.gov/sfa/hms.*

The public is reminded that participants at public hearings and on conference calls must conduct themselves appropriately. At the beginning of the conference call, a representative of NMFS will explain the ground rules (all comments are to be directed to the agency on the proposed action; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject matter. If attendees do not respect the ground rules, they will be asked to leave the conference call.

Dated: October 11, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–24919 Filed 10–13–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE936

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Notice That Vendor Will Provide 2017 Cage Tags

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

ACTION: Notice of vendor to provide fishing year 2017 cage tags.

SUMMARY: NMFS informs surfclam and ocean quahog individual transferable quota (ITQ) allocation holders that they will be required to purchase their fishing year 2017 (January 1, 2017–December 31, 2017) cage tags from the National Band and Tag Company. The intent of this notice is to comply with regulations for the Atlantic surfclam and ocean quahog fisheries and to promote efficient distribution of cage tags.

FOR FURTHER INFORMATION CONTACT: Anna Macan, Fishery Management Specialist, (978) 281–9165; fax (978) 281–9161.

SUPPLEMENTARY INFORMATION: The Federal Atlantic surfclam and ocean quahog fishery regulations at 50 CFR 648.77(b) authorize the Regional Administrator of the Greater Atlantic Region, NMFS, to specify in the **Federal Register** a vendor from whom cage tags, required under the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP), shall be purchased. Notice is hereby given that National Band and Tag Company of Newport, Kentucky, is the authorized vendor of cage tags required for the fishing year 2017 Federal surfclam and ocean quahog fisheries. Detailed instructions for purchasing these cage tags will be provided in a letter to ITQ allocation holders in these fisheries from NMFS within the next several weeks.

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

Dated: October 11, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–24920 Filed 10–13–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE727

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Maintenance, Repair, and Decommissioning of a Liquefied Natural Gas Facility off Massachusetts

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: NMFS has issued, in response to a request from Neptune LNG LLC (Neptune), an authorization to take marine mammals, by harassment, incidental to maintenance, repair, and decommissioning activities at a liquefied natural gas (LNG) deepwater port (Port) off the coast of Massachusetts.

An electronic copy of the application, proposed IHA **Federal Register** notice (81 FR 58478; August 25, 2016), issued IHA, and a list of references used in this document may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

DATES: Effective October 7, 2016 through October 6, 2017.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On May 28, 2016, NMFS received an application from Neptune for the taking of marine mammals incidental to maintenance, repair, and decommissioning of its Port, Massachusetts Bay. NMFS determined the application was adequate and complete on August 11, 2016.

Take of marine mammals may occur from the use of bow and stern thrusters on two types of dynamic positioning (DP) vessels while docking, undocking, and occasional weathervaning (turning of a vessel at anchor from one direction to another under the influence of wind or currents) during Port maintenance, repair, and decommissioning. Decommissioning will occur for up to 70 days between May 1 and November 30, 2017. Unscheduled maintenance and repair work may occur prior to decommissioning, if needed, and last up to 14 days. To facilitate maintenance, repair, and decommissioning work, DP vessels will operate bow and stern thrusters at Neptune's north and south buoy and hot tap. Take, by Level B harassment only, of individuals of fourteen species of marine mammals is anticipated from this specific activity (Table 1). Take of marine mammals from actual maintenance, repair and decommissioning work (*e.g.,* pipeline removal, valve repair or cut off, removal of seafloor position transponders) is not anticipated nor authorized.

NMFS has issued several incidental harassment authorizations for the take, by Level B harassment only, of marine mammals to Neptune. NMFS issued a one-year IHA in June 2008 for the construction of the Port (73 FR 33400; June 12, 2008). NMFS issued a second one-year IHA to Neptune for the completion of construction and beginning of Port operations on June 26, 2009 (74 FR 31926; July 6, 2009). NMFS issued a third 1-year IHA (75 FR 41440; July 16, 2010) for ongoing operations followed by a five-year rulemaking and Letters of Authorization (76 FR 34157; June 13, 2011) which expired on July 10, 2016. Although Neptune intended to operate the Port for over 25 years, changes in the natural gas market have resulted in the company halting production operations. During the period of this proposed IHA, Neptune intends to decommission the Port in its entirety and conduct any unscheduled maintenance and repairs, if needed, prior to decommissioning.

Description of the Specified Activity

Overview

The Port consists of two mooring and unloading buoys separated by approximately 2.1 mi (3.4 km) (also known as the north and south buoy) and a pipeline that was meant to receive natural gas from ''shuttle and regasification vessels'' (SRVs) through a flexible riser that connects to a 24-inch (in) subsea flowline and ultimately into a 24-in gas transmission line. A hot tap/transmission manifold valve (herein after ''hot tap'') unit used to control gas flow from the Algonquin pipeline to Neptune's gas transmission line is located inshore of the buoys. Neptune ceased operations of the Port prior to any commercial natural gas deliveries to the New England region and has decided to decommission the Port; therefore, equipment must be removed or safely abandoned in place. To conduct this work (and any maintenance or repair that may be required prior to decommissioning), DP vessels would transit to and maintain position at the north and south buoys and hot tap.

Specified Geographic Region

The Port is located within Massachusetts Bay approximately 22 miles (mi) (35 kilometers [km]) northeast of Boston, Massachusetts. It is located west (*i.e.,* inshore) of the Stellwagen Bank National Marine Sanctuary (NMS). The DP-vessel would be operating north and south buoy are located 1.23 nautical miles (nm) (2.28 km) and 1.47 nm (2.72 km), respectively, from the western edge of the Sanctuary in Federal waters approximately 260 ft (79 m) in depth.

The hot tap is well inshore of the buoys in water approximately 122 ft (37 m) in depth.

Dates and Duration

Any unscheduled maintenance and repair that may be required would occur prior to decommissioning and last up to two weeks. No maintenance or repair work is currently planned. Decommissioning will commence no earlier than May 1, 2017, and will take up to 70 days.

Detailed Description of Activities

The notice of proposed IHA (81 FR 58478; August 25, 2016) contains a detailed description of the proposed activities, including the type of DP vessels planned for use and associated thruster operation procedures. That information has not changed and is not repeated here.

Comments and Responses

A notice of Proposed IHA was published in the **Federal Register** on August 25, 2016 (81 FR 58478) for public comment. During the 30-day public comment period, NMFS received three comment letters from the following: Marine Mammal Commission (MMC), U.S. Fish and Wildlife Service (USFWS), and one private citizen.

All of the public comment letters received are available on the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following is a summary of the public comments and NMFS' responses.

Comment 1: The MMC believes the method NMFS used to estimate the numbers of takes during the proposed activities, which summed fractions of takes for each species across days, does not account for and negates the intent of NMFS's 24-hour reset policy. As a solution, the MMC recommended NMFS (1) apply a 24-hour reset policy for enumerating the number of each species that could be taken during proposed activities, (2) apply standard rounding rules before summing the numbers of estimated takes across days, and (3) for species that have the potential to be taken but model-estimated or calculated takes round to zero, use group size to inform the take estimates.

Response: Calculating predicted take is not an exact science, and there are arguments for taking different mathematical approaches in different situations and for making qualitative adjustments in other situations. NMFS is currently engaged in developing a protocol to guide more consistent take calculation given certain circumstances. The method for estimating take incidental to this action considered duration of activities, marine mammal group size, and previous monitoring reports. Therefore, we consider it appropriate. We do note there was a mathematical error when calculating gray seal take numbers and have decreased the authorized take number accordingly.

Comment 2: The USFWS service submitted comments indicating heavy workload precluded the agency from reviewing the subject project and providing comments; however, they recommended NMFS determine if the action may affect any ESA-listed species or critical habitat under USFWS jurisdiction.

Response: We searched the USFWS' Information for Planning and Conservation Web site (*https://ecos.fws.gov/ipac/*) and determined that no ESA-listed species under USFWS jurisdiction would be affected by the proposed action. Therefore, no further action was necessary.

Comment 3: One private citizen submitted a comment that no work should be permitted prior to May 1 and not after October 15.

Response: In accordance with the mitigation measures as a means of effecting the least practicable adverse impact on marine mammals, all planned work must occur between May 1 and November 1. This work window was developed through intense investigation into marine mammal abundance data and coordination with marine mammal experts in the region such as the Stellwagen Bank NMS and NMFS Greater Atlantic Regional Fisheries Office (GARFO). Unplanned maintenance and repair may occur any time of the year; however, this is to allow immediate response to emergency situations only.

Description of Marine Mammals in the Area of the Specified Activity

A description of marine mammal species authorized to be taken incidental to DP vessel thruster use, including brief introductions to the species, relevant stock status, distribution and local occurrence, and population trends and threats, was provided in the **Federal Register** notice for the proposed IHA (81 FR 58478; August 25, 2016). We are not aware of any changes to this information; therefore, those descriptions are not repeated here. In addition to the **Federal Register** notice, general species accounts can also be found on NMFS' Office of Protected Resources Web site (*www.nmfs.noaa.gov/pr/species/mammals/*). For convenience, Table 1 provides an overview of marine mammals NMFS authorized to be taken in the IHA, by Level B harassment only, during the specific activities.

TABLE 1—SPECIES AUTHORIZED TO BE TAKEN IN THE IHA

[E = endangered, D = depleted, NL = not listed, ND = not depleted, unk = unknown]

Common name	Scientific name	Stock	Status	Estimated population (Waring et al., 2015)	Occurrence
North Atlantic right whale	*Eubalaena glacialis*	Western Atlantic	E, D	476	occasional.
Fin whale	*Balaenoptera physalus*	Western North Atlantic	E, D	1,618	occasional.
Humpback whale	*Megaptera novaeangliae*	Gulf of Maine	E, D	823	occasional.
Minke whale	*Balaenoptera acutorostrata*	Canadian East Coast	NL, ND	20,741	occasional.
Sei whale	*Balaenoptera borealis*	Novia Scotia	E, D	357	occasional.
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	Western North Atlantic	NL, ND	48,819	occasional.
Long-finned pilot whale	*Globicephala melas*	Western North Atlantic	NL, ND	26,535	occasional.
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	NL, ND	79,883	not common.
Bottlenose dolphin	*Tursiops truncatus*	Western North Offshore Atlantic.	NL, ND	77,532	not common.
Short beaked common dolphin	*Delphinus delphis*	Western North Atlantic	NL, ND	173,486	occasional.
Risso's dolphin	*Grampus griseus*	Western North Atlantic	NL, ND	18,250	not common.
Killer whale	*Orcinus orca*	Western North Atlantic	NL, ND	unk	not common.
Harbor seal	*Phoca vitulina*	Western North Atlantic	NL, ND	75,834	occasional.

TABLE 1—SPECIES AUTHORIZED TO BE TAKEN IN THE IHA—Continued

[E = endangered, D = depleted, NL = not listed, ND = not depleted, unk = unknown]

Common name	Scientific name	Stock	Status	Estimated population (Waring et al., 2015)	Occurrence
Grey seal	*Halichoerus grypus*	Western North Atlantic	NL, ND	unk	occasional.

Potential Effects of the Specified Activity on Marine Mammals

The **Federal Register** notice of proposed authorization (81 FR 58478; August 25, 2016) provides a background on sound characteristics generated from the specified activity, a description of marine mammal hearing, and the potential effects of the specified activity on marine mammals. In summary, no Level A (injury) is anticipated due to Port maintenance, repair and decommissioning nor are Level A takes authorized in the IHA. Marine mammals may experience Level B harassment in the form of masking or behavioral modifications (*e.g.,* avoidance, change in dive profiles); however, NMFS anticipates these impacts would be limited in duration and not result in impact to annual rates of recruitment or survival.

Anticipated Effects on Marine Mammal Habitat

NMFS concluded any impacts from Neptune's maintenance, repair, and decommissioning activities to marine mammal habitat are expected to be minor and not cause significant or long-term consequences for individual marine mammals or populations. A description of effects on marine mammal habitat from the specific activity is described in detail in the **Federal Register** notice for the proposed IHA (81 FR 58478; August 25, 2016). In summary, the benthic community and turbidity levels at the buoys and hot tap during maintenance, repair, and decommissioning work may be impacted. However, the impacts are expected to be short-term, minor, and localized. No public comments were received regarding impacts to marine mammal habitat from Port maintenance, repair, and decommissioning. More specifically, because the Port is now located in North Atlantic right whale critical habitat (81 FR 4838; January 27, 2016), NMFS Office of Protected Resources (OPR) consulted with NMFS Greater Atlantic Regional Office (GARFO) on the effects of the specified activity on critical habitat under Section 7 of the Endangered Species Act (ESA). NMFS OPR made a ''no effect'' determination on North Atlantic right whale critical habitat. GARFO did not object to this determination and issued an incidental take statement (ITS) for the taking of marine mammals incidental to Neptune's Port maintenance, repair, and decommissioning (see Endangered Species Act section below). Finally, the Port is located within a biologically important area (BIA) for North Atlantic right whale foraging habitat from February through April, annually. Foraging BIAs are defined as areas and months within which a particular species or population selectively feeds. These may either be found consistently in space and time, or may be associated with ephemeral features that are less predictable but can be delineated and are generally located within a larger identifiable area. However, because decommissioning would be restricted from May–November, the timing of the activity would not overlap in time with this BIA designation. While maintenance and repair activities may overlap temporally, the impact on foraging habitat is expected to be minor due to the short duration of the activity (no more than 14 days), nature of the continuous sound produced at relatively low received levels, and implementation of mitigation measures (*e.g.,* reduce thruster power if whales are observed within 500 m of a DP vessel).

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Mitigation Measures

The IHA contains a number of mitigation measures designed to minimize the risk of marine mammal vessel interaction and exposure to elevated noise levels. These measures resulted from extensive coordination between Neptune, NMFS OPR, and the Stellwagen Bank NMS during issuance of previous incidental take authorizations. The mitigation measures include, but are not limited to, reducing vessel speed to four knots and delaying departures from the buoys or hot tap when a whale is visibly observed within 1,000 m or acoustically detected on the two closest passive acoustic monitoring buoys; ceasing vessel movement or idling and reducing thruster power to minimal safe operating power when a whale is observed within 500 m of the vessel; ceasing vessel movement or idling and reducing thruster power to minimal safe operating power when a non-whale species is observed within 100 m of the vessel; not transiting from shore to the project site during nighttime or when visibility is reduced below 1,000 m; and abiding by all reporting and vessel operation requirements contained with the North Atlantic right whale ship strike rule (73 FR 60173; October 10, 2008). A complete list of the mitigation measures can be found within the IHA posted on NMFS Web site *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Mitigation Conclusions

NMFS has carefully evaluated the applicant's mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well

as other measures considered by NMFS, NMFS has determined the mitigation measures included in the IHA provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

2. An increase in our understanding of how many marine mammals are likely to be exposed to levels of continuous noise from use of a DP vessel thruster that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Monitoring Measures

The proposed **Federal Register** notice (81 FR 58478; August 25, 2016) includes a number of visual and acoustic monitoring measured designed to effectively detect marine mammals within the Level B harassment zone and determine if the required mitigation measures are triggered. The final measures included in the IHA have not been altered from the proposed IHA and are not repeated here. In summary, three protected species observers (PSO) will be stationed aboard all DP vessels and an acoustic array consisting of four autonomous recording units (ARUs) will be deployed around the north and south buoys to assist in the detection of marine mammals outside of visual sighting range; the ARUs are capable of detecting North Atlantic right whale calls to approximately 6–8 kms. These monitoring measures will ensure the specific activity has the least practicable adverse impact on marine mammals through visual and acoustic monitoring.

Reporting Measures

As part of the IHA, Neptune is required to submit an annual report to NMFS containing information on marine mammal takes and behavior and any mitigation actions taken. Neptune must submit a draft report on all monitoring conducted under the IHA within ninety calendar days of the completion of marine mammal and acoustic monitoring or sixty days prior to the issuance of any subsequent IHA for this project, whichever comes first. A final report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS. The information required in the report is provided in the **Federal Register** notice (81 FR 58478; August 25, 2016) for the proposed IHA and is not repeated here.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

When Neptune's mitigation is considered in combination with the fact that marine mammals would not be expected to remain around the stationary DP vessel for the duration needed to be exposed to sound levels that reach or exceed Level A harassment thresholds, NMFS believes that injury is unlikely.

Amount of Take Authorized

As described in the proposed IHA **Federal Register** notice (81 FR 58478; August 25, 2016), Neptune proposed, and NMFS issued, take, by Level B harassment, of marine mammals based on marine mammals stock density, the extent of the largest ZOI (37.4 km^2), and the maximum number of days Neptune would operate DP vessel thrusters to facilitate maintenance and repair (14 days) and decommissioning (70 days). For continuous sounds, such as those produced by DP vessel thrusters, NMFS used a received level of 120 dB re 1 μPa (rms) to indicate the onset of potential for Level B harassment. Table 2 includes the authorized amount of take of marine mammals, by species, incidental to the specified activity.

TABLE 2—AUTHORIZED TAKE OF MARINE MAMMALS, BY SPECIES, INCIDENTAL TO THE SPECIFIED ACTIVITY

[Unk = unknown]

Species	Estimated population (Waring *et al.*, 2015)	Density	Estimated takes	% population
North Atlantic right whale (*Eubalaena glacialis*)	476	0.000017	2	0.21
Fin whale (*Balaenoptera physalus*)	1,618	0.0034	12	0.12
Humpback whale (*Megaptera novaeangliae*)	823	0.0032	10	0.22

TABLE 2—AUTHORIZED TAKE OF MARINE MAMMALS, BY SPECIES, INCIDENTAL TO THE SPECIFIED ACTIVITY—Continued

[Unk = unknown]

Species	Estimated population (Waring *et al.*, 2015)	Density	Estimated takes	% population
Minke whale (*Balaenoptera acutorostrata*)	20,741	0.0033	11	0.009
Sei whale (*Balaenoptera borealis*)	357	0.000036	2	0.28
Atlantic white-sided dolphin (*Lagenorhynchus acutus*)	48,819	0.039	124	0.043
Long-finned pilot whale (*Globicephala melas*)	26,535	0.0019	8	0.035
Harbor porpoise (*Phocoena phocoena*)	79,883	0.104	328	0.068
Bottlenose dolphin (*Tursiops truncatus*)	77,532	0.003	10	0.002
Short beaked common dolphin (*Delphinus delphis*)	173,486	0.0071	*270	0.002
Risso's dolphin (*Grampus griseus*)	18,250	0.000044	2	0.005
Killer whale (*Orcinus orca*)	unk	0.0000089	2	unk
Harbor seal (*Phoca vitulina*)	75,834	0.097	305	0.067
Gray sea (*Halichoerus grypus*)	unk	0.027	86	unk

*Although the method used to calculate take results in an estimated take of 23 common dolphins, this species travels in large aggregations. Therefore, NMFS is proposing to authorize take based on two encounters of a group size documented within the ZOI in Neptune's monitoring reports (*i.e.,* 135 × 2).

Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing

In August 2016, NMFS released its Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing, which established new thresholds for predicting auditory injury, which equates to Level A harassment under the MMPA. In the August 4, 2016, **Federal Register** notice announcing the Guidance (81 FR 51694), NMFS explained the approach it would take during a transition period, wherein we balance the need to consider this new best available science with the fact that some applicants have already committed time and resources to the development of acoustic analyses based on our previous thresholds and have constraints that preclude the recalculation of take estimates, as well as consideration of where the agency is in the decision-making pipeline. In the **Federal Register** notice, we also included a non-exhaustive list of factors that would inform the most appropriate approach for considering the Guidance, including: How far in the MMPA process the applicant has progressed; the scope of the effects; when the authorization is needed; the cost and complexity of the analysis; and the degree to which the Guidance is expected to affect our analysis.

In the Guidance, acoustic thresholds are presented as cumulative sound exposure levels (SEL_{cum}) for non-impulsive sound such as that from DP vessel thrusters. This metric considers both the received level (dB) and duration of exposure. To account for the fact that marine mammals potentially taken by the specified activity fall into one of four hearing group categories (low-frequency, mid-frequency, and high-frequency cetaceans and phocid pinnipeds), the Guidance incorporates auditory weighting functions. NMFS considered the DP vessel sound source level (177dB rms), frequency, and potential exposure duration to assess potential for Level A take. When Neptune's mitigation is considered in combination with the fact that many marine mammals would be expected to avoid making close approaches to the DP vessel (a stationary acoustic source), we believe that injury is unlikely. In summary, we have considered the new Guidance and believe that the likelihood of injury is adequately addressed in the analysis and appropriate protective measures are in place in the IHA.

Analysis and Determinations

Negligible Impact

Negligible impact is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival" (50 CFR 216.103). The lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population level effects) forms the basis of a negligible impact finding. Thus, an estimate of the number of takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, effects on habitat, and the status of the species.

To avoid repetition, except where otherwise identified, the discussion of our analyses applies to all the species listed in Table 2 given that the anticipated effects of this project on marine mammals are expected to be relatively similar in nature. Where there is information about specific impacts to, or about the size, status, or structure of, any species or stock that would lead to a different analysis for this activity, species-specific factors are identified and analyzed.

In making a negligible impact determination, NMFS considers:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of Level B harassment; and
- The context in which the takes occur (*e.g.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental take.

The following provides a summary of NMFS' assessment of these items. NMFS does not anticipate, nor does the IHA authorize, injury, serious injury or mortality of marine mammals incidental to the specified activity. For reasons detailed in the **Federal Register** notice

for the proposed IHA (81 FR 58478; August 25, 2016), NMFS has determined the effects of the specified activity on marine mammals will be limited to short-term behavioral modifications such as avoidance of the area where DP vessels are operating thrusters and changes in swim speeds and dive profiles. In addition, some masking could occur. The mitigation measures, such as restricting decommissioning work until peak North Atlantic right whale season is over and reducing thruster power when marine mammals are within 500 m of the vessel, are designed to further minimize the intensity of the anticipated effects. With respect to stock status, three of the fourteen species authorized to be taken are listed under the ESA. On September 8, 2016, humpback whales present in the action area (West Indies distinct population segment) were delisted under the ESA (81 FR 62260); no MMPA designation (depleted or not depleted) has been assigned to this stock. With respect to habitat, the Port is within North Atlantic right whale critical habitat while Massachusetts Bay, including the Port, is a designated biological important area (BIA) for North Atlantic right whale foraging from February through April. However, as described in the proposed IHA **Federal Register** notice (81 FR 58478; August 25, 2016) and the Impacts to Marine Mammal Habitat section in this document, adverse impacts to habitat, including prey availability, is anticipated to be short-term and minor, if any, due to temporal restrictions on decommissioning activities (limited to May–November), nature of sound produced at relatively low received levels, and implementation of mitigation measures (*e.g.,* reduce thruster power if whales are observed within 500 m of a DP vessel). Finally, the IHA contains a number of mitigation measures designed to reduce impacts to marine mammals. Monitoring for marine mammals to trigger these mitigation measures is greatly improved from the requirements to employ two daylight and one nighttime protected marine observers and carry out passive acoustic monitoring.

In summary, the taking of marine mammals is anticipated to produce short-term mild behavioral reactions in marine mammals exposed to elevated noise levels and is not reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. Therefore, NMFS has determined the specified activity would have a negligible impact on the affected marine mammal species and stocks.

Small Numbers Analysis

The authorized takes represent less than one percent of all populations or stocks for which NMFS was able to quantify the estimated percentage, and we have determined that a small fraction of affected killer whales and grey seal stocks will be taken based on our qualitative assessments (see Table 2 in this document). As such, we find the numbers of marine mammals estimated to be taken are small proportions of the total populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

On January 12, 2007, NMFS concluded consultation with Maritime Administration (MARAD) and U.S. Coast Guard (USCG) under section 7 of the ESA on the proposed construction and operation of the Neptune LNG facility and issued a Biological Opinion. The finding of that consultation was the construction and operation of the Neptune LNG terminal may adversely affect, but is not likely to jeopardize the continued existence of, North Atlantic right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales and Kemp's ridley, loggerhead, green, or leatherback sea turtles. The Biological Opinion concluded decommissioning activities would not likely adversely affect marine mammals; however, the analysis was limited to actual work (*e.g.,* removing the pipeline). The use of DP vessel thrusters was not included in that analysis.

On March 2, 2010, MARAD and USCG sent a letter to NMFS requesting reinitiation of section 7 consultation because MARAD and USCG determined that certain routine planned operations and maintenance activities, inspections, surveys, and unplanned repair work on the Port pipelines and flowlines, as well as any other Port component (including buoys, risers/umbilicals, mooring systems, and sub-sea manifolds), may constitute a modification not previously considered in the 2007 Biological Opinion. On July 12, 2010, NMFS' Northeast Regional Office (now GARFO) issued a Biological Opinion, which concludes the operation, maintenance, and repair of the Port is likely to adversely affect, but is not likely to jeopardize the continued existence of, North Atlantic right, humpback, fin, and sei whales. NMFS reached this conclusion after reviewing the best available information on the status of endangered and threatened species under NMFS jurisdiction, the environmental baseline for the action area, the effects of the action, and the cumulative effects in the action area. The Biological Opinion also considered the effects of incidental take authorizations issued by NMFS to Neptune under the MMPA for the take of marine mammals incidental to Port operation, maintenance, repairs. Again, the Biological Opinion concluded decommissioning activities would not likely adversely affect marine mammals; however, the analysis was limited to actual work (*e.g.,* removing the pipeline). That is, the use of DP vessel thrusters was not included in the decommissioning analysis, only for operation, maintenance, and repair. As such, NMFS requested consultation under Section 7 of the ESA with GARFO on the issuance of an IHA to Neptune for take of marine mammals incidental to decommissioning. GARFO concluded there would not be effects beyond those previously considered because the take of marine mammal incidental to thruster use was fully considered in the 2010 Biological Opinion. As a result, GARFO concluded that re-initiation of section 7 consultation was not necessary and subsequently issued an Incidental Take Statement.

National Environmental Policy Act (NEPA)

MARAD and the USCG released a Final EIS/Environmental Impact Report (EIR) for the Port, publishing a notice of availability of the Final EIS/EIR on November 2, 2006 (71 FR 64606). The Final EIS/EIR provides detailed information on the proposed project facilities, construction, operation, and decommissioning activities, and analysis of potential impacts on marine mammals.

NMFS was a cooperating agency in the preparation of the Draft and Final EIS based on a Memorandum of Understanding related to the Licensing of Deepwater Ports entered into by the U.S. Department of Commerce along with 10 other government agencies. On June 3, 2008, NMFS adopted the USCG and MARAD FEIS and issued a separate Record of Decision for previous issuance of authorizations pursuant to sections 101(a)(5)(A) and (D) of the

MMPA for the construction and operation of the Neptune LNG Port facility. For the subject IHA, NMFS reviewed the FEIS to ensure that the analysis contained in that document accurately describes and analyzes the impacts to the human environment of NMFS' action of issuing an MMPA authorization for the maintenance, repair, and decommissioning of the Neptune Port. NMFS has determined that the FEIS sufficiently covers the activities considered in the subject IHA. NMFS issued an amended Record of Decision for issuance of authorizations pursuant to sections 101(a)(5)(D) of the MMPA specific to maintenance, repair, and decommissioning.

Authorization

NMFS has issued an IHA to Neptune for the potential harassment of small numbers of 14 marine mammal species incidental to maintenance, repair, and decommissioning of their Port in Massachusetts Bay], which includes required mitigation, monitoring and reporting measures.

Dated: October 7, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–24850 Filed 10–13–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE956

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, November 1, 2016 at 10 a.m.

ADDRESSES: The meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; phone: (401) 739–3000.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Groundfish Advisory Panel will discuss Framework Adjustment 56 (FW 56) Specifications and Management Measures. They also plan to discuss draft measures and draft impact analysis for FW 56 and make recommendations to the Groundfish Committee. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 11, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–24874 Filed 10–13–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE952

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, November 2, 2016 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; phone: (401) 739–3000.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Advisory Panel will review Framework 28 (FW 28) alternatives and analyses and make final recommendations. FW 28 will set specifications including ABC/ACLs, DAS, access area allocations for LA and LAGC, hard-TAC for NGOM management area, target-TAC for LAGC incidental catch and set-asides for the observer and research programs for fishing year 2017 and default specifications for fishing year 2018. Management measures in FW 28 may include but are not limit to: (1) Measures to restrict the possession of shell stock inshore of 42°20′ N.; (2) Measures to apply spatial management to fishery specifications (ACL flowchart); and (3) Measures to modify the Closed Area I access area boundary, consistent with potential changes to habitat and groundfish mortality closed areas. They will also review and potentially provide input on 2017 scallop work priorities. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 11, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–24877 Filed 10–13–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE957

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, November 2, 2016 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; phone: (401) 739–3000.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Groundfish Committee will receive reports from the Recreational Advisory Panel and Groundfish Advisory Panel. They plan to discuss Framework Adjustment 56 (FW 56) Specifications and Management Measures. They will also discuss draft measures and draft impact analysis for FW 56 and make recommendations on preferred alternatives to the Council. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 11, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–24875 Filed 10–13–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Coast Groundfish Trawl Rationalization Program Permit and License Information Collection.

OMB Control Number: 0648–0620.

Form Number(s): None.

Type of Request: Regular (revision and extension of a currently approved information collection).

Number of Respondents: 410.

Average Hours per Response: QS permit/account application form—30 minutes; QS permit/account online renewal—10 minutes; QS permit/account late renewal form—15 minutes; QS transfer—10 minutes; QP transfer from QS account to vessel account—8 minutes; vessel account registration request—15 minutes; vessel account online renewal—10 minutes; vessel account late renewal form—15 minutes; QP transfer from vessel account to another vessel account—8 minutes; trawl identification of ownership interest form for new entrants—45 minutes; trawl identification of ownership interest form for renewals—5 minutes; first receiver site license application form for new entrants—210 minutes; first receiver site license application form for re-registering license holders—110 minutes; mothership permit renewal form—20 minutes; mothership permit change of vessel registration, permit owner, or vessel owner application form—45 minutes; mothership cooperative permit application form—240 minutes; change of mothership catcher vessel endorsement and catch history assignment registration form—45 minutes; mutual agreement exception—60 minutes; mothership withdrawal—120 minutes; catcher/processor cooperative permit application form—120 minutes; QS abandonment request—10 minutes.

Burden Hours: 406.

Needs and Uses: This request is for revision and extension of a currently approved information collection.

The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.,* provides that the Secretary of Commerce is responsible for the conservation and management of marine fisheries resources in the Exclusive Economic Zone (3–200 miles) of the United States. NMFS West Coast Region manages the Pacific Coast Groundfish Fishery in the Exclusive Economic Zone (EEZ) off of Washington, Oregon, and California under the Pacific Coast Groundfish Fishery Management Plan.

In January 2011, NMFS implemented a trawl rationalization program, which is a catch share program, for the Pacific Coast Groundfish Limited Entry Trawl Fishery. The program was implemented through Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan and the corresponding implementing regulations at 50 CFR part 660. Amendment 20 established the trawl rationalization program that consists of: An individual fishing quota (IFQ) program for the shorebased trawl fleet (including whiting and nonwhiting sectors), and cooperative programs for the at-sea mothership and catcher/processor trawl fleets (whiting only). Amendment 21 set long-term allocations for the limited entry trawl sectors of certain groundfish species.

Under the trawl rationalization program, new permits, accounts, endorsements and licenses were established. These consist of: quota share (QS) permits/accounts, vessel accounts, first receiver site licenses, mothership endorsements on certain limited entry trawl permits, mothership catcher vessel endorsements on certain limited entry trawl permits, catcher/processor endorsements on certain

limited entry trawl permits, a mothership cooperative permit, and a catcher/processor cooperative permit. NMFS collects information from program participants required to: (1) Establish new permits, accounts, and licenses; (2) renew permits, accounts, and licenses; (3) allow trading of QS percentages and quota pounds (QP) in online QS and vessel accounts, and allow transfer of catch history assignments between limited entry trawl permits; (4) track compliance with program control limits; and (5) implement other features of the regulations pertaining to permits and licenses. NMFS requests comments on the extension of these permit information collections.

As part of this request, NMFS plans to remove the notary requirement on all of our forms in this collection, which will save time and money for permit, vessel, and license owners.

Affected Public: Business and other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: October 11, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–24849 Filed 10–13–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE953

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, November 3, 2016 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; phone: (401) 739–3000.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Scallop Committee will review Framework 28 (FW 28) alternatives and analyses and make final recommendations. FW 28 will set specifications including ABC/ACLs, DAS, access area allocations for LA and LAGC, hard-TAC for NGOM management area, target-TAC for LAGC incidental catch and set-asides for the observer and research programs for fishing year 2017 and default specifications for fishing year 2018. Management measures in FW 28 may include but are not limit to: (1) Measures to restrict the possession of shell stock inshore of 42°20′ N.; (2) Measures to apply spatial management to fishery specifications (ACL flowchart); and (3) Measures to modify the Closed Area I access area boundary, consistent with potential changes to habitat and groundfish mortality closed areas. They will also review and potentially provide input on 2017 scallop work priorities. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 11, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–24878 Filed 10–13–16; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the procurement list.

SUMMARY: The Committee is proposing to delete products and services previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: November 13, 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: For further information or to submit comments contact: Barry S. Lineback, 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.

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s): 8340–01–026–6096—Shelter Half, Tent, Complete

Mandatory Source(s) of Supply: ORC Industries, Inc., La Crosse, WI

Contracting Activity: Defense Logistics Agency Troop Support

NSN(s)—Product Name(s): 7510–01–600–8030—Dated 2016 12-Month 2-Sided Laminated Wall Planner, 24″ × 37″

Mandatory Source(s) of Supply: Chicago Lighthouse Industries, Chicago, IL

Contracting Activity: General Services Administration, Philadelphia, PA

NSN(s)—Product Name(s): 7510–01–600–8036—Dated 2016 18-month Paper Wall Planner, 24″ × 37″

Mandatory Source(s) of Supply: Chicago Lighthouse for People Who Are Blind or Visually Impaired, Chicago, IL
Contracting Activity: General Services Administration, Philadelphia, PA

NSN(s)—Product Name(s):
7530–01–600–7573—Daily Desk Planner, Dated 2016, Wire bound, Non-refillable, Black Cover
7530–01–600–7591—Weekly Desk Planner, Dated 2016, Wire Bound, Non-refillable, Black Cover
7530–01–600–7599—Weekly Planner Book, Dated 2016, 5″ × 8″, Black
7530–01–600–7607—Monthly Desk Planner, Dated 2016, Wire Bound, Non-refillable, Black Cover
7510–01–600–7562—Monthly Wall Calendar, Dated 2016, Jan-Dec, 8–1/2″ × 11″
7510–01–600–7614—Wall Calendar, Dated 2016, Wire Bound w/Hanger, 12″ × 17″
7510–01–600–7632—Wall Calendar, Dated 2016, Wire Bound w/hanger, 15.5″ × 22″
Mandatory Source(s) of Supply: Chicago Lighthouse Industries, Chicago, IL
Contracting Activity: General Services Administration, New York, NY

Services

Service Type: Grounds Maintenance Service
Mandatory for: U.S. Army Reserve Center: AMSA 68(G) 42 Albion Road, Lincoln, RI
Mandatory Source(s) of Supply: The Fogarty Center, North Providence, RI
Contracting Activity: Dept of the Army, W40M NORTHEREGION Contract OFC

Service Type: Janitorial/Custodial Service
Mandatory for: U.S. Army, AMSA 163 (BMA) 48 Albion Rd, Lincoln, RI
Mandatory Source(s) of Supply: The Fogarty Center, North Providence, RI
Contracting Activity: Dept of the Army, W6QK ACC–PICA

Service Type: Operation of Postal Service Center
Mandatory for: Robins Air Force Base, Robins AFB, GA
Mandatory Source(s) of Supply: Good Vocations, Inc., Macon, GA
Contracting Activity: Dept of the Air Force, FA8501 AFSC PZIO

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2016–24898 Filed 10–13–16; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes products and services from the Procurement List previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* November 13, 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: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 9/2/2016 (81 FR 60681–60683), 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:

Product Name(s)—NSN(s): 7930–01–436–7950—Phenolic Disinfectant
Mandatory Source(s) of Supply: Beacon Lighthouse, Inc., Wichita Falls, TX
Contracting Activities: U.S. Postal Service, Washington, DC, Washington, DC; Department of Veterans Affairs, General Services Administration, Fort Worth, TX.

Product Name(s)—NSN(s): 7520–00–255–7081—Clipboard, Arch, Brown, 9′ x 17″
7520–00–191–1075—Clipboard, Arch, With Perforator, Brown, 9′ x 17″
Mandatory Source(s) of Supply: Industries of the Blind, Inc., Greensboro, NC
Contracting Activity: General Services Administration, New York, NY

Product Name(s)—NSN(s): 7520–01–424–4849—Marker, Permanent Ink (Colossal) (Black)
Mandatory Source(s) of Supply: Dallas Lighthouse for the Blind, Inc., Dallas, TX
Contracting Activity: General Services Administration, New York, NY

Product Name(s)—NSN(s): 8415–01–487–5148—Cap, Baseball, embroidered, Navy, Blue
Mandatory Source(s) of Supply: ReadyOne Industries, Inc., El Paso, TX
Contracting Activity: Defense Logistics Agency Troop Support

Services:

Service Type: Interior Landscaping/Copier Operation
Mandatory for: Department of Agriculture, Beltsville, MD
Mandatory Source(s) of Supply: Blind Industries & Services of Maryland, Baltimore, MD
Contracting Activity: Dept of Agriculture, Procurement Operations Division

Service Type: Mailing Service
Mandatory for: Department of Housing and Urban Development, Washington, DC
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: Dept of Housing and Urban Development

Service Type: ShadowBoarding Service
Mandatory for: Fleet and Industrial Supply Center, P.O. Box 97, Naval Air Station, Jacksonville, FL
Mandatory Source(s) of Supply: Mississippi Industries for the Blind, Jackson, MS
Contracting Activity: DOD/DEPARTMENT OF THE NAVY

Service Type: Order Processing 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: GSA/FAS Tools Acquisition Division II

Service Type: Microfilming Tax Forms Service
Mandatory for: Internal Revenue Service, Cincinnati, OH
Mandatory Source(s) of Supply: Blind Industries & Services of Maryland, Baltimore, MD
Contracting Activity: Department of the Treasury

Service Type: Assembly Service
Mandatory for: U.S. Information Agency, 400 C Street SW., Washington, DC
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: Dept of State, Office of Acquisition Mgmt—MA

Service Type: Sponge Rubber Mattress Rehabilitation Service
Mandatory for: Requirements for GSA Region 3, Philadelphia, PA
Mandatory Source(s) of Supply: Virginia

Industries for the Blind, Charlottesville, VA
Contracting Activity: DOD/DEPARTMENT OF THE NAVY

Service Type: Order Processing Service
Mandatory for: McGuire Air Force Base, McGuire AFB, NJ
Mandatory Source(s) of Supply: Bestwork Industries for the Blind, Inc., Cherry Hill, NJ
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK

Service Type: Operation of Postal Service Center
Mandatory for: Seymour-Johnson Air Force Base, Seymour-Johnson AFB, NC
Mandatory Source(s) of Supply: Lions Industries for the Blind, Inc., Kinston, NC
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK

Service Type: Janitorial/Custodial Service
Mandatory for: Defense Supply Center Columbus, 3990 East Broad Street, Columbus, OH
Contracting Activity: Defense Logistics Agency Land and Maritime

Service Type: Administrative/General Support Service
Mandatory for: GSA, Southwest Supply Center, 819 Taylor Street, Fort Worth, TX
Mandatory Source(s) of Supply: NewView Oklahoma, Inc., Oklahoma City, OK
Contracting Activity: General Services Administration, FPDS Agency Coordinator

Service Type: Release of Information Copying Service
Mandatory for: Veterans Affairs Medical Center, 421 North Main Street, Leeds, MA
Mandatory Source(s) of Supply: Massachusetts Commission for the Blind; Ferguson Industries for the Blind (Deleted), Malden, MA
Contracting Activity: Department of Veterans Affairs

Service Type: Administrative Support Service
Mandatory for: Federal Bureau of Prisons, Old North Carolina Highway 75, Butner, NC
Mandatory Source(s) of Supply: RLCB, Inc., Raleigh, NC
Contracting Activity: Federal Prison System, Terminal Island, FCI

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2016–24899 Filed 10–13–16; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Performance Review Board

AGENCY: Office of the Secretary of Defense (OSD), DoD.

ACTION: Notice of board membership.

SUMMARY: This notice announces the appointment of the Department of Defense, Fourth Estate, Performance Review Board (PRB) members, to include the Office of the Secretary of Defense, Joint Staff, Defense Field Activities, U.S Court of Appeals for the Armed Forces, and the following Defense Agencies: Defense Advanced Research Projects Agency, Defense Commissary Agency, Defense Contract Audit Agency, Defense Contract Management Agency, Defense Finance and Accounting Service, Defense Health Agency, Defense Information Systems Agency, Defense Legal Services Agency, Defense Logistics Agency, Defense Prisoners of War/Missing in Action Accounting Agency, Defense Security Cooperation Agency, Defense Threat Reduction Agency, Missile Defense Agency, and Pentagon Force Protection Agency. The PRB shall provide fair and impartial review of Senior Executive Service and Senior Professional performance appraisals and make recommendations regarding performance ratings and performance awards to the Deputy Secretary of Defense.

DATES: *Effective Date:* September 27, 2016.

FOR FURTHER INFORMATION CONTACT: Laura E. Devlin, Assistant Director for Office of the Secretary of Defense Senior Executive Management Office, Office of the Deputy Chief Management Officer, Department of Defense, (703) 693–8373.

SUPPLEMENTARY INFORMATION: The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the Office of the Secretary of Defense PRB with specific PRB panel assignments being made from this group. Executives listed will serve a one-year renewable term, effective September 27, 2016.

Office of the Secretary of Defense

Authorizing Official—Robert O. Work, Deputy Secretary of Defense
Principal Executive Representative—Michael L. Rhodes
Chairperson—Bonnie M. Hammersley

PRB Panel Members

ATKINSON, MICHELLE CRESSWELL
ATWOOD, III, GEORGE W.
BANKS, ROXANNE
BRENNAN, KENNETH M.
CARNEY, JR, THOMAS F.
CASE, EDWARD J.
CONDON, CHRISTINE M.
CONKLIN, PAMELA F.
EADY, WALTER B.
EASTON, MARK E.
ENGLANDER, KEITH L.
ESHENBRENNER, BRIAN W.
FRANKLIN, KEITA M.
HANDELMAN, KENNETH B.
HIGGINS, MAUREEN B.
HOFFMAN, BARBARA H.
JOHNSON, DAVID E.
KIYOKAWA, GUY T.
KNIGHT, EDNA JO
KOFFSKY, PAUL S.
KULIASHA, MICHAEL A.
KURTA, ANTHONY M.
LEIST, JR, MICHAEL N.
LOVERRO, DOUGLAS L.
MACSTRAVIC, JAMES A.
MCAFEE, MARY ANN S.
PANNULLO, JEROME E.
PINO, RICHARD D.
RUSSELL, JAMES M.
SALAZAR, TERESA M.
SCHEINER, GLENDA H.
SCHLESS, SCOTT R.
SMITH, DAVID J.
TIMERMAN, STUART F.
WALSH, JENNIFER C.
WILMER, JOHN W.
WORM, JAMES A.
YARWOOD, SUSAN A.

Dated: October 11, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–24904 Filed 10–13–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0111]

Agency Information Collection Activities; Comment Request; NPEFS 2016–2018: Common Core of Data (CCD) National Public Education Financial Survey

AGENCY: Department of Education (ED), National Center for Education Statistics (NCES)

ACTION: Notice

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before December 13, 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–0111. 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: NPEFS 2016–2018: Common Core of Data (CCD) National Public Education Financial Survey.

OMB Control Number: 1850–0067.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 5,334.

Abstract: The National Public Education Financial Survey (NPEFS) is an annual collection of state-level finance data that has been included in the NCES Common Core of Data (CCD) since FY 1982 (school year 1981–82). NPEFS provides function expenditures by salaries, benefits, purchased services, and supplies, and includes federal, state, and local revenues by source. The NPEFS collection includes data on all state-run schools from the 50 states, the District of Columbia, American Samoa, the Northern Mariana Islands, Guam, Puerto Rico, and the Virgin Islands. NPEFS data are used for a wide variety of purposes, including to calculate federal program allocations such as states' ''average per-pupil expenditure'' (SPPE) for elementary and secondary education, certain formula grant programs (*e.g.* Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) as amended, Impact Aid, and Indian Education programs). Furthermore, other federal programs, such as the Educational Technology State Grants program (Title II Part D of the ESEA), the Education for Homeless Children and Youth Program under Title VII of the McKinney-Vento Homeless Assistance Act, and the Teacher Quality State Grants program (Title II Part A of the ESEA) make use of SPPE data indirectly because their formulas are based, in whole or in part, on State Title I Part A allocations. On December 10, 2015, an amendment to ESEA, the Every Student Succeeds Act (ESSA), was signed into law. This request is to add two new items to the NPEFS data collection (to report current expenditures disaggregated by source of funds and to align with the State and LEA report cards required by ESSA) and to conduct the annual NPEFS collection of state-level finance data for FY 2016–2018.

Dated: October 11, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–24891 Filed 10–13–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Accrediting Agencies Under Review for Recognition by the U.S. Secretary of Education

AGENCY: Accreditation Group, Office of Postsecondary Education, U.S. Department of Education.

ACTION: Call for written third-party comments.

SUMMARY: This notice provides information to members of the public on submitting written comments for accrediting agencies currently undergoing review for purposes of recognition by the U.S. Secretary of Education. This solicitation of third-party comments concerning the performance of accrediting agencies under review by the Secretary is required by § 496(n)(1)(A) of the Higher Education Act (HEA) of 1965, as amended.

FOR FURTHER INFORMATION CONTACT: Herman Bounds, Director, Accreditation Group, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Room 6C115, Washington, DC 20202, telephone: (202) 453–7615, or email: *herman.bounds@ed.gov.*

Agencies Under Review and Evaluation: Below is a list of agencies currently undergoing review and evaluation by the Accreditation Group, including their current and requested scopes of recognition:

Applications for Renewal of Recognition

1. *American Podiatric Medical Association Scope of Recognition:* The accreditation and preaccreditation (''Provisional Accreditation'') throughout the United States of freestanding colleges of podiatric medicine and programs of podiatric medicine, including first professional programs leading to the degree of Doctor of Podiatric Medicine.

2. *Commission on English Language Program Accreditation Scope of Recognition:* The accreditation of postsecondary, non-degree-granting English language programs and institutions in the United States.

3. *The Council on Chiropractic Education Scope of recognition:* The accreditation of programs leading to the Doctor of Chiropractic degree and single-purpose institutions offering the Doctor of Chiropractic program.

4. *Joint Review Committee on Education in Radiologic Technology Scope of recognition:* The accreditation of education programs in radiography, magnetic resonance, radiation therapy, and medical dosimetry, including those offered via distance education, at the certificate, associate, and baccalaureate levels.

Compliance Report

Western Association for Schools and Colleges, Accrediting Commission for Community and Junior Colleges (ACCJC) Compliance report includes the following: (1) Findings identified in the

April 5, 2016 letter from the senior Department official following the December 2015 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaffreports.cfm,* (2) Findings identified in the January 4, 2016 Secretary's appeal decision available at: *http://oha.ed.gov/secretarycases/2014-10-O.pdf*

(3) The limitation on ACCJC's authority to approve single baccalaureate programs within the scope of accreditation of previously accredited institutions, as outlined in the April 5, 2016 letter from the senior Department official, (4) Review under 34 CFR 602.33.

Scope of recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of community and other colleges with a primarily pre-baccalaureate mission located in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands, which offer certificates, associate degrees, and the first baccalaureate degree by means of a substantive change review offered by institutions that are already accredited by the agency, and such programs offered via distance education and correspondence education at these colleges. This recognition also extends to the Committee on Substantive Change of the Commission, for decisions on substantive changes, and the Appeals Panel.

Application for an Expansion of Scope

Accrediting Bureau of Health Education Schools Scope of recognition: The accreditation of private, postsecondary institutions in the United States offering predominantly allied health education programs and the programmatic accreditation of medical assistant, medical laboratory technician and surgical technology programs, leading to a certificate, diploma, Associate of Applied Science, Associate of Occupational Science, Academic Associate degree, or Baccalaureate degree, including those offered via distance education. This scope extends to the Substantive Change Committee, jointly with the Commission, for decisions on substantive changes.

Requested Scope: The accreditation of private, postsecondary institutions in the United States offering predominantly allied health education programs and the programmatic accreditation of medical assistant, medical laboratory technician and surgical technology programs, leading to a certificate, diploma, Associate of Applied Science, Associate of Occupational Science, Academic Associate degree, Baccalaureate degree and Master's degree, including those offered via distance education. The scope extends to the Substantive Change Committee, jointly with the Commission, for decisions on substantive change.

Application for Renewal of Recognition—State Agency for the Approval of Nurse Education

Missouri State Board of Nursing.

Submission of written comments regarding a specific accrediting agency or state approval agency under review: Written comments about the recognition of a specific accrediting or State agency must be received by November 14, 2016, in the *ThirdPartyComments@ed.gov* mailbox and include the subject line ''Written Comments: (agency name).'' The email must include the name(s), title, organization/affiliation, mailing address, email address, and telephone number of the person(s) making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to an electronic mail message (email) or provided in the body of an email message. Comments about an agency's recognition after review of a compliance report must relate to issues identified in the compliance report and the criteria for recognition cited in the senior Department official's letter that requested the report, or in the Secretary's appeal decision, if any. Comments about the renewal of an agency's recognition based on a review of the agency's petition must relate to its compliance with the Criteria for the Recognition of Accrediting Agencies, or the Criteria and Procedures for Recognition of State Agencies for Approval of Nurse Education as appropriate, which are available at *http://www.ed.gov/admins/finaid/accred/index.html.*

Only material submitted by the deadline to the email address listed in this notice, and in accordance with these instructions, become part of the official record concerning agencies scheduled for review and are considered by the Department and NACIQI in their deliberations.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 1099b.

Lynn B. Mahaffie,

Deputy Assistant Secretary for Planning, Policy, and Innovation, delegated the duties of Assistant Secretary for Postsecondary Education.

[FR Doc. 2016–24893 Filed 10–13–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10934–027]

William B. Ruger, Jr.; 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.:* 10934–027.

c. *Date Filed:* May 23, 2016.

d. *Submitted By:* William B. Ruger, Jr.

e. *Name of Project:* Sugar River II Hydroelectric Project.

f. *Location:* On the Sugar River, in Sullivan County, New Hampshire. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Paul Nolan, 5515 North 17th Street, Arlington, VA 22205; (703) 534–5509; email—*pvnpvndiver@gmail.com*.

i. *FERC Contact:* Steve Kartalia at (202 502–6131; or email at *Stephen.kartalia@ferc.gov.*

j. Mr. Ruger filed his request to use the Traditional Licensing Process on May 23, 2016. Mr. Ruger provided public notice of this request, along with a Pre-Application Document (PAD), on August 15, 2016. In a letter issued on October 6, 2016, the Director of the Division of Hydropower Licensing

approved Mr. Ruger's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New Hampshire 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. Mr. Ruger filed a PAD, including a proposed process plan and schedule, with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. 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 licensee's office located at 169 Sunapee Street, Newport, NH 03773. Call (603) 863–6332 to make an appointment.

n. The licensee states his unequivocal intent to submit an application for a subsequent license for Project No. 10934. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a subsequent 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 April 30, 2019.

o. 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: October 7, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–24884 Filed 10–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 663–070]

Puerto Rico Electric Power Authority; Notice of Intent To File License Application, Filing of Pre-Application Document, 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.:* 663–070.

c. *Date Filed:* August 11, 2016.

d. *Submitted By:* Puerto Rico Electric Power Authority.

e. *Name of Project:* Río Blanco Hydroelectric Project.

f. *Location:* On the Río Blanco, on the southern border of the El Yunque National Forest in the Municipality of Naguabo near the community of Florida, Puerto Rico. The project occupies 2.2 acres of United States lands administered by the U.S. Forest Service.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Indira Mohip Colón, Puerto Rico Electric Power Authority, 1110 Ponce de Leon Ave. Pda 17½, NEOS Building, Office #701, Santurce, PR 00936; (787) 521–4968; or email at *I-MOHIP@AEEPR.COM.*

i. *FERC Contact:* Sarah Salazar at (202) 502–6863; or email at *sarah.salazar@ferc.gov.*

j. Puerto Rico Electric Power Authority filed its request to use the Traditional Licensing Process on August 11, 2016. Puerto Rico Electric Power Authority provided public notice of its request on August 11, 2016. In a letter dated October 7, 2016, the Director of the Division of Hydropower Licensing approved Puerto Rico Electric Power Authority's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with 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 NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Puerto Rico 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 the Puerto Rico Electric Power Authority as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Puerto Rico Electric Power Authority 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. 663. 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 August 20, 2019.

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: October 7, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–24882 Filed 10–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives

notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the New York Independent System Operator, Inc. (NYISO):

NYISO Business Issues Committee Meeting

October 11, 2016, 10:00 a.m.–11:15 a.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic&directory=2016-10-11.*

NYISO Operating Committee Meeting

October 13, 2016, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=oc&directory=2016-10-13.*

NYISO Electric System Planning Working Group Meeting

October 25, 2016, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic_espwg&directory=2016-10-25.*

NYISO Management Committee Meeting

October 26, 2016, 10:00 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=mc&directory=2016-10-26.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

New York Independent System Operator, Inc., Docket No. ER13–102.

New York Independent System Operator, Inc., Docket No. ER15–2059.

New York Transco, LLC, Docket No. ER15–572.

New York Independent System Operator, Inc., Docket No. ER16–966.

Boundless Energy NE., LLC, CityGreen Transmission, Inc., and Miller Bros. v. *New York Independent System Operator, Inc.,* Docket No. EL16–84.

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: October 7, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–24881 Filed 10–13–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3820–011]

Aclara Meters, LLC; 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.:* 3820–011

c. *Date Filed:* August 31, 2016

d. *Submitted by:* Aclara Meters, LLC

e. *Name of Project:* Somersworth Hydroelectric Project

f. *Location:* On the Salmon Falls River, near the city of Somersworth, in Strafford County, New Hampshire. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations

h. *Potential Applicant Contact:* William Beyea, Aclara Meters, LLC, 130 Main Street, Somersworth, NH 03878; (603) 749–8545; or by email—*wbeyea@aclara.commailto:putnamhydro@charter.net.*

i. *FERC Contact:* Patrick Crile at (202) 502–8042; or email at *patrick.crile@ferc.gov.*

j. Aclara Meters, LLC filed its request to use the Traditional Licensing Process on August 31, 2016. Aclara Meters, LLC provided public notice of its request on August 25, 2016. In a letter dated October 6, 2016, the Director of the Division of Hydropower Licensing approved the Aclara Meters, LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the New Hampshire Division of Historical Resources, the State Historic Preservation Office (SHPO), 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 Aclara Meters, LLC 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. Aclara Meters, LLC 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. 3820–011. 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 August 31, 2019.

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: October 6, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–24883 Filed 10–13–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0765; FRL–9954–23–OAR]

Board of Scientific Counselors Executive Committee; Notification of Public Teleconference and Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public teleconference and public comment.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the U.S. Environmental Protection Agency hereby provides notice that the Board of Scientific Counselors (BOSC) Executive Committee will host a public teleconference convening on November 1, 2016, from 1:00 p.m. to 5:00 p.m. Eastern Time. The primary discussion will be on ORD's Cross-Cutting Research Roadmaps: Environmental Justice, Climate Change, Nitrogen and Children's Environmental Health. There will also be an update on social science and program evaluation. The public is invited to provide comment from 1:25 p.m. to 1:35 p.m. Eastern Time. For information on registering to participate on the teleconference or to provide public comment, please see the **DATES** and **SUPPLEMENTARY INFORMATION** sections below. Due to a limited number of telephone lines, attendance will be on a first-come, first-served basis. Advance registration is required. Registration for participating via teleconference closes October 28, 2016. The deadline to sign up to speak during the public comment period or to submit written public comment is October 28, 2016.

DATES: The BOSC Executive Committee meeting will be held on November 1, 2016. All times noted are Eastern Time and are approximate. To participate on the teleconference you must register at the following site: *https://www.eventbrite.com/e/us-epa-bosc-executive-committee-teleconference-registration-25993266560.* Once you have completed the online registration, you will be contacted and provided with the teleconference instructions.

FOR FURTHER INFORMATION CONTACT: Questions or correspondence concerning the meeting should be directed to Tom Tracy, Designated Federal Officer, Environmental Protection Agency, by mail at 1200 Pennsylvania Avenue NW., MC 8104 R, Washington, DC 20460; by telephone at 202–564–6518; by fax at 202–565–2911; or via email at *tracy.tom@epa.gov.*

SUPPLEMENTARY INFORMATION: The Charter of the BOSC states that the advisory committee shall provide independent advice to the Administrator on technical and management aspects of the ORD's research program. Additional information about the BOSC is available at: *http://www2.epa.gov/bosc.* Members of the public who wish to provide oral comment during the meeting must preregister. Individuals or groups making remarks during the public comment period will be limited to five (5) minutes. To accommodate the number of people who want to address the BOSC Executive Committee, only one representative of a particular community, organization, or group will be allowed to speak. Written comments for the public meeting must be received by October 28, 2016, and will be included in the materials distributed to the BOSC Executive Committee prior to the meeting. Written comments should be sent to Tom Tracy, Environmental Protection Agency, via email at *tracy.tom@epa.gov* or by mail to 1200 Pennsylvania Avenue NW., (MC 8104 R), Washington, DC 20460, or submitted through *regulations.gov,* Docket ID No. EPA–HQ–ORD–2015–0765. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted online at *regulations.gov.* Information about Services for Individuals with Disabilities: For information about access or services for individuals with disabilities, please contact Tom Tracy no later than October 26, 2016, to give the Environmental Protection Agency sufficient time to process your request.

Dated: October 6, 2016.

Fred S. Hauchman,

Director, Office of Science Policy.

[FR Doc. 2016–24916 Filed 10–13–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD –2015–0611; FRL–9954–12–ORD]

Board of Scientific Counselors (BOSC); Sustainable and Healthy Communities Subcommittee Meeting—November 2016

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public meeting and public comment.

SUMMARY: The U.S. Environmental Protection Agency, Office of Research and Development (ORD), gives notice that the Board of Scientific Counselors (BOSC) Sustainable and Healthy Communities (SHC) Subcommittee will convene for a public meeting. Subcommittee deliberations will focus on Topic 3 of the ORD/SHC research program, which includes contaminated sites and sediments, environmental releases of oils and fuels, and sustainable materials management. Meeting documents are available for viewing and downloading at *https://www.epa.gov/bosc/sustainable-and-healthy-communities-subcommittee-meeting-documents.* Members of the public are encouraged to attend, and preregistration is required.

DATES: The meeting will be held on Wednesday, November 2, 2016, from 12:30 p.m. to 6:30 p.m.; Thursday, November 3, 2016, from 8:30 a.m. to 5:45 p.m.; and Friday, November 4, 2016, from 8:00 a.m. until 2:00 p.m. All times noted are Eastern Time. In-person attendees should preregister by October 25, 2016, using the Eventbrite Web site: *http://www.eventbrite.com/e/us-epa-bosc-sustainable-and-healthy-communities-subcommittee-tickets-27124114958.* Requests for the draft agenda or for submitting written comments will be accepted up to one business day before the meeting. For additional information related to preregistering, the agenda, or providing comments, please see the **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES: The meeting will be held at the EPA's Andrew W. Breidenbach Environmental Research Center (AWBERC), 26 W. Martin Luther King Drive, Rooms 130/138, Cincinnati Ohio 45268.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer (DFO) via mail at: Jace Cujé, Mail Code 8104R, Office of Science Policy, Office of Research and Development, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; via phone/voice mail at: (202) 564–1795; via fax at: (202) 565–2911; or via email at: *cuje.jace@epa.gov.*

SUPPLEMENTARY INFORMATION: The BOSC was established by the EPA to provide advice, information, and recommendations regarding the ORD research programs. The BOSC is federal advisory committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the BOSC SHC Subcommittee will hold a public meeting to deliberate on ORD/SHC research program, Topic 3, which includes contaminated sites and

sediments, environmental releases of oils and fuels, and sustainable materials management. Proposed agenda items for the meeting include, but are not limited to, the following: Program and Regional Office Overviews of Research Needs, Successful Partnerships, SHC Overviews, Poster Sessions and Partner Panel Discussions for each of three areas under SHC Topic 3. Each individual making an oral presentation at the meeting will be limited to a total of three minutes, and should consider providing written comments to expand upon the points presented orally. For security purposes at the meeting site, all attendees must go through a metal detector, sign in with the security desk, and show REAL ID Act-compliant government-issued photo identification to enter the building. Attendees are encouraged to arrive at least 15 minutes prior to the start of the meeting to allow sufficient time for security screening.

Instructions for Comments: Submit your comments using one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* Send comments by electronic mail (email) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2015–0611.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2015–0611.
- *Mail:* Send comments by mail to: Board of Scientific Counselors (BOSC) Sustainable and Healthy Communities Subcommittee Docket, Mail Code: 2822T, 1301 Constitution Ave. NW., Washington, DC 20004, Attention Docket ID No. EPA–HQ–ORD–2015–0611.
- *Hand Delivery or Courier:* Deliver comments to: EPA Docket Center (EPA/DC), Room 3334, William Jefferson Clinton West Building, 1301 Constitution Ave. NW., Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2015–0611. Note: This is not a mailing address. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

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

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Board of Scientific Counselors (BOSC) Sustainable and Healthy Communities Subcommittee Docket, EPA/DC, William Jefferson Clinton West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

Information on Services for Individuals With Disabilities: For information on access or services for individuals with disabilities, please contact Jace Cujé at (202) 564–1795 or *cuje.jace@epa.gov.* To request accommodation of a disability, please contact Jace Cujé, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

Dated: October 6, 2016.

Fred S. Hauchman,

Director, Office of Science Policy.

[FR Doc. 2016–24913 Filed 10–13–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9029–6]

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 10/03/2016 Through 10/07/2016

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. 20160231, Draft, FTA, IL, Chicago Red Line Extension, *Comment Period Ends:* 11/30/2016, *Contact:* Mark Assam 312–353–4070.

EIS No. 20160232, Final, NPS, BR, AZ, Long-Term Experimental and Management Plan (LTEMP) for the Operation of Glen Canyon Dam, *Review Period Ends:* 11/14/2016, *Contact:* Katrina Grantz 801–524–3635.

The U.S. Department of the Interior's Bureau of Reclamation and the Department of the Interior's National Park Service are joint lead agencies for the above project.

EIS No. 20160233, Final, USMC, CA, Santa Margarita River Conjunctive Use Project, *Review Period Ends:* 11/14/2016, *Contact:* Kristin Thomas 760–725–9741.

The U.S. Marine Corps and the U.S. Department of the Interior's Bureau of Reclamation are joint lead agencies of the above project.

EIS No. 20160234, Draft, DOC, PRO, Programmatic—South Region of the Nationwide Public Safety Broadband Network, *Comment Period Ends:* 12/12/2016, *Contact:* Genevieve Walker 571–665–6134.

EIS No. 20160235, Final, NMFS, MA, Amendment 18 to the Northeast Multispecies Fishery Management Plan, *Review Period Ends:* 11/14/2016, *Contact:* John Bullard 978–281–9343.

Amended Notices

EIS No. 20160236, Final, FAA, OR, ADOPTION—Military Readiness Activities at Naval Weapons System Training Facility Boardman, *Contact:* Paula Miller 202–267–7378.

The U.S. Department of Transportation's Federal Aviation Administration (FAA) has adopted the U.S. Navy's FEIS # 20150355, filed with the USEPA 12/28/2015. FAA was a cooperating agency on the project. Recirculation of the document is not necessary under Section 1506.3 of the CEQ Regulations.

Dated: October 11, 2016.

Karin Leff,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016–24902 Filed 10–13–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: *Tuesday, October 18, 2016 at 10:00 a.m.*

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 52 U.S.C. 30109. Matters concerning participation in civil actions or proceeding, or arbitration. Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Commission Secretary and Clerk.

[FR Doc. 2016–24969 Filed 10–12–16; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: October 19, 2016; 10:00 a.m.

PLACE: 800 N. Capitol Street NW., First Floor Hearing Room, Washington, DC.

STATUS: The first portion of the meeting will be held in Open Session; the second in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

1. Briefing by Chairman Cordero on TOC 2016 Conference.
2. Briefing on Consultative Shipping Group Meetings.
3. Briefing by Commissioner Maffei on International Maritime Organization and European Maritime Law Organisation.

Closed Session

1. Staff Briefing on Hanjin Shipping Bankruptcy and Shipping Disruptions.
2. Staff Briefing on Pending Third-Party Audit of PIERPass under the West Coast MTO Discussion Agreement (FMC Agreement 201143).

CONTACT PERSON FOR MORE INFORMATION: Rachel E. Dickon, Assistant Secretary, (202) 523–5725.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–24975 Filed 10–12–16; 11:15 am]

BILLING CODE 6731–AA–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

October 11, 2016.

TIME AND DATE: 10:00 a.m., Friday, October 21, 2016.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW., Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Northshore Mining Company,* Docket No. LAKE 2014–219–M (Issues include whether the Judge erred in interpreting a regulation that addresses the reporting of eye injuries.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2016–24946 Filed 10–12–16; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL TRADE COMMISSION

[File No. 161 0096]

CentraCare Health System; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 7, 2016.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/centracareconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''St. Cloud Medical Group/CentraCare Health, File No. 1610096—Consent Agreement'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/centracareconsent* by following the instructions on the Web-based form. If you prefer to file your comment on paper, write ''St. Cloud Medical Group/CentraCare Health, File No. 1610096—Consent Agreement'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Robert Canterman (202–326–2107), Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the

complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 6, 2016), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 7, 2016. Write ''St. Cloud Medical Group/CentraCare Health, File No. 1610096—Consent Agreement'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/centracareconsent* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''St. Cloud Medical Group/CentraCare Health, File No. 1610096—Consent Agreement'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 7, 2016. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Orders To Aid Public Comment

I. Overview

The Federal Trade Commission has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from CentraCare Health that is designed to mitigate the anticompetitive effects that would result from CentraCare's acquisition of St. Cloud Medical Group, P.A. (''SCMG''), the two largest providers of adult primary care, pediatric, and obstetric/gynecological (''OB/GYN'') services in the St. Cloud, Minnesota area. The Commission's willingness to accept this Consent Agreement is premised on the fact that SCMG is a financially failing physician practice group that has been unable to find an alternative purchaser for the entire practice as well as concerns regarding disruptions to patient care and possible physician shortages.

On February 29, 2016, CentraCare entered a definitive agreement to acquire all outstanding shares of stock in SCMG (''the Acquisition''). Under the terms of the Acquisition, CentraCare is to directly employ all of SCMG's physicians and advanced practice providers (''APPs''). The Commission's Complaint alleges that the Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, by substantially lessening competition for the provision of adult primary care, pediatric, and OB/GYN services in St. Cloud, Minnesota.

As the Complaint alleges, however, SCMG has recently lost its sole remaining line of credit and appears unlikely to be able to improve its financial condition. Physicians are leaving the group, and there is compelling evidence that others will depart the practice (and potentially the St. Cloud area) if the Acquisition is not consummated. Such physician departures would cause an immediate decline in revenues that could further destabilize the group. Although SCMG made a good-faith, but ultimately unsuccessful, multi-year effort to find an alternative buyer for the entire medical group, one local provider has recently expressed interest in employing a subset of the group, and other smaller, independent practices in the St. Cloud area have indicated that they also would consider hiring some SCMG physicians.

In light of this interest, the proposed Consent Agreement is designed to facilitate former SCMG physicians finding alternate local employment by suspending enforcement of any non-compete provisions against any adult primary care, pediatric, or OB/GYN physician from SCMG to allow up to 14 such physicians to depart for another St. Cloud area practice. It also encourages the creation of new competitors and the strengthening of smaller competitors by requiring CentraCare to provide sizeable departure payments to the first five physicians who leave CentraCare either to create a new medical practice or to join a small third-party medical practice in the St. Cloud area.

The Consent Agreement includes an Order to Suspend Enforcement of CentraCare Non-Competes and Maintain Assets, which is final immediately, and a Decision and Order, which is subject to the Commission's final approval. The Consent Agreement has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period

will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received and then decide whether it should withdraw from, modify, or make final the proposed Decision and Order.

The purpose of this analysis is to facilitate public comment on the Consent Agreement. The analysis is not intended to constitute an official interpretation of the Consent Agreement or to modify its terms in any way. Further, the Consent Agreement has been entered into for settlement purposes only and does not constitute an admission by Respondent that it violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

II. The Parties

CentraCare is a non-profit organization providing healthcare services through its owned hospitals, medical clinics, pharmacies, nursing homes, and home health operations throughout central Minnesota. CentraCare is the parent entity to CentraCare Clinic, a multi-specialty physician practice employing family medicine, internal medicine, pediatric, and OB/GYN physicians, among other specialists. CentraCare Clinic has 16 locations across central Minnesota, with five of those offices located within 20 miles of St. Cloud. CentraCare Clinic is the largest provider of adult primary care, pediatric, and OB/GYN services in the St. Cloud area, with approximately 102 adult primary care physicians, 28 pediatricians, and 25 OB/GYNs.

SCMG is a physician-owned multi-specialty medical clinic that operates four clinics in and around St. Cloud. SCMG's 40 physicians mainly provide family medicine, pediatrics, and OB/GYN services, but SCMG also offers surgical, occupational medicine, and rehabilitation services. SCMG also employs approximately 20 APPs.

III. The Complaint

The Complaint alleges that the proposed Acquisition will substantially increase CentraCare's market share in the St. Cloud area for the provision of adult primary care, pediatric, and OB/GYN services to commercially insured patients. According to the Complaint, by eliminating SCMG as a potential alternative in the St. Cloud area, the Acquisition likely will increase CentraCare's bargaining power vis-à-vis commercial health plans, allowing CentraCare to increase reimbursement rates and to secure more favorable terms. In addition, the Complaint alleges that the Acquisition likely will result in the loss of non-price competition between CentraCare and SCMG that currently results in quality and service benefits to patients. The Complaint further alleges that competition eliminated by the Acquisition is unlikely to be sufficiently replaced in a timely manner by other providers entering the market. The Complaint recognizes, however, that SCMG is unlikely to survive on its own, and that, despite a good-faith search, it has not identified an alternative buyer for the entire group.

IV. The Consent Agreement

The goal of the Consent Agreement is to mitigate the competitive effects of the Acquisition by preserving, to the extent possible, competition for adult primary care, pediatric, and OB/GYN services in the St. Cloud area. At least one local provider may be a viable alternative purchaser to CentraCare for a portion of the practice in that they have the capacity and the desire to employ some SCMG physicians. Likewise, some SCMG physicians appear interested in these opportunities. Those parties need additional time to pursue such an arrangement, and other interested local providers looking to add physicians may be identified during this time as well.

The Commission believes that the Consent Agreement presents the best opportunity to keep the SCMG physicians in the St. Cloud market, ensuring ongoing access to care and minimal disruption for St. Cloud area patients, while allowing local competitive alternatives to CentraCare for the relevant physician services to expand. The Consent Agreement will allow current SCMG physicians to accept alternative local employment opportunities post-acquisition without the risk of violating non-compete provisions in their employment contracts.

Specifically, the Consent Agreement provides that following the issuance of a final Decision and Order and during the 90-day First Release Period, former SCMG physicians can terminate their employment with CentraCare without penalty if the physician:

(1) Submits notice of an intention to terminate employment with CentraCare to a monitor who has been appointed by the Commission to assist in implementing the Consent Agreement in a manner that assures each physician's confidentiality;

(2) States the intention to continue to practice in the St. Cloud area for at least two years;

(3) Is among the first 14 physicians to submit a notice to terminate employment; and

(4) Leaves employment with CentraCare within 60 days of CentraCare receiving notice from the monitor.

CentraCare may request that the First Release Period be terminated as soon as the monitor has determined that 14 physicians have met the requirements to terminate.

If, at the end of the First Release Period, fewer than eight physicians have notified the monitor of their intent to terminate employment, a Second Release Period will commence. During the Second Release Period, CentraCare must also suspend the non-compete agreements of legacy CentraCare adult primary care, pediatric, and OB/GYN physicians (that is, those who did not come from SCMG) so that these physicians may explore and accept alternate employment opportunities in the St. Cloud area. The Second Release Period will end as soon as the monitor has informed CentraCare that eight physicians have met the requirements to terminate without penalty.

To encourage the creation of new competitors and strengthening of smaller competitors, CentraCare also will deposit $500,000 into an escrow account to be awarded as $100,000 departure payments to the first five physicians who leave CentraCare either to create a new medical practice or to join a third-party medical practice that has five or fewer physicians in the St. Cloud area.

Paragraphs II and III describe the basic terms under which physicians may terminate their employment with CentraCare. They prohibit CentraCare from: (1) Enforcing any non-compete, non-solicitation, or non-interference provisions in their employment agreements; (2) pursuing any breach of contract action for violation of any of these provisions; or (3) taking any retaliatory action against any physician who either leaves under the terms of the Decision and Order or who decides not to leave after exploring other employment as allowed by the Decision and Order. The Decision and Order does not, however, require CentraCare to allow physicians to terminate their employment agreements in a manner other than that specified in the Decision and Order.

Paragraph IV includes a number of provisions to ensure that CentraCare will not take any actions to discourage physicians from exploring opportunities to leave or from leaving CentraCare's employment pursuant to the Decision and Order. In addition, Paragraph

IV.A.1.f prohibits CentraCare from soliciting the employment of any physician that has departed CentraCare pursuant to the Consent Orders for a period of two years.

Paragraph V requires CentraCare to give advanced notification for future acquisitions or employment contracts involving certain adult primary care, pediatrics, and OB/GYN services in the St. Cloud area for a period of three years.

Paragraph VI requires CentraCare during the First Release Period to facilitate and not interfere with the search for alternate St. Cloud area employment by former SCMG employees, such as APPs and nurses. Paragraph VI also prohibits CentraCare from attempting to re-hire those employees for a period of two years.

Paragraph VII specifies the rules governing the work of the monitor.

The remaining order provisions are standard reporting requirements to allow the Commission to monitor on-going compliance with the provisions of the Decision and Order.

In addition to the Decision and Order, the Consent Agreement includes an Order to Suspend Enforcement of CentraCare's Non-Competes and Maintain Assets that goes into effect immediately. The purposes of this Order are (1) to permit former SCMG physicians to explore alternative employment opportunities in the St. Cloud area; and (2) to maintain those assets and personnel from the SMCG to make the transition to a different practice as easy as possible.

By direction of the Commission.

Donald S. Clark

Secretary.

Concurring Statement of Maureen K. Ohlhausen

I have reason to believe that CentraCare Health System's (CentraCare) acquisition of St. Cloud Medical Group, P.A. (SCMG), if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, by substantially lessening competition for the provision of adult primary care, pediatric, and OB/GYN services in St. Cloud, Minnesota. I also believe the Consent Agreement, subject to final approval, represents the outcome most likely to minimize competitive harm and care disruption to the residents of the St. Cloud area. I write separately because, although it is a close determination, I do not believe SCMG meets the stringent failing firm criteria set forth in the Horizontal Merger Guidelines and case law.[1]

Because of SCMG's financial challenges and facts unique to the SCMG practice structure and management, physicians are leaving the group, and compelling evidence indicates that, absent the acquisition, additional physicians plan to leave the group and possibly the area. This would diminish the competitive significance of SCMG and create potential disruptions to care and possible physician shortages in the St. Cloud area. These circumstances raise serious concerns about the likelihood that the Commission will be able to preserve competition and access to care for patients if it were to prevail in its challenge.

Given this difficult scenario, I agree with my colleagues that the Consent Agreement presents the best opportunity to keep the SCMG physicians in the market, ensure ongoing access to care and minimal disruption for area patients, and permit the expansion of local competitive alternatives to CentraCare for the relevant physician services. Accordingly, I support the Consent Agreement on the basis that it is in the public interest.

[1] *See, e.g.,* U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines § 11 (2010); *Citizen Publishing* v. *United States,* 394 U.S. 131 (1969) (establishing a three-prong test for satisfying the failing firm defense); *Fed. Trade Comm'n* v. *Arch Coal, Inc.,* 329 F. Supp. 2d 109, 154 (D.D.C. 2004).

[FR Doc. 2016–24879 Filed 10–13–16; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–17–16AWK]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted 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. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) 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; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Survey of Surveillance Records of Aedes aegypti and Aedes albopictus from 1960 to Present—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Zika virus response necessitates the collection of county and sub-county level records for Aedes aegypti and Aedes albopictus, the vectors of Zika virus. This information will be used to update species distribution maps for the United States and to develop a model aimed at identifying where these vectors can survive and reproduce. CDC is seeking a six-month OMB clearance to collect information.

In February, 2016, OMB issued emergency clearance for a county-level survey of vector surveillance records (OMB Control No. 0920–1101, expiration date 8/31/2016). The previous survey aimed to describe the current reported distribution of the Zika virus vectors Aedes aegypti and Aedes albopictus. The survey revealed that we are lacking records from recent years of both species from areas where we expect to find Zika vectors based on

historical records and environmental suitability. It is likely that the reason for this is because from 2004–2015 most vector surveillance focused on vectors of West Nile virus (Culex spp.) rather than Zika vectors.

As part of the Zika response, efforts to identify Ae. aegypti and Ae. albopictus in the continental U.S. were substantially enhanced during 2016 and funding will be provided to states to continue to enhance surveillance for these vectors. By repeating the survey, we will have a more complete assessment of where these vectors are currently being reported. In the new survey, we will also seek information on locations of the mosquito traps at sub-county spatial scales. Such information will aid in (1) targeting vector control efforts to prevent mosquito-borne Zika virus transmission in the continental U.S. and (2) targeting future vector surveillance efforts.

The purpose of the mosquito surveillance survey is to collect county and sub-county-level records for Aedes aegypti and Aedes albopictus, the vectors of Zika virus. The resulting maps and models will inform the public and policy makers of the known distribution of these vectors, identify gaps in vector surveillance, and target allocation of surveillance and prevention resources.

Respondents will include vector control professionals, entomologists, and public health professionals who will be contacted by email, primarily through listserv(s) of professional organizations. They will be asked for their voluntary participation in a short survey to assess the distribution of Aedes aegypti and Aedes albopictus at county and sub-county spatial scales in the U.S.

This information collection request is authorized by Section 301 of the Public Health Service Act (42 U.S.C. 241). The total estimated annualized number of burden hours is 125. There will be no anticipated costs to respondents other than time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses/respondent	Average burden per response (in hours)
Vector Control professionals, entomologists, and Public Health Professionals.	Survey of county-level surveillance records of *Aedes aegypti* and *Aedes albopictus*.	500	1	15/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–24845 Filed 10–13–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–17–0215]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted 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. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) 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; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Application Form and Related Forms for the Operation of the National Death Index (NDI) (OMB No. 0920–0215, Expiration 10/31/2016)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C.), as amended, authorizes that the Secretary of Health and Human Services (HHS), acting through the National Center for Health Statistics (NCHS), shall collect statistics on the extent and nature of illness and disability of the population of the United States. To improve understanding of population health, influences on health, and health outcomes, NCHS compiles data about a wide variety of health indicators. Information can be analyzed by NCHS and other entities to help guide public health and health policy decisions.

The National Death Index (NDI) is a centralized NCHS repository of identifiable information about deaths that have occurred in the United States since 1979. The NDI is compiled from records submitted annually to NCHS by all state vital statistics offices. NCHS maintains the NDI to facilitate medical epidemiology and research. Researchers may request NDI data and services by completing an initial NDI Application Form and submitting records of study subjects for computer matching against the NDI file. Additional forms used for NDI administration include the Repeat Request Form and the Transmittal Form.

The standard search against the NDI file provides the relevant states and dates of death, and the death certificate numbers of deceased study subjects. Using the NDI Plus service, researchers have the option of also receiving cause

of death information for deceased subjects, thus reducing the need to request copies of death certificates from the states. The NDI Plus option currently provides the International Classification of Disease (ICD) codes for the underlying and multiple causes of death for the years 1979–2015.

CDC requests OMB approval to update the three data collection forms used by NCHS to administer NDI services. The form updates include editorial changes needed to capture current modes of data transfer and service payment options, clarifications to the instructions for NDI applicants, the inclusion of an item to capture any resulting publications, and additional terms and conditions associated with the confidentiality agreement.

OMB approval is requested for three years. There is no cost to respondents except for their time. The total estimated annual burden hours are 507, an increase of 325 hours due to an anticipated increase in both the number of applicants and the average time needed to complete the application form.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Researchers	Application Form	100	1	4.5
	Repeat Request Form	70	1	18/60
	Data Transmittal Form	120	1	18/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–24846 Filed 10–13–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10634 and 10169]

Agency Information Collection Activities: Proposed Collection; 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 (the 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 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: The necessity and utility of the proposed information collection for the proper performance of the agency's functions; the accuracy of the estimated burden; ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by December 13, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' 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:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10634 Evaluating a Pilot Mobile Health Program

CMS–10169 Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program; Change of Ownership Forms

Under the 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 requires federal agencies to publish a 60-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.

Information Collection

1. *Type of Information Collection Request:* New collection (Request for a

new OMB control number); *Title of Information Collection:* Evaluating a Pilot Mobile Health Program; *Use:* CMS is supporting a pilot mobile health (mHealth) program in California, Louisiana, Ohio, and Oklahoma. The three-year mHealth project is being conducted to complement existing CMCS measurement, data collection, and reporting activities to monitor, track, and assess state's maternal and infant health efforts in Medicaid and CHIP populations. This information collection request supports the evaluation of the pilot mHealth program and will be used to assist CMS in tracking maternal and infant health outcomes in the Medicaid population. The methods used for collection and analysis of the data may be useful to states and serve to increase reporting of perinatal core set measures and monitoring and interpretation of state-level maternal and infant health efforts. Results from the evaluation will help CMS understand the usefulness of mobile technology for conveying health information to pregnant women and new mothers enrolled in Medicaid/CHIP, as well as the influence this information has on health behaviors and outcomes. *Form Number:* CMS–10634 (OMB control number: 0938—New); *Frequency:* Once; *Affected Public:* Individuals and households, Business or other for-profits and Not-for-profits institutions, State, local, or Tribal Governments; *Number of Respondents:* 1,679; *Total Annual Responses:* 1,679; *Total Annual Hours:* 962. (For policy questions regarding this collection contact Lekisha Daniel-Robinson at 410–786–8618.)

2. *Type of Information Collection Request:* Revision of a previously approved collection; *Title of Information Collection:* Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program; Change of Ownership Forms; *Use:* The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) requires the Secretary to recompete contracts not less often than once every 3 years. The Round 1 Rebid contract period for all product categories except mail-order diabetic supplies expired on December 31, 2013. (Round 1 Rebid contracts for mail-order diabetic testing supplies ended on December 31, 2012.) The competition for the Round 1 Recompete began in August of 2012. The Round 1 Recompete contracts and prices became effective on January 1, 2014 and will expire on December 31, 2016. Round 2 and National Mail-Order contracts and prices will expire on June 30, 2016. The most recent approval for this information collection request (ICR) was issued by OMB on June 10, 2013. That ICR included the estimated burden to collect the information in bidding Forms A and B for the Round 1 Recompete. We are now seeking approval to collect the information in Forms A and B for competitions that will occur before 2017. For these upcoming competitions CMS will publish a slightly modified version of the RFB instructions and accompanying Forms A and B so that suppliers will be better able to identify and understand the requirements of the program. We decided to modify the RFB instructions and forms based on our experience from the last round of competition. The end result is expected to produce more complete and accurate information to evaluate suppliers. No new collection requirements have been added to the modified RFB instructions or Form A or B. Finally, we are retaining without change the Change of Ownership (CHOW) Purchaser Form and the CHOW Contract Supplier Notification Form, the Subcontracting Disclosure Form, and Forms C, and D and their associated burden under this ICR. We intend to continue use of these Forms on an ongoing basis. *Form Number:* CMS–10169 (OMB control number: 0938–1016); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 70,213; *Total Annual Responses:* 53,811; *Total Annual Hours:* 162,134. (For policy questions regarding this collection contact Djanira Rivera at 410–786–8646.)

Dated: October 11, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–24910 Filed 10–13–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10598 and CMS–10597]

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 14, 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 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 of information; *Title of Information Collection:* Generic Clearance for Evaluation of Stakeholder Training—Health Insurance Marketplace and Market Stabilization Programs; *Use:* CMS is strongly committed to providing appropriate education and technical outreach to States, issuers, self-insured group health plans and third-party administrators (TPA) participating in the Marketplace and/or market stabilization programs mandated by the ACA. CMS continues to engage with stakeholders in the Marketplace to obtain input through Satisfaction Surveys following Stakeholder Training events. The survey results will help to determine stakeholders' level of satisfaction with trainings, identify any issues with training and technical assistance delivery, clarify stakeholders' needs and preferences, and define best practices for training and technical assistance. Forms being utilized for the 2017 Stakeholder Events have already been developed. CMS will continue to modify, enhance and develop forms for future years based on feedback from Stakeholders. *Form Number:* CMS–10598 (OMB control number: 0938–NEW); *Frequency:* Occasionally; *Affected Public:* Private Sector; *Number of Respondents:* 32,912; *Number of Responses:* 32,912; *Total Annual Hours:* 8,228. (For questions regarding this collection contact Sonia Henderson at 410–786–1631.)

2. *Type of Information Collection Request:* New collection (Request for a new OMB control number; *Title of Information Collection:* CMS *Healthcare.gov* Site Wide Online Survey; *Use:* The purpose of the survey is to gain an understanding of user experience, comprehension, and satisfaction with using the Federal Health Insurance Marketplace Web site established by the Affordable Care Act. The Marketplace provides coverage to uninsured Americans, as well as those already enrolled in Marketplace health insurance. One of the ways to purchase Marketplace insurance is through the online tools on *HealthCare.gov.* We have developed a survey to be administered to consumers while they are using the Web site. This survey is part of a continuing data collection program mandated by the ACA. It is designed to support the program goal to provide tools and information to help consumers to successfully find health insurance that they may not otherwise qualify for or find. Monitoring usability and the user experience through this ongoing survey provides the Web site developers with valuable information for use in continuous improvement of the Web site. The Web site survey is part of a larger research program to inform the development and enhancement of web tools for CMS programs such as the Health Insurance Marketplace. *Form Number:* CMS–10597 (OMB control number: 0938-New); *Frequency:* Weekly, Monthly, Occasionally; *Affected Public:* Individuals or Households; *Number of Respondents:* 14,000; *Total Annual Responses:* 14,000; *Total Annual Hours:* 933. (For policy questions regarding this collection contact Frank Funderburk at 410–786–1820.)

Dated: October 7, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–24814 Filed 10–13–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–2744]

Agency Information Collection Activities: Proposed Collection; 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 (the 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 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates 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 must be received by December 13, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' 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:

Contents

This notice sets out a summary of the use and burden associated with the

following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–2744 End Stage Renal Disease (ESRD) Medical Information Facility Survey

Under the 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 requires federal agencies to publish a 60-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.

Information Collection

1. *Type of Information Collection Request:* Extension of a previously approved collection; *Title of Information Collection:* End Stage Renal Disease (ESRD) Medical Information Facility Survey; *Use:* The ESRD Program Management and Medical Information System (PMMIS) Facility Certification/Survey Record contains provider-specific and aggregate patient population data on beneficiaries treated by that provider obtained from the Annual Facility Survey form (CMS–2744). The Facility Certification portion of the record captures certification and other information about ESRD facilities approved by Medicare to provide kidney dialysis and transplant services. The Facility Survey portion of the record captures activities performed during the calendar year as well as aggregate year-end population counts for both Medicare beneficiaries and non-Medicare patients. The survey includes the collection on hemodialysis patients dialyzing more than 4 times per week, vocational rehabilitation and staffing. The aggregate patient information is collected from each Medicare-approved provider of dialysis and kidney transplant services. The information is used to assess and evaluate the local, regional and national levels of medical and social impact of ESRD care and is used extensively by researchers and suppliers of services for trend analysis. *Form Number:* CMS–2744 (OMB Control Number: 0938–0447); *Frequency:* Yearly; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 5,964; *Total Annual Responses:* 5,964; *Total Annual Hours:* 47,712. (For policy questions regarding this collection contact Renee Dupee at 410–786–6747)

Dated: October 7, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–24813 Filed 10–13–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: TANF Quarterly Financial Report, ACF–196.

OMB No.: 0970–0247.

Description: This information collection is authorized under Section 411(a)(3) of the Social Security Act. This request is for renewal of approval to use the Administration for Children and Families' (ACF) 196 form for periodic financial reporting under the Temporary Assistance for Needy Families (TANF) program. States participating in the TANF program are required by statute to report financial data on a quarterly basis. This form meets the legal standard and provides essential data on the use of Federal funds. Failure to collect the data would seriously compromise ACF's ability to monitor program expenditures, estimate funding needs, and to prepare budget submissions required by Congress. Financial reporting under the TANF program is governed by 45 CFR part 265.

Respondents: TANF Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196	51	4	10	2,040

Estimated Total Annual Burden Hours: 2,040.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–24824 Filed 10–13–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Form ACF–196: TANF Financial Report for Tribes.

OMB No.: 0970–0345.

Description: Tribes use Form ACF–196T to report expenditures for the Tribal TANF grant. Authority to collect and report this information is found in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104–193. Tribal entities with approved Tribal plans for implementation of the TANF program are required by Section 412(h) of the Social Security Act to report financial data. Form ACF–196T provides for the collection of data regarding Federal expenditures. Failure to collect this data would seriously compromise the Administration for Children and Families' (ACF) ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress. Financial management of the program would be seriously compromised if the expenditure data were not collected. 45 CFR part 286 Subpart E requires the strictest controls on funding requirements, which necessities review of documentation in support of Tribal expenditures for reimbursement. Comments received from previous efforts to implement a similar Tribal TANF report Form ACF–196T were used to guide ACF in the development of the product presented with this submittal.

Respondents: All Tribal TANF Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196T	72	4	1.5	432

Estimated Total Annual Burden Hours: 432.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–24829 Filed 10–13–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Advisory Committee; Dermatologic and Ophthalmic Drugs Advisory Committee, Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Dermatologic and Ophthalmic Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Dermatologic and Ophthalmic Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until October 7, 2018.

DATES: Authority for the Dermatologic and Ophthalmic Drugs Advisory Committee will expire on October 7, 2016, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Jennifer Shepherd, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, email: *DODAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Dermatologic and Ophthalmic Drugs Advisory Committee. The committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Dermatologic and Ophthalmic Drugs Advisory Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which the Food and Drug Administration has regulatory responsibility. The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of dermatologic and ophthalmic disorders and makes appropriate recommendations to the Commissioner of Food and Drugs.

The Committee shall consist of a core of nine voting members including two Chairpersons. Members and the Chairpersons are selected by the Commissioner or designee from among authorities knowledgeable in the fields of dermatology, ophthalmology, internal medicine, pathology, immunology, epidemiology or statistics, and other related professions. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a

consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting member who is identified with industry interests.

Further information regarding the most recent charter and other information can be found at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/DermatologicandOphthalmicDrugsAdvisoryCommittee/ucm094782.htm* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: *October 7, 2016.*

Janice M. Soreth,

Acting Associate Commissioner, Special Medical Programs.

[FR Doc. 2016–24816 Filed 10–13–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–2483]

Software as a Medical Device: Clinical Evaluation; International Medical Device Regulators Forum; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance entitled ''Software as a Medical Device (SaMD): Clinical Evaluation.'' The draft guidance was prepared under the auspices of the International Medical Device Regulators Forum (IMDRF), formerly the Global Harmonization Task Force. The draft guidance pertains to the conduct of clinical evaluation of Software as a Medical Device (SaMD) and focuses on the general principles of clinical evaluation, which includes establishing the scientific validity, clinical performance, and analytical validity for a SaMD. The draft guidance is intended to provide globally harmonized principles of when and what type of clinical evaluation is appropriate based on the risk of the SaMD. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by December 13, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–2483 for ''Software as a Medical Device (SaMD): Clinical Evaluation.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Software as a Medical Device (SaMD): Clinical Evaluation'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug

Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT: *Regarding the draft guidance:* Bakul Patel, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5458, Silver Spring, MD 20993–0002, 301–796–5528.

Regarding the IMDRF: Melissa A. Torres, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5432, Silver Spring, MD 20993–0002, 301–796–5576.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. One of the goals of global harmonization is to identify and then reduce differences in regulatory policies among regulatory agencies. IMDRF seeks to advance international harmonization or convergence of medical device regulation.

IMDRF was organized to provide an opportunity for global harmonization initiatives to be developed with input from both regulatory and industry representatives. The current members of the Management Committee of the IMDRF are regulatory officials from Australia (Therapeutic Goods Administration), Brazil (National Health Surveillance Agency), Canada (Health Canada), China (China Food and Drug Administration), European Union (European Commission Directorate-General for Internal Market, Industry, Entrepreneurship and Small and Medium-sized Enterprises), Japan (Pharmaceuticals and Medical Devices Agency and the Ministry of Health, Labour and Welfare), Russia (Ministry of Healthcare), and the United States (U.S. FDA). The World Health Organization and the Asia-Pacific Economic Cooperation Life Sciences Innovation Forum Regulatory Harmonization Steering Committee are Official Observers. The Asian Harmonization Working Party and the Pan American Health Organization are IMDRF Affiliate Organizations.

In September 2016, the IMDRF Management Committee endorsed the draft guidance entitled ''Software as a Medical Device (SaMD): Clinical Evaluation'' and agreed that the guidance should be made available for public comment. The IMDRF SaMD Working Group (WG) includes representatives from the IMDRF members, as well as members from the Medical Device Regulatory Authorities and Regional Harmonization Initiatives from around the world. The draft guidance is the product of the IMDRF SaMD WG. Comments about this draft will be considered by FDA and the IMDRF SaMD WG.

We welcome comments on all aspects of the draft guidance as well as the following specific issues:

1. Does the document address the intention captured in the introduction/scope or vice versa?

2. Does the document appropriately translate and apply current clinical vocabulary for SaMD?

3. Are there other types of SaMD beyond those intended for non-diagnostic, diagnostic and therapeutic purposes that should be highlighted/considered in the document?

4. Does the document adequately address the relevant clinical evaluation methods and processes for SaMD to generate clinical evidence?

5. Are there other appropriate methods for generating clinical evaluation evidence that are relevant for SaMD beyond those described in the document?

6. Are the recommendations identified in section 7.2 related to the ''importance of clinical evidence and expectations'' appropriate as outlined for the different SaMD categories?

7. Are the recommendations identified in section 7.3 related to the ''importance of independent review'' appropriate as outlined for the different SaMD categories?

8. Given the uniqueness of SaMD and the proposed framework—is there any impact on currently regulated devices or any possible adverse consequences?

The draft guidance and the IMDRF comment page are available at *http://www.imdrf.org/consultations/consultations.asp#current.*

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Software as a Medical Device (SaMD): Clinical Evaluation.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Software as a Medical Device (SaMD): Clinical Evaluation'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 16039 to identify the guidance you are requesting.

Dated: October 6, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–24805 Filed 10–13–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Advisory Committee; Antimicrobial Drugs Advisory Committee, Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Antimicrobial Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Antimicrobial Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until October 7, 2018.

DATES: Authority for the Antimicrobial Drugs Advisory Committee will expire on October 7, 2016, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Lauren Tesh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, email: *AMDAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the

Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Antimicrobial Drugs Advisory Committee. The committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Antimicrobial Drugs Advisory Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which the Food and Drug Administration has regulatory responsibility. The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of infectious diseases and disorders and makes appropriate recommendations to the Commissioner of Food and Drugs.

The Committee shall consist of a core of 13 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of infectious disease, internal medicine, microbiology, pediatrics, epidemiology or statistics, and related specialties. Members will be invited to serve for overlapping terms of up to four years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting member who is identified with industry interests.

Further information regarding the most recent charter and other information can be found at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/Anti-InfectiveDrugsAdvisoryCommittee/ucm094132.htm* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: October 7, 2016.

Janice M. Soreth,

Acting Associate Commissioner, Special Medical Programs.

[FR Doc. 2016–24810 Filed 10–13–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Heritable Disorders in Newborns and Children

AGENCY: Health Resources and Service Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, codified at 5 U.S.C. App.), notice is hereby given that a meeting is scheduled for the Advisory Committee on Heritable Disorders in Newborns and Children. This meeting will be open to the public but advance registration is required to ensure sufficient webinar capacity. The registration link is *https://www.blsmeetings.net/achdncnovember2016/.* The registration deadline is Wednesday, November 2, 2016, 11:59 p.m. Eastern Time.

DATES AND TIMES: November 3, 2016, 9:00 a.m. to 5:00 p.m. (Meeting time is tentative.)

November 4, 2016, 9:00 a.m. to 1:00 p.m. (Meeting time is tentative.)

ADDRESSES: This meeting will be held by webinar only.

FOR FURTHER INFORMATION CONTACT: Anyone interested in obtaining other relevant information should contact Alaina Harris, Maternal and Child Health Bureau, HRSA, Room 18W66, 5600 Fishers Lane, Rockville, Maryland 20857; email: *aharris@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Committee on Heritable Disorders in Newborns and Children (Committee), as authorized by the Public Health Service Act, Title XI, § 1111 (42 U.S.C. 300b–10), was established to advise the Secretary of the Department of Health and Human Services about the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. In addition, the Committee's recommendations regarding additional conditions/inherited disorders for screening that have been adopted by the Secretary are included in the Recommended Uniform Screening Panel and constitute part of the comprehensive guidelines supported by HRSA. Pursuant to section 2713 of the Public Health Service Act, codified at 42 U.S.C. 300gg–13, non-grandfathered health plans are required to cover screenings included in the HRSA-supported comprehensive guidelines without charging a co-payment, co-insurance, or deductible for plan years (*i.e.,* policy years) beginning on or after the date that is 1-year from the Secretary's adoption of the condition for screening.

The Committee will hear presentations and discussions on topics related to newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. The Committee will also hear updates from the Laboratory Standards and Procedures workgroup, Follow-up and Treatment workgroup, and Education and Training workgroup. Agenda items are subject to changes as priorities indicate. Tentatively, the Committee is expected to review and/or vote on the following: Approving newborn screening surveillance case definitions and whether or not the nominated condition Guanidinoacetate Methyltransferase deficiency should be referred for a full evidence-based review. The Committee will not be voting on a proposed addition of a condition to the Recommended Uniform Screening Panel. The meeting agenda will be available 2 days prior to the meeting on the Committee's Web site: *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Members of the public may submit written and/or present oral comments at the meeting. All comments are part of the official Committee record. Advance registration is required to submit written comments and/or present oral comments. Written comments must be submitted by October 19, 2016, 11:59 p.m. Eastern Time in order to be included in the November meeting briefing book. Written comments should identify the individual's name, address, email, telephone number, professional or business affiliation, type of expertise (*i.e.,* parent, researcher, clinician, public health, etc.), and the topic/subject matter of comments.

Individuals who wish to provide oral comments must register by October 30, 2016, 11:59 p.m. Eastern Time. To ensure that all individuals who have registered to make oral comments can be accommodated, the allocated time may

be limited. Individuals who are associated with groups or have similar interests may be requested to combine their comments and present them through a single representative. No audiovisual presentations are permitted.

More information on the Advisory Committee is available at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–24808 Filed 10–13–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Evaluation and Initial Assessment of HRSA Teaching Health Centers

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR must be received no later than December 13, 2016.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N–39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Evaluation and Initial Assessment of HRSA Teaching Health Centers.

OMB No.: 0915–0376—Extension.

Abstract: Section 5508 of the Affordable Care Act of 2010 amended section 340H of the Public Health Service Act to establish the Teaching Health Center Graduate Medical Education (THCGME) program to support new and the expansion of existing primary care residency training programs in community-based settings. The primary goals of this program are to increase the production of primary care providers who are well prepared to practice in community settings, particularly with underserved populations, and to improve the overall number and geographic distribution of primary care providers.

Need and Proposed Use of the Information: To ensure these goals are achieved, the George Washington University (GW) is conducting an evaluation of the training, administrative and organizational structures, clinical service, challenges, innovations, costs associated with training, and outcomes of Teaching Health Centers (THCs). GW has developed questionnaires for implementation with all THC matriculating residents, graduating residents, and graduated residents at 1 year post-graduation. The matriculation questionnaire aims to collect background information on THC residents to better understand the characteristics of individuals who apply and are accepted to THC programs. The graduation questionnaire collects information on career plans. The alumni questionnaire collects information on career outcomes (including practice in primary care and in underserved settings) following graduation as well as feedback on the quality of training.

Statute requires that THCGME program award recipients report annually on the types of primary care resident approved training programs that the THCs provided for residents, the number of approved training positions for residents, the number of residents who completed their residency training at the end of the academic year and care for vulnerable populations, and any other information as deemed appropriate by the Secretary. The described data collection activities have served to meet this statutory requirement for the THCGME program award recipients in a uniform and consistent manner and have allowed comparisons of this group to other trainees in non-THC programs. GW seeks renewal of these measures with no changes.

Likely Respondents: Respondents are medical and dental residents as well as graduates of Teaching Health Centers.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
THC Graduate Survey	300	1	300	0.33	99
THC Matriculant Survey	300	1	300	0.25	75
THC Graduation Survey	300	1	300	0.25	75
Total	900		900		249

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–24843 Filed 10–13–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment

AGENCY: Health Resources and Service Administration (HRSA), Department of Health and Human Services, (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting is scheduled for the Centers for Disease Control and Prevention (CDC)/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment. This meeting will be open to the public. Information about the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment and the agenda for this meeting can be obtained by contacting LCDR Holly Berilla at (301) 443–9965 or *hberilla@hrsa.gov.*

DATES: The meeting will be held on November 16, 2016, from 8:30 a.m. to 5:00 p.m. and November 17, 2016, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: This meeting will be held in-person and offer virtual access through teleconference and Adobe Connect. The address for the meeting is 5600 Fishers Lane, Rockville, Maryland 20857, Room 5A02 (Pavilion). Parties may access the teleconference by dialing 800–369–1193 and using the public participant code: 7050725. Parties may also access the meeting through Adobe Connect (visual only) by using the following URL: *https://hrsa.connectsolutions.com/CHAC_1116.*

FOR FURTHER INFORMATION CONTACT: Anyone requesting information regarding the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment should contact LCDR Holly Berilla, Public Health Analyst, Division of Policy and Data (DPD), HIV/AIDS Bureau (HAB), HRSA, in one of three ways: (1) Send a request to the following address: LCDR Holly Berilla, Public Health Analyst, DPD, HAB, HRSA, 5600 Fishers Lane, 09N164C, Rockville, Maryland 20857; (2) call 301–443–9965; or (3) send an email to *hberilla@hrsa.gov.*

SUPPLEMENTARY INFORMATION: The CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment was established under Section 222 of the Public Health Service Act, [42 U.S.C. Section 217a], as amended.

The purpose of the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment is to advise the Secretary, HHS; the Director, CDC; and the Administrator, HRSA regarding objectives, strategies, policies, and priorities for HIV, viral hepatitis, and other STDs; prevention and treatment efforts including surveillance of HIV infection, AIDS, viral hepatitis, and other STDs, and related behaviors; epidemiologic, behavioral, health services, and laboratory research on HIV/AIDS, viral hepatitis, and other STDs; identification of policy issues related to HIV/viral hepatitis/STD professional eduction, patient healthcare delivery, and prevention services; Agency policies about prevention of HIV/AIDS, viral hepatitis and other STDs; treatment, healthcare delivery, and research and training; strategic issues influencing the ability of CDC and HRSA to fulfill their missions of providing prevention and treatment services; programmatic efforts to prevent and treat HIV, viral hepatitis, and other STDs; and support to the Agencies in their developoment of responses to emerging health needs related to HIV, viral hepatitis, and other STDs.

During the November 16–17, 2016, meeting, the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment will discuss and deliberate on areas for evaluation by HRSA/HAB; expansion of national viral hepatitis programs; employment, housing, aging and leadership initiatives geared to people living with HIV/AIDS; and updates from Committee workgroups. Agenda items are subject to change as priorities dictate.

Members of the public will have the opportunity to provide comments. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to make oral comments or provide written comments to the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment should be sent to LCDR Holly Berilla, using the address and phone number listed above by November 1, 2016. The building at 5600 Fishers Lane, Rockville, MD 20857, requires a security screening on entry. To facilitate access to the building please contact LCDR Holly Berilla at the address and phone number listed above. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify LCDR Holly Berilla at the address and phone number listed above at least 10 days prior to the meeting.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–24807 Filed 10–13–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 on Deafness and Other Communication Disorders Special Emphasis Panel; U01 Clinical Trial Review.

Date: November 4, 2016.

Time: 2:00 p.m. to 3:30 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: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health,

Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: October 7, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24804 Filed 10–13–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Risk, Prevention and Health Behavior.

Date: November 8, 2016.

Time: 9:30 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 (Telephone Conference Call).

Contact Person: Martha M. Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808 Bethesda, MD 20892, (301) 435–3575, *faradaym@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Skeletal Biology and Disease.

Date: November 9, 2016.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maria Nurminskaya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, (301) 435–1222, *nurminskayam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Radiation Therapy and Biology.

Date: November 10–11, 2016.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov.*

(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 7, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24802 Filed 10–13–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request NCI's Center for Cancer Training Application Form for Graduate Student Recruitment Program (National Cancer Institute)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 2, 2016, page 50713 (81 FR 50713) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESS: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Ofelia Olivero, Chief Intramural Diversity Workforce Branch, Center for Cancer Training, NCI, 9609 2W108, Rockville, MD 20850 or call non-toll-free number (240) 276–6890 or Email your request, including your address to: *oliveroo@exchange.nih.gov.*

SUPPLEMENTARY INFORMATION: The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: NCI's Center for Cancer Training Application Form for Graduate Student Recruitment Program (CCT)(NCI), 0925–NEW—National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The Center for Cancer Training (CCT) is supporting NCI's goal of training cancer researchers for the 21st century. To support that goal, CCT created a Graduate Student Recruitment Program (GSRP) with the purpose of recruiting outstanding young scientists to postdoctoral positions at the NCI. The proposed information collection involves brief online applications completed by applicants to the full time and summer curriculum programs. This information is essential to the program to determine the eligibility and quality of potential selected individuals. The information is for internal use to make decisions about candidates invited to visit NCI and interview with scientist as potential postdoctoral trainees.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 225.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form	Estimated number of respondents	Estimated number of responses annually per respondent	Estimated total annual burden hours	Estimated total annual burden hours
Student Applicants	CCT Application	100	1	1	100
Professors	Reference Recommendation Letters	300	1	25/60	125
Total		400	400		225

Dated: October 5, 2016.

Karla Bailey,

Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2016–24812 Filed 10–13–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; SBIR Phase IIB Small Market Awards Review.

Date: November 10, 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, Room 7184, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 7, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24803 Filed 10–13–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: AIDS and Related Research Integrated Review Group, HIV/AIDS Vaccines Study Section.

Date: November 4, 2016.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Barna Dey, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, Bethesda, MD 20892, 301–435–0000, *bdey@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Learning and Memory.

Date: November 7, 2016.

Time: 9:00 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: Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Differentiation and Integration of Stem Cells (Embryonic and Induced-Pluripotent) Into Developing or Damaged Tissues.

Date: November 8, 2016.

Time: 2:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rass M Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 8, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–24801 Filed 10–13–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5907–N–42]

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 (This is not a toll-free number).

Dated: October 6, 2016.

Brian P. Fitzmaurice,

Director, Division of Community, Assistance, Office of Special Needs Assistance, Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 10/14/2016

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. (contact GSA for more conditions and info. on a specific property)
Comments: UPDATE: fair conditions; Building 2C has wall buckling; current seismic standards not met; asbestos and lead-based paint; damaged asbestos with Trace <1% asbestos in Building 2A crawlspace.

[FR Doc. 2016–24618 Filed 10–13–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957000–17–L13100000–PP0000]

Filing of Plats of Survey, Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: After withdrawal of protest, the Bureau of Land Management (BLM) is scheduled to lift the stay of filing of plat of survey dated August 24, 2009, and file this plat of survey thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming. This survey was executed at the request of the National Park Service and is necessary for the management of these lands. The lands surveyed are:

The plat representing the entire record of the survey of Tract No. 37, Township 32 North, Range 3 East, Sixth Principal Meridian, Nebraska, was accepted March 6, 2009.

FOR FURTHER INFORMATION CONTACT: WY957, Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: A person or party who wishes to protest against this survey must file a written notice within thirty (30) calendar days from

the date of this publication with the Wyoming State Director, Bureau of Land Management, at the above address, stating that they wish to protest. A statement of reasons for the protest may be filed with the notice of protest and must be filed with the Wyoming State Director within thirty (30) calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved. Before including your address, phone number, email address, or other personal identifying information in your protest, 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 to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Copies of the preceding described plat are available to the public at a cost of $4.20 per plat.

Dated: October 7, 2016.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 2016–24852 Filed 10–13–16; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–16–033]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 25, 2016 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–548 and 731–TA–1298 (Final) (Welded Stainless Steel Pressure Pipe From India). The Commission is currently scheduled to complete and file its determinations and views of the Commission on November 7, 2016.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 12, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–25076 Filed 10–12–16; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Mobile Device Holders and Components Thereof, DN 3178;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under § 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Nite Ize, Inc. on October 6, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile device holders and components thereof. The complaint names as respondents Shenzhen Youtai Trade Company Limited, d/b/a NoChoice of China; REXS LLC of Lewes, DE; Spinido, Inc. of Brighton, CO; Luo, Qiben, d/b/a Lita International Shop of China; Guangzhou Kuaguoyi E-commerce co., ltd. d/b/a Kagu Culture of China; Shenzhen New Dream Technology Co., Ltd., d/b/a Newdreams of China; Shenzhen Gold South Technology Co., Ltd. d/b/a Baidatong of China; Zhao Chunhui d/b/a Skyocean of China; Sunpauto Co, ltd. of Hong Kong; Wang Zhi Gang d/b/a IceFox of China; Dang Yuya d/b/a Sminiker of China; Shenzhen Topworld Technology Co. d/b/a IdeaPro of Hong Kong; Lin Zhen Mei d/b/a Anson of China; Wu Xuying d/b/a Novoland of China; Shenzhen New Dream Sailing Electronic Technology Co., Ltd. d/b/a MegaDream of China; Zhongshan Feiyu Hardware Technology Co., Ltd d/b/a YouFo of China; Ninghuaxian Wangfulong Chaojischichang Youxian Gongsi Ltd., d/b/a EasybuyUS of China; Chang Lee d/b/a Frentaly of Duluth, GA; Trendbox USA LLC d/b/a Trendbox of Scottsdale, AZ; Timespa d/b/a Jia Bai Nian (Shenzhen) Electronic Commerce Trade CO., LTD, of China; Tontek d/b/a Shenzhen Hetongtai Electronics Co., Ltd., of China; Scotabc d/b/a ShenChuang Opto-electronics Technology Co., Ltd. of China; Tenswall d/b/a Shenzhen Tenswall International Trading Co, Ltd. of La Puente, CA; Luo Jieqiong d/b/a Wekin of China; Pecham d/b/a Baichen Technology Ltd. of Hong Kong; Cyrift d/b/a Guangzhou Sunway E-Commerce LLC. of China; Rymemo d/b/a Global Box, LLC of Dunbar, PA; Wang Guoxiang d/b/a Minse of China; Yuan I d/b/a Bestrix of China; Zhiping Zhou d/b/a Runshion of China; Funlavie of Riverside, CA; Huijukon d/b/a Shenzhen Hui Ju Kang Technology Co. Ltd., of China; Zhang Huajun d/b/a CeeOne of China; EasyAcc/d/b/a Searay LLC., of Newark, DE; Barsone d/b/a Shenzhen Senweite Electronic Commerce Ltd., of China; Oumeiou d/b/a Shenzhen Oumeiou of China; Grando d/b/a Shenzhen Dashentai Network Technology Co., Ltd., of China; Shenzhen Yingxue Technology Co., Ltd. of China; Shenzhen Longwang Technology Co., Ltd., d/b/a LWANG of China; and Hu Peng d/b/a AtomBud of

China. The complainant requests that the Commission issue a general exclusion order, a limited exclusion order, and cease and desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3178'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Pracice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 7, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–24793 Filed 10–13–16; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

Requests for Petitions for Duty Suspensions and Reductions

AGENCY: United States International Trade Commission.

ACTION: Notice requesting members of the public to submit petitions for duty suspensions and reductions and Commission disclosure forms.

SUMMARY: As required by section 3(b)(1) of the American Manufacturing Competitiveness Act of 2016, the Commission is publishing notice requesting members of the public who can demonstrate that they are likely beneficiaries of duty suspensions or reductions to submit petitions for duty suspensions and reductions. Consistent with the statute, the Commission will accept petitions submitted during the 60-day period beginning on October 14, 2016, and ending at 5:15 p.m. EST December 12, 2016. All petitions must be submitted via the Commission's designated secure web portal. At a later date the Commission will publish notice of the opportunity for the public to submit comments on the petitions filed.

DATES: October 14, 2016: Opening date for filing petitions for duty suspensions and reductions. December 12, 2016, 5:15 p.m., EST: Closing date and time for filing petitions for duty suspensions and reductions.

ADDRESSES: All Commission offices are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. The public file for this proceeding may be viewed on the Commission's MTB Petition System (MTBPS) at *https://www.usitc.gov/mtbps.*

FOR FURTHER INFORMATION CONTACT: For general inquiries, contact Jennifer Rohrbach at *mtbinfo@usitc.gov.* For filing inquiries, contact the Office of Secretary, Docket Services division, U.S. International Trade Commission, telephone (202) 205–3238.

The media should contact Peg O'Laughlin, Public Affairs Officer (202–205–1819 or *margaret.olaughlin@usitc.gov*). General information concerning the Commission may be obtained by accessing its internet server (*https://www.usitc.gov*).

Background: The American Manufacturing Competitiveness Act of 2016 (the Act) establishes a new process for the submission and consideration of requests for temporary duty suspensions and reductions. The Act requires the Commission to initiate the process by publishing a notice requesting members of the public who can demonstrate that

they are likely beneficiaries of duty suspensions or reductions to submit petitions and Commission disclosure forms to the Commission. The Act establishes the information to be contained in a petition and sets out the review process the Commission is to follow. The Act, (Pub. L. 114–159, May 20, 2016), 19 U.S.C. 1332 note, requires the Commission to publish its notice requesting petitions no later than October 15, 2016, and to allow the public to file petitions during the 60-day period following publication of the notice. After the period for filing petitions closes, the Commission is required to publish the petitions on its Web site and provide notice to the public of the opportunity to submit comments on the petitions published.

The Act requires the Commission to submit preliminary and final reports to the House Committee on Ways and Means and the Senate Committee on Finance (Committees) on the petitions received. The reports are to include the Commission's analysis and recommendations regarding the petitions, including whether there is domestic production of the article, whether the estimated loss in revenues due to the duty suspension or reduction does not exceed $500,000, and whether the duty suspension or reduction will be available to any person importing the article. The Commission is required to classify the petitions into categories based on whether (1) the petition meets the requirements for inclusion in a miscellaneous tariff bill; (2) the Commission recommends inclusion in such a bill with specified technical changes, changes in product scope, or adjustment in the amount of duty reduction; (3) the Commission recommends against inclusion in a bill because the petition does not meet the petitioning requirements or the petitioner is not a likely beneficiary; (4) the Commission otherwise recommends not including the petition. The Committees and the Congress will make the final decision regarding the imported articles to be included in a bill.

The Act also requires the U.S. Department of Commerce, with input from U.S. Customs and Border Protection and other Federal agencies, to submit a report to the Commission and to the Committees. This report is to include information related to domestic production and technical changes that are necessary for purposes of administration when articles are presented for importation.

Procedures for Filing a Petition: The Commission has promulgated rules of practice and procedure regarding the process for filing petitions and has also made available a handbook and other materials to assist members of the public in filing petitions. The rules, in the form of an interim rule, are published at 19 CFR part 220 (81 FR 67144, Sept. 30, 2016). The rules, handbook, and other materials are also posted on the Commission's Web site at *https://www.usitc.gov/mtbps.* Highlights of the filing procedures are presented below only as an overview; persons who are considering filing a petition should consult the Commission's rules, handbook, and other materials.

Who may file. As provided for in the statute, the rules, and other Commission materials, petitions for duty suspensions or reductions may be filed only by members of the public who can demonstrate that they are a likely beneficiary of the duty suspension or reduction. The statute defines ''likely beneficiary'' to mean ''an individual or entity likely to utilize, or benefit directly from the utilization of, an article that is the subject of a petition for a duty suspension or reduction.''

Method for filing. Petitions for duty suspensions and reductions may be filed only electronically via the Commission's designated secure web portal and in the format designated by the Commission in that portal. The portal contains a series of prompts and links that will assist persons in providing the required information (this information concerns both the petitions and related disclosure forms, so there will be only one submission). The Commission will not accept petitions submitted in paper or in any other form or format. Petitions, including any attachments thereto, must otherwise comply with the Commission's rules and Handbook on MTB Filing Procedures. Persons seeking duty suspensions or reductions on more than one imported product must submit separate petitions for each product. Persons filing petitions should be aware that they must be prepared to complete their entire petition when they enter the portal and that the portal will not allow them to edit, amend, or complete the petition at a later time. Accordingly, they should have all required information in hand when they enter the portal to begin the formal filing process. A list of all the information required to complete a petition may be found in the Commission's Before You File guide.

Time for filing. To be considered, petitions must be filed between October 14, 2016, and the close of business (5:15 p.m. EST) on December 12, 2016. The Commission will not accept petitions filed after that time and date.

Amendment and withdrawal of petitions. The Commission's secure web portal will not allow a person who has formally submitted a petition to amend the petition. Instead, that person must withdraw the original petition and file a new petition that incorporates the changes. The new petition must be filed within the 60-day period designated for filing petitions. Petitions may be withdrawn at any time prior to the time the Commission transmits its final report to the Committees.

Confidential business information. The portal will permit persons submitting petitions to claim that certain information should be treated either as confidential business information or as information protected from disclosure under the Privacy Act (*e.g.,* a home address). However, because of the portal's design, the portal instructs that such information not be included in attachments to petitions. Persons who include confidential business information and information protected under the Privacy Act in attachments to their petitions will be presumed to have waived any privilege and the information will be disclosed to the public when the petitions and attachments are posted on the Commission's Web site. See further information below on possible disclosure of confidential business information.

Confidential Business Information. The Commission will not release information which the Commission considers to be confidential business information within the meaning of § 201.6(a) of its Rules of Practice and Procedure (19 CFR 201.6) unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information.

Confidential business information submitted to the Commission in petitions and comments may be disclosed to and/or used by (1) the Commission in calculating the estimated revenue loss required under the Act, which may be based in whole or in part on the estimated values of imports submitted by petitioners in their petitions; or (2) the Commission, its employees, and contract personnel (a) in processing petitions and comments and preparing reports under the American Manufacturing Competitiveness Act of 2016 or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5

U.S.C. Appendix 3; or (3) the U.S. Department of Commerce for use in preparing its report to the Commission and the Committees, and the U.S. Department of Agriculture and CBP for use in providing information for that report; or (4) U.S. government employees and contract personnel, solely for cybersecurity purposes, subject to the requirement that all contract personnel will sign appropriate nondisclosure agreements.

By order of the Commission.

Issued: October 6, 2016.

Lisa R. Barton,

Secretary of the Commission.

[FR Doc. 2016–24690 Filed 10–13–16; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for International Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

NAME: Advisory Committee for International Science and Engineering (#25104).

DATE AND TIME: November 28, 2016; 8:00 a.m. to 5:00 p.m.; November 29, 2016; 8:00 a.m. to 1:00 p.m.

PLACE: National Science Foundation, 4121 Wilson Boulevard, Stafford II, Suite 1155.01, Arlington, Virginia 22230.

TYPE OF MEETING: Part-Open.

CONTACT PERSON: Claire Hemingway, National Science Foundation, 4121 Wilson Boulevard, Stafford II, Suite 1155.77, Arlington, Virginia 22230; 703–292–7135.

PURPOSE OF MEETING: To provide advice, recommendations and counsel on major goals and policies pertaining to international programs and activities.

Agenda

Monday, November 28, 2016 8:00 a.m.–5:00 p.m.

- Status of OISE program realignment
- Continuation of International Strategy for the NSF Big Ideas, including report out by OISE staff on Big Ideas working groups
- Follow up on Engagement with Africa session, reviewing list to be provided by Dr. Nkem Khumbah
- Engagement with China session, including discussion with Nancy Sung who will be present
- Analysis of the overseas offices (Closed Session)

Tuesday, November 29, 2016 8:00 a.m.–1:00 p.m.

- Discussion of mission/vision of Countries and Regions Cluster
- Presentation on status of OISE data analytics
- Meet with NSF leadership

Reason for Closing: Session having to do with Analysis of Overseas Offices may properly be closed to the public under 5 U.S.C. 552b(c), (2) of the Government in the Sunshine Act.

Dated: October 7, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–24848 Filed 10–13–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Metallurgy & Reactor Fuels; Cancellation of the October 21, 2016, ACRS Subcommittee Meeting

The ACRS Subcommittee meeting on Metallurgy & Reactor Fuels scheduled for October 21, 2016 (new date), 8:30 a.m. until 12:00 p.m., has been cancelled.

The notice of this meeting was previously published in the **Federal Register** on Tuesday, October 4, 2016, (81 FR 68461).

Information regarding this meeting can be obtained by contacting Christopher Brown, Designated Federal Official (DFO) (Telephone 301–415–7111 or Email: *Christopher.Brown@nrc.gov*) between 7:30 a.m. and 5:15 p.m. (EST)).

Dated: October 5, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–24885 Filed 10–13–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0131]

Site Characteristics and Site Parameters

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard Review Plan Section Revision; Issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to Section 2.0, ''Site Characteristics and Site Parameters'' of NUREG–0800, ''Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.''

DATES: The effective date of this SRP update is November 14, 2016.

ADDRESSES: Please refer to Docket ID NRC–2015–0131 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0131. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The final revision, previously issued draft revision for public use and comment, and redline strikeouts comparing the final revision with draft revision are available in ADAMS under the following Accession No(s). ML15279A105, ML15043A732, and ML15279A091.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

The NRC posts its issued staff guidance on the NRC's external Web page (*http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/*).

FOR FURTHER INFORMATION CONTACT: Mark Notich, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3053, email: *Mark.Notich@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 27, 2015 (80 FR 30285), the NRC published for public comment a proposed revision of Section 2.0, ''Site Characteristics and Site Parameters'' of NUREG–0800, ''Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.'' The staff received comments on the draft section. After consideration of comments received on the proposed revision, the NRC staff reformatted guidance for the review of nonsafety-related structures, systems, and components (SSCs) into a tabular format, and separated it from the core review guidance used for review of safety-related SSCs. A summary of comments received and the staff's disposition of the comments are available in a separate document entitled, ''Response to Public Comments on Draft Standard Review Plan, Section 2, 'Site Characteristics and Site Parameters''' (ADAMS Accession No. ML15279A093).

II. Backfitting and Issue Finality

Section 2 provides guidance to the staff for reviewing applications for a construction permit and an operating license under part 50 of title 10 of the *Code of Federal Regulations* (10 CFR) with respect to systems associated with site characteristics and site parameters. SRP Section 2 also provides guidance for reviewing an application for a standard design approval, a standard design certification, a combined license, and a manufacturing license under 10 CFR part 52 with respect to the same subject matters.

Issuance of this SRP section revision does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) nor is it inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations.

1. *The SRP positions would not constitute backfitting, inasmuch as the SRP is internal guidance to NRC staff.*

The SRP provides internal guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *The NRC staff has no intention to impose the SRP positions on existing licensees either now or in the future.*

The NRC staff does not intend to impose or apply the positions described in the SRP to existing licenses and regulatory approvals. Hence, the issuance of this SRP—even if considered guidance within the purview of the issue finality provisions in 10 CFR part 52—does not need to be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. Neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions—were intended to apply to every NRC action that substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (*e.g.,* an early site permit) or NRC regulatory approval (*e.g.,* a design certification rule) with specified issue finality provisions. The NRC staff does not, at this time, intend to impose the positions represented in the SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the staff seeks to impose a position in the SRP section in a manner that does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

III. Congressional Review Act

This action is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 11th day of October 2016.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, New Reactor Rulemaking and Guidance Branch, Division of Engineering, Infrastruture and Advanced Reactors, Office of New Reactors.

[FR Doc. 2016–24859 Filed 10–13–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0314; NRC–2013–0149; NRC–2014–0099; NRC–2014–0101]

Conduct of Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan—final section revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing final revisions to Section 13.6.4, ''Access Authorization—Operational Program;'' Section 13.7, ''Fitness-for-Duty;'' Section 13.7.1, ''Fitness-for-Duty—Operational Program;'' Section 13.7.2, ''Fitness for Duty—Construction;'' and Section 13.6.3, ''Physical Security—Operational Program—Early Site Permits and Reactor Siting Criteria;'' of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.''

DATES: The effective date of these SRP section revisions is November 14, 2016.

ADDRESSES: Please refer to Docket IDs NRC–2012–0314 for SRP Section 13.6.4, NRC–2013–0149 for SRP Sections 13.7 and 13.7.1, NRC–2014–0099 for SRP Section 13.7.2, and NRC–2014–0101 for SRP Section 13.6.3 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket IDs NRC–2012–0314 (for SRP Section 13.6.4), NRC–2013–0149 (for SRP Sections 13.7 and 13.7.1), NRC–2014–0099 (for SRP Section 13.7.2), and NRC–2014–0101 (for SRP Section 13.6.3). Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly-available documents online in the

ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document. The NUREG–0800 is available on the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0800/.*

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT:

Mark Notich, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3053; email: *Mark.Notich@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 31, 2012 (77 FR 77117), the NRC published for public comment the proposed revision to Section 13.6.4, ''Access Authorization—Operational Program'' (ADAMS Accession No. ML12125A098). On July 16, 2013 (78 FR 42558), the NRC published for public comment the proposed revision to Section 13.7, ''Fitness-for-Duty;'' and Section 13.7.1, ''Fitness-for-Duty—Operational Program'' (ADAMS Accession Nos. ML113250516 and ML113250541, respectively). On May 5, 2014 (79 FR 25627), the NRC published for public comment the proposed revision to Section 13.6.3, ''Physical Security—Early Site Permit and Reactor Siting Criteria'' (ADAMS Accession No. ML13059A367). Also on May 5, 2014 (79 FR 25628), the NRC published for public comment the proposed revision to Section 13.7.2, ''Fitness-for-Duty—Construction'' (ADAMS Accession No. ML113270035).

The NRC staff received comments on the proposed revision to SRP Section 13.6.4. A summary of the comments and the NRC staff's disposition of the comments are available in a separate document entitled, ''Response to Public Comments on Draft Standard Review Plan (SRP) 13.6.4: Access Authorization—Operational Program'' (ADAMS Accession No. ML13270A111). Therefore, the NRC is issuing this revised section of the SRP in final form for use.

The NRC did not receive comments on the proposed revisions to SRP Sections 13.6.3, 13.7, 13.7.1, and 13.7.2. Therefore, the NRC is issuing these revised sections of the SRP in final form for use.

There have been minor editorial changes to these sections since their issuance in proposed form for public comment. Details on the specific changes are included in the redline strikeout documents referenced in Section IV, ''Availability of Documents,'' of this document.

II. Backfitting and Issue Finality

Issuance of these revised SRP sections does not constitute backfitting as defined in § 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting,'' (the Backfit Rule) or otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations:

1. *The SRP positions do not constitute backfitting, inasmuch as the SRP is internal guidance directed at the NRC staff with respect to their regulatory responsibilities.*

The SRP provides guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in internal NRC staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. *The NRC staff has no intention to impose the SRP positions on existing nuclear power plant licenses or regulatory approvals either now or in the future (absent a voluntary request for change from the licensee, holder of a regulatory approval, or a design certification applicant).*

The NRC staff does not intend to impose or apply the positions described in the SRP to existing (already issued) licenses and regulatory approvals. Therefore, the issuance of a final SRP—even if considered guidance that is within the purview of the issue finality provisions in 10 CFR part 52—need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner which does not provide issue finality as described in the applicable issue finality provision, then the NRC staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. *Backfitting and issue finality—with limited exceptions not applicable here—do not protect current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions discussed in the next paragraph—were intended to apply to every NRC action which substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (*e.g.,* an early site permit) and/or NRC regulatory approval (*e.g.,* a design certification rule) with specified issue finality provisions. The NRC staff does not currently intend to impose the positions represented in these SRP sections in a manner that is inconsistent with any issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP in a manner which does not provide issue finality as described in the applicable issue finality provision, then the NRC staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

III. Congressional Review Act

These SRP section revisions are a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Availability of Documents

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

SRP section	Final revision ADAMS accession No.	Current draft revision ADAMS accession No.	Redline strikeout ADAMS accession No.
13.6.3	ML15061A471	ML13059A367	ML15226A059
13.6.4	ML15226A009	ML12125A098	ML15111A201
13.7	ML15111A091	ML113250516	ML15111A057
13.7.1	ML15111A036	ML113250541	ML15226A098
13.7.2	ML15111A034	ML113270035	ML15226A168

Dated at Rockville, Maryland, this 6th day of October 2016.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, New Reactor Rulemaking and Guidance Branch, Division of Engineering, Infrastructure, and Advanced Reactors, Office of New Reactors.

[FR Doc. 2016–24887 Filed 10–13–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08964; License No. SUA–1548; EA–16–051; NRC–2016–0211]

In the Matter of Power Resources, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmatory order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a confirmatory order to Power Resources, Inc., confirming agreements reached in an alternative dispute resolution mediation session held on September 22, 2016. As part of the agreement, Power Resources, Inc., will conduct annual meetings among key management, radiation safety officer, facility managers, and other appropriate technical personnel to provide assurance that management understands the requirements of a radiation protection program are being met; will provide training which will emphasize the importance of complete and accurate information for all required records, correspondence, and communications with the NRC and its staff; and will have a qualified member of the heath physics staff available at any of its facilities when equipment is being released from a radiologically-controlled are to an unrestricted area.

DATES: The confirmatory order was issued on September 30, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0211 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0211. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For questions about the Order, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John Kramer, Region IV, U.S. Nuclear Regulatory Commission, 1600 E. Lamar Blvd., Arlington, TX 76011–4511; telephone: 817–200–1121; email: *John.Kramer@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the Order is attached.

Dated at Arlington, Texas, this 30th day of September 2016.

For the Nuclear Regulatory Commission.

Kriss M. Kennedy,

Regional Administrator.

ATTACHMENT—CONFIRMATORY ORDER MODIFYING LICENSE

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of Power Resources, Inc.

[Docket No. 040–08964; License No. SUA–1548]

EA–16–051

CONFIRMATORY ORDER MODIFYING LICENSE

(EFFECTIVE UPON ISSUANCE)

I

Power Resources, Inc. (PRI or Licensee), is the holder of Source Material License SUA–1548 issued on May 8, 2001, by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 40 of Title 10 of the *Code of Federal Regulations* (10 CFR). The license authorizes the operation of PRI's North Butte satellite facility in accordance with conditions specified therein. The facility is located on the licensee's site in Campbell County, Wyoming.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on September 22, 2016.

II

On June 27, 2014, the NRC's Office of Investigations (OI), initiated an investigation (OI Case No. 4–2014–034) at PRI's North Butte satellite facility. Based on the evidence developed during its investigation, the NRC identified apparent violations of 10 CFR 20.1501, ''Surveys and Monitoring—General,'' and 10 CFR 40.9, ''Completeness and accuracy of information,'' as well as, two apparent violations of License Condition 9.3 of License SUA 1548, Amendment 18, dated March 27, 2013, which includes the requirement that the licensee conduct its operations in accordance with Volume 1, Chapter 9, ''Management Control Procedures,'' of the licensee's application dated May 6, 2003, as amended based on letter dated March 20, 2008. In addition, based on OI's investigative results, the NRC is concerned that willfulness may be associated with the apparent violation involving the failure to maintain accurate records of contamination exit surveys. By letter dated August 24, 2016, the NRC notified PRI of the results of the investigation and provided an opportunity to: (1) Provide a response in writing, (2) attend a

predecisional enforcement conference, or (3) participate in an ADR mediation session in an effort to resolve these concerns.

In response to the NRC's offer, PRI requested the use of the NRC's ADR process to resolve differences it had with the NRC. On September 22, 2016, the NRC and PRI met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. The ADR process is one in which a neutral mediator, with no decision-making authority, assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During that ADR session, PRI and the NRC reached a preliminary settlement agreement. The NRC recognizes the corrective actions that PRI has already implemented associated with the apparent violations. The elements of the agreement include the following:

Corrective actions taken by PRI include:

A. Problem Evaluation.

1. Completed a prompt apparent cause investigation into the incident, including an assessment of compliance with company procedures and proposed corrective actions. Included appropriate notification of regulatory authorities.

2. Engaged external counsel to conduct an independent investigation of allegations of falsification of survey records. Included appropriate notification of regulatory authorities.

B. Communications.

1. The PRI President issued a written communication to all North Butte employees describing expectations that employees will comply with NRC regulations and license requirements, Cameco code of conduct, and principles of a safety conscious work environment.

2. The PRI President met with employees involved in NRC-regulated activities at each facility, as well as employees at corporate offices that were involved with activities conducted under the license, to discuss management's expectations for employee compliance with NRC and licensee requirements, Cameco code of conduct, ethics, and principles of a safety conscious work environment.

C. Training.

1. Conducted training on ''Government Oversight of Uranium Mining,'' including discussion of complete and accurate information, deliberate misconduct, and employee protection requirements for all employees at the North Butte facility.

2. Conducted training for supervisory employees regarding enhanced investigative and documentation techniques for issues that have the potential to include employee wrongdoing, including deliberate misconduct, falsification of documents, and harassment, retaliation, and chilling effects at the Smith Ranch, North Butte, and Crow Butte facilities.

3. Conducted training for supervisory employees regarding maintenance of a safety conscious work environment, including employee protection, barriers to a safety conscious work environment, chilling effects, and best practices. The safety conscious work environment training included an interactive discussion of multiple case studies and examples relevant to the PRI operational facilities.

4. Conducted management/supervisor team training on the Cameco Code of Conduct and Ethics at the PRI operational facilities.

5. Conducted immediate refresher training on requirements for free release surveys, contractor training, and documentation of daily monitoring records for the North Butte Mine Manager, Operations Supervisor, and Safety Health Environment and Quality Specialist III.

6. Added training specific to the proper use of daily monitoring records to the PRI annual refresher training and to the new hire/contractor radiation training.

7. Added training on processes involving free release surveys, personnel qualified to perform free release surveys of equipment, and on the use of specific forms to the PRI annual refresher training and new hire/contractor radiation training.

8. To ensure the effectiveness of the training, examination questions regarding free release surveys were added to the test that all personnel must pass in order to work unescorted in radiologically-controlled areas at all PRI facilities.

D. Work Processes.

1. Conducted assessment of processes for initiating and completing inquiries into alleged employee misconduct, including scope, timeliness, and determinations regarding such allegations, and a review of the employee handbook. Made updates as appropriate.

2. Conducted a review of procedures, annual and refresher training, and work processes for revisions and enhancements. Made changes where appropriate. Changes included revised procedures for completing and documenting hazard awareness training, and improvements in the process for completing, documenting, and maintenance-of-records for daily monitoring records.

The elements of the agreement, as signed by both parties, consist of the following:

A. The NRC has concluded that a willful violation of Title 10 of the *Code of Federal Regulations* (10 CFR) 40.9(a) occurred between September 12, 2013, and February 6, 2014, when an operations supervisor documented contamination control exit surveys of contract personnel exiting the North Butte satellite facility when, in fact, the exit surveys were not performed. Power Resources, Inc., agrees with this conclusion.

B. Within 12 months of the issuance date of the Confirmatory Order and on an annual basis thereafter, PRI will conduct a meeting among key management, radiation safety officer, facility managers, and other appropriate technical personnel to provide assurance that management understands the requirements of a radiation protection program such that they can perform reviews to ensure the requirements are being met.

1. The meeting will include discussion and review of performance indicators, license changes, preparations for major changes in operations, health physics issues, procedure compliance indicators, operational safety issues, and the radiation protection program.

2. A summary of each annual meeting will be retained for a period of at least 3 years after the meeting is held.

C. Within 12 months of the issuance date of the Confirmatory Order, PRI will incorporate 10 CFR 40.9, ''Completeness and accuracy of information,'' and 10 CFR 40.10, ''Deliberate misconduct,'' requirements into initial and annual employee refresher training for all employees involved in NRC-regulated activities.

1. The training will emphasize the importance of complete and accurate information for all required records, correspondence, and communications with the NRC and its staff.

2. Training will emphasize individual accountability and clearly express that willful or deliberate failures to comply with regulations, orders, or license requirements could result in significant individual enforcement action by the NRC.

3. The training will reinforce that if any individual recognizes a non-compliance, they will immediately report the observation of the non-compliance to management.

D. Power Resources, Inc., will have a qualified member of the health physics staff available at any of its facilities when equipment is being released from a radiologically-controlled area to an unrestricted area. If a qualified member of the health physics staff is unavailable, the equipment will not be released from the radiologically-controlled area.

E. Notifications to the NRC when actions are completed.

1. Power Resources Inc., will submit written notification to the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011–4511, at intervals not to exceed 12 months until the terms of this Confirmatory Order are completed, providing a status of each item in the Order.

2. Power Resources Inc., will provide its basis for concluding that the terms of the Confirmatory Order have been satisfied, to the NRC, in writing to Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011–4511. The NRC will review to confirm whether or not the terms of the Confirmatory Order have been satisfied.

F. Administrative items.

1. The NRC and PRI agree that the above elements will be incorporated into a Confirmatory Order.

2. The NRC will consider the Confirmatory Order an escalated enforcement action with respect to future enforcement actions. The NRC will give the licensee credit for identification of this willful violation as of May 20, 2014.

3. In consideration of the commitments delineated above, the NRC agrees not to issue a Notice of Violation for the violations discussed in NRC Investigation Report 4–2014–034 and letter issued by the NRC dated August 24, 2016, (EA–16–051), and not to issue an associated civil penalty.

4. This agreement is binding upon successors and assigns of PRI.

Based on the completed actions described above, and the commitments described in

Section V below, the NRC agrees to not pursue any further enforcement action based on the apparent violations identified in the NRC's August 24, 2016, letter.

On September 27, 2016, PRI consented to issuing this Confirmatory Order with the commitments, as described in Section V below. Power Resources Inc., further agreed that this Confirmatory Order is to be effective upon issuance, the agreement memorialized in this Confirmatory Order settles the matter between the parties, and that it has waived its right to a hearing.

IV

I find that PRI's actions completed, as described in Section III above, combined with the commitments as set forth in Section V are acceptable and necessary, and conclude that with these commitments public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that PRI's commitments be confirmed by this Confirmatory Order. Based on the above and PRI's consent, this Confirmatory Order is effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 40, *it is hereby ordered, effective upon issuance, that License No. SUA–1548 is modified as follows:*

A. Within 12 months of the issuance date of the Confirmatory Order and on an annual basis thereafter, PRI will conduct a meeting among key management, radiation safety officer, facility managers, and other appropriate technical personnel to provide assurance that management understands the requirements of a radiation protection program such that they can perform reviews to ensure the requirements are being met.

1. The meeting will include discussion and review of performance indicators, license changes, preparations for major changes in operations, health physics issues, procedure compliance indicators, operational safety issues, and the radiation protection program.

2. A summary of each annual meeting will be retained for a period of at least 3 years after the meeting is held.

B. Within 12 months of the issuance date of the Confirmatory Order, PRI will incorporate 10 CFR 40.9, ''Completeness and accuracy of information,'' and 10 CFR 40.10, ''Deliberate misconduct,'' requirements into initial and annual employee refresher training for all employees involved in NRC-regulated activities.

1. The training will emphasize the importance of complete and accurate information for all required records, correspondence, and communications with the NRC and its staff.

2. Training will emphasize individual accountability and clearly express that willful or deliberate failures to comply with regulations, orders, or license requirements, could result in significant individual enforcement action by the NRC.

3. The training will reinforce that if any individual recognizes a non-compliance, they will immediately report the observation of the non-compliance to management.

C. Power Resources, Inc., will have a qualified member of the health physics staff available at any of its facilities when equipment is being released from a radiologically-controlled area to an unrestricted area. If a qualified member of the health physics staff is unavailable, the equipment will not be released from the radiologically-controlled area.

D. Notifications to the NRC when actions are completed.

1. Power Resources Inc., will submit written notification to the Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011–4511, at intervals not to exceed 12 months until the terms of this Confirmatory Order are completed, providing a status of each item in the Order.

2. Power Resources Inc., will provide its basis for concluding that the terms of the Confirmatory Order have been satisfied, to the NRC, in writing to Director, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region IV, 1600 East Lamar Blvd., Arlington, Texas 76011–4511.

The NRC will review to confirm whether or not the terms of the Confirmatory Order have been satisfied.

This Confirmatory Order is binding upon successors and assigns of PRI.

The Regional Administrator, Region IV, may, in writing, relax or rescind any of the above conditions upon demonstration by PRI or its successors of good cause.

VI

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this Confirmatory Order, other than PRI, may request a hearing within 30 calendar days of the date of issuance of this Confirmatory Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submissions to the NRC, Revision 6.1,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Electronic Filing Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System (EIE), users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document.

The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a

digital ID certificate before a hearing request or petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Electronic Filing Help Desk through the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/contact-us-eie.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 7 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff.

Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person (other than PRI) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for a hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 30 days from the date this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission.

Dated this 30th day of September 2016.

Kriss M. Kennedy,

Regional Administrator, NRC Region IV.

[FR Doc. 2016–24872 Filed 10–13–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32308; File No. 812–14628]

Destra Capital Advisors LLC, et al.; Notice of Application

October 7, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act. The requested order would permit certain registered open-end investment companies to acquire shares of certain registered open-end investment companies, registered closed-end investment companies, business development companies, as defined in section 2(a)(48) of the Act (''BDCs''), and registered unit investment trusts (collectively, ''Underlying Funds'') that are within and outside the same group of investment companies as the acquiring investment companies, in excess of the limits in section 12(d)(1) of the Act.

APPLICANTS: Destra Investment Trust, Destra Investment Trust II and Destra Exchange-Traded Fund Trust, each a Massachusetts business trust, that is registered, or, in the case of Destra Exchange-Traded Fund Trust, intends to register, under the Act as an open-end management investment company with multiple series (each, a ''Trust''); Destra Capital Advisors LLC (the ''Initial Adviser''), a Delaware limited liability company, registered as an investment adviser under the Investment Advisers Act of 1940; and Destra Capital Investments LLC, a Delaware limited liability company, registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''Exchange Act'').

DATES: *Filing Dates:* The application was filed on March 18, 2016 and amended on July 29, 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 31, 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: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: c/o Jane Hong Shissler, Destra Capital Investments LLC, One North Wacker Drive, 48th Floor, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–3038, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order to permit (a) a Fund[1] (each a ''Fund of

[1] Applicants request that the order apply to each existing and future series of a Trust and to each existing and future registered open-end investment company or series thereof that is advised by the Initial Adviser or its successors or by any other investment adviser controlling, controlled by or under common control with the Initial Adviser, and is part of the same ''group of investment companies'' as a Trust (each, a ''Fund''). For purposes of the requested order, ''successor'' is

Funds'') to acquire shares of Underlying Funds [2] in excess of the limits in sections 12(d)(1)(A) and (C) of the Act and (b) the Underlying Funds that are registered open-end investment companies or series thereof, their principal underwriters and any broker or dealer registered under the Exchange Act to sell shares of the Underlying Fund to the Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.[3] Applicants also request an order of exemption under sections 6(c) and 17(b) of the Act from the prohibition on certain affiliated transactions in section 17(a) of the Act to the extent necessary to permit the Underlying Funds to sell their shares to, and redeem their shares from, the Funds of Funds.[4] Applicants state that such transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act and will be based on the net asset values of the Underlying Funds.

2. Certain Underlying Funds may invest up to 25% of their assets in a wholly-owned and controlled subsidiary of the Underlying Fund organized under the laws of the Cayman Islands as an exempted company or under the laws of another non-U.S. jurisdiction (each, a ''Cayman Sub''), in order to invest in commodity-related instruments and certain other instruments. Applicants state that these Cayman Subs are created for tax purposes in order to ensure that the Underlying Fund would remain qualified as a regulated investment company for U.S. federal income tax purposes.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over an Underlying Fund that is not in the same ''group of investment companies'' as the Fund of Funds through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A), (B), and (C) of the Act.

4. 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. 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.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2016–24841 Filed 10–13–16; 8:45 am]

BILLING CODE 8011–01–P

limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. For purposes of the request for relief, the term ''group of investment companies'' means any two or more registered investment companies, including closed-end investment companies and BDCs, that hold themselves out to investors as related companies for purposes of investment and investor services.

[2] Certain of the Underlying Funds have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices and, accordingly, to operate as an exchange-traded fund (''ETF'').

[3] Applicants do not request relief for the Fund of Funds to invest in reliance on the order in BDCs or closed-end investment companies that are not listed and traded on a national securities exchange.

[4] Applicants note that a Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF or a closed-end fund through secondary market transactions rather than through principal transactions with the Underlying Fund. Applicants nevertheless request relief from sections 17(a)(1) and (2) to permit each ETF or closed-end fund that is an affiliated person, or an affiliated person of an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund of Funds to sell shares to or redeem shares from the Fund of Funds. This includes, in the case of sales and redemptions of shares of ETFs, in-kind transactions that accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where an ETF or closed-end fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because an investment adviser to the ETF or closed-end fund or an entity controlling, controlled by or under common control with the investment adviser to the ETF or closed-end fund, is also an investment adviser to the Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Additional Item

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: To Be Published.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, October 13, 2016.

CHANGES IN THE MEETING: The following matter will also be considered during the 10:00 a.m. Open Meeting scheduled for Thursday, October 13, 2016, in the Auditorium, Room L–002:

- The Commission will consider whether to adopt rule and form amendments that would permit open-end management investment companies to use ''swing pricing'' under certain circumstances.

This item is now being separately listed for the Open Meeting in open session as a procedural matter, and the duty officer determined that Commission business required such earlier than one week from today. No earlier notice of this action was practicable.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact Brent J. Fields in the Office of the Secretary at (202) 551–5400.

Dated: October 11, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–24988 Filed 10–12–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79074; File No. SR–Phlx–2016–92]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Partial Amendment Nos. 1, 2 and 3, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Partial Amendment Nos. 1, 2 and 3, to System Functionality Necessary to Implement the Regulation NMS Plan To Implement a Tick Size Pilot Program

October 7, 2016.

I. Introduction

On September 7, 2016, NASDAQ PHLX LLC (''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt paragraph (d) and Commentary .12 to Phlx Rule 3317 to change System[3] functionality necessary to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan'' or ''Pilot'').[4] The Exchange is also proposing amendments to Phlx Rule 3317(a) and (c) to clarify certain exceptions to the Trade-at Prohibition.[5] The proposed rule change was published for comment in the **Federal Register** on September 20, 2016.[6] The Commission received two comment letters in response to the Notice.[7] On September 29, 2016, the Exchange filed Partial Amendment No. 1 to the proposed rule change.[8] On October 4, 2016, the Exchange filed Partial Amendment No. 2 to the proposed rule change.[9] On October 7, 2016, the Exchange filed Partial Amendment No. 3 to the proposed rule change.[10]

This order provides notice of filing of Partial Amendment Nos. 1, 2 and 3, and approves the proposal, as modified by Partial Amendment Nos. 1, 2 and 3, on an accelerated basis.

II. Description of the Amended Proposal

The Exchange's proposed rule change provides for changed functionality to certain Order Types[11] and Order Attributes[12] applicable to Pilot Securities to implement the Plan. Proposed Phlx Rule 3317(d) would specify the order handling, executing, re-pricing, and displaying for the following Order Types in Pilot Securities: (i) Price to Comply Orders; (ii) Non-Displayed Orders; (iii) Post-Only Orders; (iv) Market Maker Peg Orders; and (v) Midpoint Peg Post-Only Orders. The following Order Attributes would also be amended: (i) Midpoint Pegging; (ii) Reserve Size; and (iii) Good-till-Cancelled. In addition, amended Phlx Rule 3317(d)(1) specifies that any Order Type in a security of any of the Test Groups that requires a price and does not qualify for an exception, will not be accepted if it is in a minimum price increment (''MPI'') other than $0.05.[13]

The Exchange also proposes to amend the definition of the term ''Trade-at Intermarket Sweep Order'' (''TA ISO'') and one of the TA ISO exceptions to the Trade-at Prohibition.[14] Finally, the Exchange is proposing to modify the Block Size Order exception to the Trade-at Prohibition and add a related commentary.[15]

A. Amendments to Order Type Functionality

1. Price to Comply Orders[16]

The Exchange proposes that a Price to Comply Order in a Test Group Pilot Security would operate consistent with current Phlx Rule 3301A(b)(1) except as provided below. Specifically, if a Price to Comply Order for a Test Group Three Pilot Security partially executes on entry and the remainder would lock the Protected Quotation of another market center, the unexecuted portion of the Order would be cancelled. In addition, if a Price to Comply Order for a Test Group Three Pilot Security to buy (sell) is not executable against any orders residing on the Exchange Book and its limit price would lock or cross the Protected Quotation of another market center, the Order would display at one MPI below (above) the Protected Quotation and be ranked at the current midpoint of the NBBO on the Exchange Book.[17]

2. Non-Displayed Orders[18]

The Exchange proposes that a Non-Displayed Order in a Test Group Pilot Security would operate consistent with current Phlx Rule 3301A(b)(3) except as provided below. Specifically, a resting Non-Displayed Order in a Test Group Three Pilot Security could not execute at the price of a Protected Quotation of another market center unless the incoming Order qualifies for an exception to the Trade-at Prohibition.[19] In addition, for Test Group Three Pilot Securities, if the limit price of a buy (sell) Non-Displayed Order would lock or cross a Protected Quotation of another market center, the Order would be ranked on the Exchange Book at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''PSX'' or ''System'' is defined as the automated system for order execution and trade reporting owned and operated by Phlx. *See* Phlx Rule 3301(a).

[4] *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 rule filing are defined as set forth in the Plan.

[5] Phlx Rule 3317(c)(3)(D)(i) 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 VI(D).

[6] Securities Exchange Act Release No. 78835 (September 14, 2016), 81 FR 64552 (''Notice'').

[7] *See* Letters to Brent J. Fields, Secretary, Commission, from Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange, Inc.; Eric Swanson, EVP, General Counsel and Secretary, BATS Global Markets, Inc.; Thomas A. Wittman, EVP, Global Head of Equities, Nasdaq, Inc., dated September 9, 2016 (''Comment Letter No. 1'') and from Eric Swanson, EVP, General Counsel and Secretary, BATS Global Markets, Inc., dated September 12, 2016 (''Comment Letter No. 2'').

[8] In Partial Amendment No. 1, the Exchange proposes to change references in the rule text from ''added to the Exchange Book'' to ''ranked on the Exchange Book'' as applicable for Price to Comply Orders, Non-Displayed Orders, Post-Only Orders, and Orders with Reserve Size. The Exchange also proposes to clarify that in certain cases Price to Comply Orders, not attributable Post-Only Orders, and certain Orders with Reserve Size may be ranked on the Exchange Book at the midpoint of the National Best Bid or Offer (''NBBO''). Finally, the Exchange proposes three amendments related to the operation of Reserve Size for Test Group Three Pilot Securities: (i) Change references from ''Reserve Order'' to ''Order with Reserve Size''; (ii) clarify that the Reserve Size attribute is only available for Price to Comply Orders and Price to Display Orders entered via the RASH or FIX protocols; and (iii) clarify the handling of Orders with Reserve Size in scenarios where such Orders are entered at a price that locks a Protected Quotation on an away market center.

[9] In Partial Amendment No. 2, the Exchange proposes to delete certain rule text to remove the proposed re-pricing functionality for resting Price to Comply Orders, resting Non-Displayed Orders, and resting Post-Only Orders entered via OUCH or FLITE protocols for Test Group Three Pilot Securities. The Exchange explained that its systems were re-programmed for Test Group Three Pilot Securities to permit resting Price to Comply Orders, resting Non-Displayed Orders, and resting Post-Only Orders entered via OUCH or FLITE protocols to repeatedly re-price in response to changes to the NBBO and/or the Exchange's best Bid or Offer (''BBO''). The Exchange noted that it is currently re-programming its systems to remove the proposed functionality. Further, the Exchange stated that if it appears that the multiple re-pricing functionality will remain operational by October 17, 2016, the Exchange will file a proposed rule change with the Commission and provide notice to market participants sufficiently in advance of that date. The proposed rule change and notice to market participants will describe the current operation of the systems and timing of re-programming. In any event, the Exchange states that the removal of this functionality shall be completed no later than November 30, 2016. In addition, the Exchange proposes to modify the Block Size Order exception to the Trade-at Prohibition. Finally, the Exchange is making certain non-substantive, clarifying amendments.

[10] In Partial Amendment No. 3, the Exchange clarifies that it would not apply the Trade-at Prohibition outside of Regular Trading Hours.

[11] An ''Order Type'' is a standardized set of instructions associated with an order that define its behavior with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System. *See* Phlx Rule 3301(e).

[12] An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System. *See* Phlx Rule 3301(e). The availability of, and interaction between, Order Types and Order Attributes is described in Phlx Rules 3301A and 3301B.

[13] Proposed Phlx Rule 3317(d)(1) clarifies that the System will use $0.05 as the MPI when re-pricing or rounding by the System.

[14] *See* proposed Phlx Rule 3317(a)(1)(D)(ii) and proposed Phlx Rule 3317(c)(3)(D)(iii)(j).

[15] *See* proposed Phlx Rule 3317(c)(3)(D)(iii)(c)(C) and Phlx Rule 3317, proposed Commentary .12.

[16] *See* proposed Phlx Rule 3317(d)(2). *See also* Partial Amendment No. 2.

[17] *See* Partial Amendment No. 1.

[18] *See* proposed Phlx Rule 3317(d)(3). *See also* Partial Amendment No. 2.

[19] *See* Phlx Rule 3317(c)(3)(D).

either one MPI below (above) the National Best Offer (''NBO'') ((National Best Bid) (''NBB'')) or at the midpoint of the NBBO, whichever is higher (lower).[20] Further, for a Non-Displayed Order in a Test Group Three Pilot Security entered via RASH or FIX, if after being posted to the Exchange Book the NBBO changes such that the Order would not be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order to buy (sell) would be re-priced to either one MPI below (above) the NBO (NBB) or the midpoint of the NBBO, whichever is higher (lower) and receive a new timestamp. In the same scenario, if the Non-Displayed Order was entered via OUCH or FLITE, instead of re-pricing, the Order would be cancelled back to the Participant.

3. Post-Only Orders [21]

The Exchange proposes that Post-Only Orders will operate consistent with current Phlx Rule 3301A(b)(4) except as provided below. Specifically, for a not attributable Post-Only Order for a Test Group Three Pilot Security if the limit price to buy (sell) would lock or cross a Protected Quotation of another market center, the Order would display at one MPI below (above) the Protected Quotation and would be ranked at the current midpoint of the NBBO on the Exchange Book.[22]

4. Market Maker Peg Orders [23]

The Exchange proposes that a Market Maker Peg Order in a Test Group Pilot Security will operate consistent with current Phlx Rule 3301A(b)(5) except the displayed price of such an Order would be rounded up for bids (down for offers) to the nearest MPI (*i.e.,* $0.05) if it would otherwise display at an increment smaller than the MPI.

5. Midpoint Peg Post-Only Orders [24]

The Exchange proposes that a Midpoint Peg Post-Only Order in a Test Group Pilot Security will operate consistent with current Phlx Rule 3301A(b)(6) and may execute at the midpoint of the NBBO in an increment other than the MPI.

B. Amendments To Order Attribute Functionality

1. Midpoint Pegging [25]

The Exchange proposes that an Order with a Midpoint Pegging attribute in a Test Group Pilot Security will operate consistent with current Phlx Rule 3301B(d). The Exchange also specifies that such Orders may execute at the midpoint of the NBBO in an increment other than the MPI.

2. Reserve Size [26]

The Exchange proposes that an Order with Reserve Size in a Test Group Pilot Security will operate consistent with current Phlx Rule 3301B(h) except as described below. Specifically, a resting Order with Reserve Size in a Test Group Three Pilot Security (*i.e.,* a Price to Comply Order or a Price to Display Order entered via RASH or FIX) may not execute the non-displayed Reserve Size at the price of a Protected Quotation of another market center unless the incoming Order qualifies for an exception to the Trade-at Prohibition.[27] If an Order with Reserve Size for a Test Group Three Pilot Security is partially executed upon entry and the remainder would lock a Protected Quotation of another market center, the unexecuted portion of the Order would be cancelled. If a Price to Comply Order with Reserve Size to buy (sell) a Test Group Three Pilot Security is not executable against previously posted Orders on the Exchange Book, and has a limit price that would lock or cross a Protected Quotation of another market center, the displayed portion of the Order would display one MPI below (above) the Protected Quotation and the displayed and non-displayed portions of the Order would be ranked at the current midpoint of the NBBO on the Exchange Book. If a Price to Display Order with Reserve Size is not executable against any previously posted Orders on the Exchange Book and its limit price would lock or cross a Protected Quotation of another market center, then the displayed portion of the Order would be displayed and ranked one MPI below (above) the Protected Quotation and the non-displayed portion of the Order would be ranked at the midpoint of the NBBO. If after being posted to the Exchange Book, the NBBO changes such that an Order with Reserve Size was not executable at its ranked price due to the requirements of Regulation NMS or the Plan, the Order would adjust as described above.

3. Good-Till-Cancelled [28]

The Exchange proposes that an Order with a Time-in-Force of Good-till-Cancelled in a Test Group Pilot Security will operate consistent with current Phlx Rule 3301B(a)(3) except such Order would be adjusted based on a $0.05 increment.

C. Amendments to Certain Trade-at Prohibition Exceptions

1. TA ISO [29]

The Exchange proposes to add the phrase ''or Intermarket Sweep Orders'' (''ISO'') to the definition of TA ISO as well as to the related TA ISO exception to the Trade-at Prohibition [30] to clarify that ISOs may be routed to execute against the full displayed size of the Protected Quotation that was traded at.

2. Block Size Order Exception for the Trade-at Prohibition [31]

Currently, Phlx Rule 3317(c)(3)(D)(iii)(c) provides an exception to the Trade-at Prohibition for Block Size Orders.[32] The Exchange proposes in Commentary .12 that for purposes of qualifying for the exception Orders must have a size of 5,000 shares or more and the resulting execution upon entry is for a size of 5,000 shares or more in aggregate. In addition, the Exchange proposes to amend the Block Size Order exception to the Trade-at Prohibition to allow execution on multiple Trading Centers to comply with Regulation NMS.[33]

III. Summary of Comments Received [34]

Both comment letters express support for the proposal 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 the Exchange would be able to meet the 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 the Commission staff's authority.

[20] *See* Partial Amendment No.1.

[21] *See* proposed Phlx Rule 3317(d)(4). *See also* Partial Amendment No. 2.

[22] *See* Partial Amendment No. 1.

[23] *See* proposed Phlx Rule 3317(d)(5).

[24] *See* proposed Phlx Rule 3317(d)(6).

[25] *See* proposed Phlx Rule 3317(d)(7).

[26] *See* proposed Phlx Rule 3317(d)(8). *See also* Partial Amendment No. 1.

[27] *See* Phlx Rule 3317(c)(3)(D).

[28] *See* proposed Phlx Rule 3317(d)(9).

[29] *See* proposed Phlx Rule 3317(a)(1)(D)(ii).

[30] *See* proposed Phlx Rule 3317(c)(3)(D)(iii)(j).

[31] *See* proposed Phlx Rule 3317(c)(3)(D)(iii)(c)(C) and Phlx Rule 3317, proposed Commentary .12.

[32] The plan defines Block Size as ''an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least $100,000. *See* Plan Section I(F).

[33] *See* proposed Phlx Rule 3317(c)(3)(D)(iii)(c). *See also* Partial Amendment No. 2.

[34] *See supra* note 7.

IV. Discussion and Commission's Findings

After careful review of the proposed rule change, as modified by Partial Amendment Nos. 1, 2 and 3, and the comment letters, the Commission finds that the proposal, as modified by Partial Amendment Nos. 1, 2 and 3, 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,[37] 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 to modify its handling of certain Order Types and Order Attributes during the Pilot Period. First, the Exchange proposes to clarify that it will not accept Orders in a Test Group Pilot Security in an increment other than $0.05 unless there is an applicable exception to the MPI. Second, the Exchange proposes to clarify that the displayed price of Market Maker Peg Orders for any Test Group Pilot Security would be rounded to the nearest MPI and that Good-till-Cancelled Orders for a Test Group Pilot Security would be adjusted based on the $0.05 increment. Finally, the Exchange proposes to clarify that Midpoint Peg Post-Only Orders and Orders with Midpoint Pegging Attribute in a Test Group Pilot Security may execute at the midpoint of the NBBO in an increment other than the MPI.

The Exchange also proposes to modify the handling of certain Orders and Order Attributes in Test Group Three Pilot Securities, including: (i) Price to Comply Orders; (ii) Non-Displayed Orders; (iii) Post-Only Orders; and (iv) Orders with Reserve Size. The proposed changes are intended to facilitate compliance with the Trade-at Prohibition.[38]

Finally, the Exchange proposes to amend provisions related to two exceptions to the Trade-at Prohibition. First, the Exchange proposes to amend the definition of TA ISO 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 applicable Trade-at Prohibition exception. Second, the Exchange proposes to amend the Trade-at Prohibition exception for Block Size Orders to allow such Orders to be executed on multiple Trading Centers. Further, the Exchange proposes that for purposes of the Block Size Order exception to the Trade-at Prohibition, the Order must have a size of 5,000 shares and the resulting execution upon entry must have a size of 5,000 shares or more in aggregate.[39]

The Commission believes that the proposed changes are reasonably designed to comply with the Plan. Further, the Commission believes that the proposed changes that target particular Test Groups are necessary for compliance with the Plan.[40] Accordingly, the Commission finds that these changes are consistent with Section 6(b)(5) of the Act[41] and Rule 608 of Regulation NMS[42] because they implement the Plan and clarify Exchange Rules.

For these reasons, the Commission finds that the proposed rule change, as modified by Partial Amendment Nos. 1, 2 and 3, is consistent with the requirements of the Act[43] and Rule 608 of Regulation NMS.[44]

V. Solicitation of Comments on Partial Amendment Nos. 1, 2 and 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as modified by Partial Amendment Nos. 1, 2 and 3, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–92 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–Phlx–2016–92. 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

[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] 15 U.S.C. 78f(b)(5).

[38] In Partial Amendment No. 3, the Exchange clarified that it would not apply the Trade-at Prohibition outside of Regular Trading Hours. The Commission notes that this is consistent with the Plan. *See* Plan Section I(LL).

[39] *See also* Exchange Rule 3317(c)(3)(D)(iii)(c).

[40] The Commission notes that the Exchange originally proposed to modify the operation of Post to Comply Orders, Non-Displayed Orders, and Post Only Orders entered via OUCH and FLITE for Test Group Three Pilot Securities only. In Partial Amendment No. 2, the Exchange proposes to remove the proposed functionality. Thus, the Commission believes that the proposal, as modified, is consistent with the Plan. The Exchange has committed to make the system changes necessary to implement Partial Amendment No. 2. If it appears that the system changes will not be completed by October 17, 2016, the date on which the Participants will begin implementation of Test Group 3, the Exchange will file a proposed rule change with the Commission to propose any necessary changes to the Exchange's rules and provide notice to market participants sufficiently in advance of this date to adequately inform market participants of the current operation of the Exchange's system. *See* Partial Amendment No. 2.

[41] 15 U.S.C. 78f(b)(5).

[42] 17 CFR 242.608.

[43] 15 U.S.C. 78f(b)(5).

[44] 17 CFR 242.608.

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–Phlx–2016–92 and should be submitted on or before November 4, 2016.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment Nos.1, 2 and 3

The Commission finds good cause to approve the proposed rule change, as modified by Partial Amendment Nos. 1, 2 and 3, prior to the thirtieth day after the date of publication of notice of the proposed rule change, as modified by Partial Amendment Nos. 1, 2 and 3 in the **Federal Register**. As described above, the Exchange proposes to amend its rules to comply with the Plan. The Commission notes that the Pilot started implementation on October 3, 2016, and accelerated approval of the proposal would ensure that the rules of the Exchange would be in place during implementation. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[45] to approve the proposed rule change, as modified by Partial Amendment Nos. 1, 2 and 3, on an accelerated basis.

VII. Conclusion

It is therefore ordered that, pursuant to Section 19(b)(2) of the Exchange Act,[46] that the proposed rule change (SR–Phlx–2016–92), as modified by Partial Amendment Nos. 1, 2 and 3, be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24835 Filed 10–13–16; 8:45 am]

BILLING CODE 8011–01–P

[45] 15 U.S.C. 78s(b)(2).

[46] *Id.*

[47] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79068; File No. SR–NYSEArca–2016–136]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rule 7.35P To Provide for Widened Price Collar Thresholds for the Core Open Auction on Volatile Trading Days

October 7, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 28, 2016, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.35P to provide for widened price collar thresholds for the Core Open Auction on volatile trading days. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.35P (''Rule 7.35P'') to provide for widened price collar thresholds for the Core Open Auction on volatile trading days. The Exchange believes that widening the Auction Collars for the Core Open Auction during periods of market-wide volatility would assist the Exchange in conducting fair and orderly auctions for its listed securities.

As set forth in Rule 7.35P(a)(10), the price collar thresholds for the Core Open Auction are currently set at 10% for securities with an Auction Reference Price of $25.00 or less, 5% for securities with an Auction Reference Price greater than $25.00 but less than or equal to $50.00, and 3% for securities with an Auction Reference Price greater than $50.00.[4]

The Exchange proposes to widen the applicable Auction Collars for the Core Open Auction on days with market-wide volatility to 10% for all Auction-Eligible Securities,[5] regardless of the Auction Reference Price. The Exchange believes that for securities priced greater than $25.00, the proposed wider price collar threshold would allow for additional price movements during periods of market-wide volatility, while continuing to prevent auctions from occurring at prices significantly away from the applicable Auction Reference Price.[6] The proposed 10% price collar threshold for the Core Open Auction is the same as currently used by the

[4] The Auction Reference Price for the Core Open Auction is the midpoint of the Auction NBBO or, if the Auction NBBO is locked, the locked price. If there is no Auction NBBO, the prior trading day's Official Closing Price. The Auction Reference Price for the Trading Halt Auction is the last consolidated round-lot price of that trading day, and if none, the prior trading day's Official Closing Price. *See* NYSE Arca Equities Rule 7.35P(a)(8).

[5] For the Core Open Auction, Auction-Eligible Securities are all securities for which the Exchange is the primary listing market and UTP Securities designated by the Exchange. *See* NYSE Arca Equities Rule 7.35P(a)(1)(A).

[6] On June 24, 2016, the Exchange temporarily widened Auction Collars for the Core Open Auction for all Auction-Eligible Securities to 10% in response to the a temporary basis [sic] referendum vote by the United Kingdom (''UK'') to leave the European Union, which resulted in an extraordinary level of global market activity, including the pricing of the ETPs traded on the Exchange. *See* Securities Exchange [sic] Release No. 78152 (June 24, 2016), 81 FR 42781 (June 30, 2016) (SR–NYSEArca–2016–90).

Nasdaq Stock Market LLC (''Nasdaq'') for its opening crosses.[7]

To determine whether there is market-wide volatility, the Exchange proposes to use the same standard that its affiliated exchange, the New York Stock Exchange LLC (''NYSE''), recently added to determine whether there is market-wide volatility.[8] As proposed, the Exchange would widen its Auction Collars for the Core Open Auction if, as of 9:00 a.m. Eastern Time, the E-mini S&P 500 Futures are +/- 2% from the prior day's closing price of the E-mini S&P 500 Futures or the Exchange determines that it is necessary or appropriate for the maintenance of a fair and orderly market. Market-wide volatility applies similar pricing pressure to all eligible securities and, in addition to the empirical measurement of the E-mini S&P 500 Futures, the Exchange proposes that it would have the power to widen the Auction Collars if it determines that it is necessary or appropriate for the maintenance of a fair and orderly market.[9]

The Exchange believes that widening the Auction Collars for the Core Open Auction during periods of market-wide volatility would promote greater efficiency and transparency on such trading days by specifying uniform parameters for how the Core Open Auction would be effectuated for all Auction-Eligible securities on trading days experiencing market-wide volatility.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

In particular, the Exchange believes that applying the same Auction Collars of 10% to all Eligible Auction Securities during periods of market-wide volatility, regardless of the Auction Reference Price, would remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, protect investors and the public interest, because it would promote fair and orderly auctions during periods when market-wide volatility is causing pricing dislocation across all securities. The Exchange further believes that widening the price collar thresholds for all securities would remove impediments to and perfect the mechanism of a national market system because it is designed to allow for greater price movement, while at the same time preventing auction trades from occurring at prices significantly away from the applicable Auction Reference Price. Accordingly, investors would be protected from executions significantly away from the last sale in a security or other applicable reference price, but natural price fluctuations resulting from the market volatility would be permitted. In addition, the Exchange believes that widening the Auction Collars could reduce the possibility of securities triggering multiple trading pauses under the Regulation NMS Plan to Address Market Volatility.

The Exchange further believes that by specifying the standards for when Auction Collars would be widened, the proposal would advance the efficiency and transparency of the opening process, thereby fostering accurate price discovery at the open of trading. For the same reasons, the proposal is also designed to protect investors as well as the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address competitive issues but rather is designed to ensure a fair and orderly market by widening the price collar thresholds for the Core Open Auction on trading days with market-wide volatility and therefore will not create a burden on competition. The proposed rule change is not intended to address competitive issues but rather promote greater efficiency and transparency at the open of trading on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–136 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–NYSEArca–2016–136. 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

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[7] *See* Nasdaq Rule 4752(d)(2)(E) and *http://www.nasdaqtrader.com/content/productsservices/trading/crosses/openclose_faqs.pdf.*

[8] *See* NYSE Rules 15(d)(2) and 123D(a)(1)(B)(ii); *see also* Securities Exchange [sic] Release No. 78228 (July 5, 2016), 81 FR 44907 (July 11, 2016) (SR–NYSE–2016–24) (Approval Order).

[9] Volatility affecting the Core Open Auction can emanate from many sources, including the previous day's trading session, overnight trading, trading in the foreign markets before the opening, substantial activity in the futures market before the opening, government actions or announcements, global news and events, and changes to the E-mini S&P Futures after 9:00 a.m. Eastern Time.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–136 and should be submitted on or before November 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24839 Filed 10–13–16; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32309; File No. 812–14680–01]

The Bank of New York Mellon Trust Company, National Association and The Bank of New York Mellon; Notice of Application

October 7, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from certain requirements of rule 3a–7(a)(4)(i) under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit an issuer of asset-backed securities (''ABS'') that is not registered as an investment company under the Act in reliance on rule 3a–7 under the Act (an ''Issuer'') to appoint any of the applicants to act as a trustee in connection with the Issuer's ABS when any such applicant is affiliated with an underwriter for the Issuer's ABS.

APPLICANTS: The Bank of New York Mellon Trust Company, National Association and The Bank of New York Mellon.

FILING DATES: The application was filed on August 1, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant 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 31, 2016 and should be accompanied by proof of service on the applicant, 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: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Lincoln Finkenberg, Esq., Associate General Counsel & Managing Director, The Bank of New York Mellon, 225 Liberty Street, New York, NY 10286.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–3038, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations:

1. Both applicants are wholly-owned direct subsidiaries of The Bank of New York Mellon Corporation.[1] Each applicant is frequently selected to act as trustee in connection with ABS issued by Issuers.

2. An ABS transaction typically involves the transfer of assets by a seller, usually by a ''sponsor,'' to a bankruptcy remote special purpose corporate or trust entity that is established for the sole purpose of holding the assets and issuing ABS to investors (an ''ABS Transaction''). Payments of interest and principal on the ABS depend primarily on the cash flow generated by the pool of assets owned by the Issuer.

3. The parties to an ABS Transaction enter into several transaction agreements that provide for the holding of the assets by the Issuer and define the rights and responsibilities of the parties to the transaction (''Transaction Documents''). The operative Transaction Document governing the trustee is referred to herein as the ''Agreement.''

4. The sponsor of an ABS Transaction assembles the pool of assets by purchasing or funding them, describes them in the offering materials, and retains the underwriter to sell interests in the assets to investors. The sponsor determines the structure of the ABS Transaction and drafts the Transaction Documents. The sponsor selects the other parties to the ABS Transaction, including the underwriter, the servicer, and the trustee.

5. The servicer, either directly or through subservicers, manages the assets that the Issuer holds. The servicer typically collects all the income from the assets and remits the income to the trustee. The trustee uses the income, as instructed by the servicer and/or as provided by the Agreement, to pay interest and principal on the ABS, to fund reserve accounts and purchases of additional assets, and to make other payments including fees owed to the trustee and other parties to the ABS Transaction.

6. The sponsor of an ABS Transaction selects the trustee and other participants in the transaction. In selecting a trustee, the sponsor generally seeks to obtain customary trust administrative and related services for the Issuer at minimal cost. In some instances, other parties to an ABS Transaction may provide recommendations to a sponsor about potential trustees. An underwriter for an ABS Transaction also may provide advice to the sponsor about trustee selection based on, among other things, the underwriter's knowledge of the pricing and expertise offered by a particular trustee in light of the contemplated transaction.

7. If an underwriter affiliated with an applicant recommends a trustee to a sponsor, both the underwriter's recommendation and any selection of an applicant by the sponsor will be based upon customary market considerations of pricing and expertise, among other things, and the selection will result from an arms-length negotiation between the sponsor and an applicant. An applicant

[1] Applicants also request that the order apply to an Issuer's future appointment of any other entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with any of the applicants as a trustee in connection with an Issuer's ABS. Applicants represent that any other entity that relies on the order in the future will comply with the terms and conditions of the application. Any existing entity currently intending to rely on the requested order has been named as an applicant.

will not price its services as a trustee in a manner designed to facilitate its affiliate being named underwriter.

8. The trustee's role in an ABS Transaction is specifically defined by the Agreement, and under the Agreement the trustee is not expected or required to perform discretionary functions. The responsibilities of the trustee as set forth in the Agreement are narrowly circumscribed and limited to those expressly accepted by the trustee. The trustee negotiates the provisions applicable to it directly with the sponsor and is then appointed by, and enters into the Agreement with, the Issuer.

9. The trustee usually becomes involved in an ABS Transaction after the substantive economic terms have been negotiated between the sponsor and the underwriters. The trustee does not monitor any service performed by, or obligation of, an underwriter, whether or not the underwriter is affiliated with the trustee. In the unlikely event that an applicant, in acting as trustee to an Issuer for which an affiliate acts as underwriter, becomes obligated to enforce any of the affiliated underwriter's obligations to the Issuer, an applicant will resign as trustee for the Issuer consistent with the requirements of rule 3a–7(a)(4)(i). In such an event, an applicant will incur the costs associated with the Issuer's procurement of a successor trustee.

10. The sponsor selects one or more underwriters to purchase the Issuer's ABS and resell them or to place them privately with buyers obtained by the underwriter. The sponsor enters into an underwriting agreement with the underwriter that sets forth the responsibilities of the underwriter with respect to the distribution of the ABS and includes representations and warranties regarding, among other things, the underwriter and the quality of the Issuer's assets. The obligations of the underwriter under the underwriting agreement are enforceable against the underwriter only by the sponsor.

11. The underwriter may assist the sponsor in the organization of an Issuer by providing advice, based on its expertise in ABS Transactions, on the structuring and marketing of the ABS. This advice may relate to the risk tolerance of investors, the type of collateral, the predictability of the payment stream, the process by which payments are allocated and down-streamed to investors, the way that credit losses may affect the trust and the return to investors, whether the collateral represents a fixed set of specific assets or accounts, and the use of forms of credit enhancements to transform the risk-return profile of the underlying collateral. Any involvement of an underwriter in the organization of an Issuer that occurs is limited to helping determine the assets to be pooled, helping establish the terms of the ABS to be underwritten, and providing the sponsor with a warehouse line of credit for the assets to be transferred to the Issuer in connection with, and prior to, the related securitization.

12. An underwriter may provide advice to a sponsor regarding the sponsor's selection of a trustee for the Issuer. However, an underwriter's role in structuring a transaction would not extend to determining the obligations of a trustee, and the underwriter is not a party to the Agreement or to any of the Transaction Documents. Except for arrangements involving credit or credit enhancement for an Issuer or remarketing agent activities, the underwriter typically has no role in the operation of the Issuer after its issuance of securities. Applicants represent that although an underwriter typically may provide credit or credit enhancement for an Issuer or engage in remarketing agent activities, an underwriter affiliated with an applicant will not provide or engage in such activities.

Applicants' Legal Analysis:

1. Rule 3a–7 excludes from the definition of investment company under section 3(a) of the Act an Issuer that meets the conditions of the rule. One of rule 3a–7's conditions, set forth in paragraph (a)(4)(i), requires that the Issuer appoint a trustee that is not affiliated with the Issuer or with any person involved in the organization or operation of the Issuer (the "Independent Trustee Requirement"). Rule 3a–7(a)(4)(i) therefore prohibits an Issuer from appointing a trustee that is affiliated with an underwriter.

2. Section 6(c) 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 the Act, or from any rule thereunder, if and to the extent 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.

3. Applicants request exemptive relief under section 6(c) of the Act from rule 3a–7(a)(4)(i) under the Act to the extent necessary to permit an Issuer to appoint an applicant as a trustee to the Issuer when such applicant is affiliated with an underwriter involved in the organization of the Issuer. Applicants submit that the requested exemptive relief from the Independent Trustee Requirement is necessary and appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act due to changes in the banking industry, due to the timing and nature of the roles of the trustee and the underwriter in ABS Transactions, and because the requested relief is consistent with the policies and purposes underlying the Independent Trustee Requirement and rule 3a–7 in general.

4. Applicants note that when rule 3a–7 was proposed in 1992, virtually all trustees were unaffiliated with the other parties involved in an ABS Transaction. Applicants state that consolidation within the banking industry, as well as economic and other business factors, has resulted in a significant decrease in the number of bank trustees providing services to Issuers. Applicants also state that bank consolidation has been accompanied by the expansion of banks into investment banking, including the underwriting of ABS Transactions. Applicants further state that due to these banking industry changes, most trustees that provide services to Issuers, including an applicant, have affiliations with underwriters to Issuers. Applicants state that, as a result, when an affiliate of an applicant is selected to underwrite ABS in an ABS Transaction, rule 3a–7(a)(4)(i)'s Independent Trustee Requirement generally prevents applicant from serving as trustee for the Issuer. Applicants state that the Independent Trustee Requirement imposes an unnecessary regulatory limitation on trustee selection and causes market distortions by leading to the selection of trustees for reasons other than customary market considerations of pricing and expertise. This result is disadvantageous to the ABS market and to ABS investors.

5. Applicants submit that due to the nature and timing of the roles of the trustee and the underwriter, an applicant's affiliation with an underwriter would not result in a conflict of interest or possibility of overreaching that could harm investors. Applicants state that the trustee's role begins with the Issuer's issuance of its securities, and the trustee performs its role over the life of the Issuer. Applicants state that, in contrast, the underwriter is chosen early in the ABS Transaction process, may help to structure the ABS Transaction, distributes the Issuer's securities to investors, and generally have no role subsequent to the distribution of the Issuer's securities. Applicants further

state that an ABS trustee does not monitor the distribution of securities or any other activity performed by underwriters and there is no opportunity for a trustee and an affiliated underwriter to act in concert to benefit themselves at the expense of holders of the ABS either prior to or after the closing of the ABS Transaction.

6. Applicants state that the trustee's role is narrowly defined, and that the trustee is neither expected nor required to exercise discretion or judgment except after a default in the ABS transaction, which rarely occurs. Applicants state that the duties of a trustee after a default are limited to enforcing the terms of the Agreement for the benefit of debt holders as a ''prudent person'' would enforce such interests for his own benefit. Applicants further state that the trustee of the Issuer has virtually no discretion to pursue anyone in any regard other than preserving and realizing on the assets. In any event, applicants state that any role taken by the trustee in the event of a default would occur after the underwriter has terminated its role in the transaction.

7. Applicants submit that the concerns underlying the Independent Trustee Requirement are not implicated if the trustee for an Issuer is independent of the sponsor, servicer, and credit enhancer for the Issuer, but is affiliated with an underwriter for the Issuer, because in that situation no single entity would act in all capacities in the issuance of the ABS and the operation of an Issuer. Applicants state that each applicant would continue to act as an independent party safeguarding the assets of any Issuer regardless of an affiliation with an underwriter of the ABS. Applicants submit that the concern that affiliation could lead to a trustee monitoring the activities of an affiliate also is not implicated by a trustee's affiliation with an underwriter, because, in practice, a trustee for an Issuer does not monitor the distribution of securities or any other activity performed by underwriters. Applicants further state that the requested relief would be consistent with the broader purpose of rule 3a–7 of not hampering the growth and development of the ABS market, to the extent consistent with investor protection.

8. Applicants state that the conditions set forth below provide additional protections against conflicts and overreaching. For example, the conditions ensure that an applicant will continue to act as an independent party safeguarding the assets of an Issuer regardless of an affiliation with an underwriter of the ABS and would not allow the underwriter any greater access to the assets, or cash flows derived from the assets, of the Issuer than if there were no affiliation.

Applicants' Conditions:

Each applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The applicant will not be affiliated with any person involved in the organization or operation of the Issuer in an ABS Transaction other than the underwriter.

2. The applicant's relationship to the affiliated underwriter will be disclosed in writing to all parties involved in an ABS Transaction, including the rating agencies and the ABS holders.

3. The underwriter affiliated with the applicant will not be involved in the operation of an Issuer, and the affiliated underwriter's involvement in the organization of an Issuer will extend only to determining the assets to be pooled, assisting in establishing the terms of the ABS to be underwritten, and providing the sponsor with a warehouse line of credit for the assets to be transferred to the Issuer in connection with, and prior to, the related securitization.

4. No affiliated person of the applicant, including the affiliated underwriter, will provide credit or credit enhancement to an Issuer if the applicant serves as trustee to the Issuer.

5. The underwriter affiliated with the applicant will not engage in any remarketing agent activities, including involvement in any auction process in which ABS interest rates, yields, or dividends are reset at designated intervals in any ABS Transaction for which the applicant serves as trustee to the Issuer.

6. All of the affiliated underwriter's contractual obligations pursuant to the underwriting agreement will be enforceable by the sponsor.

7. Consistent with the requirements of rule 3a–7(a)(4)(i), the applicant will resign as trustee for the Issuer if the applicant becomes obligated to enforce any of the affiliated underwriter's obligations to the Issuer.

8. The applicant will not price its services as trustee in a manner designed to facilitate its affiliate being named underwriter.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2016–24840 Filed 10–13–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79072; File No. SR–MIAX–2016–26]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Order Approving a Proposed Rule Change To Adopt New Rules To Govern the Trading of Complex Orders

October 7, 2016

I. Introduction

On August 8, 2016, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules to govern the trading of complex orders on the Exchange. The proposed rule change was published for comment in the **Federal Register** on August 25, 2016.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description

A. Definitions

MIAX proposes to add Rule 518(a) to define a complex order as any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the ''legs'' or ''components'' of the complex order),[4] for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy.[5]

A stock-option order is proposed to be defined as an order to buy or sell a stated number of units of an underlying security (stock or Exchange Traded Fund Share (''ETF'')) or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (i) the same number of units of the underlying

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78620 (August 18, 2016), 81 FR 58770 (''Notice'').

[4] The different options in the same underlying security that comprise a particular complex order are referred to as the ''legs'' or ''components'' of the complex order.

[5] This definition is consistent with other options exchanges. *See, e.g.,* CBOE Rule 6.53C(a)(1); PHLX Rule 1098(a)(i); NYSE MKT Rule 900.3NY(e); and BOX Rule 7240(a)(5).

security or convertible security, or (ii) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying security or convertible security in the option leg to the total number of units of the underlying security or convertible security in the stock leg.[6]

The Exchange has also proposed to define a complex strategy as a particular combination of components and their ratios to one another. As proposed, the Exchange may limit the number of new complex strategies that may be in the System at a particular time and will communicate this limitation to Members via Regulatory Circular.[7]

B. Types of Complex Orders

MIAX is proposing to add Rule 518(b) to allow complex orders to be entered as limit orders, market orders, Good 'til Cancelled (''GTC'') orders, or day limit orders (all as defined in MIAX Rule 516). In addition, MIAX is proposing new complex order types: Complex Auction-on-Arrival (''cAOA'') orders, Complex Auction-or-Cancel (''cAOC'') orders, or Complex Immediate-or-Cancel (''cIOC'') orders, as described below. Proposed Rule 518(b)(1) states that the Exchange will issue a Regulatory Circular listing which complex order types, among the complex order types set forth in the proposed Rule, are available for use on the Exchange. Additional Regulatory Circulars will be issued as additional complex order types, among those complex order types set forth in the proposed Rule, become available for use on the Exchange. Regulatory Circulars will also be issued when a complex order type that had been in usage on the Exchange will no longer be available for use.

C. Trading of Complex Orders and Quotes

Proposed Rule 518(c) describes the manner in which complex orders will be handled and traded on the Exchange. The proposed rule provides that the Exchange will determine and communicate to Members via Regulatory Circular which complex order origin types (*i.e.,* non-broker-dealer customers, broker-dealers that are not Market Makers on an options exchange, and/or Market Makers on an options exchange) are eligible for entry onto the Strategy Book.[8] The proposed rule also states that complex orders will be subject to all other Exchange Rules that pertain to orders generally, unless otherwise provided in proposed Rule 518.

1. Minimum Increments and Trade Prices

Proposed Rule 518(c)(1) provides that bids and offers on complex orders and quotes may be expressed in $0.01 increments, and the component(s) of a complex order may be executed in $0.01 increments, regardless of the minimum increments otherwise applicable to individual components of the complex order,[9] and that if any component of a complex strategy would be executed at a price that is equal to a Priority Customer bid or offer on the Simple Order Book,[10] at least one other component of the complex strategy must trade at a price that is better than the corresponding MBBO.[11]

Proposed Rule 518(c)(1)(iii) states generally that a complex order will not be executed at a net price that would cause any component of the complex strategy to be executed: (A) at a price of zero; or (B) ahead of a Priority Customer order on the Simple Order Book without improving the MBBO of at least one component of the complex strategy.

2. Execution of Complex Orders and Quotes

a. Opening and Reopening

MIAX proposes to add Rule 518(c)(2)(i), which states that complex orders and quotes do not participate in the opening process for the individual option legs conducted pursuant to Rule 503. At the beginning of each trading session, and upon reopening after a halt, once all components of a complex strategy are open, an initial evaluation will be conducted in order to determine whether a complex order is a Complex Auction-eligible order, using the process and criteria described in Interpretations and Policies .03(a) of proposed Rule 518 regarding the Initial Improvement Percentage (''IIP''). Specifically, the Exchange would set a defined percentage (such percentage, the ''IIP'') of the dcMBBO[12] bid/ask differential at or within which the System will determine to initiate a Complex Auction when the Strategy Book opens for trading.[13] If a Complex Auction-eligible order is priced equal to, or improves, the IIP value and is also priced equal to, or improves, other complex orders and/or quotes resting at the top of the Strategy Book, the complex order will be eligible to initiate a Complex Auction.[14]

MIAX also proposes that the Strategy Book will open for trading, or reopen for trading after a halt, with a Complex Auction if it is determined that one of the following conditions is present: (A) A complex order with no matching interest on the Strategy Book equals or improves the IIP, (B) matching interest exists at a price that is equal to or through the IIP, or (C) a size imbalance exists where the price at which the maximum quantity that can trade is equal to or through the IIP. If the Strategy Book contains matched interest or a size imbalance exists where the price at which the maximum quantity can trade is not equal to or through the IIP, the Strategy Book will open for trading with a trade and a Complex Auction will not be initiated. The remaining portion of any complex order for which there is a size imbalance will be placed on the Strategy Book. If the Strategy Book contains no matching interest or interest equal to or through the IIP, the complex strategy will open without a trade and a Complex Auction will not be initiated.

b. Pricing

Proposed Rule 518(c)(2)(ii) describes the manner in which the System determines the price of execution of complex orders and quotes. Incoming complex orders and quotes will be executed by the System in accordance

[6] This is substantially similar to the definition of a stock-option order on other exchanges. *See, e.g.,* CBOE Rule 6.53C(a)(2) and PHLX Rule 1098(a)(i).

[7] *See* MIAX Rule 518(a)(6).

[8] *See* MIAX Rule 518(c). The Strategy Book is defined as the Exchange's electronic book of complex orders and complex quotes. *See* MIAX Rule 518(a)(17).

[9] *See* MIAX Rule 518(c)(1). *See also* ISE Rule 722(b)(1).

[10] The Simple Order Book is defined as the Exchange's regular electronic book of orders and quotes. *See* MIAX Rule 518(a)(15).

[11] *See* MIAX Rule 518(c)(1)(ii). *See also* ISE Rule 722(b)(2) and PHLX Rule 1098(c)(iii). ''MBBO'' is defined as the best bid or offer on the Simple Order Book on the Exchange. *See* MIAX Rule 518(a)(13).

[12] The Displayed Complex MIAX Best Bid or Offer (''dcMBBO'') is calculated using the best displayed price for each component of a complex strategy from the Simple Order Book. For stock-option orders, the dcMBBO for a complex strategy will be calculated using the Exchange's best displayed bid or offer in the individual option component(s) and the NBBO in the stock component. *See* MIAX Rule 518(a)(8).

[13] Similarly, as discussed more fully below, the System will also calculate an Upon Receipt Improvement Percentage (''URIP'') value to determine whether a complex order is priced equal to, or improves, the URIP value upon receipt when the complex strategy is open for trading, and a Re-evaluation Improvement Percentage (''RIP'') value, to determine whether a complex order resting at the top of the Strategy Book is priced equal to, or improves, the RIP value. If so, in either case, the complex order will be Complex Auction-eligible. *See* MIAX Rule 518, Interpretations and Policies .03(b) and (c). *See* Notice, 81 FR at 58782, for an example of a URIP calculation.

[14] *See* MIAX Rule 518(c)(2)(i).

with the provisions below, and will not be executed at prices inferior to the icMBBO [15] or at a price that is equal to the icMBBO when there is a Priority Customer Order (as defined in Rule 100) [16] at the best icMBBO price.[17] Complex orders will never be executed at a price that is outside of the individual component prices on the Simple Order Book.[18] Furthermore, the net price of a complex order executed against another complex order on the Strategy Book will never be inferior to the price that would be available if the complex order legged into the Simple Order Book.[19]

The proposed rule also provides that incoming complex orders that cannot be executed because the executions would be priced (A) outside of the icMBBO, or (B) equal to or through the icMBBO due to a Priority Customer Order at the best icMBBO price, will be cancelled if such complex orders are not eligible to be placed on the Strategy Book.[20] Complex orders and quotes will be executed without consideration of any prices for the complex strategy that might be available on other exchanges trading the same options contracts provided, however, that such complex order price may be subject to the Implied Exchange Away Best Bid or Offer (''ixABBO'') Protection set forth in Interpretations and Policies .05(d) proposed Rule 518.[21]

3. Priority

Proposed Rule 518(c)(3) describes how the system will establish priority for complex orders.[22] A complex order may be executed at a net credit or debit price with one other Member without giving priority to bids or offers established in the marketplace that are no better than the bids or offers comprising such net credit or debit; provided, however, that if any of the bids or offers established in the marketplace consist of a Priority Customer Order, at least one leg of the complex order must trade at a price that is better than the corresponding bid or offer in the marketplace by at least a $0.01 increment.[23] Under the circumstances described above, if a stock-option order has one option leg, such option leg has priority over bids and offers established in the marketplace by Professional Interest (as defined in Rule 100) [24] and Market Makers with priority quotes [25] that are no better than the price of the options leg, but not over such bids and offers established by Priority Customer Orders. If a stock-option order has more than one option leg, such option legs may be executed in accordance with proposed Rule 518(c)(3)(i).

Regarding execution and allocation of complex orders, proposed Rule 518(c)(3)(ii) establishes that complex orders will be automatically executed against bids and offers on the Strategy Book in price priority. Bids and offers at the same price on the Strategy Book will be executed pursuant to the following priority rules: (A) Priority Customer complex orders resting on the Strategy Book will have first priority to trade against a complex order. Priority Customer complex orders resting on the Strategy Book will be allocated in price time priority; (B) Market Maker Priority Interest for Complex (described below) will collectively have second priority. Market Maker Priority Interest for Complex will be allocated on a pro-rata basis as defined in Rule 514(c)(2); (C) Market Maker non-Priority Interest for Complex will collectively have third priority. Market Maker non-Priority Interest for Complex will be allocated on a pro-rata basis as defined in Rule 514(c)(2); (D) Non-Market Maker Professional Interest orders resting on the Strategy Book will collectively have fourth priority. Non-Market Maker Professional Interest orders will be allocated on a pro-rata basis as defined in Rule 514(c)(2).[26]

4. Managed Interest Process

Proposed Rule 518(c)(4), sets forth the price(s) at which complex orders will be placed on the Strategy Book. The managed interest process is initiated when a complex order that is eligible to be placed on the Strategy Book cannot be executed against either the Strategy Book or the Simple Order Book (with the individual legs) at the complex order's net price, and is intended to ensure that a complex order to be managed does not result in a locked or crossed market on the Exchange. Once initiated, the managed interest process for complex orders will be based upon the icMBBO.[27]

Under the managed interest process, a complex order that is resting on the Strategy Book and is either a complex market order as described in proposed Rule 518(c)(6) and discussed below, or has a limit price that locks or crosses the current opposite side icMBBO when the icMBBO is the best price, may be subject to the managed interest process for complex orders as discussed herein. Complex Standard quotes are not eligible for inclusion in the managed interest process. An unexecuted complex Standard quote with a limit price that would otherwise be managed to the icMBBO will be cancelled. If the order is not a Complex Auction-eligible order as defined in proposed Rule 518(d)(1) and described below, the System will first determine if the inbound complex order can be matched against other complex orders and/or quotes resting on the Strategy Book at a price that is at or inside the icMBBO (provided there are no Priority Customer orders on the Simple Order Book at that

[15] The Implied Complex Best Bid or Offer (''icMBBO'') is calculated using the best price from the Simple Order Book for each component of a complex strategy including displayed and non-displayed trading interest. For stock-option orders, the icMBBO for a complex strategy will be calculated using the best price (whether displayed or non-displayed) on the Simple Order Book in the individual option component(s), and the national best bid or offer (''NBBO'') in the stock component. *See* MIAX Rule 518(a)(11). ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from the appropriate Securities Information Processor (''SIP''). *See* MIAX Rule 518(a)(14).

[16] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The term ''Priority Customer Order'' means an order for the account of a Priority Customer. *See* MIAX Rule 100.

[17] *See* MIAX Rule 518(c)(2)(ii).

[18] *See id.*

[19] *See id.*

[20] *See* MIAX Rule 518(c)(2)(ii).

[21] The ixABBO price protection feature is a price protection mechanism under which, when in operation as requested by the submitting Member, a buy order will not be executed at a price that is higher than each other single exchange's best offer, and under which a sell order will not be executed at a price that is lower than each other single exchange's best bid for the complex strategy. *See* Interpretations and Policies .05(d) to MIAX Rule 518. The ixABBO is calculated using the best net bid and offer for a complex strategy using each other exchange's displayed best bid or offer on their version of the Simple Order Book. For stock-option orders, the ixABBO for a complex strategy will be calculated using the BBO for each component on each individual away options market and the NBBO for the stock component. The ixABBO price protection feature must be engaged on an order-by-order basis by the submitting Member and is not available for complex Standard quotes, complex eQuotes, or cAOC orders. ABBO is defined as the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in MIAX Rule 1400(f)) and calculated by the Exchange based on market information received by the Exchange from the Options Price Reporting Authority (''OPRA''). *See* MIAX Rule 518(a)(1).

[22] The proposed complex order priority structure is based generally on the same approach and structure currently effective on MIAX respecting priority of orders and quotes in the simple market as established in MIAX Rule 514. *See* Notice, 81 FR at 58788.

[23] *See* MIAX Rule 518(c)(3).

[24] The term ''Professional Interest'' means (i) an order that is for the account of a person or entity that is not a Priority Customer or (ii) an order or non-priority quote for the account of a Market Maker. *See* MIAX Rule 100.

[25] *See* MIAX Rule 517(b)(1).

[26] *See* MIAX Rule 518(c)(3)(ii).

[27] A complex order for which the ixABBO protection is engaged will be managed to the ixABBO as described below and in MIAX Rule 518, Interpretations and Policies .05(d).

price). Second, the System will determine if the inbound complex order can be executed by Legging against individual orders and quotes resting on the Simple Order Book at the icMBBO. A complex order subject to the managed interest process will never be executed at a price that is through the individual component prices on the Simple Order Book. Furthermore, the net price of a complex order subject to the managed interest process that is executed against another complex order on the Strategy Book will never be inferior to the price that would be available if the complex order legged into the Simple Order Book. When the opposite side icMBBO includes a Priority Customer Order, the System will book and display such booked complex order on the Strategy Book at a price (the ''book and display price'') that is $0.01 away from the current opposite side icMBBO.[28]

When the opposite side icMBBO does not include a Priority Customer Order and is not available for execution in the ratio of such complex order, or cannot be executed through Legging with the Simple Order Book, the System will place such complex order on the Strategy Book and display such booked complex order at a book and display price that will lock the current opposite side icMBBO because it is a price at which another complex order or quote can trade.[29]

Should the icMBBO change, the complex order's book and display price will continuously re-price to the new icMBBO until (A) the complex order has been executed in its entirety; (B) if not executed, the complex order has been placed on the Strategy Book at prices up to and including its limit price or, in the case of a complex market order, at the new icMBBO; (C) the complex order has been partially executed and remaining unexecuted contracts have been placed on the Strategy Book at prices up to and including their limit price or, in the case of a complex market order, at the new icMBBO; or (D) the complex order or any remaining portion of the complex order is cancelled. If the Exchange receives a new complex order or quote for the complex strategy on the opposite side of the market from the managed complex order that can be executed, the System will immediately execute the remaining contracts from the managed complex order to the extent possible at the complex order's current book and display price, provided that the execution price is not outside of the current icMBBO. If unexecuted contracts remain from the complex order on the Strategy Book, the complex order's size will be revised and disseminated to reflect the complex order's remaining contracts at its current managed book and display price.

5. Evaluation Process

Proposed Rules 518(c)(2)(v) and (c)(5) describe how and when the System determines to execute or otherwise handle complex orders in the System, a process known as ''evaluation.'' The System will evaluate complex orders and quotes and the Strategy Book on a regular and event-driven basis. For example, the System would evaluate whether an incoming complex order is Complex Auction-eligible;[30] whether it could be executed against the Simple Order Book;[31] whether there is a halt or wide market condition in any component of the complex order;[32] or whether a derived order should be generated or cancelled.[33] The System will evaluate complex orders and quotes initially once all components of the complex strategy are open as set forth in proposed Rule 518(c)(2)(i), upon receipt as set forth in proposed Rule 518(c)(5)(i), and continually as set forth in proposed Rule(c)(5)(ii). In addition, proposed Rule 518(c)(5)(iii) states that if the System determines that a complex order is a Complex Auction-eligible order (described below), such complex order will be submitted into the Complex Auction process as described in proposed Rule 518(d) and discussed below.

D. Derived Orders

1. Generation and Removal of Derived Orders; Ranking and Display

MIAX proposes to adopt Rule 518(a)(9) relating to derived orders. A ''derived order'' is an Exchange-generated limit order on the Simple Order Book that represents either the bid or offer of one component of a complex order resting on the Strategy Book that is comprised of orders to buy or sell an equal quantity (with a one-to-one ratio) of two option components.[34] Derived orders are firm orders that are included in the MBBO.[35] Derived orders will not be routed outside of the Exchange regardless of the price(s) disseminated by away markets. The Exchange will determine on a class-by-class basis to make available derived orders and communicate such determination to Members via a Regulatory Circular. A derived order may be automatically generated for one or more legs of a complex order at a price that matches or improves upon the best displayed bid or offer in the affected series on the Simple Order Book and at a price at which the net price of the complex order on the Strategy Book can be achieved when the other component(s) of the complex order is (are) executed against the best displayed bid or offer on the Simple Order Book.[36] A derived order will not be displayed at a price that locks or crosses the best bid or offer of another exchange.[37] In such a circumstance, the System will display the derived order on the Simple Order Book at a price that is one Minimum Price Variation (''MPV'') away from the current opposite side best bid or offer of such other exchange, and rank the derived order on the Simple Order Book according to its actual price.[38] A derived order will not be created at a price increment less than the minimum established by MIAX Rule 510.[39]

MIAX proposes that a derived order is automatically removed from the Simple Order Book if (i) the displayed price of the derived order is no longer at the displayed best bid or offer on the Simple Order Book, (ii) execution of the derived order would no longer achieve the net price of the complex order on the Strategy Book when the other component of the complex order is executed against the best bid or offer on the Simple Order Book, (iii) the complex order is executed in full,[40] (iv) the complex order is cancelled, or (v) any component of the complex order resting on the Strategy Book that is used to generate the derived order is subject to a Simple Market Auction or Timer (''SMAT'') Event,[41] a wide market

[28] For an example of the managed interest process when Priority Customer Interest is present at the icMBBO, *see* Notice, 81 FR at 58778–79.

[29] For an example of the managed interest process when no Priority Customer Interest is present at the icMBBO, *see* Notice, 81 FR at 58779.

[30] *See* Part II.F.1, *infra.*

[31] *See* Part II.E, *infra.*

[32] *See* Part II.I, *infra.*

[33] *See* Part II.D, *infra.*

[34] *See* MIAX Rule 518(a)(9).

[35] *See* MIAX Rule 518(a)(9).

[36] *See* MIAX Rule 518(a)(9)(i).

[37] *See* MIAX Rule 518(a)(9)(ii).

[38] *See* Notice, 81 FR at 58771–72, for an example of adjustment of the price of a derived order.

[39] *See* MIAX Rule 518(a)(9)(iii).

[40] *See* Notice, 81 FR at 58772–73, for an example of the creation and cancellation of a derived order.

[41] A SMAT Event is defined as any of the following: a PRIME Auction (pursuant to Exchange Rule 515A); a Route Timer (pursuant to Exchange Rule 529); or a liquidity refresh pause (pursuant to Exchange Rule 515(c)(2)). *See* proposed Rule 518(a)(16). *See* Notice, 81 FR at 58772–73, for an example of cancellation of a derived order when a component of a complex order is subject to a SMAT Event.

condition,[42] or a halt [43] (each as described below).[44]

2. Execution

MIAX proposes that a derived order will be handled in the same manner as other orders on the Simple Order Book except as otherwise provided in proposed Rule 518, and will be executed only after all other executable orders (including orders subject to the managed interest process as described below) and quotes at the same price are executed in full.[45] When a derived order is executed, the other component of the complex order on the Strategy Book will be automatically executed against the best bid or offer on the Exchange. If a derived order is locked (*i.e.,* if the opposite side MBBO locks the derived order), the Exchange proposes that it will be executed if the execution price is at the NBBO.[46]

E. Legging

Proposed Rule 518(c)(2)(iii) describes the Legging process through which complex orders, under certain circumstances, are executed against the individual components of a complex strategy on the Simple Order Book. Complex orders up to a maximum number of legs (determined by the Exchange on a class-by-class basis as either two or three legs and communicated to Members via Regulatory Circular) may be automatically executed against bids and offers on the Simple Order Book for the individual legs of the complex order (''Legging''), provided the complex order can be executed in full or in a permissible ratio by such bids and offers, and provided that the execution price of each component is not executed at a price that is outside of the NBBO.[47] Legging is not available for cAOC orders, complex Standard quotes, complex eQuotes, or stock-option orders. Notwithstanding the foregoing, the Exchange is proposing to establish, in proposed Rule 518(c)(2)(iii), that complex orders that could otherwise be eligible for Legging will only be permitted to trade against other complex orders in the Strategy Book in certain situations. Specifically, proposed Rule 518(c)(2)(iii) would provide that complex orders with two option legs where both legs are buying or both legs are selling and both legs are calls or both legs are puts may only trade against other complex orders on the Strategy Book and will not be permitted to leg into the Simple Order Book. Similarly, proposed Rule 518(c)(2)(iii) would impose a similar restriction by stating that complex orders with three option legs where all legs are buying or all legs are selling may only trade against other complex orders on the Strategy Book (regardless of whether the option leg is a call or a put). The System will not generate derived orders for these complex orders.

F. Complex Auction Process

Proposed Rule 518(d), Complex Auction Process, describes the process for determining if a complex order is eligible to begin a Complex Auction, and to participate in a Complex Auction that is in progress. Certain option classes, as determined by the Exchange and communicated to Members via Regulatory Circular, will be eligible to participate in a Complex Auction (an ''eligible class''). Upon evaluation as described above, the Exchange may determine to automatically submit a Complex Auction-eligible order (defined below) into a Complex Auction (as described below). Upon entry into the System or upon evaluation of a complex order resting at the top of the Strategy Book, Complex Auction-eligible orders may be subject to an automated request for responses (''RFR''), as described below.

1. Eligibility and Initiation

Proposed Rule 518(d)(1) defines and describes the handling of a Complex Auction-eligible order. A ''Complex Auction-eligible order'' means a complex order that, as determined by the Exchange, is eligible to initiate or join a Complex Auction based upon the order's marketability (*i.e.,* if the price of such order is equal to or within a specific range of the current dcMBBO) as established by the Exchange, number of components, and complex order origin types (*i.e.,* non-broker-dealer customers, broker-dealers that are not market makers on an options exchange, and/or market makers on an options exchange as established by the Exchange and communicated to Members via Regulatory Circular).[48]

In order to initiate a Complex Auction upon receipt, a Complex Auction-eligible order must be designated as cAOA [49] and must meet the criteria described in proposed Rule 518, Interpretations and Policies .03(b) regarding the URIP. A complex order not designated as cAOA (*i.e.,* a complex order considered by default to be ''do not auction on arrival'' by the System) may (i) join a Complex Auction in progress at the time of receipt; (ii) become a Complex Auction-eligible order after resting on the Strategy Book and may then automatically join a Complex Auction then in effect for the complex strategy; or (iii) initiate a Complex Auction if it meets the criteria described in proposed Rule 518, Interpretations and Policies .03(a) regarding the IIP or .03(c) regarding the RIP.

A complex order not designated as cAOA will still have execution opportunities. A complex order not designated as cAOA is deemed to be ''do not auction on arrival'' by the System by default. Such a complex order will still have the opportunity to execute upon entry into the System without initiating a Complex Auction. For example, such an order may execute automatically upon entry into the System by matching with complex orders and/or quotes resting on the Strategy Book at a price that is at or inside the icMBBO, or via Legging against the Simple Order Book. Additionally, such an order on the opposite side of, and marketable against, a Complex Auction-eligible order may trade against the Complex Auction-eligible order if the System receives the order while a Complex Auction is ongoing.[50] Complex orders processed through a Complex Auction may be executed without consideration to prices of the same complex interest that might be available on other exchanges.

Proposed Rule 518(d)(2) describes the circumstances under which a Complex Auction is begun. Upon receipt of a Complex Auction-eligible order or upon

[42] A ''wide-market condition'' is defined as any individual component of a complex strategy having, at the time of evaluation, an MBBO quote width that is wider than the permissible valid quote width as defined in Rule 603(b)(4). *See* MIAX Rule 518, Interpretations and Policies .05(e).

[43] *See* MIAX Rule 504.

[44] *See* MIAX Rule 518(a)(9).

[45] *See* Notice, 81 FR at 58772, for an example of the priority of a derived order on the Simple Order Book.

[46] *See* MIAX Rule 518(a)(9)(vii).

[47] *See* MIAX Rule 518(c)(2)(iii).

[48] *See also* NYSE MKT Rule 980NY(e)(1), which allows the exchange to determine which complex order origin types are eligible to initiate a complex order auction.

[49] Complex orders that are designated as cIOC or cAOC are not eligible for cAOA designation, and their evaluation will not result in the initiation of a Complex Auction either upon arrival or if eligible when resting on the Strategy Book. *See* MIAX Rule 518(b)(2)(ii). Market orders may be designated as cAOA. See MIAX Rule 518(c).

[50] A MIAX complex order not designated as cAOA will not be considered a Complex Auction-eligible order by default. The Exchange believes that this gives market participants extra flexibility to control the handling and execution of their complex orders by the System by giving them the ability to determine affirmatively to have their complex order initiate a Complex Auction by way of the cAOA designation. In contrast, CBOE Rule 6.53C(d)(ii)(B) expressly states that Trading Permit Holders may request on an order by order basis that an incoming COA eligible order with two legs *not* COA (a ''do not COA'' request).

an evaluation by the System indicating that there is a Complex Auction-eligible order resting on the Strategy Book, the Exchange may begin the Complex Auction process by sending an RFR message. The RFR message will be sent to all subscribers to the Exchange's data feeds that deliver RFR messages. The RFR message will identify the complex strategy, the price, quantity of matched complex quotes and/or orders at that price, imbalance quantity, and side of the market of the Complex Auction-eligible order. The inclusion of the quantity of matched complex quotes and/or orders at the price included in the RFR message is intended to inform participants considering submitting an RFR Response of the number of contracts for which there is matched interest, and the purpose of including the imbalance quantity in the RFR message is to inform such participants of the number of contracts that do not have matched interest. The sum of the matched interest quantity and the imbalance quantity is equal to the size of the initiating Complex Auction-eligible order that is being auctioned. The price included in the RFR message will be the limit order price, unless that price is through the opposite side dcMBBO or the Complex Auction is initiated by a complex market order, in which case such price will be the dcMBBO.

The Exchange may determine to limit the frequency of Complex Auctions for a complex strategy (*i.e.,* establish a minimum time period between Complex Auctions initiated for complex orders in that strategy resting on the Strategy Book). The duration of such limitation will be established on an Exchange-wide basis and communicated to Members via Regulatory Circular. The Exchange will not change the duration of the minimum time period on an intra-day basis during any trading session. The purpose of this limitation is to safeguard the integrity of the System and to ensure an orderly market on the Exchange. Despite this limitation respecting orders resting on the Strategy Book, however, a new complex order received by the System during such limitation that ordinarily triggers a Complex Auction will still trigger a Complex Auction upon receipt.

2. Response Time Interval

Proposed Rule 518(d)(3) defines the amount of time within which participants may respond to an RFR message. The term ''Response Time Interval'' means the period of time during which responses to the RFR may be entered. The Exchange will determine the duration of the Response Time Interval, which shall not exceed 500 milliseconds, and will communicate it to Members via Regulatory Circular.

Proposed Rule 518(d)(4) states that Members may submit a response to the RFR message (an ''RFR Response'') during the Response Time Interval. RFR Responses may be submitted in $0.01 increments. RFR Responses must be cAOC orders [51] or cAOC eQuotes (discussed below), and may be submitted on either side of the market. RFR Responses represent non-firm interest that can be modified or withdrawn at any time prior to the end of the Response Time Interval. At the end of the Response Time Interval, RFR Responses are firm (*i.e.,* guaranteed at the RFR price and size). All RFR Responses and other complex orders and quotes on the opposite side of the Complex Auction-eligible order are also firm with respect to other incoming Complex Auction-eligible orders that are received during the Response Time Interval. Any RFR Responses not executed in full will expire at the end of the Complex Auction.

Proposed Rule 518(d)(5) describes how Complex Auction-eligible orders are handled following the Response Time Interval. At the end of the Response Time Interval, Complex Auction-eligible orders (and other complex orders and quotes) may be executed in whole or in part. Complex Auction-eligible orders will be executed against the best priced contra side interest, and any unexecuted portion of a Complex Auction-eligible order remaining at the end of the Response Time Interval will either be evaluated to determine if it may initiate another Complex Auction, or placed on the Strategy Book and ranked pursuant to proposed Rule 518(c)(3) as discussed above.

The Complex Auction will terminate at the end of the Response Time Interval without trading when any individual component of a complex strategy in the Complex Auction process is subject to a wide market condition as described in proposed Rule 518, Interpretations and Policies .05(e)(1), or to a SMAT Event as described in proposed Rule 518(a)(16) and proposed Interpretations and Policies .05(e)(2), or immediately without trading if any individual component or underlying security of a complex strategy in the Complex Auction process is subject to a halt as described in proposed Rule 518, Interpretations and Policies .05(e)(3).[52] Upon the conclusion of these condition(s) or process(es), an affected complex order will be evaluated and may initiate a new Complex Auction if such complex order is determined to be a Complex Auction-eligible order.

3. Pricing

Proposed Rule 518(d)(6) describes the manner in which the System prices and executes complex orders and quotes at the conclusion of the Response Time Interval. A complex strategy will not be executed at a net price that would cause any component of the complex strategy to be executed: (A) at a price of zero; or (B) ahead of a Priority Customer order on the Simple Order Book without improving the MBBO on at least one component of the complex strategy by at least $.01.

At the conclusion of the Response Time Interval, using $0.01 inside the current icMBBO as the boundary (the ''boundary''), the System will calculate the price where the maximum quantity of contracts can trade and also determine whether there is an imbalance.[53] If there is no imbalance, and a single price satisfies the maximum quantity criteria, that single price is used as the Complex Auction price.[54] If two or more prices satisfy the maximum quantity criteria, the System will calculate the midpoint of the lowest and highest price points that satisfy the maximum quantity criteria, such midpoint price is used as the Complex Auction price.[55] For orders with ixABBO Price Protection, (''price protection''), the midpoint pricing will use the price protection range selected by the Member at the end of the Complex Auction. If the midpoint price is not in a $0.01 increment, the System will round toward the midpoint of the dcMBBO to the nearest $0.01.[56] If the midpoint of the highest and lowest prices is also the midpoint of the dcMBBO and is not in a $0.01 increment, the System will round the price up to the next $0.01 increment.[57]

[51] A cAOC order is a complex limit order used to provide liquidity during a specific Complex Auction with a time in force that corresponds with that event. cAOC orders are not displayed to any market participant, and are not eligible for trading outside of the event. *See* MIAX Rule 518(b)(3). The Exchange also proposes a minor change to Exchange Rule 605, Market Maker Orders, to codify in Rule 605(a) that, in addition to the other order types specified in the rule, Market Makers may place cAOC complex orders in option classes to which they are appointed.

[52] For an example of termination of an auction without trading due to a SMAT event, see Notice, 81 FR at 58782–83.

[53] For an example, *see* Notice, 81 FR at 58783.

[54] For an example, *see* Notice, 81 FR at 58783–84.

[55] For an example, *see* Notice, 81 FR at 58784.

[56] For an example, *see* Notice, 81 FR at 58784.

[57] For an example, *see* Notice, 81 FR at 58784–85.

If there is a size imbalance, and if a single price satisfies the maximum quantity criteria, that single price is used as the Complex Auction price. If two or more prices satisfy the maximum quantity criteria, the System will price the execution at the price on the opposite side of the size imbalance that meets the maximum quantity criteria, while also respecting limit prices and the pricing boundaries which include the price protection boundary of $0.01 inside of the icMBBO and the price protection range (if any) selected by the Members whose interest makes up the order imbalance.[58]

If, after trading the maximum quantity at the execution price, Complex Auction interest remains with a managed price that locks or crosses the opposite side icMBBO, the System will execute the individual legs of eligible remaining Complex Auction-eligible orders and quotes against orders and quotes resting on the Simple Order Book that were present prior to the beginning of the Complex Auction at the icMBBO if available in the proper ratio and at or within the NBBO of each component of the complex order.[59]

After executing the imbalance side interest to the extent possible at the icMBBO, and if Priority Customer interest at the icMBBO that is not in the proper ratio remains, the System will place such remaining imbalance side interest on the Strategy Book and manage such interest pursuant to proposed Rule 518(c)(4). If no Priority Customer interest at the icMBBO remains, the System will execute Complex Auction interest with any available complex orders, complex Standard quotes or complex eQuotes priced at the icMBBO, and then with any orders or quotes on the Simple Order Book at the icMBBO that were received or modified after the beginning of the Response Time Interval.

If after trading the maximum quantity at the initial icMBBO all interest at the initial icMBBO has been executed, including through Legging with the Simple Order Book (as described in proposed Rule 518(c)(2)(iii) above), and Complex Auction interest remains with a managed price that crosses the exhausted icMBBO or dcMBBO (if the next opposite side icMBBO is also the dcMBBO), or locks or crosses the next opposite side icMBBO or dcMBBO (if the next opposite side icMBBO is also the dcMBBO), the System will repeat the process for a size imbalance described in proposed Rule 518(d)(6)(i)(B)(1)–(3).[60] At each icMBBO price level the System will repeat this process at the end of the Response Time Interval until reaching the dcMBBO price. If the Complex Auction price is equal to or crosses the dcMBBO and the dcMBBO is exhausted, the System will place any remaining Complex Auction interest on the Strategy Book and manage the interest that is eligible to rest on the Strategy Book pursuant to subparagraph (c)(4) to the exhausted dcMBBO price, cancel Complex Auction interest, including remaining complex order cAOC interest, that is not eligible to rest on the Strategy Book, and cancel any complex Standard quotes that are locking or crossing the exhausted dcMBBO price. The System will then immediately initiate a re-evaluation of the remaining interest from the Complex Auction and may initiate a new Complex Auction without regard to the RIP.

If all interest at the dcMBBO has been exhausted and Auction orders with a managed or limit price that locks or crosses the exhausted dcMBBO price remain, the System will place any remaining Complex Auction interest on the Strategy Book and manage the interest that is eligible to rest on the Strategy Book pursuant to proposed Rule 518(c)(4) to the exhausted dcMBBO price, cancel Complex Auction interest (including remaining complex order cAOC interest) that is not eligible to rest on the Strategy Book, and cancel any complex Standard quotes that are locking or crossing the exhausted dcMBBO price. The System will then immediately initiate a reevaluation of the remaining interest from the Complex Auction and may initiate a new Complex Auction without regard to the RIP.

The System will place any eligible remaining non-marketable Complex Auction orders and quotes on the Strategy Book, cancel any remaining Complex Auction interest that is not eligible to rest on the Strategy Book, and cancel complex Standard quotes that would otherwise require management because of their price as described in proposed Rule 518(c)(4) above if placed on the Strategy Book.

4. Allocation

Proposed Rule 518(d)(7) describes the allocation of complex orders and quotes that are executed in a Complex Auction.[61] Once the Complex Auction is complete (at the end of the Response Time Interval), such orders and quotes will be allocated first in price priority based on their original limit price, and thereafter as stated herein.

Individual orders and quotes in the leg markets resting on the Simple Order Book prior to the initiation of a Complex Auction and that have remained unchanged during the Auction have first priority, provided the complex order can be executed in full (or in a permissible ratio) against orders and quotes on the Simple Order Book, provided that the prices of the components on the Simple Order Book are at or within the NBBO for each component. Orders and/or quotes resting on the Simple Order Book that execute against a complex order will be allocated pursuant to Rule 514(c).

Priority Customer complex orders resting on the Strategy Book before, or that are received during, the Response Time Interval, and Priority Customer RFR Responses, collectively have second priority and will be allocated in price-time priority.

Market Maker non-Priority Interest for Complex and RFR Responses from Market Makers with non-Priority Interest for Complex collectively have fourth priority and will be allocated on a pro-rata basis as defined in Rule 514(c)(2).

Non-Market Maker Professional Interest complex orders resting on the Strategy Book, non-Market Maker Professional Interest complex orders placed on the Strategy Book during the Response Time Interval, and non-Market Maker Professional Interest RFR Responses will collectively have fifth priority and will be allocated on a pro-rata basis as defined in Rule 514(c)(2).

Finally, individual orders and quotes in the leg markets that are received or changed during the Complex Auction will collectively have sixth priority and will be allocated pursuant to Rule 514(c)(2).

Proposed Rule 518(d)(8) describes the manner in which the System handles incoming unrelated complex orders and quotes that are eligible to join a Complex Auction and are received during the Response Time Interval for a Complex Auction-eligible order. Such incoming unrelated complex orders and quotes will simply join the Complex Auction, will be ranked by price, and will be allocated as described above.[62]

[58] For an example, *see* Notice, 81 FR at 58785.

[59] For an example, *see* Notice, 81 FR at 58786.

[60] For examples, *see* Notice, 81 FR at 58786–87.

[61] For examples of allocation, see Notice, 81 FR at 58788–89.

[62] The Exchange proposes to include eligible unrelated incoming complex orders and quotes in the Complex Auction Process. This is similar to another exchange. Specifically, PHLX incoming Complex Orders that were received during the COLA Timer (equivalent to the MIAX Response Time Interval) for the same Complex Order Strategy as the COLA-eligible order that are on the same side

Continued

G. Stock-Option Orders

MIAX is proposing Interpretations and Policies .01 to provide additional detail regarding the trading and regulation of stock-option orders on the Exchange. The Exchange will determine when stock-option orders will be made available for trading in the System and communicate such determination to Members via Regulatory Circular.[63]

As set forth in proposed Rule 518, Interpretations and Policies .01(a), stock-option orders may be executed against other stock-option orders through the Strategy Book and Complex Auction. Stock-option orders will not be legged against the individual component legs, and the System will not generate a derived order based upon a stock-option order.[64] A stock-option order shall not be executed on the System unless the underlying security component is executable at the price(s) necessary to achieve the desired net price.[65]

MIAX Rule 518, Interpretations and Policies .01(a), permits Members to submit stock-option orders only if such orders comply with the Qualified Contingent Trade (''QCT'') Exemption from Rule 611(a) of Regulation NMS [66] under the Act, and provides further, that Members submitting stock-option orders represent that such orders comply with the QCT Exemption.[67]

To participate in stock-option order processing, a Member must give up a Clearing Member previously identified to, and processed by the Exchange as a Designated Give Up for that Member in accordance with Rule 507 and which has entered into a brokerage agreement with one or more Exchange-designated broker-dealers that are not affiliated with the Exchange to electronically execute the underlying security component of the stock-option order at a stock trading venue selected by the Exchange-designated broker-dealer on behalf of the Member.[68]

Proposed Rule 518, Interpretations and Policies .01(b) sets forth the process by which stock-option orders, including inbound and those resting on the Strategy Book, will be handled.[69] When a stock-option order is received by the Exchange, the System will validate that the stock-option order has been properly marked as required by Rule 200 of Regulation SHO under the Act (''Rule 200'').[70] Rule 200 requires all broker-dealers to mark sell orders of equity securities as ''long,'' ''short,'' or ''short exempt.'' Accordingly, Members submitting stock-option orders must mark the underlying security component (including ETF) ''long,'' ''short,'' or ''short exempt'' in compliance with Rule 200.[71] If the stock-option order is not so marked, the order will be rejected by the System.[72] Likewise, any underlying security component of a stock-option order sent by the Exchange to the Exchange-designated broker-dealer shall be marked ''long,'' ''short,'' or ''short exempt'' in the same manner in which it was received by the Exchange from the submitting Member.[73]

If the stock-option order is properly marked, the System will determine whether the stock-option order is Complex Auction-eligible.[74] If the stock-option order is Complex Auction-eligible, the System will initiate the Complex Auction Process.[75] The rule requires that any stock-option order executed utilizing the Complex Auction Process will comply with the requirements of Rule 201 of Regulation SHO under the Act (''Rule 201'').[76]

When the short sale price test in Rule 201 is triggered for a covered security,[77] a ''trading center,'' [78] such as the Exchange, an Exchange-designated broker-dealer, or a stock trading venue, as applicable, must comply with Rule 201.[79] A trading center such as the Exchange, an Exchange-designated broker-dealer and a stock trading venue, as applicable, on which the underlying security component is executed, must also comply with Rule 201(b)(1)(iii)(B),[80] which provides that a trading center must establish, maintain, and enforce written policies and procedures reasonably designed to permit the execution or display of a short sale order of a covered security marked ''short exempt'' [81] without regard to whether the order is at a price that is less than or equal to the current national best bid.[82]

If the stock-option order is not Complex Auction-eligible, the System will determine if it is eligible to be executed against another inbound stock-option order or another stock-option order resting on the Strategy Book.[83] If eligible, the System will route both sides of the matched underlying security component of the stock-option order as a QCT to an Exchange-designated broker-dealer for execution on a stock trading venue.[84] The stock trading venue will then either successfully execute the QCT or cancel it back to the Exchange-designated broker-dealer, which in turn will either report the execution of the QCT or cancel it back to the Exchange.[85] While the Exchange is a trading center pursuant to Rule 201, the Exchange will neither execute nor display the underlying security component of a stock-option order.[86] Instead, the execution or display of the underlying security component of a stock-option order will occur on a trading center other than the Exchange, such as an

of the market will join the COLA. *See* PHLX Rule 1098(e)(viii)(B).

[63] *See* MIAX Rule 518, Interpretations and Policies .01(a).

[64] *See id.*

[65] *See id.*

[66] 17 CFR 242.611(a).

[67] *See* MIAX Rule 518, Interpretations and Policies .01(a). *See also* Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (order modifying the QCT Exemption) and Securities Exchange Act Release No. 53489 (August 31, 2006), 71 FR 52829 (September 7, 2006) (order establishing the QCT Exemption).

[68] *See* MIAX Rule 518, Interpretations and Policies .01(a).

[69] Stock-option orders and quotes on the Strategy Book that are marketable against each other will automatically execute, provided they meet the conditions of MIAX Rule 518, Interpretations and Policies .01(b). *See* MIAX Rule 518, Interpretations and Policies .01(d).

[70] 17 CFR 242.200.

[71] *See* MIAX Rule 518, Interpretations and Policies .01(b).

[72] *See id.*

[73] *See id.*

[74] *See id.* MIAX Rule 518, Interpretations and Policies .01(e) provides that stock-option orders executed via Complex Auction shall trade in the sequence set forth in proposed Rule 518(d) except that the provision regarding individual orders and quotes in the leg markets resting on the Simple Order Book prior to the initiation of a Complex Auction will not be applicable and such execution will be subject to the conditions set forth in MIAX Rule 518, Interpretations and Policies .01 regarding the price of the option leg(s), together with all applicable securities laws.

[75] *See id.*

[76] 17 CFR 242.201. *See* MIAX Rule 518, Interpretations and Policies .01(b).

[77] The term ''covered security'' is defined in Rule 201(a)(1) as any NMS stock as defined in Rule 600(b)(47) of Regulation NMS. *See also* 17 CFR 242.600(b)(47).

[78] Rule 201(a)(9) states that the term ''trading center'' shall have the same meaning as in Rule 600(b)(78). Rule 600(b)(78) of 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)(78). The definition encompasses all entities that may execute short sale orders. Thus, Rule 201 will apply to any entity that executes short sale orders.

[79] *See* MIAX Rule 518, Interpretations and Policies .01(b). *See also* Notice, 81 FR at 58791.

[80] 17 CFR 242.201(b)(1)(iii)(B).

[81] 17 CFR 242.200(g)(2).

[82] Since the underlying security component of a stock-option order is not displayed by the Exchange, the exception in Rule 201(b)(1)(iii)(A) is not available. 17 CFR 242.201(b)(1)(iii)(A).

[83] *See* MIAX Rule 518, Interpretations and Policies .01(b).

[84] *See id.*

[85] *See id.*

[86] *See id.*

Exchange-designated broker-dealer or other stock trading venue.[87]

If the Exchange-designated broker-dealer or other stock trading venue, as applicable, cannot execute the underlying security component of a stock-option order in accordance with Rule 201, the Exchange will not execute the option component(s) of the stock-option order and will either place the unexecuted stock-option order on the Strategy Book or cancel it back to the submitting Member in accordance with the submitting Member's instructions (except that cAOC and cIOC stock-option orders and eQuotes will be cancelled).[88] Once placed back onto the Strategy Book, the stock-option order will be handled in accordance with MIAX Rule 518, Interpretations and Policies .01(b).[89]

MIAX also proposes that the execution price of the underlying security component must be also within the high-low range for the day in the underlying security at the time the stock-option order is processed and within a certain price from the current market, which the Exchange will establish and communicate to Members via Regulatory Circular.[90] Pursuant to the proposed rules, if the underlying security component price is not within these parameters, the stock-option order is not executable.[91]

Proposed Rule 518, Interpretations and Policies .01(c) states that the option leg(s) of a stock-option order shall not be executed (i) at a price that is inferior to the Exchange's best bid (offer) in the option or (ii) at the Exchange's best bid (offer) in that option if one or more Priority Customer Orders are resting at the best bid (offer) price on the Simple Order Book in each of the option components and the stock-option order could otherwise be executed in full (or in a permissible ratio). If one or more Priority Customer Orders are resting at the best bid (offer) price on the Simple Order Book, at least one option component must trade at a price that is better than the corresponding bid or offer in the marketplace by at least $0.01.[92] The option leg(s) of a stock-option order may be executed in a $0.01 increment, regardless of the minimum quoting increment applicable to that series.[93]

Finally, proposed Rule 518, Interpretations and Policies .01(f) provides that the underlying security of a stock-option order is in a limit up-limit down state as defined in Rule 530, such order will only execute if the calculated stock price is within the permissible Price Bands as determined by SIPs under the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time (the ''LULD Plan'').

H. Market-Maker Complex Quotes

Proposed Rule 518, Interpretations and Policies .02 describes the manner in which the Exchange will allow Market Maker quotes in complex strategies.[94] Market Maker complex quotes may be entered as either complex Standard quotes or complex eQuotes, as defined in proposed Rule 518, Interpretations and Policies .02(a).[95]

The Exchange will determine, on a class-by-class basis, the complex strategies in which Market Makers may submit complex Standard quotes, and will notify Members of such determination via Regulatory Circular. Market Makers may submit complex eQuotes in their appointed options classes.

A ''Complex Auction or Cancel eQuote'' or ''cAOC eQuote'' [96] is an eQuote submitted by a Market Maker that is used to provide liquidity during a specific Complex Auction with a time in force that corresponds with the duration of the Complex Auction. cAOC eQuotes will not: (i) Be executed against individual orders and quotes resting on the Simple Order Book; (ii) be eligible to initiate a Complex Auction, but may join a Complex Auction in progress; (iii) rest on the Strategy Book; or (iv) be displayed.

A ''Complex Immediate or Cancel eQuote'' or ''cIOC eQuote'' [97] is a complex eQuote with a time-in-force of IOC that may be matched with another complex quote or complex order for an execution to occur in whole or in part upon receipt into the System.[98] cIOC eQuotes will not: (i) Be executed against individual orders and quotes resting on the Simple Order Book; (ii) be eligible to initiate a Complex Auction or join a Complex Auction in progress; (iii) rest on the Strategy Book; or (iv) be displayed. Any portion of a cIOC eQuote that is not executed will be immediately cancelled.

Market Maker complex quotes are executed in the same manner as complex orders but will not be executed against bids and offers on the Simple Order Book via Legging as described in proposed Rule 518(c)(2)(iii). Market Maker complex Standard quotes may rest on the Strategy Book and are not subject to the managed interest process described in proposed Rule 518(c)(4). An unexecuted complex Standard quote with a limit price that would otherwise be managed to the icMBBO will be cancelled.

Certain Market Maker complex Standard quotes and complex eQuotes (as defined below) will qualify as ''Market Maker Priority Interest for Complex'' on the Strategy Book (as defined below) if the certain criteria have been met. If complex Standard quoting is engaged for a complex strategy, a Market Maker complex Standard quote or complex eQuote will qualify as Market Maker Priority Interest for Complex if the Market Maker has a complex Standard quote in the complex strategy that equals or improves the dcMBBO on the opposite side from the incoming complex order or quote at the time of evaluation (a ''Complex priority quote''). For purposes of the proposed Rule, Market Maker Priority Interest for Complex is established at the beginning of a Complex Auction (as described in proposed Rule 518(d) below), or at the time of execution in free trading.

Market Makers are not required to enter complex quotes on the Strategy Book.[99] Quotes for complex strategies are not subject to any quoting requirements that are applicable to Market Maker quotes in the simple market for individual options series or classes. Volume executed in complex strategies is not taken into consideration when determining whether Market Makers are meeting quotation obligations applicable to Market Maker

[87] *See id.*

[88] *See* MIAX Rule 518, Interpretations and Policies .01(b).

[89] *See id.* If the stock-option order is not Complex Auction-eligible and cannot be executed or placed on the Strategy Book, it will be cancelled by the System. *See id.*

[90] *See id.*

[91] *See id.*

[92] *See* MIAX Rule 518, Interpretations and Policies .01(c).

[93] *See id.*

[94] ISE permits market maker complex quotes. *See* ISE Rule 722, Supplementary Material .03.

[95] A complex Standard quote is a complex quote submitted by a Market Maker that cancels and replaces the Market Maker's previous complex Standard quote for that side of the strategy, if any. A complex eQuote is a complex quote submitted by a Market Maker with a specific time in force that does not automatically cancel and replace the Market Maker's previous complex Standard quote or complex eQuote.

[96] *See* MIAX Rule 518, Interpretations and Policies .02(c)(1).

[97] *See* MIAX Rule 518, Interpretations and Policies .02(c)(2).

[98] This is based on the Exchange's current IOC eQuote in the simple market. *See* MIAX Rule 517(a)(2)(iv).

[99] *See* MIAX Rule 518, Interpretations and Policies .02(e).

quotes in the simple market for individual options.[100]

I. Price Protection and Other Features

MIAX is also proposing to adopt price protection features. First, the proposal establishes a price protection program for Vertical Spreads and Calendar Spreads by establishing a Vertical Spread Variance (''VSV'') [101] and Calendar Spread Variance (''CSV'').[102] VSV will apply only to Vertical Spreads, and CSV will apply only to Calendar Spreads.[103]

If the execution price of a complex order would be outside of the limits established in the VSV or the CSV, such complex order will be placed on the Strategy Book and will be managed to the appropriate trading price limit as described in proposed Rule 518(c)(4) above. Orders to buy below the minimum trading price limit and orders to sell above the maximum trading price limit (in the case of Vertical Spreads) will be rejected by the System.

Proposed Rule 518, Interpretations and Policies .05(e)(1)(i), describes how the System functions when there is a wide market condition [104] during free trading (*i.e.,* when there is not a Complex Auction in progress).[105] Specifically, if a wide market condition exists for a component of a complex strategy, trading in the complex strategy will be suspended. The Strategy Book will remain available for Members to enter and manage complex orders and quotes. New Complex Auctions will not be initiated and incoming Complex Auction-eligible orders that could have otherwise caused an auction to begin will be placed on the Strategy Book. Incoming complex orders with a time in force of IOC will be cancelled.

The System will continue to evaluate the Strategy Book. If a wide market condition exists for a component of a complex strategy at the time of evaluation, complex orders or quotes that could have otherwise been executed will not be executed until the wide market condition no longer exists. When the wide market condition no longer exists, the System will again evaluate the Strategy Book and will use the process and criteria respecting the RIP as described in proposed Interpretations and Policies .03(c) to determine whether complex order interest exists to initiate a Complex Auction, or whether to commence trading in the complex strategy without a Complex Auction.

Proposed Rule 518, Interpretations and Policies .05(e)(1)(ii), describes how the System functions when there is a wide market condition during a Complex Auction. If, at the expiration of the Response Time Interval, a wide market condition exists for a component of a complex strategy in the Complex Auction, trading in the complex strategy will be suspended, and any RFR Responses will be cancelled. Remaining Complex Auction-eligible orders will then be placed on the Strategy Book. When the wide market condition no longer exists, the System will evaluate the Strategy Book pursuant to proposed Rule 518(c)(5)(ii), and will use the process and criteria respecting the RIP as described in proposed Interpretations and Policies .03(c) to determine whether complex order interest exists to initiate a Complex Auction, or whether to commence trading in the complex strategy without a Complex Auction.

Proposed Rule 518, Interpretations and Policies .05(e)(2) sets forth the functionality of the System if a Simple Market Auction or Timer (''SMAT'') Event (defined above as a PRIME Auction, a Route Timer, or a liquidity refresh pause) [106] exists for a component of a complex strategy, both during free trading and during an auction. Once a SMAT Event is concluded or resolved, the System will evaluate the Strategy Book as described above to provide the previously suspended complex orders with more opportunities to be executed.

Proposed Rule 518, Interpretations and Policies .05(e)(3) describes the System's functionality when there is a halt in trading for the underlying security or a component of a complex order. If a trading halt exists for the underlying security or a component of a complex strategy, trading in the complex strategy will be suspended.

The Strategy Book will remain available for members to enter and manage complex orders and quotes. Incoming complex orders and quotes that could otherwise be executed or initiate a Complex Auction in the absence of a halt will be placed on the Strategy Book. Incoming complex orders and quotes with a time in force of IOC will be cancelled.

When trading in the halted component(s) and/or underlying security of the complex order resumes, the System will evaluate the Strategy Book as described in proposed Rule 518(c)(2)(i), and will use the process and criteria respecting the IIP as described in proposed Rule 518, Interpretations and Policies .03(a) to determine whether complex order interest exists to initiate a Complex Auction, or whether to commence trading in the complex strategy without a Complex Auction.

Proposed Interpretations and Policies .05(e)(3)(ii) describes what happens when there is a halt during a Complex Auction. Unlike during a wide market condition or a SMAT Event, where a Complex Auction will end without trading at the end of the Response Time Interval, if during a Complex Auction any component or the underlying security of a Complex Auction-eligible order is halted, the Complex Auction will end early without trading [107] and all RFR Responses will be cancelled. Remaining complex orders will be placed on the Strategy Book if eligible, or cancelled. When trading in the halted component(s) and/or underlying security of the complex order resumes, the System will evaluate the Strategy Book pursuant to proposed Rule 518(c)(2)(i) above, and will use the process and criteria respecting the IIP as described in Interpretations and Policies .03(a) of this Rule to determine whether marketable complex order interest exists to initiate a Complex Auction, or whether to commence trading in the complex strategy without a Complex Auction.

Another investor protection proposed by the Exchange is described in Interpretations and Policies .06 of proposed Rule 518, the MIAX Order Monitor for Complex Orders (''cMOM'').[108] cMOM defines a price

[100] *See* MIAX Rule 518, Interpretations and Policies .02(e). This is substantially similar to complex quoting functionality currently operative on another exchange. *See* ISE Rule 722, Supplementary Material .03.

[101] A ''Vertical Spread'' is a complex strategy consisting of the purchase of one call (put) option and the sale of another call (put) option overlying the same security that have the same expiration but different strike prices. *See* MIAX Rule 518, Interpretations and Policies .05(a).

[102] A ''Calendar Spread'' is a complex strategy consisting of the purchase of one call (put) option and the sale of another call (put) option overlying the same security that have different expirations but the same strike price. *See* MIAX Rule 518, Interpretations and Policies .05(b).

[103] The proposed MIAX VSV and CSV price protections are similar to the price protections that are currently operative on other exchanges. *See* ISE Rule 722, Supplementary Material .07(c), PHLX Rule 1098(g).

[104] A ''wide market condition'' is defined as any individual component of a complex strategy having, at the time of evaluation, an MBBO quote width that is wider than the permissible valid quote width as defined in Rule 603(b)(4).

[105] ''Free trading'' is defined in MIAX Rule 518(a)(10) as trading that occurs during a trading session other than: (i) At the opening or re-opening for trading following a halt, or (ii) during the Complex Auction Process.

[106] *See* MIAX Rule 518(a)(16).

[107] This is the only circumstance under which a Complex Auction on MIAX would end early. In all other circumstances described in proposed Rule 518 that would disrupt trading during a Complex Auction, the Complex Auction will end after the Response Time Interval without trading.

[108] cMOM is substantially similar to the Exchange's MIAX Order Monitor (''MOM'')

range outside of which a complex limit order will not be accepted by the System. cMOM is a number defined by the Exchange and communicated to Members via Regulatory Circular. The default price range for cMOM will be greater than or equal to a price through the cNBBO [109] for the complex strategy to be determined by the Exchange and communicated to Members via Regulatory Circular. Such price will not be greater than $2.50. A complex limit order to sell will not be accepted at a price that is lower than the cNBBO bid, and a complex limit order to buy will not be accepted at a price that is higher than the cNBBO offer, by more than cMOM. A complex limit order that is priced through this range will be rejected. cMOM includes complex order size protections, open complex order protection, and open complex contract protection. The cMOM protections will be available for complex orders as determined by the Exchange and communicated to Members via Regulatory Circular.

The Exchange is also proposing to amend Exchange Rule 519A to state that complex orders will participate in the Risk Protection Monitor. The Risk Protection Monitor maintains a counting program for each participating Member that will count the number of orders entered and the number of contracts traded via an order entered by a Member on the Exchange within a specified time period that has been established by the Member, and will reject orders that exceed a Member-designated ''Allowable Order Rate'' and an ''Allowable Contract Execution Rate.'' [110]

J. Obvious Errors

The Exchange proposes to adopt Rule 521(c)(5) to address the manner in which obvious errors in complex order transactions will be handled in situations where one or more components of a complex order is eligible to be adjusted or nullified pursuant to Exchange Rule 521(c)(4).[111]

Specifically, if a complex order executes against another complex order on the Strategy Book and one or more components of the transaction is deemed eligible to be adjusted or nullified, the entire trade (all components) will be nullified, unless both parties agree to adjust the transaction to a different price within thirty (30) minutes of being notified by the Exchange of the decision to nullify the transaction. Additionally, if a complex order executes against orders or quotes on the Simple Order Book, each component of the complex order will be reviewed and handled independently in accordance with Exchange Rule 521.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[112] In particular, for the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[113] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

A. Definitions and Types of Complex Orders

The proposal adopts several defined terms related to the trading of complex orders. The Commission notes that MIAX's new definition of complex order [114] is consistent with the definition of complex order adopted by other options exchanges.[115] The Commission believes that adding Rule 518(b) to allow complex orders to be entered as limit orders, market orders, GTC orders, day limit orders, cAOA orders, cAOC orders, or cIOC orders could provide market participants with greater flexibility and control over the trading of complex orders. The Commission notes, in addition, that MIAX currently permits each of these orders types (other than cAOA, cAOC, and cIOC orders) for orders on single option series.[116]

B. Trading of Complex Orders and Quotes

The Commission notes that MIAX states that it has designed its execution rules to allow complex orders to interact with interest in the Simple Order Book and vice versa.[117] The Commission notes that MIAX Rule 518(c)(3), is designed to protect interest established in the leg market by providing that if any of the bids or offers established in the marketplace consist of a Priority Customer Order, at least one leg of the complex order must trade at a price that is better than the corresponding bid or offer in the marketplace by at least a $0.01 increment. In addition, the Commission notes that other options exchanges have similar provisions requiring one leg to trade at a better price in such a circumstance.[118]

MIAX proposes that complex orders will never be executed at a price that is outside of the individual component prices on the Simple Order Book.[119] Furthermore, the net price of a complex order executed against another complex order on the Strategy Book will never be inferior to the price that would be available if the complex order legged into the Simple Order Book.[120] According to MIAX, these provisions should help prevent a component of a complex order from being executed at a price that compromises the priority already established by a Priority Customer on the Simple Order Book.[121]

C. Derived Orders

As described more fully above, MIAX proposes to provide for the generation of derived orders on behalf of certain complex orders. The Commission believes that derived orders could facilitate the execution of complex orders on MIAX by increasing the opportunities for complex orders to execute against interest in the leg market, thereby benefitting investors seeking to execute complex orders. In addition, the Commission believes that derived orders could benefit participants in the leg market by providing additional liquidity, and potentially more favorable executions,

protection for the Simple Order Book. *See* Exchange Rule 519.

[109] The Complex National Best Bid or Offer (''cNBBO'') is defined as the best net bid and offer price the best net bid and offer for a complex strategy calculated using the NBBO for each component of a complex strategy. For stock-option orders, the cNBBO for a complex strategy is calculated using the NBBO in the individual option component(s) and the NBBO in the stock component. *See* MIAX Rule 518(a)(2).

[110] For a complete description of the Risk Protection Monitor, *see* Securities Exchange Act Release No. 74496 (March 13, 2015), 80 FR 14421 (March 19, 2015) (SR–MIAX–2015–03).

[111] Exchange Rule 521(c)(4) describes the actions to be taken by the Exchange when a transaction resulting from an obvious error (as defined elsewhere in Rule 521) has occurred, depending upon who the parties to the transaction are.

[112] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[113] 15 U.S.C. 78f(b)(5).

[114] *See* MIAX Rule 518(a)(5).

[115] *See, e.g.,* ISE Rule 722(a)(1) and CBOE Rule 6.53C(a)(1).

[116] *See* MIAX Rule 516.

[117] *See* MIAX Rule 514. *See also* Notice, 81 FR at 58788.

[118] *See* ISE Rule 722(b)(2) and Phlx Rule 1098(c)(iii).

[119] *See* Notice, 81 FR at 58780.

[120] *See id.*

[121] *See* Notice, 81 FR at 58775–76.

for leg market interest. The Commission notes that it previously approved proposals by other options exchange to implement similar functionality.[122]

D. Legging

As described more fully above, MIAX proposes to provide for Legging of complex orders into the Simple Order Book. The Commission believes that Legging could benefit investors by providing additional execution opportunities for both complex orders and interest on the MIAX Book. In addition, the Commission believes that Legging could facilitate interaction between the Strategy Book and the Simple Order Book, potentially resulting in a more competitive and efficient market, and better executions for investors.

In addition, and as discussed above, MIAX is proposing to prohibit Legging for: (i) Complex orders with two option legs where both legs are buying or both legs are selling and both legs are calls or both legs are puts; and (ii) complex orders with three option legs where all legs are buying or all legs are selling regardless of whether the option leg is a call or a put.[123] The Commission notes that this prohibition is consistent with the rules of another options market, which the Commission has approved.[124] The Commission notes that directional complex orders may continue to trade against other complex orders on the Exchange's Strategy Book, and that market participants may submit the individual legs of a directional complex order separately to the regular market for execution should they so choose.

E. Complex Auction Process

MIAX has proposed Rule 518(d) to describe the Complex Auction Process. MIAX states that the auction process is designed to ensure that complex orders are given every opportunity to be executed at the best prices against an increased level of contra-side liquidity.[125] In addition, MIAX states that the Complex Auction process is intended to protect the integrity of the MIAX System[126] and is designed to work effectively with the Strategy Book by maintaining priority of all resting quotes and orders and any RFR Responses received before the end of the Response Time Interval.[127] The Commission notes that the ability for unrelated marketable orders to join and be executed in a Complex Auction may enhance the liquidity in the Complex Auction and thus increase opportunities for execution of complex orders and quotes on both sides of the market.

F. Stock-Option Orders

The Commission believes that the proposal to add Rule 518, Interpretations and Policies .01(a) to provide that stock-option orders will execute against other stock-option orders through the Strategy Book and Complex Auction is consistent with the Act because it could facilitate the execution of stock-option orders. The Commission notes that another options exchange similarly permits stock-option orders traded on its electronic trading platform to execute only against other stock-option orders.[128]

As described more fully above, MIAX proposes to allow the Exchange to electronically communicate the stock leg of a stock-option order to a designated broker-dealer(s) for execution on behalf of a Member.[129] To participate in stock-option order automated processing, a Member must give up a Clearing Member previously identified to, and processed by the Exchange as a Designated Give Up for that Member in accordance with Rule 507 and which has entered into a brokerage agreement with one or more Exchange-designated broker-dealers that are not affiliated with the Exchange.[130] A Member may submit a stock-option order only if the order complies with the QCT Exemption from Rule 611(a) of Regulation NMS, and a Member submitting a stock-option order represents that the order complies with the QCT Exemption.[131]

MIAX's proposal to electronically communicate the stock leg of a stock-option order to a designated broker-dealer for execution is similar to rules adopted by other options exchanges.[132] Accordingly, the Commission finds that the proposal to allow MIAX to electronically communicate the stock leg of a stock-option order to a designated broker-dealer that is not affiliated with MIAX for execution on behalf of a Permit Holder is consistent with the Act.

As described above, proposed Rule 518, Interpretations and Policies .01(c) states that the option leg(s) of a stock-option order shall not be executed (i) at a price that is inferior to the Exchange's best bid (offer) in the option or (ii) at the Exchange's best bid (offer) in that option if one or more Priority Customer Orders are resting at the best bid (offer) price on the Simple Order Book in each of the option components and the stock-option order could otherwise be executed in full (or in a permissible ratio). These provisions are consistent with the rules of other options exchanges.[133] Accordingly, the Commission believes that the price priority requirements for stock-option orders in MIAX Rule 518, Interpretations and Policies .01(c) are consistent with the Act.

Under the proposal, stock-option orders executed against other stock-option orders through a Complex Auction will trade in the sequence set forth in MIAX Rule 518(d), except that the provision regarding individual orders and quotes in the leg markets resting on the Simple Order Book prior to the initiation of a Complex Auction will not be applicable and such execution will be subject to the conditions set forth in MIAX Rule 518, Interpretations and Policies .01 regarding the price of the option leg(s), together with all applicable securities laws.[134] The Commission believes that it is consistent with the Act to apply the same allocation sequence as other complex orders, as modified to reflect that stock-option orders will not execute against individual orders and quotes in the Strategy Book.

G. Market-Maker Complex Quotes

MIAX is proposing to allow Market Maker quotes to qualify as Market Maker Priority Interest for Complex. Under the proposal, and as described in more detail above, if complex Standard quoting is engaged for a complex strategy, a Market Maker complex Standard quote or complex eQuote will qualify as Market Maker Priority Interest for Complex if the Market Maker has a complex Standard quote in the complex strategy that equals or improves the dcMBBO on the opposite side from the incoming complex order or quote at the time of evaluation. According to MIAX, the Exchange's proposal to adopt Market Maker Priority Interest for Complex in the Strategy Book is substantially based

[122] *See* Securities Exchange Act Release Nos. 66234 (January 25, 2012), 77 FR 4852 (January 31, 2012) (order approving File No. SR–ISE–2011–82) and 69419 (April 19, 2013), 78 FR 24449 (April 25, 2013) (order approving File No. SR–BOX–2013–01).

[123] *See* MIAX Rule 518(c)(2)(iii).

[124] *See* Securities Exchange Act Release No. 73023 (September 9, 2014) 79 FR 55033 (September 15, 2014) (order approving SR–ISE–2014–10).

[125] *See* Notice, 81 FR at 58799.

[126] *See id.*

[127] See Notice, 81 FR at58789.

[128] See C2 Rule 6.13, Interpretation and Policy .06.

[129] *See* MIAX Rule 518, Interpretations and Policies .01(a).

[130] *See id.*

[131] *See id.*

[132] *See* ISE Rule 722, Supplementary Material .02. *See also* C2 Rule 6.13, Interpretation and Policy .06(a).

[133] *See* ISE Rule 722(b)(2) and C2 Rule 6.13, Interpretation and Policy .06(b).

[134] *See* MIAX Rule 518, Interpretations and Policies .01(e).

upon principles and rules currently operative on the Exchange in the Simple Order Book.[135] In addition, MIAX notes that affording priority in the Strategy Book to Market Makers with a Complex priority quote should provide incentive for MIAX participants to submit complex quotes at the best prices and rewards Market Makers who are quoting in the Strategy Book at the best prices.[136]

H. Price Protection and Other Features

MIAX's proposed price and order protection features are intended to provide market participants with price and order size protection in order to allow them to better manage their risk exposure.[137] The VSV and CSV price protections are similar to functionalities already available on other options exchanges.[138] In addition, according to MIAX, the cMOM functionality may help ensure a fair and orderly market by rejecting inbound complex orders whose prices may be erroneous or disruptive.[139] The cMOM functionality is similar to an existing functionality on MIAX's simple market.[140] MIAX's provisions regarding wide market conditions, SMAT events, and halts could help protect investors by pausing trading during potentially disruptive conditions.[141] Finally, according to MIAX, adding complex orders to the Risk Protection Monitor should allow MIAX members to better manage their risk and encourage them to submit additional liquidity to the Exchange.[142] The Commission believes the proposed new price protection features are reasonably designed to promote just and equitable principles of trade to the extent they are able to mitigate potential risks associated with market participants entering orders or executing trades at what MIAX believes are erroneous or disruptive prices.[143] In addition, the Commission has noted that the Risk Protection Monitor may help members, and member groups, mitigate potential risk associated with the execution an unacceptable level of order that result from, *e.g.,* technology issues.[144]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[145] that the proposed rule change (SR–MIAX–2016–26) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[146]

Robert W. Errett,

Deputy Secretary.

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[135] The Exchange currently follows the established hierarchy that generally affords priority to Priority Customer Orders, then to Market Makers with priority quotes, followed by Professional Interest at the same price. *See* Notice, 81 FR at 58773, n. 24 and MIAX Rule 514.

[136] *See* Notice, 81 FR at 58798.

[137] *See* Notice, 81 FR at 58800.

[138] *See* ISE Rule 722, Supplementary Material .07(c) and PHLX Rule 1098(g).

[139] *See* Notice, 81 FR at 58800.

[140] *See* MIAX Rule 519.

[141] *See* Notice, 81 FR at 58800.

[142] *See id.*

[143] *See id.*

[144] *See* Securities Exchange Act Release No. 74496 (March 13, 2015), 80 FR 14421 (March 19, 2015) (SR–MIAX–2015–03), at 14423. The Commission reminds members electing to use the Risk Protection Monitor to be mindful of their obligations to, among other things, seek best execution of orders they handle on an agency basis. *See id.*

[145] 15 U.S.C. 78s(b)(2).

[146] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79075; File No. SR–Nasdaq–2016–126]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Partial Amendment Nos. 1, 2 and 3, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Partial Amendment Nos. 1, 2 and 3, to System Functionality Necessary To Implement the Regulation NMS Plan To Implement a Tick Size Pilot Program

October 7, 2016.

I. Introduction

On September 7, 2016, The Nasdaq Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt paragraph (d) and Commentary .12 to Nasdaq Rule 4770 to change System [3] functionality necessary to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan'' or ''Pilot'').[4] The Exchange is also proposing amendments to Nasdaq Rule 4770(a) and (c) to clarify certain exceptions to the Trade-at Prohibition.[5] The proposed rule change was published for comment in the **Federal Register** on September 20, 2016.[6] The Commission received two comment letters in response to the Notice.[7] On September 29, 2016, the Exchange filed Partial Amendment No. 1 to the proposed rule change.[8] On October 4, 2016, the Exchange filed Partial Amendment No. 2 to the proposed rule change.[9] On October 7, 2016, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''System'' is defined as the automated system for order execution and trade reporting owned and operated by Nasdaq. *See* Nasdaq Rule 4701(a).

[4] *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 rule filing are defined as set forth in the Plan.

[5] Nasdaq Rule 4770(c)(3)(D)(i) 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 VI(D).

[6] Securities Exchange Act Release No. 78837 (September 14, 2016), 81 FR 64544 (''Notice'').

[7] *See* Letters to Brent J. Fields, Secretary, Commission, from Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange, Inc.; Eric Swanson, EVP, General Counsel and Secretary, BATS Global Markets, Inc.; Thomas A. Wittman, EVP, Global Head of Equities, Nasdaq, Inc., dated September 9, 2016 (''Comment Letter No. 1'') and from Eric Swanson, EVP, General Counsel and Secretary, BATS Global Markets, Inc., dated September 12, 2016 (''Comment Letter No. 2'').

[8] In Partial Amendment No. 1, the Exchange proposes to change references in the rule text from ''added to the Nasdaq Book'' to ''ranked on the Nasdaq Book'' as applicable for Price to Comply Orders, Non-Displayed Orders, Post-Only Orders, and Orders with Reserve Size. The Exchange also proposes to clarify that in certain cases Price to Comply Orders, not attributable Post-Only Orders, and certain Orders with Reserve Size may be ranked on the Nasdaq Book at the midpoint of the National Best Bid or Offer (''NBBO''). Finally, the Exchange proposes three amendments related to the operation of Reserve Size for Test Group Three Pilot Securities: (i) Change references from ''Reserve Order'' to ''Order with Reserve Size''; (ii) clarify that the Reserve Size attribute is only available for Price to Comply Orders and Price to Display Orders entered via the RASH FIX, or QIX protocols; and (iii) clarify the handling of Orders with Reserve Size in scenarios where such Orders are entered at a price that locks a Protected Quotation on an away market center.

[9] In Partial Amendment No. 2, the Exchange proposes to delete certain rule text to remove the proposed re-pricing functionality for resting Price to Comply Orders, resting Non-Displayed Orders, and resting Post-Only Orders entered via OUCH or FLITE protocols for Test group Three Pilot Securities. The Exchange explained that its systems were re-programmed for Test Group Three Pilot Securities to permit resting Price to Comply Orders, resting Non-Displayed Orders, and resting Post-Only Orders entered via OUCH or FLITE protocols to repeatedly re-price in response to changes to the NBBO and/or the Nasdaq best Bid or Offer (''BBO''). Nasdaq noted that it is currently re-programming its systems to remove the proposed functionality. Further, Nasdaq stated that if it appears that the multiple re-pricing functionality will remain operational by October 17, 2016, the Exchange will file a proposed rule change with the Commission and provide notice to market participants sufficiently in advance of that date. The proposed rule change and notice to market participants will describe the current operation of the systems and

Continued

Exchange filed Partial Amendment No. 3 to the proposed rule change.[10]

This order provides notice of filing of Partial Amendment Nos. 1, 2 and 3, and approves the proposal, as modified by Partial Amendment Nos. 1, 2 and 3, on an accelerated basis.

II. Description of the Amended Proposal

The Exchange's proposed rule change provides for changed functionality to certain Order Types[11] and Order Attributes[12] applicable to Pilot Securities to implement the Plan. Proposed Nasdaq Rule 4770(d) would specify the order handling, executing, re-pricing and displaying for the following Order Types in Pilot Securities: (i) Price to Comply Orders; (ii) Non-Displayed Orders; (iii) Post-Only Orders; (iv) Midpoint Peg Post-Only Orders; (v) Supplemental Orders; and (vi) Market Maker Peg Orders. The following Order Attributes would also be amended: (i) Midpoint Pegging; (ii) Reserve Size; and (iii) Good-till-Cancelled. In addition, amended Nasdaq Rule 4770(d)(1) specifies that any Order Type in a security of any of the Test Groups that requires a price and does not qualify for an exception, will not be accepted if it is in a minimum price increment (''MPI'') other than $0.05.[13]

The Exchange also proposes to amend the definition of the term ''Trade-at Intermarket Sweep Order'' (''TA ISO'') and one of the TA ISO exceptions to the Trade-at Prohibition.[14] Finally, the Exchange is proposing to modify the Block Size Order exception to the Trade-at Prohibition and add a related commentary.[15]

A. Amendments to Order Type Functionality

1. Price To Comply Orders[16]

The Exchange proposes that a Price to Comply Order in a Test Group Pilot Security would operate consistent with current Nasdaq Rule 4702(b)(1) except as provided below. Specifically, if a Price to Comply Order for a Test Group Three Pilot Security partially executes on entry and the remainder would lock the Protected Quotation of another market center, the unexecuted portion of the Order would be cancelled. In addition, if a Price to Comply Order for a Test Group Three Pilot Security to buy (sell) is not executable against any orders residing on the Nasdaq Book and its limit price would lock or cross the Protected Quotation of another market center, the Order would display at one MPI below (above) the Protected Quotation and be ranked at the current midpoint of the NBBO on the Nasdaq Book.[17]

2. Non-Displayed Orders[18]

The Exchange proposes that a Non-Displayed Order in a Test Group Pilot Security would operate consistent with current Nasdaq Rule 4702(b)(3) except as provided below. Specifically, a resting Non-Displayed Order in a Test Group Three Pilot Security could not execute at the price of a Protected Quotation of another market center unless the incoming Order qualifies for an exception to the Trade-at Prohibition.[19] In addition, for Test Group Three Pilot Securities, if the limit price of a buy (sell) Non-Displayed Order would lock or cross a Protected Quotation of another market center, the Order would be ranked on the Nasdaq Book at either one MPI below (above) the National Best Offer (''NBO'') ((National Best Bid) (''NBB'')) or at the midpoint of the NBBO, whichever is higher (lower).[20] Further, for a Non-Displayed Order in a Test Group Three Pilot Security, entered via RASH, QIX or FIX, if after being posted to the Nasdaq Book the NBBO changes such that the Order would not be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order to buy (sell) would be re-priced to either one MPI below (above) the NBO (NBB) or the midpoint of the NBBO, whichever is higher (lower) and receive a new timestamp. In the same scenario, if the Non-Displayed Order was entered via OUCH or FLITE, instead of re-pricing, the Order would be cancelled back to the Participant.

3. Post-Only Orders[21]

The Exchange proposes that Post-Only Orders will operate consistent with current Nasdaq Rule 4702(b)(4) except as provided below. Specifically, for a not attributable Post-Only Order for a Test Group Three Pilot Security, if the limit price to buy (sell) would lock or cross a Protected Quotation of another market center, the Order would display at one MPI below (above) the Protected Quotation and would be ranked at the current midpoint of the NBBO on the Nasdaq Book.[22]

4. Midpoint Peg Post-Only Orders[23]

The Exchange proposes that a Midpoint Peg Post-Only Order in a Test Group Pilot Security will operate consistent with current Nasdaq Rule 4702(b)(5) and may execute at the midpoint of the NBBO in an increment other than the MPI.

5. Supplemental Orders[24]

The Exchange proposes that Supplemental Orders for Test Group One and Test Group Two Pilot Securities will operate consistent with current Nasdaq Rule 4702(b)(6). In addition, the Exchange proposes to not accept Supplemental Orders for Test Group Three Pilot Securities.

6. Market Maker Peg Orders[25]

The Exchange proposes that a Market Maker Peg Order in a Test Group Pilot Security will operate consistent with current Nasdaq Rule 4702(b)(7), except the displayed price of such an Order would be rounded up for bids (down for offers) to the nearest MPI (*i.e.,* $0.05) if it would otherwise display at an increment smaller than the MPI.

B. Amendments To Order Attribute Functionality

1. Midpoint Pegging[26]

The Exchange proposes that an Order with a Midpoint Pegging attribute in a Test Group Pilot Security will operate consistent with current Nasdaq Rule 4703(d). The Exchange also specifies that such Orders may execute at the midpoint of the NBBO in an increment other than the MPI.

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timing of re-programming. In any event, Nasdaq states that the removal of this functionality shall be completed no later than November 30, 2016. In addition, the Exchange proposes to modify the Block Size Order exception to the Trade-at Prohibition. Finally, the Exchange is making certain non-substantive, clarifying amendments.

[10] In Partial Amendment No. 3, the Exchange clarifies that it would not apply the Trade-at Prohibition outside of Regular Trading Hours.

[11] An ''Order Type'' is a standardized set of instructions associated with an order that define its behavior with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to the System. *See* Nasdaq Rule 4701(e).

[12] An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System. *See* Nasdaq Exchange Rule 4701(e). The availability of, and interaction between, Order Types and Order Attributes is described in Nasdaq Rules 4702 and 4703.

[13] Proposed Nasdaq Rule 4770(d)(1) clarifies that the System will use $0.05 as the MPI when re-pricing or rounding by the System.

[14] *See* proposed Nasdaq Rule 4770(a)(1)(D)(ii) and proposed Nasdaq Rule 4770(c)(3)(D)(iii)(j).

[15] *See* proposed Nasdaq Rule 4770(c)(3)(D)(iii)(c) and Nasdaq Rule 4770, proposed Commentary .12.

[16] *See* proposed Nasdaq Rule 4770(d)(2). *See also* Partial Amendment No. 2.

[17] *See* Partial Amendment No. 1.

[18] *See* proposed Nasdaq Rule 4770(d)(3). *See also* Partial Amendment No. 2.

[19] *See* Nasdaq Rule 4770(c)(3)(D).

[20] *See* Partial Amendment No. 1.

[21] *See* proposed Nasdaq Rule 4770(d)(4). *See also* Partial Amendment No. 2.

[22] *See* Partial Amendment No. 1.

[23] *See* proposed Nasdaq Rule 4770(d)(5).

[24] *See* proposed Nasdaq Rule 4770(d)(6).

[25] *See* proposed Nasdaq Rule 4770(d)(7).

[26] *See* proposed Nasdaq Rule 4770(d)(8).

2. Reserve Size [27]

The Exchange proposes that an Order with Reserve Size in a Test Group Pilot Security will operate consistent with current Nasdaq Rule 4703(h) except as described below. Specifically, a resting Order with Reserve Size in a Test Group Three Pilot Security (*i.e.,* a Price to Comply Order or a Price to Display Order entered via RASH, FIX or QIX) may not execute the non-displayed Reserve Size at the price of a Protected Quotation of another market center unless the incoming Order qualifies for an exception to the Trade-at Prohibition.[28] If an Order with Reserve Size for a Test Group Three Pilot Security is partially executed upon entry and the remainder would lock a Protected Quotation of another market center, the unexecuted portion of the Order would be cancelled. If a Price to Comply Order with Reserve Size to buy (sell) a Test Group Three Pilot Security is not executable against previously posted Orders on the Nasdaq Book, and has a limit price that would lock or cross a Protected Quotation of another market center, the displayed portion of the Order would display one MPI below (above) the Protected Quotation, and the displayed and non-displayed portions of the Order would be ranked at the current midpoint of the NBBO on the Nasdaq Book. If a Price to Display Order with Reserve Size is not executable against any previously posted Orders on the Nasdaq Book and its limit price would lock or cross a Protected Quotation of another market center, then the displayed portion of the Order would be displayed and ranked one MPI below (above) the Protected Quotation and the non-displayed portion of the Order would be ranked at the midpoint of the NBBO. If after being posted to the Exchange Book, the NBBO changes such that an Order with Reserve Size was not executable at its ranked price due to the requirements of Regulation NMS or the Plan, the Order would adjust as described above.

3. Good-Till-Cancelled [29]

The Exchange proposes that an Order with a Time-in-Force of Good-till-Cancelled in a Test Group Pilot Security will operate consistent with current Nasdaq Rule 4703(a)(3) except such Order would be adjusted based on a $0.05 increment.

[27] *See* proposed Nasdaq Rule 4770(d)(9). *See also* Partial Amendment No. 1.

[28] *See* Nasdaq Rule 4770(c)(3)(D).

[29] *See* proposed Nasdaq Rule 4770(d)(10).

C. Amendments to Certain Trade-at Prohibition Exceptions

1. TA ISO [30]

The Exchange proposes to add the phrase ''or Intermarket Sweep Orders'' (''ISO'') to the definition of TA ISO as well as to the related TA ISO exception to the Trade-at Prohibition [31] to clarify that ISOs may be routed to execute against the full displayed size of the Protected Quotation that was traded at.

2. Block Size Order Exception for the Trade-at Prohibition [32]

Currently, Nasdaq Rule 4770(c)(3)(D)(iii)(c) provides an exception to the Trade-at Prohibition for Block Size Orders.[33] The Exchange proposes in Commentary .12 that for purposes of qualifying for the exception Orders must have a size of 5,000 shares or more and the resulting execution upon entry is for a size of 5,000 shares or more in aggregate. In addition, Nasdaq proposes to amend the Block Size Order exception to the Trade-at Prohibition to allow execution on multiple Trading Centers to comply with Regulation NMS.[34]

III. Summary of Comments Received [35]

Both comment letters express support for the proposal 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 the Exchange would be able to meet the 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 the Commission staff's authority.

IV. Discussion and Commission's Findings

After careful review of the proposed rule change, as modified by Partial Amendment Nos. 1, 2 and 3, and the comment letters, the Commission finds that the proposal, as modified by Partial Amendment Nos. 1, 2 and 3, is consistent with the requirements of the Act, Rule 608 of Regulation NMS,[36] and the rules and regulations thereunder that are applicable to a national securities exchange.[37] Specifically, the Commission finds that the rule change is consistent with Section 6(b)(5) of the Act,[38] 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 to modify its handling of certain Order Types and Order Attributes during the Pilot Period. First, the Exchange proposes to clarify that it will not accept Orders in a Test Group Pilot Security in an increment other than $0.05 unless there is an applicable exception to the MPI. Second, the Exchange proposes to clarify that the displayed price of Market Maker Peg Orders for any Test Group Pilot Security would be rounded to the nearest MPI and that Good-till-Cancelled Orders for a Test Group Pilot Security would be adjusted based on the $0.05 increment. Finally, the Exchange proposes to clarify that Midpoint Peg Post-Only Orders and Orders with the Midpoint Pegging Attribute in a Test Group Pilot Security may execute at the midpoint of the NBBO in an increment other than the MPI.

The Exchange also proposes to modify the handling of certain Orders and Order Attributes in Test Group Three Pilot Securities, including: (i) Price to Comply Orders, (ii) Non-Displayed Orders, (iii) Post-Only Orders; (iv) Supplemental Orders, and (v) Orders

[30] *See* proposed Nasdaq Rule 4770(a)(1)(D)(ii).

[31] *See* proposed Nasdaq Rule 4770(c)(3)(D)(iii)(j).

[32] *See* proposed Nasdaq Rule 4770(c)(3)(D)(iii)(c) and Nasdaq Rule 4770, proposed Commentary .12.

[33] The plan defines Block Size as ''an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least $100,000. *See* Plan Section I(F).

[34] *See* proposed Nasdaq Rule 4770(c)(3)(D)(iii)(c). *See also* Partial Amendment No. 2.

[35] *See supra* note 7.

[36] 17 CFR 242.608.

[37] 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).

[38] 15 U.S.C. 78f(b)(5).

with Reserve Size. The proposed changes are intended to facilitate compliance with the Trade-at Prohibition.[39]

Finally, the Exchange proposes to amend provisions related to two exceptions to the Trade-at Prohibition. First, the Exchange proposes to amend the definition of TA ISO 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 applicable Trade-at Prohibition exception. Second, the Exchange proposes to amend the Trade-at Prohibition exception for Block Size Orders to allow such Orders to be executed on multiple Trading Centers. Further, the Exchange proposes that for purposes of the Block Size Order exception to the Trade-at Prohibition, the Order must have a size of 5,000 shares and the resulting execution upon entry must have a size of 5,000 shares or more in aggregate.[40]

The Commission believes that the proposed changes are reasonably designed to comply with the Plan. Further, the Commission believes that the proposed changes that target particular Test Groups are necessary for compliance with the Plan.[41] Accordingly, the Commission finds that these changes are consistent with Section 6(b)(5) of the Act[42] and Rule 608 of Regulation NMS[43] because they implement the Plan and clarify Exchange Rules.

For these reasons, the Commission finds that the proposed rule change, as modified by Partial Amendment Nos. 1, 2 and 3, is consistent with the requirements of the Act[44] and Rule 608 of Regulation NMS.[45]

V. Solicitation of Comments on Partial Amendment Nos. 1, 2 and 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as modified by Partial Amendment Nos. 1, 2 and 3, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–126 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–NASDAQ–2016–126. 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–NASDAQ–2016–126 and should be submitted on or before November 4, 2016.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment Nos. 1, 2 and 3

The Commission finds good cause to approve the proposed rule change, as modified by Partial Amendment Nos. 1, 2 and 3, prior to the thirtieth day after the date of publication of notice of the proposed rule change, as modified by Partial Amendment Nos. 1, 2 and 3 in the **Federal Register**. As described above, the Exchange proposes to amend its rules to comply with the Plan. The Commission notes that the Pilot started implementation on October 3, 2016, and accelerated approval of the proposal would ensure that the rules of the Exchange would be in place during implementation. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[46] to approve the proposed rule change, as modified by Partial Amendment Nos. 1, 2 and 3, on an accelerated basis.

VII. Conclusion

It is therefore ordered that, pursuant to Section 19(b)(2) of the Exchange Act,[47] that the proposed rule change (SR–NASDAQ–2016–126), as modified by Partial Amendment Nos. 1, 2 and 3, be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Robert W. Errett,

Deputy Secretary.

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[39] In Partial Amendment No. 3, the Exchange clarified that it would not apply the Trade-at Prohibition outside of Regular Trading Hours. The Commission notes that this is consistent with the Plan. *See* Plan Section I(LL).

[40] *See* also Exchange Rule 4770(c)(3)(D)(iii)(c).

[41] The Commission notes that the Exchange originally proposed to modify the operation of Post to Comply Orders, Non-Displayed Orders, and Post Only Orders entered via OUCH and FLITE for Test Group Three Pilot Securities only. In Partial Amendment No. 2, the Exchange proposes to remove the proposed functionality. Thus, the Commission believes that the proposal, as modified, is consistent with the Plan. The Exchange has committed to make the system changes necessary to implement Partial Amendment No. 2. If it appears that the system changes will not be completed by October 17, 2016, the date on which the Participants will begin implementation of Test Group 3, Nasdaq will file a proposed rule change with the Commission to propose any necessary changes to the Exchange's rules, and provide notice to market participants sufficiently in advance of this date to adequately inform market participants of the current operation of Nasdaq's systems. *See* Partial Amendment No. 2.

[42] 15 U.S.C. 78f(b)(5).

[43] 17 CFR 242.608.

[44] 15 U.S.C. 78f(b)(5).

[45] 17 CFR 242.608.

[46] 15 U.S.C. 78s(b)(2).

[47] *Id.*

[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79070; File No. SR-BatsBZX–2016–66]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of Bats BZX Exchange, Inc.

October 7, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2016, Bats BZX

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members [3] and non-members of the Exchange pursuant to BZX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to the Exchange's options platform (''BZX Options'') to: (i) Modify the Professional Penny Pilot Add Volume Tiers under footnote 9; (ii) remove fee codes PA and NA from footnote 4, NBBO Setter Tiers; (iii) modify the criteria for Tier 5 under footnote 1, Customer Penny Pilot Add; (iv) modify the criteria for the Tier 1 under footnote 3, Non-Customer Penny Pilot Take Volume; and (v) modify the criteria for Tier 1 under footnote 13, Non-Customer Non-Penny Pilot Take Volume.

Professional Penny Pilot Add Volume Tiers

The Exchange is proposing to add two new tiers under footnote 9, Professional Penny Pilot Add Volume Tiers,[4] Tier 3 and Tier 4. Currently, Professional [5] orders that add liquidity in Penny Pilot Securities [6] receive a standard rebate of $0.25 per contract. In addition, Members who qualify for Tier 1 and Tier 2 under footnote 9, Professional Penny Pilot Add Volume Tier, receive for such orders a rebate of $0.40 and $0.43, respectively. Under the proposed new Tier 3, a Member that has a combined ADAV [7] in Customer [8] and Professional orders equal to or greater than 0.30% of average TCV [9] would receive a $0.46 rebate per contract for each Professional order that adds liquidity in Penny Pilot Securities. Under the proposed new Tier 4, a Member that has a combined ADAV in Customer and Professional orders equal to or greater than 0.50% of average TCV would receive a $0.48 rebate per contract for each Professional order that adds liquidity in Penny Pilot Securities.

The Exchange is also proposing to modify the criteria necessary to qualify for the Professional Penny Pilot Add Volume Tier 1 and to increase the rebate provided under both Professional Penny Pilot Add Volume Tier 1 and Tier 2 under footnote 9. Currently under Tier 1, a Member must have an ADV [10] equal to or greater than 0.25% of average TCV in order to receive a rebate of $0.40. The Exchange now proposes an increased rebate of $0.42 pursuant to Tier 1 when a Member has an ADAV in Customer and Professional Orders equal to or greater than 0.10% of average TCV. Thus, in addition to increasing the rebate this change will align the structure of the criteria of Tier 1 with the structure of existing Tier 2 as well as new proposed Tiers 3 and 4 described above.

Under Tier 2 the Exchange presently provides a rebate of $0.43 for Members who have a combined ADAV in Customer and Professional orders equal to or greater than 0.20% of average TCV. The Exchange is proposing to increase the rebate under Tier 2 to $0.44. In addition, in order to ensure consistent terminology throughout footnote 9, the Exchange proposes to modify the description of Tier 2 to eliminate the reference to ''combined'' such that the Tier will apply when a Member has an ADAV in Customer and Professional orders equal to or greater than 0.20% of average TCV. The Exchange believes the use of the word ''combined'' in this case is unnecessary and inconsistent with other portions of the fee schedule.[11] The Exchange also notes that changes are required to the Standard Rates table of the fee schedule in connection with the changes to footnote 9 to reflect these changes.

NBBO Setter Tiers

The Exchange's NBBO Setter Program is a program intended to incentivize aggressive quoting on BZX Options by providing an additional rebate upon execution for all orders that add liquidity that set either the national best bid (''NBB'') or national best offer (''NBO''), subject to certain volume requirements. The Exchange currently operates four NBBO Setter Tiers that provide an additional rebate of either $0.02, $0.03 or $0.04 per contract to orders from qualifying Members that submit orders that yield fee codes PA, PF, PM, [sic] NA, NF, NM or NN.[12]

The Exchange does not propose to modify the criteria necessary to qualify for the NBBO Setter Tiers or the rebates provided thereunder, however the Exchange does propose to limit the applicability of Tier 1 through Tier 4 to fee codes PF, PM, PN, NF, NM, and NN. Thus, NBBO Setter Tiers rebates would no longer be provided to orders yielding fee codes PA or NA. The Exchange also proposes to eliminate references to

[3] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[4] In addition to the proposed substantive changes to footnote 9, the Exchange proposes to make the title of the footnote plural, as it currently reads ''Professional Penny Pilot Add Volume Tier'' even though there is more than one tier.

[5] As set forth in the Exchange's fee schedule, the term ''Professional'' applies to any transaction identified by a Member as such pursuant to Exchange Rule 16.1.

[6] ''Penny Pilot Securities'' are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01.

[7] As set forth in the Exchange's fee schedule, ''ADAV'' means average daily volume calculated as the number of contracts added per day.

[8] As set forth in the Exchange's fee schedule, the term ''Customer'' applies to any transaction identified by a Member for clearing in the Customer range at the Options Clearing Corporation (''OCC''), excluding any transaction for a Broker Dealer or a ''Professional'' as defined in Exchange Rule 16.1.

[9] As set forth in the Exchange's fee schedule, ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

[10] As set forth in the Exchange's fee schedule, ''ADV'' means average daily volume calculated as the number of contracts added or removed, combined, per day.

[11] *See, e.g.,* footnote 2, Tier 1, which simply refers to ADAV in orders representing multiple capacities (''Away MM/Firm/BD/JBO orders'').

[12] The Exchange notes that it also offers a fifth NBBO Setter Tier that provides an additional rebate of $0.05 per contract to orders from qualifying Members that submit orders that yield fee codes PF, PM and PN.

footnote 4 for each of these fee codes on the Fee Codes and Associated Fees chart.

Customer Penny Pilot Add Tiers

The Exchange currently offers a total of eight tiers under footnote 1, Customer Penny Pilot Add Tiers, which provide rebates for Customer orders in Penny Pilot Securities that add liquidity to BZX Options and yield fee code PY. The Exchange proposes to update the required criteria for Customer Add Volume Tier 5 under footnote 1 as set forth below.

Presently under Tier 5, the Exchange provides a rebate of $0.53 per contract for a Customer order where a Member: (1) Has an ADAV in Customer orders equal to or greater than 0.60% of average TCV; (2) has an ADAV in Market Maker [13] orders equal to or greater than 0.30% of average TCV; and (3) has on the Exchange's affiliated equity securities platform (''BZX Equities'') an ADAV equal to or greater than 0.30% of average TCV. The Exchange proposes to modify the second prong of these criteria to decrease the ADAV threshold in Market Maker orders from 0.30% to 0.25%.

Non-Customer Penny Pilot Take Volume Tiers

The Exchange currently offers a total of three tiers under footnote 3, Non-Customer Penny Pilot Take Volume Tiers, which provide discounted fees for Non-Customer orders in Penny Pilot Securities that remove liquidity from BZX Options under fee code PP. The Exchange proposes to update the required criteria for Tier 1, as set forth below.

The Exchange currently charges $0.44 per contract for Members that qualify for Non-Customer Volume Tier 1, which requires that a Member has (1) an ADAV in Customer orders equal to or greater than 0.60% of average TCV; (2) an ADAV in Market orders equal to or greater than 0.30%; and (3) on BZX Equities an ADAV equal to or greater than 0.30% of average TCV. The Exchange proposes to modify the second prong of these criteria to decrease the ADAV threshold in Market Maker orders from 0.30% to 0.25%.

Non-Customer Non-Penny Pilot Take Volume Tiers

The Exchange presently offers a total of three tiers under footnote 13, Non-Customer Non-Penny Pilot Take Volume Tiers,[14] which offer discounted fees for Non-Customer orders in No-Penny Pilot Securities that remove liquidity from BZX Options under fee code NP. The Exchange is proposing to update the required criteria for Tier 1 under footnote 13 as described below.

Currently, the Exchange charges $1.02 per contract for Members that qualify for Non-Customer Take Volume Tier 1, which requires that a Member has (1) an ADAV in Customer orders equal to or greater than 0.60% of average TCV; (2) an ADAV in Market Maker orders equal to or greater than 0.30% of average TCV; and (3) on BZX Equities an ADAV equal to or greater than 0.30% of average TCV. The Exchange is proposing to modify the second prong of these criteria to decrease the ADAV threshold in Market Maker orders from 0.30% to 0.25%.

Implementation Date

The Exchange proposes to implement these amendments to its fee schedule as of October 3, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[15] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[16] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive.

Volume-based rebates such as those currently maintained on the Exchange have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes.

The Exchange believes that its proposal to add two new Professional Penny Pilot Add Volume Tiers and update the required criteria and rebate amounts for Tier 1 and Tier 2 under footnote 9 is reasonable, fair and equitable and non-discriminatory, for the reasons set forth above with respect to volume-based pricing generally. In addition, the Exchange believes the amount of the proposed rebates offered under the new Professional Penny Pilot Add Volume Tiers, Tier 3 and Tier 4, are equitable and reasonable because they are generally in line with the proposed rebates offered pursuant to Professional Penny Pilot Add Volume Tier 1 and Tier 2. The Exchange believes that the proposed tiers are reasonable, fair and equitable, and non-discriminatory because they, like the Professional Penny Pilot Add Volume Tier generally, are aimed to incentivize active participation on the Exchange.

The Exchange believes that its proposal to remove fee codes PA and NA from footnote 4, NBBO Setter Tiers, is reasonable, fair and equitable and non-discriminatory, because the proposal coincides with the addition of new volume tiers and enhanced rebates for transactions that yield fee code PA. Thus, although Professional orders will no longer be able to qualify for NBBO Setter Tiers, there are additional ways to receive enhanced rebates and such rebates have also been increased. Similar to the pricing tiers discussed above, the Exchange believes this incentive is reasonably related to the value to the Exchange's market quality associated with higher levels of market activity, including liquidity provision and the introduction of higher volumes of orders into the price and volume discovery processes.

The proposed modifications to the criteria required to qualify for current Customer (Penny Pilot) Add Tier 5, Non-Customer (Penny Pilot) Take Volume Tier 1, and Non-Customer (Non-Penny Pilot) Take Volume Tier 1, are intended to incentivize additional Members to send Customer orders and/or Market Maker orders to the Exchange in an effort to qualify for the enhanced rebate or lower fee made available by the tiers. The Exchange believes that the proposal to require that the Member have an ADAV in Market Maker orders equal to or greater than 0.25% of average TCV under all three tiers is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will make it easier to qualify for enhanced rebates or reduced fees pursuant to such tiers. The

[13] As set forth in the Exchange's fee schedule, the term ''Market Maker'' applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is registered with the Exchange as a Market Maker as defined in Rule 16.1(a)(37).

[14] In addition to the proposed substantive changes to footnote 13, the Exchange proposes to make the title of the footnote plural, as it currently reads ''Non-Customer Non-Penny Pilot Take Volume Tier'' even though there is more than one tier.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4).

increased liquidity from this proposal also benefits all investors by deepening the BZX Options liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Such pricing programs thereby reward a Member's growth pattern on the Exchange and such increased volume increases potential revenue to the Exchange, and will allow the Exchange to continue to provide and potentially expand the incentive programs operated by the Exchange. The Exchange believes that the proposal is reasonable, equitably allocated and non-discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of BZX Options. As noted above, such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange. The proposed pricing program is also fair and equitable in that membership in BZX Options is available to all market participants which would provide them with access to the benefits on BZX Options provided by the proposed changes, as described above, even where a member of BZX Options is not necessarily eligible for the proposed increased rebates on the Exchange. Further, the proposed changes will result in Members receiving either the same or an increased rebate than they would currently receive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed amendments to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange has designed the proposed amendments to its fee schedule in order to enhance its ability to compete with other exchanges. Also, the Exchange believes that the addition of volume-tiered rebates by the Exchange contributes to rather than burdens competition, as such changes are intended to incentivize participants to increase their participation on the Exchange. Similarly, the modifications to criteria applicable to existing volume-tiered rebates and fees are intended to provide incentives to Members to encourage them to enter orders to the Exchange, and thus are intended to enhance competition.

Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes to the Exchange's tiered pricing structure burdens competition, but instead, enhances competition as it is intended to increase the competitiveness of the Exchange. Also, the Exchange believes that the price changes contribute to, rather than burden competition, as such changes are broadly intended to incentivize participants to increase their participation on the Exchange, which will increase the liquidity and market quality on the Exchange, which will then further enhance the Exchange's ability to compete with other exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and paragraph (f) of Rule 19b–4 thereunder.[18] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-BatsBZX–2016–66 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-BatsBZX–2016–66. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2016–66, and should be submitted on or before November 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24838 Filed 10–13–16; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79076; File No. SR–BX–2016–050]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing of Partial Amendment Nos. 1 and 3, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Partial Amendment Nos. 1 and 3, to System Functionality Necessary To Implement the Regulation NMS Plan To Implement a Tick Size Pilot Program

October 7, 2016.

I. Introduction

On September 7, 2016, NASDAQ BX, Inc. (''Exchange'' or ''BX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt paragraph (d) and Commentary .12 to BX Rule 4770 to change System [3] functionality necessary to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program (''Plan'' or ''Pilot'').[4] The Exchange is also proposing amendments to BX Rule 4770(a) and (c) to clarify certain exceptions to the Trade-at Prohibition.[5] The proposed rule change was published for comment in the **Federal Register** on September 20, 2016.[6] The Commission received two comment letters in response to the Notice.[7] On September 29, 2016, the Exchange filed Partial Amendment No. 1 to the proposed rule change.[8] On October 4, 2016, the Exchange filed Partial Amendment No. 2 to the proposed rule change. On October 7, 2016, the Exchange withdrew Amendment No. 2 and filed Partial Amendment No. 3 to the proposed rule change.[9]

This order provides notice of filing of Partial Amendment Nos. 1 and 3, and approves the proposal, as modified by Partial Amendment Nos. 1 and 3, on an accelerated basis.

II. Description of the Amended Proposal

The Exchange's proposed rule change provides for changed functionality to certain Order Types [10] and Order Attributes [11] applicable to Pilot Securities to implement the Plan. Proposed BX Rule 4770(d) would specify the order handling, executing, re-pricing and displaying for the following Order Types in Pilot Securities: (i) Price to Comply Orders; (ii) Non-Displayed Orders; (iii) Post-Only Orders; (iv) Retail Price Improving Orders; (v) Retail Orders; and (vi) Market Maker Peg Orders. The following Order Attributes would also be amended: (i) Midpoint Pegging; (ii) Reserve Size; and (iii) Good-till-Cancelled. In addition, amended BX Rule 4770(d)(1) specifies that any Order Type in a security of any of the Test Groups that requires a price and does not qualify for an exception, will not be accepted if it is in a minimum price increment (''MPI'') other than $0.05.[12]

The Exchange also proposes to amend the definition of the term ''Trade-at Intermarket Sweep Order'' (''TA ISO'') and one of the TA ISO exceptions to the Trade-at Prohibition.[13] Finally, the Exchange is proposing to modify the Block Size Order exception to the Trade-at Prohibition and add a related commentary.[14]

A. Amendments To Order Type Functionality

1. Price to Comply Orders [15]

The Exchange proposes that a Price to Comply Order in a Test Group Pilot Security would operate consistent with current BX Rule 4702(b)(1) except as provided below. Specifically, if a Price to Comply Order for a Test Group Three Pilot Security partially executes on entry and the remainder would lock the Protected Quotation of another market center, the unexecuted portion of the Order would be cancelled. In addition, if a Price to Comply Order for a Test Group Three Pilot Security to buy (sell) is not executable against any orders residing on the Exchange Book and its limit price would lock or cross the Protected Quotation of another market center, the Order would display at one MPI below (above) the Protected

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''System'' is defined as the automated system for order execution and trade reporting owned and operated by BX. *See* BX Rule 4701(a).

[4] *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 rule filing are defined as set forth in the Plan.

[5] BX Rule 4770(c)(3)(D)(i) 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 VI(D).

[6] Securities Exchange Act Release No. 78838 (September 14, 2016), 81 FR 64566 (''Notice'').

[7] *See* Letters to Brent J. Fields, Secretary, Commission, from Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange, Inc.; Eric Swanson, EVP, General Counsel and Secretary, BATS Global Markets, Inc.; Thomas A. Wittman, EVP, Global Head of Equities, Nasdaq, Inc., dated September 9, 2016 (''Comment Letter No. 1'') and from Eric Swanson, EVP, General Counsel and Secretary, BATS Global Markets, Inc., dated September 12, 2016 (''Comment Letter No. 2'').

[8] In Partial Amendment No. 1, the Exchange proposes to change references in the rule text from ''added to the Exchange Book'' to ''ranked on the Exchange Book'' as applicable for Price to Comply Orders, Non-Displayed Orders, Post-Only Orders, and Orders with Reserve Size. The Exchange also proposes to clarify that in certain cases Price to Comply Orders, not attributable Post-Only Orders, and certain Orders with Reserve Size may be ranked on the Exchange Book at the midpoint of the National Best Bid or Offer (''NBBO''). Finally, the Exchange proposes three amendments related to the operation of Reserve Size for Test Group Three Pilot Securities: (i) Change references from ''Reserve Order'' to ''Order with Reserve Size''; (ii) clarify that the Reserve Size attribute is only available for Price to Comply Orders and Price to Display Orders entered via the RASH or FIX protocols; and (iii) clarify the handling of Orders with Reserve Size in scenarios where such Orders are entered at a price that locks a Protected Quotation on an away market center.

[9] In Partial Amendment No. 3, the Exchange proposes to delete certain rule text to remove the re-pricing functionality for resting Price to Comply Orders, resting Non-Displayed Orders, and resting Post-Only Orders entered via OUCH or FLITE protocols for Test Group Three Pilot Securities. The Exchange explained that its systems were re-programmed for Test Group Three Pilot Securities to permit resting Price to Comply Orders, resting Non-Displayed Orders, and resting Post-Only Orders entered via OUCH or FLITE protocols to repeatedly re-price in response to changes to the NBBO and/or the Exchange's best Bid or Offer (''BBO''). The Exchange noted that it is currently re-programming its systems to remove the proposed functionality. Further, the Exchange stated that if it appears that the multiple re-pricing functionality will remain operational by October 17, 2016, the Exchange will file a proposed rule change with the Commission and provide notice to market participants sufficiently in advance of that date. The proposed rule change and notice to market participants will describe the current operation of the systems and timing of re-programming. In any event, the Exchange states that the removal of this functionality shall be completed no later than November 30, 2016. In addition, the Exchange proposes to modify the Block Size Order exception to the Trade-at Prohibition. The Exchange also clarified that that it would not apply the Trade-at Prohibition outside of Regular Trading Hours. Finally, the Exchange is making certain non-substantive, clarifying amendments.

[10] An ''Order Type'' is a standardized set of instructions associated with an order that define its behavior with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System. *See* BX Rule 4701(e).

[11] An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Exchange Book when submitted to the System. *See* BX Rule 4701(e). The availability of, and interaction between, Order Types and Order Attributes is described in BX Rules 4702 and 4703.

[12] Proposed BX Rule 4770(d)(1) clarifies that the System will use $0.05 as the MPI when re-pricing or rounding by the System.

[13] *See* proposed BX Rule 4770(a)(1)(D)(ii) and proposed BX Rule 4770(c)(3)(D)(iii)(j).

[14] *See* proposed BX Rule 4770(c)(3)(D)(iii)(c) and BX Rule 4770, proposed Commentary .12.

[15] *See* proposed BX Rule 4770(d)(2). *See also* Partial Amendment No. 3.

Quotation and be ranked at the current midpoint of the NBBO on the Exchange Book.[16]

2. Non-Displayed Orders [17]

The Exchange proposes that a Non-Displayed Order in a Test Group Pilot Security would operate consistent with current BX Rule 4702(b)(3) except as provided below. Specifically, a resting Non-Displayed Order in a Test Group Three Pilot Security could not execute at the price of a Protected Quotation of another market center unless the incoming Order qualifies for an exception to the Trade-at Prohibition.[18] In addition, for Test Group Three Pilot Securities, if the limit price of a buy (sell) Non-Displayed Order would lock or cross a Protected Quotation of another market center, the Order would be ranked on the Exchange Book at either one MPI below (above) the National Best Offer (''NBO'') ((National Best Bid) (''NBB'')) or at the midpoint of the NBBO, whichever is higher (lower).[19] Further, for a Non-Displayed Order in a Test Group Three Pilot Security entered via RASH or FIX, if after being posted to the Exchange Book, the NBBO changes such that the Order would not be executable at its posted price due to the requirements of Regulation NMS or the Plan, the Non-Displayed Order to buy (sell) would be re-priced to either one MPI below (above) the NBO (NBB) or the midpoint of the NBBO, whichever is higher (lower) and receive a new timestamp. In the same scenario, if the Non-Displayed Order was entered via OUCH or FLITE, instead of re-pricing, the Order would be cancelled back to the Participant.

3. Post-Only Orders [20]

The Exchange proposes that Post-Only Orders will operate consistent with current BX Rule 4702(b)(4) except as provided below. Specifically, for a not attributable Post-Only Order for a Test Group Three Pilot Security, if the limit price to buy (sell) would lock or cross a Protected Quotation of another market center, the Order would display at one MPI below (above) the Protected Quotation and would be ranked at the current midpoint of the NBBO on the Exchange Book.[21]

4. Retail Price Improving Orders [22]

The Exchange proposes that Retail Price Improving Orders for Test Group Pilot Securities will operate consistently with current BX Rule 4702(b)(5) except as provided below. Specifically, a Retail Price Improving Order for a Test Group Two or Test Group Three Pilot Security must be entered in a MPI of $0.005 and will only execute against Retail Orders if its price is at least $0.005 better than the NBBO.

5. Retail Orders [23]

The Exchange proposes that Retail Orders for Test Group Pilot Securities will operate consistently with current BX Rule 4702(b)(6) except as provided below. Specifically, a Retail Order in a Test Group One Pilot Security must be entered with a limit price in a MPI and may execute in an increment other than a MPI if the order is provided price improvement of at least $0.001 better than the NBBO. In addition, a Retail Order in a Test Group Two or Test Group Three Pilot Security must be entered in a MPI and may execute in an increment other than a MPI if the order is provided price improvement that is at least $0.005 better than the NBBO.

6. Market Maker Peg Orders [24]

The Exchange proposes that a Market Maker Peg Order for Test Group Pilot Securities will operate consistent with current BX Rule 4702(b)(7) except the displayed price of such an Order would be rounded up for bids (down for offers) to the nearest MPI (*i.e.,* $0.05) if it would otherwise display at an increment smaller than the MPI.

B. Amendments To Order Attribute Functionality

1. Midpoint Pegging [25]

The Exchange proposes that an Order with a Midpoint Pegging attribute in a Test Group Pilot Security will operate consistent with current BX Rule 4703(d). The Exchange also specifies that such Orders may execute at the midpoint of the NBBO in an increment other than the MPI.

2. Reserve Size [26]

The Exchange proposes that an Order with Reserve Size in a Test Group Pilot Security will operate consistent with current BX Rule 4703(h) except as described below. Specifically, a resting Order with Reserve Size in a Test Group Three Pilot Security (*i.e.,* a Price to Comply Order or a Price to Display Order entered via RASH or FIX) may not execute the non-displayed Reserve Size at the price of a Protected Quotation of another market center unless the incoming Order qualifies for an exception to the Trade-at Prohibition.[27] If an Order with Reserve Size for a Test Group Three Pilot Security is partially executed upon entry and the remainder would lock a Protected Quotation of another market center, the unexecuted portion of the Order would be cancelled. If a Price to Comply Order with Reserve Size to buy (sell) a Test Group Three Pilot Security is not executable against previously posted Orders on the Exchange Book, and has a limit price that would lock or cross a Protected Quotation of another market center, the displayed portion of the Order would display one MPI below (above) the Protected Quotation, and the displayed and non-displayed portions of the Order, would be ranked at the current midpoint of the NBBO on the Exchange Book. If a Price to Display Order with Reserve Size is not executable against any previously posted Orders on the Exchange Book and its limit price would lock or cross a Protected Quotation of another market center, then the displayed portion of the Order would be displayed and ranked one MPI below (above) the Protected Quotation and the non-displayed portion of the Order would be ranked at the midpoint of the NBBO. If after being posted to the Exchange Book, the NBBO changes such that an Order with Reserve Size was not executable at its ranked price due to the requirements of Regulation NMS or the Plan, the Order would adjust as described above.

3. Good-till-Cancelled [28]

The Exchange proposes that an Order with a Time-in-Force of Good-till-Cancelled in a Test Group Pilot Security will operate consistent with current BX Rule 4703(a)(3) except such Order would be adjusted based on a $0.05 increment.

C. Amendments to Certain Trade-at Prohibition Exceptions

1. TA ISO [29]

The Exchange proposes to add the phrase ''or Intermarket Sweep Orders'' (''ISO'') to the definition of TA ISO as well as to the related TA ISO exception to the Trade-at Prohibition[30] to clarify

[16] *See* Partial Amendment No. 1.

[17] *See* proposed BX Rule 4770(d)(3). *See also* Partial Amendment No. 3.

[18] *See* BX Rule 4770(c)(3)(D).

[19] *See* Partial Amendment No. 1.

[20] *See* proposed BX Rule 4770(d)(4). *See also* Partial Amendment No. 3.

[21] *See* Partial Amendment No. 1.

[22] *See* proposed BX Rule 4770(d)(5).

[23] *See* proposed BX Rule 4770(d)(6).

[24] *See* proposed BX Rule 4770(d)(7).

[25] *See* proposed BX Rule 4770(d)(8).

[26] *See* proposed BX Rule 4770(d)(9). *See also* Partial Amendment No. 1.

[27] *See* BX Rule 4770(c)(3)(D).

[28] *See* proposed BX Rule 4770(d)(10).

[29] *See* proposed BX Rule 4770(a)(1)(D)(ii).

[30] *See* proposed BX Rule 4770(c)(3)(D)(iii)(j).

that ISOs may be routed to execute against the full displayed size of the Protected Quotation that was traded at.

2. Block Size Order exception for the Trade-at Prohibition [31]

Currently, BX Rule 4770(c)(3)(D)(iii)(c) provides an exception to the Trade-at Prohibition for Block Size Orders.[32] The Exchange proposes in Commentary .12 that for purposes of qualifying for the exception Orders must have a size of 5,000 shares or more and the resulting execution upon entry is for a size of 5,000 shares or more in aggregate. In addition, the Exchange proposes to amend the Block Size Order exception to the Trade-at Prohibition to allow execution on multiple Trading Centers to comply with Regulation NMS.[33]

III. Summary of Comments Received [34]

Both comment letters express support for the proposal 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 the Exchange would be able to meet the 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 the Commission staff's authority.

IV. Discussion and Commission's Findings

After careful review of the proposed rule change, as modified by both Partial Amendment Nos. 1 and No. 3, and the comment letters, the Commission finds that the proposal, as modified by Partial Amendment Nos. 1 and 3, 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,[37] 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 to modify its handling of certain Order Types and Order Attributes during the Pilot Period. First, the Exchange proposes to clarify that it will not accept Orders in a Test Group Pilot Security in an increment other than $0.05 unless there is an applicable exception to the MPI. Second, the Exchange proposes to clarify that the displayed price of Market Maker Peg Orders for any Test Group Pilot Security would be rounded to the nearest MPI and that Good-till-Cancelled Orders for a Test Group Pilot Security would be adjusted based on the $0.05 increment. Finally, the Exchange proposes to clarify that Orders with Midpoint Pegging Attribute in a Test Group Pilot Security may execute at the midpoint of the NBBO in an increment other than the MPI.

The Exchange clarifies the operation of Retail Price Improving Orders in Test Group Two and Test Group Three Pilot Securities. In addition, the Exchange proposes to clarify how Retail Orders for Test Group One Pilot Securities must be entered in the $0.05 MPI but may execute in an increment other than a MPI if it is provided with price improvement of at least $0.001. Retail Orders in Test Group Two and Test Group Three Pilot Securities must be entered in a MPI and may execute in an increment other than the $0.05 if the Order is provided with price improvement of at least $0.005 better than the NBBO.

The Exchange also proposes to modify the handling of certain Orders and Order Attributes in Test Group Three Pilot Securities, including: (i) Price to Comply Orders; (ii) Non-Displayed Orders; (iii) Post-Only Orders; and (iv) Orders with Reserve Size. The proposed changes are intended to facilitate compliance with the Trade-at Prohibition.[38]

Finally, the Exchange proposes to amend provisions related to two exceptions to the Trade-at Prohibition. First, the Exchange proposes to amend the definition of TA ISO 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 applicable Trade-at Prohibition exception. Second, the Exchange proposes to amend the Trade-at Prohibition exception for Block Size Orders to allow such Orders to be executed on multiple Trading Centers. Further, the Exchange proposes that for purposes of the Block Size Order exception to the Trade-at Prohibition, the Order must have a size of 5,000 shares and the resulting execution upon entry must have a size of 5,000 shares or more in aggregate.[39]

The Commission believes that the proposed changes are reasonably designed to comply with the Plan. Further, the Commission believes that the proposed changes that target particular Test Groups are necessary for compliance with the Plan.[40] Accordingly, the Commission finds that these changes are consistent with Section 6(b)(5) of the Act [41] and Rule 608 of Regulation NMS [42] because they implement the Plan and clarify Exchange Rules.

For these reasons, the Commission finds that the proposed rule change, as modified by Partial Amendment Nos. 1

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[31] *See* proposed BX Rule 4770(c)(3)(D)(iii)(c) and BX Rule 4770, proposed Commentary .12.

[32] The plan defines Block Size as ''an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least $100,000. *See* Plan Section I(F).

[33] *See* proposed BX Rule 4770(c)(3)(D)(iii)(c). *See also* Partial Amendment No. 3.

[34] *See supra* note 7.

[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] 15 U.S.C. 78f(b)(5).

[38] In Partial Amendment No. 3, the Exchange clarified that it would not apply the Trade-at Prohibition outside of Regular Trading Hours. The Commission notes that this is consistent with the Plan. *See* Plan Section I(LL).

[39] *See also* BX Rule 4770(c)(3)(D)(iii)(c).

[40] The Commission notes that the Exchange originally proposed to modify the operation of Post to Comply Orders, Non-Displayed Orders, and Post Only Orders entered via OUCH and FLITE for Test Group Three Pilot Securities only. In Partial Amendment No. 3, the Exchange proposes to remove the proposed functionality. Thus, the Commission believes that the proposal, as modified, is consistent with the Plan. The Exchange has committed to make the system changes necessary to implement Partial Amendment No. 3. If it appears that the system changes will not be completed by October 17, 2016, the date on which the Participants will begin implementation of Test Group 3,the Exchange will file a proposed rule change with the Commission to propose any necessary changes to the Exchange's rules and provide notice to market participants sufficiently in advance of this date to adequately inform market participants of the current operation of the Exchange's systems. *See* Partial Amendment No. 3.

[41] 15 U.S.C. 78f(b)(5).

[42] 17 CFR 242.608.

and 3, is consistent with the requirements of the Act[43] and Rule 608 of Regulation NMS.[44]

V. Solicitation of Comments on Partial Amendment Nos. 1 and 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as modified by Partial Amendment Nos. 1 and 3, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2016–050 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–BX–2016–050. 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–BX–2016–050 and should be submitted on or before November 4, 2016.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment Nos.1 and 3

The Commission finds good cause to approve the proposed rule change, as modified by Partial Amendment Nos. 1 and 3, prior to the thirtieth day after the date of publication of notice of the proposed rule change, as modified by Partial Amendment Nos. 1 and 3 in the **Federal Register**. As described above, the Exchange proposes to amend its rules to comply with the Plan. The Commission notes that the Pilot started implementation on October 3, 2016, and accelerated approval of the proposal would ensure that the rules of the Exchange would be in place during implementation. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[45] to approve the proposed rule change, as modified by Partial Amendment Nos. 1 and 3, on an accelerated basis.

VII. Conclusion

It is therefore ordered that, pursuant to Section 19(b)(2) of the Exchange Act,[46] that the proposed rule change (SR–BX–2016–050), as modified by Partial Amendment Nos. 1 and 3, be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24842 Filed 10–13–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79073; File No. SR–Phlx–2016–97]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change To Delete Outdated or Unnecessary Rule Language

October 7, 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 27, 2016, NASDAQ PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to delete outdated or unnecessary rule language contained in Rule 1020, Registration and Functions of Options Specialists, section (b) and Commentary .01 through .06.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 1020 contains provisions relating to registration and functions of options specialists.[3] Rule 1020's provisions were initially adopted in the 1970s, in the early days of exchange trading of options. As explained below, the rule reflects the trading context in which it was adopted. Various provisions of the rule are consequently very outdated.

The Exchange is therefore proposing to delete obsolete and unnecessary language from section (b) and from Commentary .01 through Commentary

[43] 15 U.S.C. 78f(b)(5).

[44] 17 CFR 242.608.

[45] 15 U.S.C. 78s(b)(2).

[46] *Id.*

[47] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''specialist'' is an Exchange member who is registered as an options specialist pursuant to Exchange Rule 1020(a). Specialists are subject to quoting and registration obligations set forth in Rules 1014(b), 1020, and 1080.02.

.06 of Rule 1020 pertaining to the obligations of specialists. The Exchange proposes to delete the language in question in order to prevent any confusion that may result from obsolete provisions, to eliminate unnecessary language, and to ensure that the rulebook accurately reflects specialists' obligations in the context of the manner in which trading is conducted today.

Section (b)

Rule 1020 provides that, as a condition of being registered as a specialist in one or more options, a member has an obligation to assist in the maintenance of a fair and orderly market. The rule currently provides that this obligation exists for a specialist ''in addition to the execution of orders entrusted him in such options.'' The Exchange is deleting the language regarding execution of entrusted orders. Specialists no longer manually handle or execute others' orders due to the Exchange's migration to a new electronic trading system (''Phlx XL II'') in 2009.[4] The Phlx XL II enhancements were designed to improve the execution quality for its Phlx users by improving a number of processes, including the opening process, the order handling process and the execution of orders process. As a consequence of this migration a manual book no longer exists and specialists no longer enter manual orders entrusted to them onto the electronic limit order book.[5] Specialists no longer handle any agency orders whatsoever in their role as specialists. The Exchange proposes to delete the language in question in order to prevent any confusion that may result from this obsolete provision and to ensure that the rulebook accurately reflects member obligations.

Commentary .01

Commentary .01 applies to transactions of a specialist for his own account that establish or increase a position. It provides that in ''effecting transactions'' for his own account for the purpose of establishing or increasing a position, a specialist is to effect such transactions in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular option and the adequacy of his position to the immediate and reasonably anticipated needs of the options market. It provides that the following types of transactions to establish or increase a position are not to be effected except when they are reasonably necessary to render the specialist's position adequate to such needs: (a) A purchase at a price above the last sale in the same trading session; (b) the purchase of all or substantially all the options offered on the book at a price equal to the last sale, when the option so offered represents all or substantially all the options offered in the market; and when a substantial amount of an option is offered at a price equal to the last sale price, the purchase of more than 50% of all the options offered at the last sale price; (c) the supplying of all or substantially all the options bid for on the book at a price equal to the last sale, when the option so bid for represents all or substantially all the options bid for in the market; and when a substantial amount of the options bid for at a price equal to the last sale price, the supplying of more than 50% of all the options bid for at the last sale price; (d) failing to re-offer or re-bid where necessary after effecting transactions described in (a), (b), or (c). The rule permits transactions of these types to be effected, however, with the approval of an Options Exchange Official or in relatively inactive markets where they are an essential part of a proper course of dealings and where the amount of an option involved and the price change, if any, are normal in relation to the market.

The Exchange proposes to delete the last sentence of Commentary .01, and sections (a) through (d) of Commentary .01, because a specialist is unable to comply with its requirements given the way trading is conducted today in the PHLX XL trading system. Specialists today only rarely ''effect transactions'' in the sense of matching bids and offers to cause an execution to occur. Rather, they submit bids and offers to be matched. Although a specialist may ''effect transactions'' with a market maker on the Exchange's trading floor, the vast majority of transactions are executed electronically by the trading system and the specialist may be unable to determine the price of the last sale which would be required to comply with the language being deleted. Thus, for example, given electronic quoting and the absence of specialist control over the book, there is no way a specialist can guarantee that a purchase is at a price above the last sale in the same trading session. Because he will not know the price at which trading will occur, he cannot comply with Commentary .01 (a)—(d).

Although these tick-based rules may have been appropriate for and worked well in a market where substantially all trading was conducted manually, at a pace that enabled individuals to discern ''tick'' changes easily and which tolerated the time it took to call an Options Exchange Official into the crowd to approve a particular specialist's transaction, they are inappropriate now where trading is substantially electronic and the speed and frequency of executions and quote changes preclude individuals from being able to accurate track ''ticks'' or stop trading to allow for Options Exchange Official involvement.[6] The rules of the NASDAQ Options Market (''NOM'') do not contain comparable provisions with respect to market makers.

Commentary .02

Commentary .02 applies to transactions of a specialist for his own account that liquidate or decrease his position in an option in which he is registered. It provides that such transactions are to be ''effected'' in a reasonable and orderly manner in relation to the condition of the general market, the market in the particular option and the adequacy of the specialist's positions to the immediate and reasonably anticipated needs of the options market. It also provides that, in this connection, unless he has the prior approval of an Options Exchange Official, he should avoid: (a) Liquidation of all or substantially all of a position by selling options at prices below the last different price or by purchasing options at prices above the last different price unless such transactions are reasonably necessary in relation to the specialist's overall position in the options in which he is registered; (b) failing to maintain a fair and orderly market during liquidations;

[4] In May 2009, the Exchange enhanced the options trading system and adopted corresponding rules referring to it as ''Phlx XL II.'' *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). Thereafter, the Exchange submitted a number of filings updating various rules and deleting obsolete provisions. *See* Securities Exchange Act Release Nos. 61397 (January 22, 2010), 75 FR 4893 (January 29, 2010) (SR–Phlx–2010–07); 63036 (October 4, 2010), 75 FR 62621 (October 12, 2010) (SR–Phlx–2010–131); and 67469 (July 19, 2012), 77 FR 43633 (July 25, 2012) (SR–Phlx–2012–92).

[5] Specifically, the Exchange has stated that no orders will be executed, and therefore handled, manually in Phlx XL II. *See* Securities Exchange Act Release No. 59721 (April 7, 2009), 74 FR 17245 (April 14, 2009) (SR–Phlx–2009–32) (Notice of Filing of Proposed Rule Change Relating to the Exchange's Enhanced Electronic Trading Platform for Options, Phlx XL II at 17258). Rules governing the obligations of Specialists, such as quoting and registration obligations, still exist. *See, e.g.,* Rules 1014(b) and 1020.

[6] *See* Securities Exchange Act Release No. 54860 (December 1, 2006), 71 FR 71221 (December 8, 2006) (SR–NYSE–2006–76) in which the New York Stock Exchange advanced this explanation in support of proposed changes to its specialist stabilization rules.

or (c) failing to re-enter the market where necessary, after effecting transactions described in (a) above.

The Exchange proposes to delete part of the last sentence of Commentary .02 as well as sections (a) through (c) of Commentary .02. The Exchange believes that while these rules may have made sense when they were adopted, changes in market structure and technology in the succeeding decades, such as the shift to trading in penny increments, dispersion of order flow to multiple competing market centers, consolidation and availability of market data, and enhancements in trading, communications and surveillance technology have made these rules anticompetitive anachronisms.

As discussed above, given the way trading is conducted today in the PHLX XL trading system, a specialist may be unable to determine the ''last different price'' as required to comply with section (a). Section (b) is being deleted as redundant of Rule 1020(b) which already contains the ''fair and orderly'' requirement. Section (c) is being deleted because it depends on Section (a) which is being deleted as discussed above. Finally, the NOM rules do not contain comparable provisions with respect to market makers.[7] The language is therefore operationally obsolete, as explained above. Moreover, having clear and up-to-date rules should promote just and equitable principles of trade on the Exchange.

Commentary .03

Commentary .03 provides that a specialist's quotation, made for his own account, should be such that a transaction effected at his quoted price or within the quoted spread, whether having the effect of reducing or increasing the specialist's position, would bear a proper relation to preceding transactions and anticipated succeeding transactions. The Exchange proposes to delete Commentary .03 because given the speed of trading that occurs today on the Phlx XL trading system, a specialist may not have knowledge of the preceding transactions to which his quotation would relate, much less any anticipated succeeding transactions. Without affecting his liquidity, the specialist cannot possibly look at every single transaction, nor can he know how the transactions relate to one another. Prior to the advent of electronic trading, a specialist would announce his quote verbally, which was a very slow process. Today, a specialist would not be able to adjust quotes as needed to comply with Commentary .03 before the quotes are accessed.

The NOM rules do not contain comparable provisions with respect to market makers. The language is an unnecessary and anticompetitive burden on Phlx specialists, because market makers on NOM which fulfill a comparable role to Phlx specialists are not subject to a comparable requirement.

Commentary .04

Commentary .04 applies to opening or reopening an option. It provides that a specialist should avoid participating as a dealer in opening or reopening an option in such a manner as to reverse the balance of public supply and demand as reflected by market and limited price orders at or near the price of the previous close or halt, unless the condition of the general market or the specialist's position in light of the reasonably anticipated needs of the market make it advisable to do so, or unless the specialist has obtained the prior approval of an Options Exchange Official to do so. The rule provides that he may, however, buy or sell an option as a dealer to minimize the disparity between supply and demand at an opening or reopening. The Exchange proposes to delete Commentary .04 in its entirety because the Specialist no longer manually opens options classes. Rather, the PHLX XL trading system handles the opening and re-opening of options in accordance with Phlx Rule 1017. While the Specialist is required to provide a quote, he or she is no more involved in resolving imbalances than any other market maker. All aspects of the opening are done automatically by the system.

Commentary .05

Commentary .05 prohibits a member acting as a specialist from effecting transactions for the purpose of adjusting a LIFO inventory in an option in which he is so acting except as a part of a course of dealings reasonably necessary to assist in the maintenance of a fair and orderly market. This rule largely tracks former NYSE rule 104.13 which was designed to prevent year-end purchases or sales for the purpose of obtaining tax advantages under the LIFO system of valuing inventory.[8]

The Exchange proposes to delete Commentary .05 in its entirety because the Exchange believes it is unnecessary. The NOM rules do not contain a comparable provision for market makers. Additionally, the Exchange was unable to locate a comparable Chicago Board Options Exchange (''CBOE'') rule. The language is an unnecessary and anticompetitive burden on Phlx specialists, because market makers on NOM which fulfill a comparable role to Phlx specialists are not subject to a comparable requirement.

Commentary .06

Commentary .06 provides that under certain circumstances a specialist may assign options in which he is registered to an investment account. Purchases creating or adding to a position in an investment account may not be made unless reasonably necessary to permit the specialist to assist in the maintenance of a fair and orderly market. The Exchange is deleting this sentence because it believes it is not necessary. Specialists have their ''specialist account.'' Any executions on their quotes are placed into their specialist accounts. While an ''investment account'' may have played a role in early days of trading, the Exchange is unaware today of what such an account might consist of or its purpose—consequently, the Exchange perceives no need to regulate it or fashion rules around it.

Commentary .06 states that in the maintenance of price continuity with reasonable depth, it is commonly desirable for a specialist to supply options to the market, even though he may have to sell short to do so, to the extent reasonably necessary to meet the needs of the market. This sentence is being deleted because the Exchange believes its rules should not include statements of ''desirable'' behavior.

Finally, Commentary .06 provides that a specialist may not effect a transfer of options in which he is registered from his dealer account to an investment account if the transfer would result in creating a short position in the dealer account. This Exchange is deleting this sentence because it is unnecessary, for the reasons specified above relating to investment accounts.

The NOM rules do not contain provisions comparable to the provisions of Commentary .06 with respect to its market makers. The language is an unnecessary and anticompetitive burden on Phlx specialists, because market makers on NOM which fulfill a comparable role to Phlx specialists are not subject to comparable requirements.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

[7] The Exchange believes that the fact that NOM does not have a trading floor is irrelevant.

[8] *See* Securities Exchange Act Release No. 7432, 29 FR 13777 (October 6, 1964).

of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by deleting unnecessary and obsolete provisions and generally providing clarity to the rules.

Specifically, the deletion of a portion of the Rule 1020 Section (b) and Commentary provisions discussed above is consistent with the Act because this rule language is operationally obsolete, as explained above; moreover, having clear and up to date rules should promote just and equitable principles of trade on the Exchange. The proposal should result in a more accurate and understandable rule book, particularly for Exchange specialists who no longer operate a book or handle orders manually. The Exchange's goal with respect to the deletion of language is to ensure that the rulebook accurate reflects member obligations in the context of how trading takes place on the Exchange today, which should protect investors and the public interest. The Exchange's proposal will also delete unnecessary provisions that, because they are not present in the NOM rulebook with respect to market makers, represent an anticompetitive burden on Phlx specialists as discussed above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Removing unnecessary regulatory burdens should enhance a Phlx specialist's ability to compete with market makers on Phlx and on other exchanges who are not burdened with similar requirements.

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 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–97 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–Phlx–2016–97. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–97, and should be submitted on or before November 4, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–24836 Filed 10–13–16; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 14888 and # 14889]

Florida Disaster Number FL–00119

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of FLORIDA (FEMA–4280–DR), dated 09/28/2016.

Incident: Hurricane Hermine.

Incident Period: 08/31/2016 through 09/11/2016.

Effective Date: 09/30/2016.

Physical Loan Application Deadline Date: 11/28/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 06/28/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Florida, dated 09/28/2016, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Alachua, Baker, Gilchrist, Manatee, Marion, Sarasota, Sumter, Union.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–24826 Filed 10–13–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14890 Disaster #ZZ–00012]

The Entire United States and U.S. Territories

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Military Reservist Economic Injury Disaster Loan Program (MREIDL), dated 10/01/2016.

EFFECTIVE DATE: 10/01/2016.

MREIDL LOAN APPLICATION DEADLINE DATE: 1 year after the essential employee is discharged or released from active duty.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of Public Law 106–50, the Veterans entrepreneurship and Small Business Development Act of 1999, and the Military Reservist and Veteran Small Business Reauthorization Act of 2008, this notice establishes the application filing period for the Military Reservist Economic Injury Disaster Loan Program (MREIDL). Effective 10/01/2016, small businesses employing military reservists may apply for economic injury disaster loans if those employees are called up to active duty during a period of military conflict or have received notice of an expected call-up, and those employees are essential to the success of the small business daily operations.

The purpose of the MREIDL program is to provide funds to an eligible small business to meet its ordinary and necessary operating expenses that it could have met, but is unable to meet, because an essential employee was called-up or expects to be called-up to active duty in his or her role as a military reservist. These loans are intended only to provide the amount of working capital needed by a small business to pay its necessary obligations as they mature until operations return to normal after the essential employee is released from active duty. For information/applications contact 1–800–659–2955 or visit *www.sba.gov.*

Applications for the Military Reservist Economic Injury Disaster Loan Program may be filed at the above address.

	Percent
The Interest Rate for eligible small businesses is	4.000

The number assigned is 14890 0.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–24830 Filed 10–13–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 14903 and # 14904]

Mississippi Disaster # MS–00092

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Mississippi dated 10/06/2016.

Incident: Severe Storms and Flooding.

Incident Period: 08/12/2016 through 08/14/2016.

Effective Date: 10/06/2016.

Physical Loan Application Deadline Date: 12/05/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 07/06/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Wilkinson
Contiguous Counties:
Mississippi: Adams, Amite, Franklin
Louisiana: Concordia, East Feliciana, West Feliciana

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.125
Homeowners Without Credit Available Elsewhere	1.563
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14903 B and for economic injury is 14904 0.

The States which received an EIDL Declaration # are Mississippi; Louisiana.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: October 6, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–24921 Filed 10–13–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14905 and #14906]

Iowa Disaster #IA–00068

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of IOWA (FEMA–4281–DR), dated 09/29/2016.

Incident: Severe Storms, Straight-line Winds, and Flooding.

Incident Period: 08/23/2016 through 08/27/2016.

Effective Date: 09/29/2016.

Physical Loan Application Deadline Date: 11/28/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 06/29/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on

09/29/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Allamakee, Chickasaw, Clayton, Fayette, Floyd, Howard, Mitchell, Winneshiek

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14905B and for economic injury is 14906B.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–24918 Filed 10–13–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14893 and #14894]

North Carolina Disaster #NC–00079

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of North Carolina dated 10/05/2016.

Incident: Severe Storms and Flooding.

Incident Period: 09/21/2016.

Effective Date: 10/05/2016.

Physical Loan Application Deadline Date: 12/05/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 07/05/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bertie

Contiguous Counties:

North Carolina: Chowan, Halifax, Hertford, Martin, Northampton, Washington

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.125
Homeowners Without Credit Available Elsewhere	1.563
Businesses With Credit Available Elsewhere	6.250
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere ...	2.625
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14893 B and for economic injury is 14894 0.

The State which received an EIDL Declaration # is North Carolina.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: October 5, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–24827 Filed 10–13–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9759]

Certification Pursuant to Section 7045(A)(3)(B) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016

By virtue of the authority vested in me as Deputy Secretary of State by Department of State Delegation of Authority 245–1, and pursuant to section 7045(a)(3)(B) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2016 (Div. K, Pub. L. 114–113), I hereby certify that the central government of Honduras is taking effective steps to:

- Establish an autonomous, publicly accountable entity to provide oversight of the Plan [of the Alliance for Prosperity in the Northern Triangle of Central America];
- Combat corruption, including investigating and prosecuting government officials credibly alleged to be corrupt;
- Implement reforms, policies, and programs to improve transparency and strengthen public institutions, including increasing the capacity and independence of the judiciary and the Office of the Attorney General;
- Establish and implement a policy that local communities, civil society organizations (including indigenous and other marginalized groups), and local governments are consulted in the design, and participate in the implementation and evaluation of, activities of the Plan that affect such communities, organizations, and governments;
- Counter the activities of criminal gangs, drug traffickers, and organized crime;
- Investigate and prosecute in the civilian justice system members of military and police forces who are credibly alleged to have violated human rights, and ensure that the military and police are cooperating in such cases;
- Cooperate with commissions against impunity, as appropriate, and with regional human rights entities;
- Support programs to reduce poverty, create jobs, and promote equitable economic growth in areas contributing to large numbers of migrants;
- Establish and implement a plan to create a professional, accountable civilian police force and curtail the role of the military in internal policing;
- Protect the right of political opposition parties, journalists, trade unionists, human rights defenders, and other civil society activists to operate without interference;
- Increase government revenues, including by implementing tax reforms and strengthening customs agencies; and
- Resolve commercial disputes, including the confiscation of real property, between United States entities and such government.

This certification shall be published in the **Federal Register** and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated: September 30, 2016.

Heather A. Higginbottom,

Deputy Secretary of State.

[FR Doc. 2016–24894 Filed 10–13–16; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice: 9755]

Department of State Performance Review Board Members

In accordance with section 4314(c)(4) of 5 United States Code, the Department of State has appointed the following individuals to the Department of State Performance Review Board for Senior Executive Service members:

Alan Evans, Chairperson, Deputy Comptroller, Bureau of the Comptroller and Global Financial Services, Department of State;
Nerissa Cook, Deputy Assistant Secretary, Bureau of International Organizations, Department of State;
Paul Dean, Assistant Legal Adviser, Office of the Legal Adviser, Department of State;
Wanda Nesbitt, Dean, Foreign Service Institute, Department of State; and,
William Todd, Principal Deputy Assistant Secretary, Bureau of South and Central Asian Affairs, Department of State.

Dated: September 22, 2016.

Arnold Chacon,

Director General of the Foreign Service and Director of Human Resources, Department of State.

[FR Doc. 2016–24895 Filed 10–13–16; 8:45 am]

BILLING CODE 4710–15–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 35347 (Sub-No. 1)]

Elkhart & Western Railroad Co.—Amended Lease and Operation Exemption Containing Interchange Commitment—Norfolk Southern Railway Company

Elkhart & Western Railroad Co. (EWR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to continue to lease and operate approximately 23.0 miles of rail line from Norfolk Southern Railway Company (NSR) between MP I 108.6 +/− (at Argos, Ind.) to MP I 131.6 +/− (at Walkerton, Ind.) (the Line).[1]

According to EWR, it first entered into a lease agreement (Original Agreement) with NSR in 2010. *See Elkhart & W. R.R.—Lease & Operation Exemption—Norfolk S. Ry.,* FD 35347 (STB served Feb. 19, 2010). On July 21, 2016, EWR and NSR agreed to amend the Original Agreement (1st Agreement Amendment) to extend the agreement's termination date an additional five years, through December 31, 2024, and amend certain other specific terms of the agreement.[2] EWR states that the 1st Agreement Amendment will take effect on or after the effective date of the notice of exemption.

According to EWR, it will continue to interchange traffic with NSR at a track in the vicinity of the Argo Yard. EWR states that the Original Agreement, as modified by the 1st Agreement Amendment, does not prohibit or limit EWR from interchanging with third-party connecting carriers that connect to the Line, nor does the modified agreement set forth terms governing EWR's interchange of traffic with such third-party carriers. According to EWR, the Original Agreement, as modified by the 1st Agreement Amendment, contains a provision specifically permitting EWR unrestricted interchange with other carriers. However, EWR certifies that the Original Agreement, as modified by the 1st Agreement Amendment, does contain lease credits, a type of interchange commitment. As required under 49 CFR 1150.43(h)(1), EWR has disclosed in its verified notice that the Original Agreement, as modified by the 1st Agreement Amendment, affects the interchange point of MP I 131.6 +/− (at Walkerton, Ind.) and MP 118.3 (at Plymouth, Ind.). EWR has also provided additional information regarding the interchange commitment.

EWR also certifies that the projected annual revenues do not exceed those that would qualify it as a Class II or Class I rail carrier and would not exceed $5 million.

The proposed transaction may be consummated on October 29, 2016, the effective date of the exemption (30 days after the verified notice of exemption was filed). If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than October 21, 2016 (at least seven days before the exemption becomes effective.)

An original and ten copies of all pleadings, referring to Docket No. FD 35347 (Sub-No. 1), 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, William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

Board decisions and notices are available on our Web site at ''*WWW.STB.GOV*.''

Decided: October 11, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Marline Simeon,

Clearance Clerk.

[FR Doc. 2016–24870 Filed 10–13–16; 8:45 am]

BILLING CODE 4915–01–P

[1] EWR also has local trackage rights over approximately 13 miles of rail line owned by Fulton County, LLC, extending from MP 1–95.6 at Rochester, Fulton County, Ind., to MP I–108.6, where it connects with the Line. *Elkhart & W. R.R.—Trackage Rights Exemption—Fulton Cty., LLC,* FD 35453 (STB served Feb. 9, 2011).

[2] EWR filed a confidential, complete version of the 1st Agreement Amendment with its notice of exemption to be kept confidential by the Board under 49 CFR 1104.14(a) without the need for the filing of an accompanying motion for protective order under 49 CFR 1104.14(b).

SURFACE TRANSPORTATION BOARD

[Docket No. AB 57 (Sub-No. 64X)]

Soo Line Railroad Company—Abandonment of Trackage Located in Burleigh County, N.D.

Soo Line Railroad Company d/b/a Canadian Pacific (Soo Line) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 0.9-mile line of railroad between milepost 417.99 +/− and milepost 418.89 +/− in Burleigh County, N.D. (Line). The Line traverses United States Postal Zip Codes 58501 and 58504.

Soo Line has certified that: (1) No local traffic has moved over the Line for at least two years: (2) any overhead traffic can be and has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Board or any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch*

Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on November 15, 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 24, 2016. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 3, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to Soo Line'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.

Soo Line 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 21, 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), Soo Line 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 Soo Line's filing of a notice of consummation by October 14, 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 11, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2016–24886 Filed 10–13–16; 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 $1,700. *See Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.—2016 Update,* EP 542 (Sub-No. 24) (STB served Aug. 2, 2016).

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36068]

The Indiana Rail Road Company—Trackage Rights Exemption—CSX Transportation, Inc.

The Indiana Rail Road Company (INRD), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for its acquisition of trackage rights over a line of railroad of CSX Transportation, Inc. (CSXT) between approximately milepost OZA 204.5 at Sullivan, Ind., and milepost OZA 219.05 at Oaktown, Ind., a distance of approximately 14.55 miles (the Line).

INRD states that, pursuant to a May 15, 2008 trackage rights agreement and two subsequent supplements to that agreement, dated as of August 1, 2009, and November 20, 2009, INRD holds trackage rights over CSXT's rail line from Sullivan to Carlisle and Oaktown, Ind.,[1] for the purpose of handling unit coat trains from mines at Carlisle and Oaktown to specified destinations on INRD or other railroads with which INRD interchanges.

Pursuant to a written Supplemental Agreement No. 6 (Agreement) dated September 1, 2016,[2] CSXT has agreed to grant additional limited, temporary trackage rights to INRD over the Line. The purpose of the transaction is to allow INRD to handle loaded and empty coal trains between the Oaktown Mine and the Kentucky Utilities Generating Station in Harrodsburg, Ky., in interline service with other rail carriers.[3] The Agreement provides that the trackage rights are temporary in nature and are scheduled to expire on December 31, 2017.[4]

The transaction may be consummated on or after October 29, 2016, the effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 21, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36068, 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 Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our Web site at ''*WWW.STB.GOV.*''

Decided: October 11, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Marline Simeon,

Clearance Clerk.

[FR Doc. 2016–24876 Filed 10–13–16; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Ind. Rail Rd.—Trackage Rights Exemption—CSX Transp., Inc.,* FD 35328 (STB served Dec. 31, 2009); *Ind. Rail Rd.—Trackage Rights Exemption—CSX Transp., Inc.,* FD 35287 (STB served Sept. 2, 2009); *Ind. Rail Rd.—Amended Trackage Rights Exemption—CSX Transp., Inc.,* FD 35137 (STB served May 22, 2008).

[2] The fully executed Agreement between CSXT and INRD was filed with the notice as Exhibit 2.

[3] INRD's notice of exemption initially described the trackage rights as ''local.'' However, on October 4, 2016, INRD filed a supplement in which it states that, beyond serving the mine at Oaktown, the temporary trackage rights will not allow INRD to provide local service at any points between Sullivan and Oaktown.

[4] INRD states that, because the temporary trackage rights established by the Agreement are longer than one year in duration, it is not filing under the Board's class exemption for temporary trackage rights under 49 CFR 1180.2(d)(8). Instead, INRD has filed under the trackage rights class exemption at 1180.2(d)(7). Concurrently, INRD has filed, in Docket No. FD36068 (Sub-No. 1), a petition for partial revocation of this exemption to permit these proposed trackage rights to expire on December 31, 2017, as provided in the Agreement. The Board will address that petition in a separate decision.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36067]

New Orleans Public Belt Railroad—Temporary Trackage Rights Exemption—Illinois Central Railroad Company

The New Orleans Public Belt Railroad (NOPB), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(8) for its acquisition of temporary overhead trackage rights over a line of railroad of the Illinois Central Railroad Company (IC), over two segments of IC's rail lines as follows: (1) IC's McComb Subdivision, between IC's connection with the Kansas City Southern Railway Company (KCS) at or near IC milepost 906.4 at East Bridge Junction in Shrewsbury, La., and IC milepost 900.8 at Orleans Junction in New Orleans, La. (approximately 5.6 miles), and (2) IC's Baton Rouge Subdivision, between IC milepost 444.2 at Orleans Junction and IC milepost 443.5 at Frellsen Junction in New Orleans, La. (approximately 0.7 miles), a total distance of approximately 6.3 miles the Line).

NOPB states that, pursuant to a written trackage rights agreement (Agreement) dated September 16, 2016,[1] IC has agreed to grant the specified temporary overhead trackage rights to New Orleans Public Belt Railroad (NOPB) over the Line. NOPB states that it intends to consummate the transaction on or after October 28, 2016, the effective date of the exemption (30 days after the verified notice of exemption was filed). The sole purpose of the trackage rights is to allow NOPB to temporarily interchange with KCS on KCS trackage which requires NOPB to operate over IC's 6.3 miles of trackage. The temporary trackage rights will expire on January 31, 2017.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). 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 21, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36067, 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, Audrey L. Brodrick, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

According to NOPB, 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 11, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2016–24909 Filed 10–13–16; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted copy of the Agreement between NOPB and IC was filed with the notice. An unredacted copy was filed under seal along with a motion for protective order pursuant to 49 CFR 1194.14(a). That motion will be addressed in a separate decision.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36074]

WRL, LLC—Acquisition Exemption—City of Tacoma, Department of Public Works

WRL, LLC (WRL), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from the City of Tacoma, Department of Public Works d/b/a Tacoma Rail (Tacoma Rail), approximately 34.6 miles of rail line between milepost 33C and milepost 67.6 in Lewis and Thurston Counties, Wash. (the Line). The Line is currently operated by Western Washington Railroad, LLC (WWRR). *See W. Wash. R.R.—Lease & Operation Exemption—City of Tacoma, Dep't of Pub. Works,* FD 35921 (STB served July 29, 2015).

According to WRL, it expects to enter into an agreement with Tacoma Rail on or about October 4, 2016, pursuant to which it will acquire the Line from Tacoma Rail. WRL states that WWRR will continue to be the operator of the Line. WRL also states that the proposed transaction does not involve any provision that prohibits, restricts, or would otherwise limit future interchange of traffic with any third-party carrier.

WRL certifies that, as a result of the proposed transaction, its projected revenues will not result in its becoming a Class I or Class II rail carrier and will not exceed $5 million.

WRL states that the parties intend to consummate the transaction immediately after the effective date of the exemption. The earliest this transaction may be consummated is October 30, 2016 (30 days after the verified notice of exemption was filed).

According to WRL, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic review under 49 CFR 1105.8(b).

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 21, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36074, 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 James H.M. Savage, 22 Rockingham Court, Germantown, MD 20874.

Board decisions and notices are available on our Web site at ''*WWW.STB.GOV.*''

Decided: October 11, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2016–24861 Filed 10–13–16; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2016–0018; Dispute Number WTO/DS510]

WTO Dispute Settlement Proceeding Regarding United States—Certain Measures Relating to the Renewable Energy Sector

AGENCY: Office of the United States Trade Representative.

ACTION: Notice with request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on September 9, 2016, India requested consultations with the United States under the *Marrakesh Agreement Establishing the World Trade Organization* (WTO Agreement) concerning certain measures relating to the renewable energy sector in the United States. You can find that request at *www.wto.org* in a document designated as WT/DS510/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, you should submit your comment on or before November 25, 2016, to be assured of timely consideration by USTR.

ADDRESSES: You should submit written comments through the Federal eRulemaking Portal: *http://www.regulations.gov,* docket number USTR–2016–0018. Follow the instructions for submitting comments in section III below. For alternatives to on-line submissions, please contact Sandy McKinzy at (202) 395–9483. If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Robert Anderson, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street NW., Washington DC 20508, (202) 395–7630.

SUPPLEMENTARY INFORMATION:

I. Background

USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU). If these consultations do not resolve the matter and a dispute settlement panel is established pursuant to the DSU, the panel, which would hold its meetings in Geneva Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

II. Major Issues Raised by India

On September 9 2016, India requested consultations concerning certain U.S. measures relating to domestic content requirements and subsidies instituted by the governments of the states of Washington, California, Montana, Massachusetts, Connecticut, Michigan, Delaware and Minnesota (collectively, US States), in the energy sector. India alleges that these domestic content requirements and subsidies are maintained under the following instruments.

1. Renewable Energy Cost Recovery Incentive Payment Program (RECIP) maintained under the authority of the Revised Code of Washington (RCW 82.16.110 through 82.16.130) and the Washington Administrative Code (WAC 458–20–273).
2. State of California Self-Generation Incentive Program (SGIP) under the California Public Utilities Code (Sections 360–380), as modified by the Senate Bill 412, and the SGIP Handbook 2015.
3. Los Angeles Department of Water and Power's (LADWP) Solar Incentive Program implemented by the LADWP under the Solar Photovoltaic (PV) Incentive Program Guidelines.
4. Montana Tax Incentive for Ethanol Production (TIEP) under the Ethanol Tax Incentive and Administration Act of 1983 (Montana Code Annotated 2015, Section 15–70–522).
5. Montana Tax Credit for Biodiesel Blending and Storage under Montana Code Annotated 2015, Section 15–32–703.
6. Refund for Taxes paid on Biodiesel by Distributor or Retailer under the Montana Code Annotated 2015, Section 15–70–433.
7. Massachusetts Clean Energy Centre's Commonwealth Solar Hot Water Program, (CSHWP) under Chapter 307 of the Acts of 2008 (Green Jobs Act of 2008), codified in Chapter 23J of the Massachusetts General Laws read with the Residential and Small Scale Solar Hot Water Program Manual and the Commercial Scale Solar Hot Water Program Manual.
8. Connecticut Residential Solar Investment Program (CRSIP) under 2012 Connecticut General Statutes, Title 16, Chapter 283, Section 16–245ff read with 2014 Connecticut General Statutes, Title 16, Chapter 283, Section 16–245gg.
9. Michigan Energy Credits under the Clean, Renewable and Efficient Energy Act, 2008 (CREEA), Chapter 460, Section 27/(Section 460.1027) and 39(2)/(Section 460.1039); and Experimental Advanced Renewable Energy Program (EARP) under Section 21/(Section 460.1021) of the CREEA read with Rule C10.3 of the Rate Book for Electric Service adopted by Consumers Energy Company and approved by the Michigan Public Service Commission.
10. Delaware Solar Renewable Energy Credits under the Renewable Energy Portfolio Standards Act 2005 (RPS Act). Delaware Administrative Code, Title 26, Public Utilities, Rules and Procedures to Implement the Renewable Energy Portfolio Standard.
11. Made in Minnesota Solar Incentive Program (MSIP) administered pursuant to the criterion established under the Made in Minnesota Solar Energy Production Incentive law (Minnesota Statute § 216C.414, subd. 2 (2013)).

India alleges inconsistencies with Articles III:4 and XVI:1 of the *General Agreement on Tariffs and Trade 1994;* Article 2.1 of the *Agreement on Trade-related Investment Measures;* Articles 3.1(b), 3.2, 5(a), 5(c), 6.3(a), 6.3(c), and 25 of the Agreement on Subsidies and Countervailing Measures; and Article XVI:4 of the *Marrakesh Agreement* establishing the World Trade Organization.

III. Public Comments: Requirements for Submissions

USTR invites written comments concerning the issues raised in this dispute. You should submit your comment electronically to *www.regulations.gov,* docket number USTR–2016–0018. For alternatives to electronic submissions, contact Sandy McKinzy at (202) 395–9483.

To submit comments via *www.regulations.gov,* enter docket number USTR–2016–0018 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting Notice under Document Type on the left side of the search-results page, and click on the link entitled ''Comment Now!'' For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use Regulations.gov'' on the bottom of the home page.

The *www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comment'' field, or by attaching a document using an ''Upload File'' field. USTR prefers that comments be provided in an attached document. If

a document is attached, it is sufficient to type ''See attached'' in the ''Type Comment'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Type Comment'' field.

Submit any comments containing business confidential information by fax to Sandy McKinzy at (202) 395–3640. A person requesting that information contained in a comment be treated as confidential business information must certify that s/he would not customarily release the information to the public. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top and bottom of that page. Filers of submissions containing business confidential information also must submit a public version of their comments electronically through *regulations.gov.* The non-confidential summary will be placed in the docket and will be open to public inspection.

USTR may determine that information or advice contained in a comment, other than business confidential information, is confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If a submitter believes that information or advice is confidential, s/he must clearly designate the information or advice as confidential and mark it as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page, and provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR–2016–0018, accessible to the public at *www.regulations.gov.* The public file will include non-confidential public comments USTR receives regarding the dispute. If a dispute settlement panel is convened, or in the event of an appeal from a panel, USTR will make the following documents publicly available at *www.ustr.gov:* The U.S. submissions and any non-confidential summaries of submissions received from other participants in the dispute. If a dispute settlement panel is convened, or in the event of an appeal from a panel, the report of the panel, and, if applicable, the report of the Appellate Body, will also be available on the Web site of the World Trade Organization, at *www.wto.org.*

Juan Millan,

Assistant United States Trade Representative for Monitoring and Enforcement, Office of the U.S. Trade Representative.

[FR Doc. 2016–24796 Filed 10–13–16; 8:45 am]

BILLING CODE 3290–F7–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Federal Aviation Administration Record of Decision and Adoption of Department of Navy's Final Environmental Impact Statement for Military Readiness Activities at the Naval Weapons Systems Training Facility Boardman, Oregon

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of record of decision.

SUMMARY: The Federal Aviation Administration (FAA) announces its decision to adopt the Department of the Navy's (DoN) Final Environmental Impact Statement (EIS) for Military Readiness Activities at Naval Weapons Systems Training Facility Boardman, Oregon, EIS No. 20150355. In accordance with Section 102 of the National Environmental Policy Act of 1969 (''NEPA''), the Council on Environmental Quality's (''CEQ'') regulations implementing NEPA (40 CFR parts 1500–1508), and other applicable authorities, including The Federal Aviation Administration (FAA) Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8–2, and FAA Order JO 7400.2K, ''Procedures for Handling Airspace Matters,'' paragraph 32–2–3, the FAA has conducted an independent review and evaluation of the DoN's Final Environmental Impact Statement (EIS) for Military Readiness Activities at the at Naval Weapons Systems Training Facility (NWSTF) Boardman, Oregon, dated December 2015. As a cooperating agency with responsibility for approving special use airspace under 49 U.S.C. 40103(b)(3)(A), the FAA provided subject matter expertise and closely coordinated with the DoN during the environmental review process, including preparation of the Draft EIS and the Final EIS. Based on its independent review and evaluation, the FAA has determined the Final EIS, including its supporting documentation, as incorporated by reference, adequately assesses and discloses the environmental impacts of the for Military Readiness Activities at the at NWSTF Boardman, Oregon, and that adoption of the Final EIS by the FAA is authorized under 40 CFR 1506.3, Adoption. Accordingly, the FAA adopts the FEIS, and takes full responsibility for the scope and content that addresses the proposed changes to special use airspace for NWSTF Boardman.

FOR FURTHER INFORMATION CONTACT: Paula Miller, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7378.

SUPPLEMENTAL INFORMATION:

Background

In August 2012, in accordance with the National Environmental Policy Act and its implementing regulations, the DoN released a Draft EIS. The Draft EIS presented the potential environmental consequences of the DoN's proposal to achieve and maintain military readiness by analyzing the military training activities at NWSTF Boardman, Oregon. As a result of public, agency, and tribal comments during the 60-day public comment period on the Draft EIS, and the FAA aeronautical review process, the DoN, FAA, other federal and state agencies, and tribal governments have consulted to mitigate concerns while continuing to meet national defense training requirements. The DoN is the proponent for the NWSTF Boardman and is the lead agency for the preparation of the FEIS. The FAA is a cooperating agency responsible for approving special use airspace as defined in 40 CFR 1508.5.

Implementation

As a result of the public comments received, the aeronautical studies, environmental analysis, the FAA is establishing the Boardman Low Military Operations Area (MOA) and amending the Boardman MOA. The Boardman MOA legal description has been modified from the description circularized to the public from July 18 through August 31, 2014. After the conclusion of the Aeronautical Study comment period, the FAA changed the coordinates of the airspace action to incorporate the proposed expansion that was circularized to the public consistent with the intent of the proposal stated in the circular and Aeronautical Study recommendation. The result is the change amends the existing Boardman MOA's description instead of creating a separate MOA for the expansion area. One coordinate in the Boardman Low MOA was changed to more accurately

reflect the airspace action. The revised legal descriptions do not change the special use airspace request or the analysis done in the Final EIS and the Aeronautical Study. The modification to the legal description did not change the area of analysis; therefore, the environmental and aeronautical analyses are still valid. The legal descriptions for the Boardman MOAs being established, as noted in this notice, will be published in the NFDD with a November 10, 2016 effective date. A copy of the FAA Record of Decision is available on the FAA Web site.

Right of Appeal

The Adoption/ROD for the changes to the Boardman MOAs constitutes a final order of the FAA Administrator and is subject to exclusive judicial review under 49 U.S.C. 46110 by the U.S. Circuit Court of Appeals for the District of Columbia or the U.S. Circuit Court of Appeals for the circuit in which the person contesting the decision resides or has its principal place of business. Any party having substantial interest in this order may apply for review of the decision by filing a petition for review in the appropriate U.S. Court of Appeals no later than 60 days after the date of this notice in accordance with the provisions of 49 U.S.C. 46110. Any party seeking to stay implementation of the action as stated in the ROD must file an application with the FAA prior to seeking judicial relief as provided in Rule 18(a) of the Federal Rules of Appellate Procedure.

Dated: October 6, 2016.

Richard Roberts,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–24890 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2013–0048]

Notice of Funding Opportunity for Accelerated Innovation Deployment Demonstration

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Correction.

SUMMARY: This notice corrects information in the September 1, 2016, Notice of Funding Opportunity (NOFO) at 81 FR 60403 in reference to the amount of time by which a project must be authorized after applying for Accelerated Innovation Deployment (AID) Demonstration funding.

DATES: The FHWA will use an open, rolling solicitation. The project must be authorized within 12 months of applying for AID Demonstration funding. Completed applications will be evaluated and award determinations made on a rolling basis until the program ends or funding is no longer available. Applications must be submitted through *http://www.grants.gov.*

ADDRESSES: Only applicants who comply with all submission requirements described in this notice and submit applications through *www.grants.gov* will be eligible for award.

FOR FURTHER INFORMATION CONTACT: For questions about the AID Demonstration program discussed herein, contact Mr. Thomas Harman, Director, Center for Accelerating Innovation, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–6377. For legal questions, contact Ms. Seetha Srinivasan, Office of the Chief Counsel, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–4099. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays. A TDD is available for individuals who are deaf or hard of hearing at (202) 366–3993.

Additionally, the notice, answers to questions, requests for clarification, and information about Webinars for further guidance will be posted at: *http://www.fhwa.dot.gov/innovation/grants/.* Applicants are encouraged to contact FHWA directly to receive information about AID Demonstration.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register** Web site at *http://www.archives.gov* and the Government Publishing Office's database at *http://www.access.gpo.gov/nara.*

Background

The FHWA posted its NOFO on September 1, 2016, at 81 FR 60403. The NOFO is identified as document number 2016–21063 on the docket. Section D. Application and Submission Information and section E. Application Review Information, subsection I.1.i. of the NOFO incorrectly identified the amount of time by which a project must be authorized after applying for AID Demonstration funding as 6 months. The FHWA issues this correction to clarify that a project must be authorized within 12 months of applying for AID Demonstration funding.

Additional eligibility, application and submission information, as well as FHWA application review information, remains as published in the FHWA's NOFO dated September 1, 2016.

Authority: Section 52003 of Pub. L. 112–141; Section 6003 of Pub. L. 114–94; 23 U.S.C. 503.

Issued on: October 5, 2016.

Gregory G. Nadeau,

Administrator, Federal Highway Administration.

[FR Doc. 2016–24851 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0107]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions of four individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions were effective on November 6, 2015. The exemptions will expire on November 6, 2017. Comments must be received on or before November 14, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0107 using 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; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building

Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for two years if it finds ‘‘such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.’’ The statute also allows the Agency to renew exemptions at the end of the two-year period.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

> Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

The four individuals listed in this notice have requested renewal of their exemptions from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application. In accordance with 49 U.S.C. 31136(e) and 31315, each of the four applicants has satisfied the conditions for obtaining an exemption from the Epilepsy and Seizure Disorder requirements and were published in the **Federal Register** (78 FR 67449). In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License information System (CDLIS) and the Motor Carrier Management Information System (MCMIS) are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency (SDLA). These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce.

The four drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. FMCSA has concluded that renewing the exemptions for each of these applicants is likely to achieve a level of safety equal to that existing without the exemption. Therefore, FMCSA has decided to renew each exemption for a two-year period. In accordance with 49 U.S.C. 31136(e) and 31315, each driver has received a renewed exemption.

As of November 6, 2015, the following four drivers has satisfied the renewal conditions for obtaining an exemption from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), from driving CMVs in interstate commerce (78 FR 67449): Christopher Bird (OH); Edward Nissenbaum (PA); Stephen Stawinsky (PA); and George Webb (MA). The drivers were included in FMCSA–2013–0107. The exemptions were effective on November 6, 2015, and will expire on November 6, 2017.

IV. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the two-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified Medical Examiner, as defined by 49 CFR 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with

the goals and objectives of 49 U.S.C. 31136(e) and 31315.

V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the four exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the Epilepsy and Seizure Disorders requirement in 49 CFR 391.41 (b)(8). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: October 7, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–24924 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0160]

Agency Information Collection Activities; Extension of an Approved Information Collection: Designation of Agents, Motor Carriers, Brokers and Freight Forwarders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) titled, ''Designation of Agents, Motor Carriers, Brokers and Freight Forwarders,'' is used to provide registered motor carriers, property brokers, and freight forwarders a means of meeting process agent requirements.

DATES: We must receive your comments on or before November 14, 2016. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2016–0160. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Tura Gatling, Office of Registration and Safety Information, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone Number: (202) 385–2412; Email Address: *tura.gatling@dot.gov.* Office hours are from 8:00 a.m. to 5:00 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Designation of Agents, Motor Carriers, Brokers and Freight Forwarders.

OMB Control Number: 2126–0015.

Type of Request: Extension of a currently approved collection.

Respondents: Motor carriers, freight forwarders and brokers.

Estimated Number of Respondents: 110,371 respondents in the first year [35,000 currently approved applicants plus 75,371 new entrants].

Estimated Time per Response: 10 minutes.

Expiration Date: November 30, 2016.

Frequency of Response: Form BOC–3 must be filed by all motor carriers, freight forwarders and brokers when the transportation entity first registers with the FMCSA. All brokers shall make a designation for each State in which it has an office or in which contracts are written. Subsequent filings are made only if the motor carrier, broker or freight forwarder changes process agents.

Estimated Total Annual Burden: 18,395 hours [110,371 respondents times 10 minutes per response].

Background: The Secretary of Transportation (Secretary) is authorized to register motor carriers under the provisions of 49 U.S.C. 13902; freight forwarders under the provisions of 49 U.S.C. 13903; and property brokers under provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. 13901. The Secretary has delegated authority pertaining to these registration requirements to the FMCSA pursuant to 49 CFR 1.73(a)(5).

Registered motor carriers, brokers and freight forwarders must designate an agent on whom service of notices in proceedings before the Secretary may be made (49 U.S.C. 13303). Registered motor carriers must also designate an agent for every State in which they operate and traverse in the United States during such operations, agents on whom process issued by a court may be served in actions brought against the registered transportation entity (49 U.S.C. 13304, 49 CFR 366.4). Every broker shall make a designation for each State in which its offices are located or in which contracts are written (49 U.S.C. 13304, 49 CFR 366.4). Regulations governing the designation of process agents are found at 49 CFR part 366. This designation is filed with the FMCSA on Form BOC–3, ''Designation of Agents for Service of Process.''

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: October 7, 2016.

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2016–24963 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0213]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions of four individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any

loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions were effective on September 16, 2016. The exemptions will expire on September 16, 2018. Comments must be received on or before November 14, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0213 using 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; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for two years if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the two-year period.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

> Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

The four individuals listed in this notice have requested renewal of their exemptions from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application. In accordance with 49 U.S.C. 31136(e) and 31315, each of the four applicants has satisfied the conditions for obtaining an exemption from the Epilepsy and Seizure Disorder requirements and were published in the **Federal Register** (80 FR 16495). In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License information System (CDLIS) and the Motor Carrier Management Information System (MCMIS) are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency (SDLA). These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce.

The four drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. FMCSA has concluded that renewing the exemptions for each of these applicants is likely to achieve a level of safety equal to that existing without the exemption. Therefore, FMCSA has decided to renew each exemption for a two-year period. In accordance with 49 U.S.C. 31136(e) and 31315, each driver has received a renewed exemption.

As of September 16, 2016, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), from driving CMVs in interstate commerce (80 FR 16495): Lee Anderson (MA); Gary Combs (KY); Roland Mezger (PA); and Robert Thomas Jr. (NC).

These drivers were included in FMCSA–2014–0213. The exemptions were effective on September 16, 2016, and will expire on September 16, 2018.

IV. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the two-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver

has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified Medical Examiner, as defined by 49 CFR 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the four exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the Epilepsy and Seizure Disorders requirement in 49 CFR 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: October 7, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–24965 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0334]

Agency Information Collection Activities; Extension of an Approved Information Collection: Training Certification for Drivers of Longer Combination Vehicles

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for approval and invites public comment. FMCSA requests approval to renew the ICR titled ''*Training Certification for Drivers of Longer Combination Vehicles (LCVs).*'' This ICR relates to Agency requirements for drivers to be certified to operate LCVs, and that motor carriers must satisfy before permitting their drivers to operate LCVs. Motor carriers, upon inquiry by authorized Federal, State or local officials, must produce an LCV driver-training certificate for each of their LCV drivers.

DATES: We must receive your comments on or before December 13, 2016.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2016–0334 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments see the Public Participation heading below. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

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 Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8–794.pdf.*

Public participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–4325; email *tom.yager@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: An LCV is any combination of a truck-tractor and two or more semi-trailers or trailers that operates on the National System of Interstate and Defense Highways (according to 23 CFR 470.107) and has a gross vehicle weight greater than 80,000 pounds. To enhance the safety of LCV operations on our nation's highways, Section 4007(b) of the Motor Carrier Act of 1991 directed the Secretary of Transportation to establish Federal minimum training requirements for drivers of LCVs [Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914, 2152]. The Secretary of Transportation delegated responsibility for establishing these requirements to FMCSA (49 CFR 1.87), and on March 30, 2004, after appropriate notice and solicitation of public comment, FMCSA established the current training requirements for operators of LCVs (69 FR 16722). The regulations bar motor carriers from permitting their drivers to operate an LCV if they have not been properly trained in accordance with the requirements of 49 CFR 380.113. Drivers receive an LCV Driver-Training Certificate upon successful completion of these training requirements. Motor carriers employing an LCV driver must verify the driver's qualifications to operate an LCV, and must maintain a copy of the LCV Driver-Training Certificate and present it to authorized Federal, State or local officials upon request.

Title: Training Certification for Drivers of LCVs.

OMB Control Number: 2126–0026.

Type of Request: Extension of a currently-approved information collection.

Respondents: Drivers who complete LCV training each year, current LCV drivers who submit their LCV Driver-Training Certificate to prospective employers, and employers (motor carriers) receiving and maintaining copies of the LCV Driver-Training certificates of their drivers.

Estimated Number of Respondents: 59,684 consisting of 2,360 newly-certified LCV drivers plus 28,662 currently-certified LCV drivers plus 28,662 motor carriers employing LCV drivers.

Estimated Time per Response: 10 minutes for preparation of LCV Driver-Training Certificates for drivers who successfully complete the LCV training, and 10 minutes for activities associated with the LCV Driver-Training Certificate during the hiring process.

Expiration Date: May 31, 2017.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 5,565 hours. The total number of drivers who will be subjected to these requirements each year is 31,022, consisting of 2,360 newly-certified LCV drivers, and 28,662 currently-certified LCV drivers obtaining new employment. The total annual information collection burden is approximately 5,565 hours, consisting of 394 hours for preparation of LCV Driver-Training Certificates [2,360 drivers successfully completing LCV driver training × 10 minutes ÷ 60 minutes/hour] and 5,171 hours for requirements related to the hiring of LCV drivers [31,022 LCV drivers obtaining new employment × 10 minutes ÷ 60 minutes/hour].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA's performance; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and

(4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87 on: October 7, 2016.

G. Kelly Regal,

Associate Administrator, Office of Research and Information Technology.

[FR Doc. 2016–24928 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–2008–0362 and FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee (MCSAC) and Medical Review Board (MRB) Meetings: Public Meetings

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Announcement of advisory committee public meetings.

SUMMARY: FMCSA announces a joint meeting of its Motor Carrier Safety Advisory Committee (MCSAC) and Medical Review Board (MRB) on Monday, October 24, 2016. Together, the MCSAC and MRB will receive an update on the Driver Health and Wellness Initiative, a non-regulatory public-private partnership of stakeholders to improve drivers' health, and a preview of its Web page. The MRB will report on its revised recommendations on obstructive sleep apnea (OSA) based on its evaluation of the comments from the joint Advance Notice of Proposed Rulemaking (ANPRM) that the Agency issued with the Federal Railroad Administration. Additionally, the MCSAC will discuss how the implementation of these recommendations may impact current and future populations of drivers. On October 25, the MCSAC will meet separately to complete its review of the Agency's regulatory guidance and the MRB will meet to discuss how to incorporate recently issued warnings from the Food and Drug Administration (FDA) on narcotics and benzodiazepines. The meetings are open to the public for their entirety.

DATES: The joint meeting will be held on Monday, October 24, 2016, from 9:15 a.m. to 5 p.m., Eastern Time (E.T.). On Tuesday, October 25, the MCSAC and MRB will meet separately. Copies of all task statements and an agenda for the entire meeting will be made available in advance of the meeting at *http://mrb.fmcsa.dot.gov* and *http://mcsac.fmcsa.dot.gov.*

ADDRESSES: The meetings will take place at the National Association of Homebuilders (NAHB), 1201 Fifteenth Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Policy Advisor, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–5221, *mcsac@dot.gov.*

Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Eran Segev at (617) 494–3174, *eran.segev@dot.gov,* by Wednesday, October 19.

SUPPLEMENTARY INFORMATION:

I. Background

MCSAC

Section 4144 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59, 119 Stat. 1144, August 10, 2005) required the Secretary of Transportation to establish the MCSAC. The Moving Ahead for Progress in the 21st Century Act (MAP–21, Pub. L. 112–141) reauthorized the MCSAC through September 30, 2013, at which time its statutory authority expired, necessitating the establishment of MCSAC as a discretionary committee under FACA. Secretary Foxx established that effective September 30, 2013, through September 30, 2015. MCSAC provides advice and recommendations to the FMCSA Administrator on motor carrier safety programs and regulations, and operates in accordance with the Federal Advisory Committee Act (FACA, 5 U.S.C. App 2).

The MCSAC began considering Task 16–1, Review of Regulatory Guidance, at its June 2016 meeting to provide recommendations to the Agency concerning implementation of section 5203 of the FAST Act to: (1) Prioritize regulatory guidance that should be incorporated into the safety regulations to promote clear, consistent, and enforceable rules; (2) identify regulatory guidance that appears to be inconsistent with the intent of the safety regulations or makes enforcement of key safety requirements difficult; and (3) identify guidance that should remain in place.

Additionally, the MCSAC and MRB began considering Joint Task 15–3, on Driver Health and Wellness, at its joint meeting in September 2015. The task is to provide recommendations to the Agency on the structure, content, and methods for determining the effectiveness of a public-private partnership to promote commercial motor vehicle (CMV) driver wellness. To reach that goal, the MCSAC and MRB chairmen appointed a joint subcommittee that included members of both advisory committees and stakeholders.

MRB

Section 4116 of SAFETEA–LU requires the Secretary of Transportation, with the advice of the MRB and the chief medical examiner, to establish, review, and revise ''medical standards for operators of commercial motor vehicles that will ensure that the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely.'' The MRB operates in accordance with FACA under the terms of its charter, filed November 25, 2013.

At its meeting in August 2016, the MRB began consideration of Task 16–1, which is to provide recommendations to the Agency on the disposition of comments from medical professionals and associations to the Agency's and the Federal Railroad Administration's (FRA) Advance Notice of Proposed Rulemaking (ANPRM) on safety-sensitive rail and commercial motor vehicle (CMV) drivers with moderate to severe Obstructive Sleep Apnea (OSA).

II. Meeting Participation

Oral comments from the public will be heard throughout the meeting, at the discretion of the MCSAC and MRB chairmen. Members of the public may submit written comments on the topics to be considered during the meeting by Wednesday, October 19, to Federal Docket Management System (FDMC) Docket Number FMCSA–2008–0362 for the MRB and FMCSA–2006–26367 for the MCSAC using any of the following methods:

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

Issued on: October 7, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–24927 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0443]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions of five individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions were effective on May 19, 2016. The exemptions will expire on May 19, 2018. Comments must be received on or before November 14, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0443 using 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; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for two years if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the two-year period.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

> Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—

MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

The five individuals listed in this notice have requested renewal of their exemptions from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application. In accordance with 49 U.S.C. 31136(e) and 31315, each of the five applicants has satisfied the conditions for obtaining an exemption from the Epilepsy and Seizure Disorder requirements and were published in the **Federal Register** (79 FR 74170). In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License information System (CDLIS) and the Motor Carrier Management Information System (MCMIS) are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency (SDLA). These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce.

The five drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. FMCSA has concluded that renewing the exemptions for each of these applicants is likely to achieve a level of safety equal to that existing without the exemption. Therefore, FMCSA has decided to renew each exemption for a two-year period. In accordance with 49 U.S.C. 31136(e) and 31315, each driver has received a renewed exemption.

As of May 19, 2016, the following five individuals have satisfied the renewal conditions for obtaining an exemption from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), from driving CMVs in interstate commerce (79 FR 74170):

Thomas Bynum (NC)
Ronald Hartl (WI)
Craig Hoisington (NH)
Michael Miller (WI)
Peter Thompson (FL)

These drivers were included in FMCSA–2013–0443. The exemptions were effective on May 19, 2016, and will expire on May 19, 2018.

IV. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the two-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified Medical Examiner, as defined by 49 CFR 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 5 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the Epilepsy and Seizure Disorders requirement in 49 CFR 391.41 (b)(8). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: October 7, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–24923 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0442; FMCSA–2013–0445]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions of two individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The renewed exemptions were effective on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before November 14, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0442; FMCSA–2013–0445 using 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; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for two years if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the two-year period.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

> Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

The two individuals listed in this notice have requested renewal of their exemptions from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application. In accordance with 49 U.S.C. 31136(e) and 31315, each of the two applicants has satisfied the conditions for obtaining an exemption from the Epilepsy and Seizure Disorder requirements and were published in the **Federal Register** (79 FR 73690, 79 FR 73693). In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License information System (CDLIS) and the Motor Carrier Management Information System (MCMIS) are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency (SDLA). These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce.

The two drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. FMCSA has concluded that renewing the exemptions for each of these applicants is likely to achieve a level of safety equal to that existing without the exemption. Therefore, FMCSA has decided to renew each exemption for a two-year period. In accordance with 49 U.S.C. 31136(e) and 31315, each driver has received a renewed exemption.

As of July 8, 2016, Michael Duprey (CT) has satisfied the renewal conditions for obtaining an exemption from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), from driving CMVs in interstate commerce (79 FR 73690). This driver was included in FMCSA–2013–0442. The exemption was effective on July 8, 2016, and will expire on July 8, 2018.

As of July 14, 2016, Ronald Blout (GA) has satisfied the renewal conditions for obtaining an exemption from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), from driving CMVs in interstate commerce (79 FR 73693). This driver was included in FMCSA–2013–0445. The exemption was effective on July 14, 2016, and will expire on July 14, 2018.

IV. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the two-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified Medical Examiner, as defined by 49 CFR 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the two exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the Epilepsy and Seizure Disorders requirement in 49 CFR 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: October 7, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–24930 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7006; FMCSA–2000–7165; FMCSA–2000–8398; FMCSA–2001–11426; FMCSA–2002–11714; FMCSA–2002–12294; FMCSA–2004–17195; FMCSA–2004–17984; FMCSA–2004–18885; FMCSA–2005–21711; FMCSA–2006–23773; FMCSA–2006–24783; FMCSA–2007–0071; FMCSA–2007–27897; FMCSA–2008–0106; FMCSA–2008–0174; FMCSA–2008–0231; FMCSA–2008–0266; FMCSA–2009–0303; FMCSA–2010–0082; FMCSA–2010–0114; FMCSA–2010–0161; FMCSA–2010–0187; FMCSA–2010–0385; FMCSA–2011–0366; FMCSA–2011–0379; FMCSA–2011–0380; FMCSA–2012–0040; FMCSA–2012–0160; FMCSA–2012–0161; FMCSA–2012–0214; FMCSA–2012–0215; FMCSA–2012–0216; FMCSA–2013–0167; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2014–0003; FMCSA–2014–0004; FMCSA–2014–0005; FMCSA–2014–0006; FMCSA–2014–0007; FMCSA–2014–0010; FMCSA–2014–0011; FMCSA–2014–0296]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 125 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: Each group of renewed exemptions are effective from the dates stated in the discussions below. Comments must be received on or before November 14, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: [Docket No. FMCSA–2000–7006; FMCSA–2000–7165; FMCSA–2000–8398; FMCSA–2001–11426; FMCSA–2002–11714; FMCSA–2002–12294; FMCSA–2004–17195; FMCSA–2004–17984; FMCSA–2004–18885; FMCSA–2005–21711; FMCSA–2006–23773; FMCSA–2006–24783; FMCSA–2007–0071; FMCSA–2007–27897; FMCSA–2008–0106; FMCSA–2008–0174; FMCSA–2008–0231; FMCSA–2008–0266; FMCSA–2009–0303; FMCSA–2010–0082; FMCSA–2010–0114; FMCSA–2010–0161; FMCSA–2010–0187; FMCSA–2010–0385; FMCSA–2011–0366; FMCSA–2011–0379; FMCSA–2011–0380; FMCSA–2012–0040; FMCSA–2012–0160; FMCSA–2012–0161; FMCSA–2012–0214; FMCSA–2012–0215; FMCSA–2012–0216; FMCSA–2013–0167; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2014–0003; FMCSA–2014–0004; FMCSA–2014–0005; FMCSA–2014–0006; FMCSA–2014–0007; FMCSA–2014–0010; FMCSA–2014–0011; FMCSA–2014–0296], using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 125 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 125 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. Each individual is identified according to the renewal date.

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. The following group(s) of drivers will receive renewed exemptions effective in the month of October and are discussed below.

As of October 6, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 58 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (65 FR 20245; 65 FR 57230; 67 FR 15662; 67 FR 37907; 67 FR 46016; 67 FR 57266; 67 FR 57627; 69 FR 17263; 69 FR 26206; 69 FR 26921; 69 FR 31447; 69 FR 51346; 69 FR 52741; 70 FR 48797; 70 FR 61493; 71 FR 19602; 71 FR 26602; 71 FR 27033; 71 FR 27034; 71 FR 32183; 71 FR 41310; 71 FR 6826; 71 FR 50970; 71 FR 53489; 72 FR 39879; 72 FR 52419; 73 FR 6242; 73 FR 6244; 73 FR 16950; 73 FR 16952; 73 FR 27018; 73 FR 35194; 73 FR 35200; 73 FR 36955; 73 FR 38498; 73 FR 48270; 73 FR 48273; 73 FR 48275; 73 FR 51336; 73 FR 75807; 74 FR 41971; 74 FR 60022; 75 FR 4623; 75 FR 22179; 75 FR 25918; 75 FR 27622; 75 FR 34209; 75 FR 34211; 75 FR 36778; 75 FR 36779; 75 FR 39725; 75 FR 44050; 75 FR 44051; 75 FR 47886; 75 FR 47888; 75 FR 52062; 75 FR 61833; 75 FR 77942; 76 FR 5425; 76 FR 54530; 77 FR 5874; 77 FR 15184; 77 FR 17109; 77 FR 17117; 77 FR 23797; 77 FR 23799; 77 FR 26816; 77 FR 27845; 77 FR 27850; 77 FR 33558; 77 FR 36338; 77 FR 38381; 77 FR 38384; 77 FR 40945; 70 FR 40946; 77 FR 41879; 77 FR 46153; 77 FR 46793; 77 FR 51846; 77 FR 52388; 77 FR 52389; 77 FR 52391; 77 FR 56262; 77 FR 59245; 78 FR 64271; 78 FR 64274; 78 FR 67454; 78 FR 77778; 78 FR 78477; 79 FR 4803; 79 FR 1908; 79 FR 2748; 79 FR 14333; 79 FR 14571; 79 FR 18392; 79 FR 23797; 79 FR 27365; 79 FR 27681; 79 FR 28588; 79 FR 29498; 79 FR 35212; 79 FR 35218; 79 FR 35220; 79 FR 37842; 79 FR 38649; 79 FR 38659; 79 FR 38661; 79 FR 40945; 79 FR 40945; 79 FR 41735; 79 FR 41740; 79 FR 45868; 79 FR 46153; 79 FR 46300; 79 FR 47175; 79 FR 51642; 79 FR 51643; 79 FR 52388; 79 FR 53514; 79 FR 64001):

Ramon Adame (IL)
Thomas A. Black (MO)
John E. Breslin (NV)
Trixie L. Brown (IN)
Joel W. Bryant (LA)
Howard T. Bubel (ND)
Raymond E. Burrus (CO)
Bradley E. Buzzell (NH)
Dionicio Carrera (TX)
Scott F. Chalfant (DE)
Tommy J. Cross, Jr. (TN)
Tony K. Ellis (IN)
Curtis E. Firari (WI)
Kelly L. Foster (UT)
Donald H. Fuller (NY)
Viktor V. Goluda (SC)
Ronald M. Green (OH)
David W. Grooms (IN)
Clifford J. Harris (VA)
Billy R. Holdman (IL)
Daniel Hollins (KY)
Ralph E. Holmes (MD)
Charles S. Huffman (KS)
Fredrick C. Ingles (WV)
Daniel W. Johnson (NY)
Matthew B. Lairamore (OK)
Terry A. Legates (OK)
Gary McKown (WV)
Ronald S. Milkowski (NJ)
Donald L. Minney (OH)
Jack W. Murphy, Jr. (OH)
Danny W. Nuckles (VA)
Nathan J. Price (ID)
Matias P. Quintanilla (CA)
Jacques W. Rainville (VT)
Antonio A. Ribeiro (CT)
Ronney L. Rogers (WA)
David T. Rueckert (WA)
Kirk Scott (CT)
Ronald H. Sieg (MO)
Kenneth D. Sisk (NC)
David L. Slack (TX)
David M. Smith (IL)
Mark A. Smith (IA)
Scotty W. Sparks (KY)
Robert L. Strange (NC)
Charles E. Stokes (FL)
Samuel M. Stoltzfus (PA)
George W. Thomas (SC)
Malcolm J. Tilghman, Sr. (DE)
Duane L. Tysseling (IA)
Melvin V. Van Meter (PA)
Nicholas J. Vance (OH)
Christopher M. Vincent (NC)
Scott C. Westphal (MN)
Dale E. Williams (TX)
Robert D. Williams (LA)
Michael T. Wimber (MT)

The drivers were included in one of the following dockets: Docket Nos. FMCSA–2000–7006; FMCSA–2002–11714; FMCSA–2002–12294; FMCSA–2004–17195; FMCSA–2005–21711; FMCSA–2006–23773; FMCSA–2006–24783; FMCSA–2007–0071; FMCSA–2007–27897; FMCSA–2008–0106; FMCSA–2008–0174; FMCSA–2009–0303; FMCSA–2010–0082; FMCSA–2010–0114; FMCSA–2010–0161; FMCSA–2010–0385; FMCSA–2011–0366; FMCSA–2011–0379; FMCSA–2011–0380; FMCSA–2012–0040; FMCSA–2012–0160; FMCSA–2012–0161; FMCSA–2012–0214; FMCSA–2013–0167; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2014–0003; FMCSA–2014–0004; FMCSA–2014–0005; FMCSA–2014–0006; FMCSA–2014–0007; FMCSA–2014–0010. Their exemptions are effective as of October 6, 2016 and will expire on October 6, 2018.

As of October 15, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 17 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (67 FR 10471; 67 FR 19798; 69 FR 33997; 69 FR 51346; 69 FR 61292; 71 FR 50970; 71 FR 55820; 73 FR 38497; 73 FR 46973; 73 FR 48270; 73 FR 48271; 73 FR 54888; 73 FR 65009; 75 FR 39725; 75 FR 44050; 75 FR 47883; 75 FR 50799; 75 FR 52063; 75 FR 57105; 75 FR 61833; 75 FR 63257; 77 FR 38381; 77 FR 48590; 77 FR 51846; 77 FR 52388; 77 FR 60010):

William C. Ball (NC)
Julian Collins (GA)
Ivory Davis (MD)
Timothy J. Droeger (MN)
Edward P. Hynes II (VA)
Richard L. Kelley (MN)
Theodore Kirby (MD)
Kelly R. Konesky (AZ)
Joseph A. Leigh, Jr. (NC)
Hollis J. Martin (AL)
Kevin C. Palmer (OR)
Charles O. Rhodes (FL)
Gordon G. Roth (KS)
Julius Simmons, Jr. (SC)
Ted L. Smeltzer (IN)
Stephen B. Whitt (NC)

Darrell F. Woosley (IL)

The drivers were included in one of the following dockets: Docket No. FMCSA–2001–11426; FMCSA–2004–17984; FMCSA–2008–0174; FMCSA–2008–0321; FMCSA–2010–0161; FMCSA–2010–0187; FMCSA–2012–0160. Their exemptions are effective as of October 15, 2016 and will expire on October 15, 2018.

As of October 21, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 7 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (79 FR 56099; 79 FR 70928):

Terry L. Allen (IL)
Todd A. Carlson (MN)
Ronald Gaines (FL)
Russel K. Gray (OH)
Billy R. Hampton (NC)
Raymond Holt (CA)
Juan C. Puente (TX)

The drivers were included on the following docket: Docket No. FMCSA–2014–0011. Their exemptions are effective as of October 21, 2016 and will expire on October 21, 2018.

As of October 22, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 8 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (73 FR 35194; 73 FR 51689; 73 FR 63047; 75 FR 39725; 75 FR 47883; 75 FR 61883; 75 FR 63257; 75 FR 64396; 77 FR 64582; 79 FR 56104):

Randall J. Denson (MN)
James D. Drabek, Jr. (IL)
Delone W. Dudley (MD)
James W. Lappan (KS)
Jeromy W. Leatherman (PA)
Ernest B. Martin (KY)
Mark L. McWhorter (FL)
Sylvester Silver (VA)

The drivers were included on the following docket: Docket No. FMCSA–2008–0106; FMCSA–2008–0266; FMCSA–2010–0161; FMCSA–2010–0187. Their exemptions are effective as of October 22, 2016 and will expire on October 22, 2018.

As of October 23, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 7 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (77 FR 52381; 77 FR 64841; 79 FR 56097):

Ronald A. Duester (TX)
Charlene E. Geary (SD)
David N. Hinchliffe (TX)
Michael C. Hoff (WA)
Benny L. Sanchez (CA)
Sandeep Singh (CA)
James T. Stalker (OH)

The drivers were included on the following docket: Docket No. FMCSA–2012–0215. Their exemptions are effective as of October 23, 2016 and will expire on October 23, 2018.

As of October 27, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 10 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (65 FR 33406; 65 FR 57234; 65 FR 78256; 66 FR 16311; 67 FR 57266; 69 FR 52741; 69 FR 53493; 69 FR 62742; 71 FR 53489; 71 FR 62148; 73 FR 61925; 75 FR 59327; 77 FR 64583; 79 FR 56117):

David W. Brown (TN)
Monty G. Calderon (OH)
Awilda S. Colon (TN)
Zane G. Harvey, Jr. (VA)
Jeffrey M. Keyser (OH)
Donnie A. Kildow (ID)
David G. Meyers (NY)
Rodney M. Pegg (PA)
Zbigniew P. Pietranik (WI)
Joseph F. Wood (MS)

The drivers were included on the following docket: Docket No. FMCSA–2000–7165; FMCSA–2000–8398; FMCSA–2004–18885. Their exemptions are effective as of October 27, 2016 and will expire on October 27, 2018.

As of October 31, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 18 individuals have satisfied the conditions for obtaining a renewed exemption from the vision requirements (77 FR 56261; 77 FR 65933; 79 FR 58856; 79 FR 59348; 79 FR 72754):

Richard J. Beck (IL)
Donald L. Blakeley II (NV)
Marty R. Brewsteer (KS)
Henry L. Chrestensen (IA)
Sanford L. Goodwin (TX)
Tonia L. Graves (AZ)
Roger S. Hardin (AL)
Gregory S. Hatten (LA)
Thomas J. Long III (PA)
Matthew J. Mantooth (KY)
Thomas J. McClure (IA)
Steven W. Miller (PA)
James J. Monticello (IN)
Aaron F. Naylor (PA)
Klifford N. Siemens (KS)
Steven R. Smith (ID)
Scott E. Tussey (KY)
Aaron H. Walser (ID)

The drivers were included on the following docket: Docket No. FMCSA–2012–0216; FMCSA–2014–0296. Their exemptions are effective as of October 31, 2016 and will expire on October 31, 2018.

Each of the 125 applicants listed in the groups above has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by November 14, 2016.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 125 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will

take immediate steps to revoke the exemption of a driver.

Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–2000–7006; FMCSA–2000–7165; FMCSA–2000–8398; FMCSA–2001–11426; FMCSA–2002–11714; FMCSA–2002–12294; FMCSA–2004–17195; FMCSA–2004–17984; FMCSA–2004–18885; FMCSA–2005–21711; FMCSA–2006–23773; FMCSA–2006–24783; FMCSA–2007–0071; FMCSA–2007–27897; FMCSA–2008–0106; FMCSA–2008–0174; FMCSA–2008–0231; FMCSA–2008–0266; FMCSA–2009–0303; FMCSA–2010–0082; FMCSA–2010–0114; FMCSA–2010–0161; FMCSA–2010–0187; FMCSA–2010–0385; FMCSA–2011–0366; FMCSA–2011–0379; FMCSA–2011–0380; FMCSA–2012–0040; FMCSA–2012–0160; FMCSA–2012–0161; FMCSA–2012–0214; FMCSA–2012–0215; FMCSA–2012–0216; FMCSA–2013–0167; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2014–0003; FMCSA–2014–0004; FMCSA–2014–0005; FMCSA–2014–0006; FMCSA–2014–0007; FMCSA–2014–0010; FMCSA–2014–0011; FMCSA–2014–0296 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. FMCSA may issue a final rule at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2000–7006; FMCSA–2000–7165; FMCSA–2000–8398; FMCSA–2001–11426; FMCSA–2002–11714; FMCSA–2002–12294; FMCSA–2004–17195; FMCSA–2004–17984; FMCSA–2004–18885; FMCSA–2005–21711; FMCSA–2006–23773; FMCSA–2006–24783; FMCSA–2007–0071; FMCSA–2007–27897; FMCSA–2008–0106; FMCSA–2008–0174; FMCSA–2008–0231; FMCSA–2008–0266; FMCSA–2009–0303; FMCSA–2010–0082; FMCSA–2010–0114; FMCSA–2010–0161; FMCSA–2010–0187; FMCSA–2010–0385; FMCSA–2011–0366; FMCSA–2011–0379; FMCSA–2011–0380; FMCSA–2012–0040; FMCSA–2012–0160; FMCSA–2012–0161; FMCSA–2012–0214; FMCSA–2012–0215; FMCSA–2012–0216; FMCSA–2013–0167; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2014–0003; FMCSA–2014–0004; FMCSA–2014–0005; FMCSA–2014–0006; FMCSA–2014–0007; FMCSA–2014–0010; FMCSA–2014–0011; FMCSA–2014–0296 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–24960 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0094; FMCSA–2013–0109]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions of two individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each renewed exemption was effective on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before November 14, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0094; FMCSA–2013–0109 using 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; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can

be reviewed at *http://www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for two years if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the two-year period.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

> Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

The two individuals listed in this notice have requested renewal of their exemptions from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application. In accordance with 49 U.S.C. 31136(e) and 31315, each of the two applicants has satisfied the conditions for obtaining an exemption from the Epilepsy and Seizure Disorder requirements and were published in the **Federal Register** (79 FR 70917, 79 FR 23054). In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License information System (CDLIS) and the Motor Carrier Management Information System (MCMIS) are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency (SDLA). These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce.

The two drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. FMCSA has concluded that renewing the exemptions for each of these applicants is likely to achieve a level of safety equal to that existing without the exemption. Therefore, FMCSA has decided to renew each exemption for a two-year period. In accordance with 49 U.S.C. 31136(e) and 31315, each driver has received a renewed exemption.

As of February 10, 2016, Victor Martinez (ID) has satisfied the renewal conditions for obtaining an exemption from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), from driving CMVs in interstate commerce (79 FR 70917). This driver was included in FMCSA–2012–0094. The exemption was effective on February 10, 2016, and will expire on February 10, 2018.

As of February 14, 2016, John Johnson (WI) has satisfied the renewal conditions for obtaining an exemption from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), from driving CMVs in interstate commerce (79 FR 23054). This driver was included in FMCSA–2013–0109. The exemption was effective on February 14, 2016, and will expire on February 14, 2018.

IV. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the two-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified Medical Examiner, as defined by 49 CFR 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the two exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the Epilepsy and Seizure Disorders requirement in 49 CFR 391.41 (b)(8). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: October 7, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–24933 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0161]

Agency Information Collection Activities; Extension of a Currently Approved Information Collection Request: Unified Registration System, FMCSA Registration/Updates.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) titled, ''Unified Registration System'' (78 FR 52608 dated August 23, 2013) required those entities that are subject to the FMCSA's licensing, registration and certification regulations to use a new application Form MCSA–1 titled, ''FMCSA Registration/Update(s).''

DATES: Please send your comments on or before November 14, 2016. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2016–0161. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Secrist, Office of Registration and Safety Information, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone Number: (202) 385–2367; Email Address: *jeff.secrist@dot.gov.* Office hours are from 8:00 a.m. to 5:00 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Unified Registration System, FMCSA Registration/Updates.

OMB Control Number: 2126–0051.

Type of Request: Extension of a currently-approved information collection.

Respondents: Motor carriers (including private and exempt for-hire carriers effective January 14, 2017), freight forwarders, brokers, cargo tank (CT) facilities, and intermodal equipment providers (IEPs) that are required to initially register for and then maintain their safety and operating authority registrations with USDOT.

Estimated Number of Respondents: 78,400 respondents for initial registration filings; 507,500 respondents for completing the biennial update; 13,000 respondents for filing name/address change requests; 1,100 respondents for transfer of operating authority registration notifications; and 2,030 respondents for reinstatements of operating authority registration.

Estimated Time per Response: 1.34 hours for initial registration filings; and 10 minutes each for the biennial update, name/address change request, notification of transfer of operating authority registration, and reinstatement of revoked or inactive registration.

Expiration Date: November 30, 2016

Frequency of Response: This information collection covers the initial application to register with FMCSA as a motor carrier, freight forwarder, broker, intermodal equipment provider, and cargo tank facility; as well as subsequent applications to complete a biennial update or any other update of the information recorded on the registration system, submit a name/address change request, seek a reinstatement of revoked or inactive registration, and notify the Agency of a transfer of operating authority registration.

Estimated Total Annual Burden: 105,000 burden hours for the initial applications of registration; 84,600 burden hours for completing biennial updates; 2,200 burden hours for filing name/address change requests; 180 burden hours for operating authority registration transfer notifications; and 340 burden hours for reinstatements of revoked or inactive registration; for a total estimated annual burden of 192,320 hours.

Background: Section 103 of the ICC Termination Act of 1995 (ICCTA) enacted 49 U.S.C. 13908, which required the Secretary of Transportation (Secretary) to propose regulations to replace four current identification and registration systems with a single, online, Federal system—the Unified Registration System (URS). The Unified Carrier Registration Act of 2005, subtitle C of title IV of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59, 119 Stat. 1714, August 10, 2005] modified the requirements for a unified registration system by amending § 13908. In particular, SAFETEA–LU repealed the Single State Registration System (SSRS), one of the four systems identified in § 13908, and replaced it with the Unified Carrier Registration Agreement. It also modified the requirement that fees collected under the new system cover the costs of operating and upgrading the registration by placing limitations on certain fees that the Agency could charge. Section 4304 of SAFETEA–LU reiterated the congressional requirement for a single, Federal online system to replace the four individual systems identified under 49 U.S.C. 13908. This consolidation simplifies current Federal registration processes and makes data on interstate motor carriers, property brokers, freight forwarders, and other regulated entities more accessible.

This information collection supports the DOT Strategic Goal of Safety. It will streamline the existing registration process and ensure that FMCSA can more efficiently track motor carriers, freight forwarders, brokers, and other entities regulated by the Agency.

The information on the on-line Form MCSA–1 will be used by FMCSA to identify its regulated entities, to help prioritize the Agency's activities, to aid in assessing the safety outcomes of those activities and for statistical purposes. The FMCSA will collect the information electronically through on-line forms. The information is currently being collected through a series of forms, which may be filed on-line or on paper. Every interstate motor carrier operating commercial motor vehicles is required to register with FMCSA to obtain a USDOT Number. Most for-hire carriers are also required to file a separate application for operating authority under 49 U.S.C. 13901. Mexico- and Non-North America-domiciled motor carriers file a separate registration form. The information collection will replace these three collections and create a single on-line form. This rule will streamline the collection and eliminate the need for motor carriers to file the same information on multiple forms.

On June 10, 2016, FMCSA published a notice in the **Federal Register** requesting public comments on ''Unified Registration System, FMCSA Registration/Updates'' Information Collection Request, OMB Control Number 2126–0051 (81 FR 37661). No comments were received.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR. 1.87 on: October 11, 2016.

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2016–24934 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0007]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 11 individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before November 14, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2016–0007 using 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; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: 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 *http://www.regulations.gov* as described in the system records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the two-year period.

The 11 individuals listed in this notice have requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

> Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section *H. Epilepsy: § 391.41(b)(8),* paragraphs 3, 4, and 5.]

The advisory criteria state the following:

If an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the Medical Examiner in consultation with the treating physician. Prior to considering certification, it is suggested there be a six-month waiting period from the time of the episode. Following the waiting period, it is suggested that the individual undergo a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has

[1] See *http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171.a* and *https://www.gpo.gov/fdsys/pkg/CFR–2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers who have had a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for five years or more.

As a result of Medical Examiners misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified Medical Examiner based on the physical qualification standards and medical best practices.

On January 15, 2013, in a Notice of Final Disposition entitled, ''Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders,'' (78 FR 3069), FMCSA announced its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' Since the January 15, 2013 notice, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in 49 CFR 391.41(b)(8).

To be considered for an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (MEP) (78 FR 3069).

II. Qualifications of Applicants

Kevin Beamon

Mr. Beamon is a 56 year-old class A CDL holder in New York. He has a history of a seizure in 2007. He takes anti-seizure medication with the dosage and frequency remaining the same since 2011. His physician states that he is supportive of Mr. Beamon receiving an exemption.

Marvin Lavern Fender

Mr. Fender is a 63 year-old class A CDL holder in Colorado. He has a history of a seizure disorder and his last seizure was in 1996. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Fender receiving an exemption.

Michael Charles Grant

Mr. Grant is a 54 year-old driver in South Carolina. He has a history of a seizure disorder and his last seizure was in 1995. He takes anti-seizure medication with the dosage and frequency remaining the same since 2013. His physician states that he is supportive of Mr. Grant receiving an exemption.

Todd W. Hines

Mr. Hines is a 46 year-old class B CDL holder in Ohio. He has a history of a brain tumor removal and a single seizure in 2002. He takes anti-seizure medication with the dosage and frequency remaining the same since 2006. His physician states that he is supportive of Mr. Hines receiving an exemption.

John A. Kangas

Mr. Kangas is a 44 year-old class A CDL holder in Michigan. He has a history of epilepsy and his last seizure was in 2001. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Kangas receiving an exemption.

Chad Thomas Knott

Mr. Knott is a 24 year-old driver in Maryland. He has a history of juvenile epilepsy and his last seizure was in 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Knott receiving an exemption.

Duane Scott Mahin

Mr. Mahin is a 56 year-old driver in Kansas. He has a history of juvenile epilepsy and his last seizure was in 1977. He has not taken anti-seizure medication since 1982. His physician states that he is supportive of Mr. Mahin receiving an exemption.

Cornelius L. Page

Mr. Page is a 55 year-old driver in Maryland. He has a history of a seizure disorder and his last seizure was in 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since 2013. His physician states that he is supportive of Mr. Page receiving an exemption.

Curtis Joseph Palubicki

Mr. Palubicki is a 30 year-old driver in Minnesota. He has a history of epilepsy and his last seizure was in September 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Palubicki receiving an exemption.

Daniel A. Pierstorff

Mr. Pierstorff is a 48 year-old class A CDL holder in Wisconsin. He has a history of epilepsy and his last seizure was in 1982. He takes anti-seizure medication with the dosage and frequency remaining the same since 2013. His physician states that he is supportive of Mr. Pierstorff receiving an exemption.

William M. Powderly

Mr. Powderly is a 33 year-old driver in California. He has a history of a seizure disorder and his last seizure was in 2002. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Powderly receiving an exemption.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2016–0007'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would

like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0007 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: October 7, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–24943 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0389; FMCSA–2012–0294; FMCSA–2013–0109; FMCSA–2013–0442]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions of 11 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were effective on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before November 14, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0389; FMCSA–2012–0294; FMCSA–2013–0109; FMCSA–2013–0442 using 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; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for two years if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the two-year period.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

> Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5.]

The 11 individuals listed in this notice have requested renewal of their exemptions from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

II. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

III. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application. In accordance with 49 U.S.C. 31136(e)

and 31315, each of the 11 applicants has satisfied the conditions for obtaining an exemption from the Epilepsy and Seizure Disorder requirements and were published in the **Federal Register** (79 FR 70917; 79 FR 73690; 79 FR 23054). In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License information System (CDLIS) and the Motor Carrier Management Information System (MCMIS) are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency (SDLA). These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce.

The 11 drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. FMCSA has concluded that renewing the exemptions for each of these applicants is likely to achieve a level of safety equal to that existing without the exemption. Therefore, FMCSA has decided to renew each exemption for a two-year period. In accordance with 49 U.S.C. 31136(e) and 31315, each driver has received a renewed exemption.

As of April 8, 2016, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), from driving CMVs in interstate commerce (79 FR 70917; 79 FR 23054): Jeffrey Ballweg (WI); Michael Ranalli (PA); Lonnie Reicker (IL); and Jay Whitehead (NY). These drivers were included in FMCSA–2011–0389; and FMCSA–2012–0294; FMCSA–2013–0109. The exemptions were effective on April 8, 2016, and will expire on April 8, 2018.

As of April 23, 2016, the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the Epilepsy and Seizure Disorders prohibition in 49 CFR 391.41(b)(8), from driving CMVs in interstate commerce (79 FR 73690):

Charles Blood (NY)
Raymond Lobo (NJ)
Randy Pinto (PA)
Brent Robinson (NC)
James Spece (PA)
Douglas Teigland (MN)
Joseph Thomas (MD)

These drivers were included in FMCSA–2013–0442. The exemptions were effective on April 23, 2016, and will expire on April 23, 2018.

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the two-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified Medical Examiner, as defined by 49 CFR 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

IV. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

V. Conclusion

Based upon its evaluation of the 11 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the Epilepsy and Seizure Disorders requirement in 49 CFR 391.41 (b)(8). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: October 7, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–24967 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0041; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming Model Year 2008 Chevrolet Silverado Trucks are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that model year (MY) 2008 Chevrolet Silverado trucks that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2008 Chevrolet Silverado truck) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 14, 2016.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments

received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see 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 Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments Submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *https://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories (WETL), Inc. of Houston, Texas (Registered Importer R–90–005) has petitioned NHTSA to decide whether nonconforming 2008 Chevrolet Silverado trucks are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are MY 2008 Chevrolet Silverado trucks sold in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified MY 2008 Chevrolet Silverado trucks to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified MY 2008 Chevrolet Silverado trucks, as originally manufactured, conform with many applicable FMVSS in the same manner as their U.S.-certified counterparts, or are capable of being readily altered to conform to those standards. Specifically, the petitioner claims that the non U.S.-certified MY 2008 Chevrolet Silverado trucks, as originally manufactured, conform to: Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 108 *Lamps, reflective devices, and associated equipment,* 111 *Rear visibility,* 113 *Hood Latch System,* 114 *Theft Protection,* 116 *Motor Vehicle Brake Fluids,* 118 *Power-Operated Window, Partition, and Roof Panel System,* 124 *Accelerator Control Systems,* 126 *Electronic Stability Control Systems,* 135 *Light vehicle brake systems,* 138 *Tire Pressure Monitoring Systems,* 201 *Occupant Protection in Interior Impact,* 202a *Head Restraints,* 203 *Impact Protection for the Driver from the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 208 *Occupant Crash Protection,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 213 *Child Restraint Systems,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the subject non-U.S certified vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Addition of the brake warning indicator to fully comply with the standard.

Standard No. 110 *Tire Selection and Rims:* Installation of the required tire information placard.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicle near the left windshield pillar to meet the requirements of 49 CFR part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–24855 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2016–0194]

Notice of Rights and Protections Available Under the Federal Antidiscrimination and Whistleblower Protection Laws

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: No FEAR Act Notice.

SUMMARY: This Notice implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act of 2002). It is the annual obligation for Federal agencies to notify all employees, former employees, and applicants for Federal employment of the rights and protections available to them under the Federal Anti-discrimination and Whistleblower Protection Laws.

FOR FURTHER INFORMATION CONTACT: Yvette Rivera, Associate Director of Equal Employment Opportunity Programs Division (S–32), Departmental Office of Civil Rights, Office of the

Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W78–306, Washington, DC 20590, 202–366–5131 or by email at *Yvette.Rivera@dot.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

You may retrieve this document online through the Federal Document Management System at *http://www.regulations.gov.* Electronic retrieval instructions are available under the help section of the Web site.

No FEAR Act Notice

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' now recognized as the No FEAR Act (Pub. L. 107–174). One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' (Pub. L. 107–174, Summary). In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination'' (Pub. L. 107–174, Title I, General Provisions, section 101(1)). The Act also requires the United States Department of Transportation (USDOT) to provide this Notice to all USDOT employees, former USDOT employees, and applicants for USDOT employment. This Notice informs such individuals of the rights and protections available under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions, or privileges of employment because of race, color, religion, sex, national origin, age, disability, marital status, genetic information, or political affiliation. One or more of the following statutes prohibit discrimination on these bases: 5 U.S.C. 2302(b)(1), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 206(d), 29 U.S.C. 791, 42 U.S.C. 2000e–16 and 2000ff.

If you believe you were a victim of unlawful discrimination on the bases of race, color, religion, sex, national origin, age, genetic information, and/or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or in the case of a personnel action, within 45 calendar days of the effective date of the action to try and resolve the matter informally. This must be done before filing a formal complaint of discrimination with USDOT (See, *e.g.,* 29 CFR part 1614).

If you believe you were a victim of unlawful discrimination based on age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. As an alternative to filing a complaint pursuant to 29 CFR part 1614, you can file a civil action in a United States district court under the Age Discrimination in Employment Act, against the head of an alleged discriminating agency after giving the EEOC not less than a 30 day notice of the intent to file such action. You may file such notice in writing with the EEOC via mail at P.O. Box 77960, Washington, DC 20013, personal delivery, or facsimile within 180 days of the occurrence of the alleged unlawful practice.

If you are alleging discrimination based on marital status or political affiliation, you may file a written discrimination complaint with the U.S. Office of Special Counsel (OSC). Form OSC–11 is available online at the OSC Web site *http://www.osc.gov,* under the tab to file a complaint. Additionally, you can download the form from *http://www.osc.gov/Pages/Resources-OSCForms.aspx.* Complete Form OSC–11 and mail it to the Complaints Examining Unit, U.S. Office of Special Counsel at 1730 M Street NW., Suite 218 Washington, DC 20036–4505. You also have the option to call the Complaints Examining Unit at (800) 872–9855 for additional assistance. In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the USDOT administrative or negotiated grievance procedures, if such procedures apply and are available.

If you are alleging compensation discrimination pursuant to the Equal Pay Act, and wish to pursue your allegations through the administrative process, you must contact an EEO counselor within 45 calendar days of the alleged discriminatory action as such complaints are processed under EEOC's regulations at 29 CFR part 1614. Alternatively, you may file a civil action in a court of competent jurisdiction within two years, or if the violation is willful, three years of the date of the alleged violation, regardless of whether you pursued any administrative complaint processing. The filing of a complaint or appeal pursuant to 29 CFR part 1614 shall not toll the time for filing a civil action.

Whistleblower Protection Laws

A USDOT employee with authority to take, direct others to take, recommend, or approve any personnel action must not use that authority to take, or fail to take, or threaten to take, or fail to take a personnel action against an employee or applicant because of a disclosure of information by that individual that is reasonably believed to evidence violations of law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless the disclosure of such information is specifically prohibited by law and such information is specifically required by Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against a USDOT employee or applicant for making a protected disclosure is prohibited (5 U.S.C. 2302(b)(8)). If you believe you are a victim of whistleblower retaliation, you may file a written complaint with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036–4505 using Form OSC–11. Alternatively, you may file online through the OSC Web site at *http://www.osc.gov.*

Disciplinary Actions

Under existing laws, USDOT retains the right, where appropriate, to discipline a USDOT employee who engages in conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection laws up to and including removal from Federal service. If OSC initiates an investigation under 5 U.S.C. 1214, USDOT must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation (5 U.S.C. 1214). Nothing in the No FEAR Act alters existing laws, or permits an agency to take unfounded disciplinary action against a USDOT employee, or to violate the procedural rights of a USDOT employee accused of discrimination.

Additional Information

For more information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate office(s) within your agency (*e.g.,* EEO/civil rights offices, human resources offices, or legal offices). You can find additional information regarding Federal antidiscrimination, whistleblower protection, and retaliation laws at the EEOC Web site at *http://www.eeoc.gov* and the OSC Web site at *http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands, or reduces any rights otherwise available to any employee, former employee, or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Issued in Washington, DC, on October 5, 2016.

Leslie M. Proll,

Director, Departmental Office of Civil Rights, U.S. Department of Transportation.

[FR Doc. 2016–24863 Filed 10–13–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2012–0168]

RIN 2105–ZA02

Guidance on State Freight Plans and State Freight Advisory Committees

AGENCIES: Office of the Secretary of Transportation (OST), Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Maritime Administration (MARAD), Pipeline and Hazardous Materials Safety Administration (PHMSA), Saint Lawrence Seaway Development Corporation (SLSDC); U.S. Department of Transportation (DOT).

ACTION: Notice of guidance; response to comments.

SUMMARY: The FAST Act included a provision that requires each State that receives funding under the National Highway Freight Program to develop a State Freight Plan that provides a comprehensive plan for the immediate and long-range planning activities and investments of the State with respect to freight and meets all the required plan contents listed in the Act. This guidance provides the minimum required elements that State Freight Plans must meet, provides a template that reflects those statutory requirements, and suggests recommended, but optional elements, that States may include in their State Freight Plans. It also provides suggestions for establishing State Freight Advisory Committees that will benefit State freight planning. This notice also responds to comments submitted in response to interim guidance on State Freight Plans and State Freight Advisory Committees published by DOT on October 15, 2012.

DATES: Unless otherwise stated in this Notice, this guidance is effective October 14, 2016.

FOR FURTHER INFORMATION CONTACT: Ryan Endorf, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone Number (202) 366–4835 or Email *ryan.endorf@dot.gov.* Questions can also be submitted to *Freight@dot.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this Guidance on State Freight Plans and State Freight Advisory Committees is to provide States with information on the statutorily required elements of State Freight Plans under 49 U.S.C. 70202 and recommend approaches and information that States may include in their State Freight Plans. This guidance also strongly encourages States to establish State Freight Advisory Committees and provides suggestions as to how those Committees can help the State with its freight planning.

49 U.S.C. 70202 lists ten required elements that all State Freight Plans must address for each of the transportation modes:

1. An identification of significant freight system trends, needs, and issues with respect to the State;

2. A description of the freight policies, strategies, and performance measures that will guide the freight-related transportation investment decisions of the State;

3. When applicable, a listing of—

a. multimodal critical rural freight facilities and corridors designated within the State under section 70103 of title 49 (National Multimodal Freight Network);

b. critical rural and urban freight corridors designated within the State under section 167 of title 23 (National Highway Freight Program);

4. A description of how the plan will improve the ability of the State to meet the national multimodal freight policy goals described in section 70101(b) of title 49, United States Code and the national highway freight program goals described in section 167 of title 23;

5. A description of how innovative technologies and operational strategies, including freight intelligent transportation systems, that improve the safety and efficiency of the freight movement, were considered;

6. In the case of roadways on which travel by heavy vehicles (including mining, agricultural, energy cargo or equipment, and timber vehicles) is projected to substantially deteriorate the condition of the roadways, a description of improvements that may be required to reduce or impede the deterioration;

7. An inventory of facilities with freight mobility issues, such as bottlenecks, within the State, and for those facilities that are State owned or operated, a description of the strategies the State is employing to address those freight mobility issues;

8. Consideration of any significant congestion or delay caused by freight movements and any strategies to mitigate that congestion or delay;

9. A freight investment plan that, subject to 49 U.S.C. 70202(c), includes a list of priority projects and describes how funds made available to carry out 23 U.S.C. 167 would be invested and matched; and

10. Consultation with the State Freight Advisory Committee, if applicable.

Each of these required elements is discussed more fully in Section V of the guidance below. In addition, DOT suggests a number of optional items that States may consider including in their State Freight Plans. These optional elements are discussed more fully in Section VI below.

MAP–21 included two provisions that required the Secretary to encourage States to establish State Freight Plans and State Freight Advisory Committees. The FAST Act moved these provisions from title 23 to title 49 (Multimodal Freight Transportation) and required that States complete a State Freight Plan in order to obligate freight formula funds under 23 U.S.C. 167. State Freight Plans and State Freight Advisory Committees are complementary to other FAST Act freight provisions, such as the development of the National Freight Strategic Plan and the release of a Final National Multimodal Freight Network (NMFN; DOT released an Interim NMFN on May 27, 2016 per the statutory requirement).

Following the enactment of MAP–21 on July 6, 2012, DOT released Interim Guidance on State Freight Plans and State Freight Advisory Committees for public comment (77 FR 62596, October 15, 2012). DOT received 54 comments from State Departments of Transportation, local governments, industry groups, ports, and private individuals pertaining to various aspects of the Interim Guidance. In this section, DOT responds to these comments and describes their relevance to the new provisions in 49 U.S.C. 70201 and 70202, established under section 8001 of the FAST Act.

Response to Comments

Scope of Guidance

An important issue for some of the commenters was that it appeared to create an unnecessary burden for States by suggesting that a State include in its

State Freight Plan items beyond what is required by section 1118 of MAP–21. In particular, these commenters felt that the Interim Guidance lacked clarity about which plan elements were required as opposed to those that were recommended but not mandatory. Some commenters noted that certain aspects of the recommended guidance did not apply to their States or alternatively, that their States lacked the financial or technical capacity to address those aspects fully in their State Freight Plans. Additionally, there was concern that the Secretary would give preferential treatment (through the Secretary's discretionary authority to approve projects for increased Federal share under section 1116 of MAP–21) to States that included some or all of the recommended elements from the Interim Guidance (note that section 1116 of MAP–21 was repealed by the FAST Act).

To address these concerns, DOT is modifying the structure of the guidance below to clarify which elements are statutorily required versus those elements that are recommended for States to consider for optional inclusion in their State Freight Plans. As indicated in this new Guidance, some provisions for the State Freight Plans are required by the FAST Act and must be addressed in order for a State to obligate apportioned funds under the NHFP.

DOT recognizes that States vary in their transportation needs and system requirements, particularly regarding multimodal freight transportation. Some of the recommended elements may not be relevant to every State, and as such, do not have to be included in the plan. Similarly, the guidance is not intended to preclude States from supplementing their State Freight Plans with elements not described in the FAST Act or in this guidance. States have significant flexibility in creating State Freight Plans and State Freight Advisory Committees that fit their needs.

Based on a review of State Freight Plans and State Freight Advisory Committee materials that have been published by some States, DOT is confident that States, MPOs, local and tribal governments, and private entities will be able to take advantage of State Freight Plans and State Freight Advisory Committees to improve their freight planning processes. These materials are extensive in nature and far exceed many of the Plan and Advisory Committee requirements of MAP–21.[1] To date, 46 States are now in the process of developing or have developed State Freight Plans or modified Long-Range Statewide Transportation Plans to include freight provisions (many of these plans were developed prior to MAP–21), and 35 States have established State Freight Advisory Committees. Based on the new provisions of the FAST Act, it is anticipated that any State Freight Plan that was MAP–21 compliant will require some modification to meet the FAST Act requirements. These modifications will be discussed in greater detail below.

DOT will have a role in determining whether a State Freight Plan conforms to the requirements of 49 U.S.C. 70202. This review will be made using the statutorily defined requirements of section 70202 as they pertain to the specific transportation and other circumstances defined by each State. The optional elements suggested for consideration in this guidance will not be used as a factor for determining whether a State Freight Plan conforms to the requirements of 49 U.S.C. 70202.

Following the publication of the Interim Guidance in 2012, DOT received a number of comments regarding section 1116 of MAP–21. Because the FAST Act repealed section 1116 of MAP–21, DOT will not specifically address these comments. However, with respect to the new requirement in the FAST Act that States must have FAST Act-compliant State Freight Plans in order to remain eligible to obligate formula funding under the NHFP after December 4, 2017, the new Guidance below specifies that State Freight Plans, whether separate or incorporated into the Long-Range Statewide Transportation Plan, will be reviewed by DOT to determine whether the Plan satisfies the minimum requirements of 49 U.S.C. 70202.

Other commenters expressed concerns that the October 15, 2012, Interim Guidance was not sufficiently prescriptive. This set of commenters thought that the Interim Guidance should have provided more details so that States would not ignore important considerations in developing their plans. To address these concerns, we have provided additional recommended elements for consideration, along with the rationale for providing such suggestions. As previously stated, these recommendations are optional and are not meant to be exhaustive of additional considerations that could be included by a State. As addressed above, DOT recognizes that States differ in their freight considerations and capacities and these variations should be reflected in their State Freight Plans. States with unique freight characteristics are welcome to add those considerations into their State Freight Plans even if these considerations are not explicitly outlined in the guidance. DOT will monitor best practices regarding these plans and may seek to share such practices through publicly available resources like a public Web site, webinar, or future guidance.

DOT also received comments suggesting that additional categories of stakeholders should be included as part of State Freight Advisory Committees. DOT notes below that the FAST Act expands the categories of participants to be included in State Freight Advisory Committees, but also recognizes that States are free to add other participants and to exercise their discretion as to which stakeholders to include in their State freight planning process. The Guidance provided below offers suggestions for additional categories of members. Other recommendations in this Guidance are intended to assist the State in establishing protocols and best practices for State Freight Advisory Committees relative to the intent of 49 U.S.C. 70201.

Multimodal Considerations

A second major issue in the comments received on the October 15, 2012, Interim Guidance relates to how States should consider non-highway modes in their freight planning. Many commenters, including several State DOTs, urged that DOT encourage States to include maritime, rail, aviation, and other non-highway modes and facilities in their State Freight Plans and State Freight Advisory Committees. Some commenters, by contrast, urged that DOT not recommend inclusion of non-highway portions of the freight system.

The U.S. transportation system moved a daily average of 49 million tons of freight valued at over $53 billion in 2015 (daily value). By 2045, the U.S. population is expected to increase by 70 million more people and freight tons moved by all modes of transportation are expected to increase by 40 percent according to recent data released by the Bureau of Transportation Statistics (BTS).[2] While much of this freight growth will occur on highways and depend upon highway connectivity,

[1] It is important to note that MAP–21 did not require a State Freight Plan in order to receive federal formula or discretionary funding, although the development of a compliant plan was a requirement for consideration for eligibility to use a larger Federal share of federal aid funding for freight projects under section 1116 of MAP–21, Prioritization of Projects to Improve Freight Movement. This funding provision was repealed by the FAST Act and replaced with the new formula program for freight projects.

[2] *https://www.transportation.gov/briefing-room/dot-releases-30-year-freight-projections.*

particularly for first and last mile connections, significant increases are also projected for rail, maritime, pipeline, and air freight. In order to meet these future challenges, it is essential that freight planning efforts and investment decisions are coordinated, to the extent possible, among all modes of transportation. This view was supported in other public comments collected by DOT for the development of another MAP–21 requirement, the Primary Freight Network.[3] DOT recognizes that not all States have the ability to influence decisions over non-highway infrastructure, but a plan that considers the needs and capabilities of the entire freight system, including providing improved connectivity between different modal systems, will lead to better efficiency and safer outcomes than one that only considers the needs of highway freight. In addition, two primary purposes for establishing the National Multimodal Freight Network (49 U.S.C. 70103), a requirement of the FAST Act, are to assist States in strategically directing resources toward improved system performance for the efficient movement of freight on the network and to inform freight transportation planning. Supporting the importance of multimodal freight consideration, Congress created a requirement for a multimodal freight network in the FAST Act.

State Freight Plans developed pursuant to the FAST Act are multimodal in scope. DOT views State Freight Plans as a critical resource for the States to use in prioritizing freight transportation investments and guiding future transportation policymaking. Under the FAST Act, this linkage has been reinforced; prioritization of freight projects (within a State Freight Plan) is now mandatory. Specifically, within the State Freight Plan, a freight investment plan must include a prioritized list of projects and describe how funds made available to carry out the NHFP would be invested and matched by other funding sources. 49 U.S.C. 70202(b)(9). This information will also be helpful to States, MPOs, local and tribal governments, maritime ports and other special transportation authorities, and the Federal government in the identification of freight projects that may be eligible for funding under the Nationally Significant Freight and Highway Projects program (known as the ''FASTLANE program,''[4] established under section 1105 of the FAST Act and codified in 23 U.S.C. 117); the Advanced Transportation and Congestion Management Technologies Deployment program (established by section 6004 of the FAST Act and codified in 23 U.S.C. 503(c)); as well as for applications for credit under the Transportation Infrastructure Finance and Innovation Act (TIFIA) and Railroad Rehabilitation and Improvement Financing (RRIF) programs. However, the only projects that must be included in the freight investment plan of the State Freight Plan (as of December 4, 2017) are those that would use NHFP funding.

State Freight Plans ultimately reflect each State's analysis of its own economy and how the key sectors of its economy rely upon the freight transportation system. The more comprehensively a State Freight Plan represents all transportation modes related to freight movement, the more useful it will be in meeting the freight transportation needs of all of the State's industries, and in helping the State to make the best freight transportation decisions. State Freight Advisory Committees, with comprehensive representation by public and private freight interests, are a highly effective means of gathering information on system needs and potential solutions to be included in State Freight Plans and for other planning processes at interstate and local levels.

DOT made extensive use of the State Freight Plans prepared in response to section 1118 of MAP–21 (or earlier State-initiated efforts) in formulating the October 2015 draft National Freight Strategic Plan required under section 1115 of MAP–21 (this requirement was renewed by the FAST Act under 49 U.S.C. 70102). The new statutory provisions in 49 U.S.C. 70202 with regard to preparing fiscally constrained multimodal freight investment plans will greatly strengthen DOT's ability to respond to requirements for future revisions of the multimodal National Freight Strategic Plan under 49 U.S.C. 70102, which requires, among other factors, the identification of freight infrastructure bottlenecks and information on the cost of addressing each bottleneck, as well as any operational improvements that could be implemented. Accurate information of this type cannot be developed at the national level but rather must rely on careful assessments at the State and MPO levels, some of which is now required in State Freight Plans.

Interstate and International Collaboration

Several comments submitted for the October 15, 2012, Interim Guidance noted that the efficiency of freight movement has an important impact on international trade and that freight transportation issues often transcend State borders. In particular, these comments suggested that State Freight Advisory Committees should also include representatives from neighboring States or at least coordinate directly on regional priorities with other States. DOT fully agrees that efficient and reliable freight movement is a critical factor in stimulating international and interstate trade and encourages States to work jointly with their State and international neighbors, as well as with regional planning organizations and corridor coalitions, to prioritize projects that can facilitate freight movement across borders. While there are no specific requirements in chapter 702 of title 49, United States Code, for participation of neighboring States and nations in State Freight Advisory Committees or in the development of State Freight Plans, DOT believes that such participation would be valuable in facilitating discussions about prioritizing mutually beneficial freight transportation investments. As such, DOT strongly encourages neighboring States and countries to work together or consult with each other during the development or updating of State Freight Plans. Additionally, for multi-state projects that would be on a fiscally constrained freight investment plan, those multi-state projects would require coordination of the States involved such that the project is accurately and consistently reflected in each State's Freight Plan.

Integration With Existing State Planning Processes

Many commenters on the October 15, 2012, Interim Guidance addressed the issue of integrating State Freight Plans within the existing State planning process. Several commenters emphasized the role that MPOs should have in this process. Other commenters mentioned that State Freight Planning should be coordinated in part with State environmental and economic development agencies. Some commenters emphasized the role of regional planning.

DOT strongly recommends that States include all relevant parties in their freight planning processes, particularly

[3] *https://www.transportation.gov/sites/dot.gov/files/docs/FHWA-151002-013_F%20PFN.pdf.*

[4] Fostering Advancements in Shipping and Transportation for the Long-term Achievement of National Efficiencies.

through inclusion in State Freight Advisory Committees. This inclusion is supported by section 8001 of the FAST Act which requires that, ''The Secretary of Transportation shall encourage each State to establish a freight advisory committee consisting of a representative cross-section of public and private sector freight stakeholders, including representatives of ports, freight railroads, shippers, carriers, freight-related associations, third-party logistics providers, the freight industry workforce, the transportation department of the State, and local governments'' (49 U.S.C. 70201(a)). Other potential members of the State Freight Advisory Committees, including State environmental agencies and tribal governments, are described in the Guidance below. Even in instances where an organization is not a participant in a State Freight Advisory Committee, DOT recommends that the freight planning work of the organization be reviewed and incorporated into the State Freight Plan.

DOT recommends that MPOs (although not specifically listed in 49 U.S.C. 70201) be adequately represented in the State Freight Advisory Committee and in the development of the State Freight Plan. States and MPOs already coordinate planning activities in the development of Long-Range Statewide Transportation Plans and statewide transportation improvement programs (STIPs). Joint participation by State DOTs and MPOs in multimodal State Freight Advisory Committees will help ensure that State Freight Plan, TIP, and STIP processes are coordinated, fully address non-highway freight projects, and are consistent in their treatment. Existing and enhanced cooperation between States and MPOs will be vital in the development of fiscally constrained freight investment plans that must now be part of the State Freight Plan under 49 U.S.C. 70202.

Plan Updates and Modifications

One commenter on the October 15, 2012, Interim Guidance asked how States should proceed if they recently updated their State Freight Plans prior to the release of the Interim Guidance. DOT expects that this question is still relevant for States that updated their State Freight Plans to be compliant with the MAP–21 requirements. DOT notes that in order for a State to obligate NHFP (23 U.S.C. 167) funds 2 years after the date of enactment of the FAST Act (*i.e.,* after December 4, 2017), its State Freight Plan must include the required elements under 49 U.S.C. 70202 (except that the multimodal elements of the plan, which the FAST Act allows, may be incomplete before an obligation is made) and the project must be identified in the State Freight Plan. Thus, if a State recently updated its State Freight Plan, it should verify that its plan addresses all of the required elements under 49 U.S.C. 70202 and that the plan provides the required prioritized fiscally constrained list of freight projects that are needed in the State. If the State Freight Plan is missing any of these elements, the State should modify or amend its plan by December 4, 2017, so that it can continue to obligate funds available through the NHFP.[5] This modification or revision process would also restart the clock for submitting an updated State Freight Plan, which must be updated at least once every 5 years. States may wish to update their State Freight Plans on the same cycle that they update their Long-Range Statewide Transportation Plan, but States are allowed to update their State Freight Plans at whatever frequency is most suitable for them, provided this cycle does not exceed 5 years. In addition to the fiscally constrained freight investment plan component, States must include in their State Freight Plans, at a minimum, all plan contents required by 49 U.S.C. 70202(b) as they relate to highways in order to obligate NHFP apportioned funds after December 4, 2017. While any multimodal component of a State Freight Plan is not required in order to obligate NHFP funds, DOT strongly encourages States to have incorporated these components in their Plan by that date, when applicable, along with any other multimodal content not already identified in section 70202.

One State commenting on the October 15, 2012, Interim Guidance objected to listing out the recommended projects, stating that it would create an expectation in the general public that they would be constructed regardless of available funding. That State expressed that projects are developed with potential sources of funding in mind, as opposed to projects being developed without consideration for how they might be funded. DOT notes that the FAST Act addresses this concern both by providing sources of dedicated freight funding (23 U.S.C. 167 and 23 U.S.C. 117) and requiring in 49 U.S.C. 70202 that a State Freight Plan include a fiscally constrained freight investment plan that includes a list of priority projects and describes how NHFP funds would be invested and matched. DOT believes that these plans will help States to identify and act on their freight priorities. Further, State Freight Plans will be more useful for policymakers at all levels of government and the public if States can provide more information in advance about prioritized projects, including information about a project's need for funding and potential funding streams.

[5] States may obligate NHFP funding prior to December 4, 2017 without a State Freight Plan, provided they meet the other requirements and eligibilities of the NHFP program.

Guidance on State Freight Plans and State Freight Advisory Committees

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VIII. Data and Analytical Resources for State Freight Planning

I. Background and Program Purpose

The purpose of this document is to provide guidance on the implementation of 49 U.S.C. 70201 (State Freight Advisory Committees) and 70202 (State Freight Plans), as established under the Fixing America's Surface Transportation Act (FAST Act; Pub. L. 114–94). These concepts were initially introduced under sections 1117 and 1118, respectively, of the Moving Ahead for Progress in the 21st Century Act (MAP–21; Pub. L. 112–141). 49 U.S.C. 70201 requires the Secretary to encourage each State to establish a State Freight Advisory Committee consisting of a representative cross-section of public and private freight stakeholders. 49 U.S.C. 70202 requires each State receiving funding under 23 U.S.C. 167 (NHFP) to develop a comprehensive State Freight Plans that include both immediate and long-term freight planning activities and investments. Section 70202 specifies certain minimum contents for State Freight Plans, and provides that such plans may be developed separate from or be incorporated into the Long-Range Statewide Transportation Plans required by 23 U.S.C. 135.

The provisions for the State Freight Advisory Committees and State Freight Plans described under MAP–21 and the FAST Act are similar in content and scope, with some important distinctions. Unlike the provisions in MAP–21, which only encouraged the development of State Freight Plans,[6] section 8001 of the FAST Act requires

[6] The only requirement for a State Freight Plan under MAP–21 was to gain eligibility for consideration for a higher federal match for freight projects; this provision was repealed under the FAST Act.

that each State that receives NHFP funds under 23 U.S.C. 167 shall develop a freight plan that provides a comprehensive plan for the immediate and long-range planning activities and investments of the State with respect to freight. State Freight Plans developed pursuant to the FAST Act are multimodal in scope. For example, a State Freight Plan is required to include a description of how the Plan will improve the ability of the State to meet the national multimodal freight policy goals described in 49 U.S.C. 70101(b), and if applicable, the State Freight Plan must include multimodal critical rural freight facilities and corridors designated within the State under 49 U.S.C. 70103. State Freight Plans are meant to be comprehensive, and as such, they should assist State planning that involves all relevant freight modes (highway, rail, maritime, air cargo, and pipeline, as appropriate to that State).

Under 23 U.S.C. 167(i)(4), effective beginning 2 years after the date of the enactment of the FAST Act, each State that plans to obligate funds apportioned to the State under the NHFP must have developed a State Freight Plan in accordance with 49 U.S.C. 70202 (as it relates to highways), though the multimodal components of the Plan may be incomplete. In addition to the requirements for State Freight Plans under MAP–21, each FAST Act–compliant Plan must include a fiscally constrained freight investment plan and a list of the multimodal critical rural freight facilities and corridors that the State designates under 49 U.S.C. 70103 and the critical rural freight corridors and critical urban freight corridors (if these have been identified at the time of submission of the Plan) designated by the State and MPOs under 23 U.S.C. 167. FHWA has issued separate guidance on the implementation of 23 U.S.C. 167, which can be found here: *http://www.ops.fhwa.dot.gov/freight/pol_plng_finance/policy/fastact/s1116nhfpguidance/*.

FHWA has also provided a detailed Questions and Answers document that is available here: *http://www.ops.fhwa.dot.gov/freight/pol_plng_finance/policy/fastact/s1116nhfpqa/*.

II. Policy

DOT strongly encourages all States to establish State Freight Advisory Committees. Such Advisory Committees are an important part of the process needed to develop a thorough State Freight Plan. If a State establishes a State Freight Advisory Committee, the State must consult with its respective advisory committee while developing or updating its State Freight Plan (49 U.S.C. 70202(b)(10)). Bringing together the perspectives and knowledge of public and private partners, including shippers, carriers, and infrastructure owners and operators, is important to developing a comprehensive and relevant State Freight Plan.

Pursuant to 49 U.S.C. 70202, each State that receives funding for the NHFP shall develop a comprehensive freight plan that provides for the immediate and long-range planning activities and investments of the State with respect to freight. Further, 23 U.S.C. 167(i)(4) specifies that, notwithstanding any other provision of the FAST Act, effective beginning 2 years after the date of enactment of the FAST Act (*i.e.,* December 4, 2017), a State may not obligate funds apportioned to the State under the NHFP unless the State has developed a freight plan in accordance with 49 U.S.C. 70202, except that the multimodal component of the plan may be incomplete. State Freight Plans are required to be updated no less frequently than every 5 years.

DOT strongly encourages every State to develop a multimodal State Freight Plan for reasons in addition to enabling long-term access to funding under the NHFP. DOT understands that the effects of freight transportation are often regional or national in scope, and because freight providers own and operate private infrastructure, it can be more difficult for States to incorporate freight projects into their planning process than it is for projects that aid passenger transportation. DOT strongly encourages States to consider the performance and modal interaction of the overall freight system when developing their State Freight Plans. State Freight Plans that consider all the relevant transportation modes and performance measures (congestion reduction, safety, infrastructure condition, economic vitality, system reliability, and environmental sustainability) will be more informed and lead to better outcomes.[7]

Section 8001 of the FAST Act made important reforms to establish and codify a National Multimodal Freight Policy, National Multimodal Freight Network, multimodal State Freight Advisory Committees, and State Freight Plans, which must address the goals of the National Multimodal Freight Policy. The FAST Act greatly increases the likelihood of widespread adoption of improved freight transportation planning and implementation by creating dedicated sources of freight funding with multimodal eligibility. Because freight transportation is critical to the economic vitality of the United States and now has a source of dedicated funding through the FAST Act, renewed attention to planning and investing for safe and efficient freight transportation will have strong positive effects on the welfare of Americans and the competitiveness of the United States in the global economy.

State Freight Plans can help States contribute to the goals of the National Multimodal Freight Policy in 49 U.S.C. 70101(b) and the goals of the NHFP in 23 U.S.C. 167(b). DOT believes strongly that these goals provide essential direction and support for the improvement of freight transportation across all modes.

The State Freight Plans can also be used to communicate the freight performance measurement targets established pursuant to MAP–21, progress and strategies to goal achievement, any extenuating circumstances or other information relevant to this regulatory requirement. [Note: At the time of the release of this Guidance, the comment period for the Notice of Proposed Rulemaking on the freight performance measures was open and DOT was soliciting input on the proposed measures.[8]]

The State Freight Plan may be developed as a separate document from, or incorporated into, the Long-Range Statewide Transportation Plan required by 23 U.S.C. 135. If the State Freight Plan is separate from the Long-Range Statewide Transportation Plan,[9] both the State Freight Plan and the Long-Range Statewide Plan should explain how the projects and actions listed in the State Freight Plan are compatible with and reflected in the Long-Range Statewide Transportation Plan. If the two plans are combined, the Long-Range Statewide Transportation Plan should include a separate section focused on freight transportation and must include the elements specified in 49 U.S.C. 70202.

Due to the flexibility provided by this guidance to States regarding State Freight Plans, DOT will be reviewing State Freight Plans separately from the Long-Range Statewide Transportation and State Rail Plans, which are governed by other statutes. For

[7] For more information on performance measures, particularly on highways, please see *www.fhwa.dot.gov/TPM.*

[8] Federal Highway Administration, Notice of Proposed Rulemaking, *National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program,* 81 FR 23806 (April 22, 2016).

[9] 23 U.S.C. 135(f) (Long-Range Statewide Transportation Plan).

consideration of compliance with FAST Act provisions of State Freight Plans, States should submit their State Freight Plans to the Federal Highway Division Office in their State. DOT will review the freight plans for compliance with 49 U.S.C. 70202 and will use them to determine whether a State is eligible to continue to obligate NHFP funds after December 4, 2017.

DOT released a multimodal, draft National Freight Strategic Plan for public comment on October 18, 2015 (see *http://www.regulations.gov/#!docketDetail;D=DOT-OST-2015-0248*). DOT is updating the draft National Freight Strategic Plan to comply with the requirements under 49 U.S.C. 70102, as enacted by the FAST Act, and to incorporate public comments received. The final National Freight Strategic Plan will be based on the national goals and priorities set forth in 49 U.S.C. 70101, but has and will continue to incorporate, to the extent possible, issues and trends identified in State Freight Plans to capture State and local priorities.

III. Funding

Authorization level under the FAST Act: There is no formula or discretionary funding specifically designated for State Freight Plans or to establish or operate State Freight Advisory Committees. Nevertheless, there are several resources with eligibility to assist in the activities that support these elements of the FAST Act.

States may use funding apportioned under the Surface Transportation Block Grant Program (23 U.S.C. 133) for developing State Freight Plans, as well as funding set aside from apportioned programs for the State Planning and Research Program (23 U.S.C. 505). Similarly, States can use funds from the new NHFP to support freight planning and outreach, including efforts to develop or update State Freight Plans and support State Freight Advisory Committees. They may also use carryover balances from National Highway System (NHS) funds authorized under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU; 23 U.S.C. 103(b)(6)(E) as in effect on the day before enactment of MAP–21) that can be used for transportation planning that benefits the NHS in accordance with 23 U.S.C. 134 and 135 (section 1104 of MAP–21 amended 23 U.S.C. 103, eliminating the National Highway System Program under section 103; however, the carryover balances remain available for planning activities that benefit the NHS).

IV. State Freight Advisory Committees

DOT strongly recommends that States use a collaborative process for freight planning that involves all of the relevant stakeholders acting within or affected by the freight transportation system. To help accomplish this and per guidance found in 49 U.S.C. 70201, DOT strongly encourages States to establish, continue, or expand membership in State Freight Advisory Committees. A forum of this type that is similar from State to State will also facilitate the ability of public and private stakeholders, including but not limited to cargo carriers and logistics companies, and safety, community, energy, and environmental stakeholders, to identify and engage the appropriate freight planning organization in each State. However, DOT emphasizes that the establishment of State Freight Advisory Committees is not required by statute or by DOT. Each State has the option of establishing a State Freight Advisory Committee at its own convenience and subject to its own conditions, though pursuant to 49 U.S.C. 70201(b), the role of each committee shall include at a minimum the items listed in section 70201(b).

As specified in section 8001 of the FAST Act, State Freight Advisory Committees should include representatives of a cross-section of public and private sector freight stakeholders. These might include, but are not limited to, representatives of the following:

- Ports;
- Freight railroads;
- Shippers, freight forwarders;
- Carriers, including carriers operating on their own infrastructure (such as railroads and pipelines) and carriers operating on publicly-owned infrastructure (such as airlines, railroads, trucking companies, ocean carriers, and barge companies);
- Freight-related associations;
- Third-party logistics providers;
- Freight industry workforce;
- The transportation department of the State;
- MPOs, councils of government, regional councils, organizations representing multi-State transportation corridors, tribal governments, and local governments, and regional planning organizations;
- Federal agencies;
- Independent transportation authorities, such as maritime port and airport authorities of varying sizes, toll highway authorities, and bridge and tunnel authorities;
- Safety partners and advocates
- State and local environmental and economic development agencies;
- Other private infrastructure owners, such as pipelines;
- Hazardous material transportation providers;
- Representatives of environmental justice populations potentially affected by freight movement;
- University Transportation Centers and other institutions of higher education with experience in freight.

The inclusion of freight carriers, freight associations, and shipper and logistics companies in State Freight Advisory Committees is essential, as much of the innovation in freight carriage, management, and planning for future systems takes place among these organizations. Planning for freight without consulting with these organizations would constitute a significant gap in understanding the nature of freight needs and concerns. Carriers should represent a range of sizes and specialties, including full truck load, less than truckload, and small package delivery services. Similarly, participation by shipper and logistics companies of different sizes can provide critical information about warehousing and distribution service needs.

DOT strongly encourages States to include representatives from MPOs in freight planning processes because many freight projects are located within metropolitan areas. For that reason, MPOs and State DOTs must be in agreement if such projects are to be included in STIPs and TIPs and Long-Range Metropolitan and Long-Range Statewide Transportation Plans. Similarly, local governments, which often have land use authority in locations of important freight activity, should be included. MPOs, local governments, and civic organizations are concerned about community impacts of freight projects and early collaboration with those organizations during the freight project planning process can help to address concerns and opportunities. For example, community input and engagement with railroad representatives can help identify existing or emerging impacts of growth in rail activity that affect mobility, throughput, and safety at railway-roadway grade crossings. This focus in a State Freight Advisory Committee can help inform strategies and identify areas for investment in a State Freight Plan to resolve conflicts and improve Ladders of Opportunity in communities. Similarly, the inclusion of independent transportation authorities, such as maritime port and airport authorities, toll highway authorities, and bridge and tunnel authorities will help minimize the fragmentation of

planning that often occurs due to different authorities acting independently.

The FAST Act made important changes to the Tribal Transportation Program, including (but not limited to) the creation of the Tribal Transportation Self-Governance Program (section 1121 of the FAST Act; 23 U.S.C. 207) that extends many of the self-governance provisions of Title V of the Indian Self-Determination and Education Assistance Act to transportation. Representation of tribal governments in State freight planning is essential to development of a comprehensive State Freight Plan.

State DOTs already coordinate State involvement in both freight and passenger rail operations, and as required under section 330 of the Passenger Rail Investment and Improvement Act (PRIIA), develop FRA-accepted State Rail Plans. Rail, highway, and other modal divisions (pipeline safety, maritime/ports, and aviation airports) within the State DOT, or in other agencies of the State government, should be represented if deemed appropriate by the State. States should also consider the inclusion of other State agencies, including those engaged in law enforcement and emergency planning, which may have the authority to regulate and enforce speed limits on roads and highways, issue permits for higher-weight truck movements and longer combination vehicles (tractor-trailer combinations with two or more trailers) on State roads, and plan for emergency operations. Participation of Federal and State environmental agencies may prove useful in helping project sponsors anticipate and mitigate potential environmental issues that could arise from freight projects. Additionally, these agencies establish and enforce air and water regulations that have important effects on freight transportation. Joint planning with multiple participants within the framework of State Freight Advisory Committees can facilitate better solutions and prevent future conflicts.

States are encouraged to invite representatives from neighboring States and nations (Canada and Mexico, and their subordinate Provinces and States, as appropriate) to participate in State Freight Advisory Committees. They should also consider inviting councils of government and regional councils (if not already represented through the MPO), organizations representing multi-State transportation corridors, and other local and regional planning organizations to participate. Participation by Federal government representatives is also encouraged. These participants can play an important role in coordinating planning and funding for larger freight projects that extend beyond the boundaries of MPOs and States. Similarly, participation by regional economic development offices and State or regional Chambers of Commerce can be beneficial. These organizations may also have recommendations for other participants.

Representatives from the freight transportation industry workforce are critical participants in the freight planning process. Transportation workers provide input in identifying bottlenecks and other inefficiencies, safety problems, methods to respond to freight labor shortages, truck parking capacity and information needs, applications of new technologies, and other factors. Similarly, independent transportation experts, including academic specialists and industry consultants are valuable additions to the planning effort.

In all cases, DOT expects that State Freight Advisory Committee participation will vary from State to State and acknowledges that available funding, State DOT resources, and specific characteristics of a State's freight infrastructure will lead to significant differences in the size and composition of such Committees.

The FAST Act directs that State Freight Advisory Committees shall:

- Advise the State on freight-related priorities, issues, projects, and funding needs;
- Serve as a forum for discussion of State transportation decisions affecting freight mobility;
- Communicate and coordinate regional priorities with other organizations (for example, among a State's DOT, MPOs, tribal and other local planning organizations);
- Promote the sharing of information between the private and public sectors on freight issues; and
- Participate in the development of the State Freight Plan.

DOT notes that the multimodal, multiagency mix of participants recommended above offers an excellent forum for the exchange of information needed to develop the required components of the State Freight Plan (described in more detail below), such as in the identification of significant freight system trends, needs, and issues with respect to the State; a description of how innovative technologies and operational strategies, including freight intelligent transportation systems, that improve the safety and efficiency of freight movement are considered (the private sector is leading the way in the deployment of connected, automated and autonomous systems); creating an inventory of facilities with freight mobility issues, such as bottlenecks; development of strategies to mitigate that congestion or delay; and development of freight investment plans that combine public and private funding.

The identification of problems and opportunities in a multimodal forum can lead to innovative solutions that may never rise to the level of a State Freight Plan priority. By facilitating State, MPO, and local government access to highly skilled agency and private freight expertise, the Committee focuses and facilitates government efforts to incorporate freight into day-to-day planning efforts and raise the visibility of freight issues to levels not previously achieved. For this reason, DOT recommends that State Freight Advisory Committees meet on a regular basis, not solely for the purpose of developing or revising a State Freight Plan.

DOT notes that if a State is establishing or updating a State Freight Plan and also has opted to create a State Freight Advisory Committee, 49 U.S.C. 70202 requires that the State must consult with its State Freight Advisory Committee on the State Freight Plan. DOT believes that it will in almost all cases be more constructive to prepare a useful State Freight Plan based on State Freight Advisory Committee review and input. The FAST Act does not require, however, that a State Freight Advisory Committee be established or provide its approval for a State Freight Plan to become final. As such, the authority of the State to go forward with a State Freight Plan is not diminished by establishing a Committee. A State Freight Advisory Committee is advisory in nature and is not subject to Federal open meeting laws, though State open meeting laws may apply. DOT strongly encourages States to conduct State Freight Advisory Committee business in an open manner so that interested persons are able to observe any meeting of the Committee and be afforded opportunities to provide input.

The FAST Act, through 23 U.S.C. 167(d)(2), provides that the Federal Highway Administrator, in re-designating the Primary Highway Freight System, shall provide an opportunity for State Freight Advisory Committees, as applicable, to submit additional route miles for consideration. Similarly, 49 U.S.C. 70103(c)(2)(j) authorizes the Under Secretary of Transportation to consider recommendations by State Freight Advisory Committees for facilities to be

included on the National Multimodal Freight Network. DOT notes that States are not statutorily constrained from placing requirements in the charters of their State Freight Advisory Committees to require State consensus with such Committee recommendations for such facilities to the Under Secretary or the Administrator.[10]

V. State Freight Plans—Required Elements

Beginning on December 4, 2017, to be eligible to obligate Federal funds provided through the NHFP (23 U.S.C. 167), the FAST Act requires that a State has developed a State Freight Plan that provides a comprehensive plan for the immediate and long-range planning activities and investments of the State with respect to freight (49 U.S.C. 70202), except that multimodal elements of the plan need not be complete (23 U.S.C. 167(i)(4)).

DOT recognizes that many States have recently published State Freight Plans or are in the process of updating their State Freight Plans to be compliant with MAP–21 requirements. DOT emphasizes that those Plans can be updated (including by amendment) to be compliant with the FAST Act requirements. The required elements of State Freight Plans under section 1118 of MAP–21 and under 49 U.S.C. 70202, as amended by the FAST Act, are similar and are listed below. However, there are several additional requirements added under the FAST Act, meaning that all MAP–21 compliant State Freight Plans must be updated to include these requirements if they are not already in the plans. These new requirements have been highlighted in bold:

1. An identification of significant freight system trends, needs, and issues with respect to the State;

2. A description of the freight policies, strategies, and performance measures that will guide the freight-related transportation investment decisions of the State;

3. When applicable, a listing of—

• multimodal critical rural freight facilities and corridors designated within the State under section 70103 of title 49 (National Multimodal Freight Network);

• critical rural and urban freight corridors designated within the State under section 167 of title 23 (National Highway Freight Program);

4. A description of how the plan will improve the ability of the State to meet the national multimodal freight policy goals described in section 70101(b) of title 49, United States Code and the national highway freight program goals described in section 167 of title 23;

5. A description of how innovative technologies and operational strategies, including freight intelligent transportation systems, that improve the safety and efficiency of the freight movement, were considered;

6. In the case of roadways on which travel by heavy vehicles (including mining, agricultural, energy cargo or equipment, and timber vehicles) is projected to substantially deteriorate the condition of the roadways, a description of improvements that may be required to reduce or impede the deterioration;

7. An inventory of facilities with freight mobility issues, such as bottlenecks, within the State, and for those facilities that are State owned or operated, a description of the strategies the State is employing to address those freight mobility issues;

8. Consideration of any significant congestion or delay caused by freight movements and any strategies to mitigate that congestion or delay;

9. A freight investment plan that, subject to 49 U.S.C. 70202(c), includes a list of priority projects and describes how funds made available to carry out 23 U.S.C. 167 would be invested and matched; and

10. Consultation with the State Freight Advisory Committee, if applicable.

State Freight Plans issued prior to section 1118 of MAP–21 may need substantial modification to comply with the FAST Act if they were not previously updated for MAP–21. In this instance, issuance of a new consolidated FAST Act-compliant State Freight Plan is strongly encouraged; however, the new plan could make extensive use of material from a prior State Freight Plan.

The action of amending or updating a State Freight Plan to comply with the FAST Act will constitute a formal update of the plan and would restart the clock for submitting an updated State Freight Plan, which must be updated at least once every 5 years.

DOT wishes to emphasize that the elements listed in 49 U.S.C. 70202 (which are shown above) are the only required elements of State Freight Plans. Each element, as it relates to highways, must be addressed if a State wishes to obligate NHFP funds available under 23 U.S.C. 167 after December 4, 2017. Note that if a State wishes to obligate NHFP funds for a freight intermodal or freight rail project, that project must be included in the fiscally constrained freight investment plan as well. As long as State Freight Plans cover the required elements, they may be organized in any structure that works best for individual States.

For States that have neither developed nor recently updated their State Freight Plan to reflect MAP–21 requirements and are looking for a possible model to address the FAST Act requirements, DOT suggests the following structure as a possible, but not mandated, model that States can follow to address all of the statutorily required criteria:

1. Identification and Inventory of Freight System:

a. An identification of significant freight system trends, needs, and issues with respect to the State;

b. An inventory of facilities with freight mobility issues, such as bottlenecks, within the State;

c. When applicable, a listing of—

i. Multimodal critical rural freight facilities and corridors designated within the State under section 70103 of title 49; and

ii. Critical rural and urban freight corridors designated within the State under 23 U.S.C. 167;

2. Consideration of any significant congestion or delay caused by freight movements and any strategies to mitigate that congestion or delay;

3. Description of Policies, Goals and Strategies:

a. A description of the freight policies, strategies, and performance measures that will guide the freight-related transportation investment decisions of the States;

b. A description of how the Plan will improve the ability of the State to meet the National Multimodal Freight Policy goals described in 49 U.S.C. 70101(b) and the NHFP goals described in 23 U.S.C. 167(b);

c. In the case of roadways on which travel by heavy vehicles (including mining, agricultural, energy cargo or equipment, and timber vehicles) is projected to substantially deteriorate the condition of the roadways, a description of improvements that may be required to reduce or impede the deterioration;

d. For those facilities that are State-owned or operated, a description of the strategies the State is employing to address the freight mobility issues;

e. A description of strategies to mitigate any significant congestion or delay caused by freight movements;

f. A description of how innovative technologies and operational strategies,

[10] The charter for the California Freight Advisory Committee (*http://dot.ca.gov/hq/tpp/offices/ogm/CFAC/Final_CFAC_Charter_062813_3.pdf*) is one example of a State Freight Advisory Committee charter that conforms to good practice, providing for committee membership, responsibilities, frequency of meetings, decision processes, reporting, etc. States can, of course, vary from this format, but DOT strongly recommends the development of a charter document.

including freight intelligent transportation systems, that improve the safety and efficiency of freight movement, were considered;

4. A freight investment plan that, subject to 49 U.S.C. 70202(c), includes a list of priority projects and describes how funds made available to carry out 23 U.S.C. 167 would be invested and matched; [11] and

5. Demonstration of consultation with the State Freight Advisory Committee, if applicable.

This optional organizational scheme does not change or reduce the statutorily-required elements of the State Freight Plan, but merely provides one possible structure that allows for consolidation of related elements and information. As noted previously, States have flexibility to follow any structure they wish as long as they contain the statutorily required elements noted above.

VI. State Freight Plans—Optional Elements

DOT reiterates that the only elements that State Freight Plans must include are those identified in the statute and outlined in the previous section ''V. STATE FREIGHT PLANS—Required Elements.'' This section (SECTION VI) suggests optional methods by which States might respond to the above requirements and identifies a number of other items that States may consider including in their State Freight Plans. These items have been identified through a review of research papers, studies of best industry practices, and State Freight Plans that were completed immediately following MAP–21. DOT is providing this information to help inform each State's freight planning process; but ultimately, it is up to each State to determine which if any of these additional elements to include.

A State Freight Plan must address a 5-year forecast period, although DOT strongly encourages an outlook of two decades or more. While the FAST Act provides that ''A State freight plan described in subsection (a) shall address a 5-year forecast period'' (49 U.S.C. 70202(d)), the Act also states that the plan should provide ''a comprehensive plan for the immediate and long-range planning activities and investments of the State with respect to freight'' (49 U.S.C. 70202(a)). In almost all transportation planning exercises, long-range planning necessarily exceeds a period of 5 years. DOT notes that a freight plan horizon of only 5 years would not enable States to do more than list present problems and projects already in the development pipeline, without respect to longer-term trends and new technologies. In summary, whereas a planning forecast of 5 years is sufficient (and must be provided) to meet the statutory requirement, longer outlooks supplementing the five year forecast are strongly recommended for the overall State Freight Plan—if possible, corresponding at least to the 20-year outlook of the Long-Range Metropolitan and Long-Range Statewide Transportation Plans. Carefully developed forecasts of freight movements will be essential to the success of a freight plan whether it cover a 5-year period, a 20-year period or longer timeframe. For example, it will be important to have accurate estimates of freight moving along a particular corridor and the numbers of trucks, trains, etc. associated with moving that freight in an efficient manner in order to select the most appropriate project or projects for that corridor. Improved freight travel modeling is necessary for estimating freight emissions accurately and to better inform alternatives analysis for freight projects, including multi-modal freight planning. To assist States in long term freight planning Section VIII of this guidance contains a number of data and analysis sources that may prove useful. DOT continues to support further improvements in freight modeling through its freight model improvement program.

A special exception to this guidance on a 20-year outlook periods applies to the fiscally constrained Freight Investment Plan component of the State Freight Plan (49 U.S.C. 70202(c)), which addresses the NHFP funding timeframe and can be updated more frequently than the five-year requirement for the entire State Freight Plan. Fiscal constraint requires that revenues in transportation planning and programming (Federal, State, local, and private) are identified and ''are reasonably expected to be available'' to implement the Long-Range Metropolitan Transportation Plan and the STIP/TIP, while providing for the operation and maintenance of the existing highway and transit systems. In addition, revenues must be ''available or committed'' for the first 2 years of a TIP/STIP in air quality nonattainment and maintenance areas (23 CFR 450.324(e) and 23 CFR 450.216(a)(5)). Long-Range Statewide Transportation Plans are not required to be fiscally constrained, however; and in some cases, States may not be able to provide a fiscally-constrained state-wide list of freight projects exceeding the planning period of the STIP. Thus, DOT recommends the Freight Investment Plan, at a minimum, be carefully aligned with the TIP and STIP documents for the respective State. Aligning this investment plan with the above-referenced documents enhances the State's ability to better prioritize their freight projects and ensures coordination between the State DOT and the MPOs. States may opt to extend the period of their Freight Investment Plans to longer intervals, including 20-year periods that correspond to the Statewide and metropolitan long-range plans, if this would help them for freight-planning purposes.

The FAST Act does not provide instructions on the volume of the information to be included or the thoroughness of a State Freight Plan. DOT notes that the contents of the State Freight Plan and its necessary components should comply with what a State determines is needed to guide planning and investment activities. Many States have already prepared State Freight Plans in response to section 1118 of MAP–21 that provide extensive multimodal and other useful information in keeping with the goal of improving their freight planning. DOT supports these State efforts to improve their freight planning and invites the inclusion of any aspects of freight planning that a State believes add value to its planning effort in addition to addressing the required components of the FAST Act.

DOT has organized this section around the statutory requirements of 49 U.S.C. 70202 to provide context for where optional elements can supplement the required elements. Bold items are the statutory requirements described in Section V; non-bold items are the optional elements, or clarifying statements.

1. An identification of significant freight system trends, needs, and issues with respect to the State;

States have broad flexibility in addressing the trends, needs, and issues of their freight systems. To enhance the identification of these issues, DOT recommends, but does not require, that the State Freight Plan begin with a discussion of the role that freight transportation plays in the State's overall economy, and how the economy is projected to grow or change. This section could identify those industries which are most important to the economy of the State and the specific freight transportation modes and facilities most vital to the supply chains

[11] States must include in their State Freight Plan any facility, highway or otherwise, on which they intend to use NHFP funding, in that 23 U.S.C. Section 167(i)(5)(ii) requires an eligible project for such funding to be identified in a freight investment plan included in a freight plan of the State that is in effect.

of these industries. The discussion could address the key issues confronting the freight system, both in the present and anticipated in the future, such as needs to improve safety and reduce impacts of freight movement on communities, particularly minority and low-income communities, and the environment, as well as future transportation labor force challenges. This could include assessing the following: The benefits and burdens of freight movements, including air quality, noise, and vibration impacts; effects on community connectivity and cohesion; impacts of longer and more frequent trains at roadway/rail grade crossings; truck parking capacity and information; hazardous material transportation and emergency response capability; and areas with high levels of pedestrian and bicycle activity. Many of these issues can be identified through the State Freight Advisory Committee (if one has been established). In most instances, the State will also have identified critical freight issues in studies conducted through State agencies, MPOs, and academic or research institutions. Additionally, there are many national studies (such as through the Transportation Research Board of the National Academies of Science, Engineering and Medicine) and frequently, local case studies that focus on emerging freight problems, such as last mile delivery issues, that will be relevant to many States.

The following are possible items to consider when identifying the economic trends and forecasts that will affect freight: [12]

- Global, national, regional, and local economic conditions and outlooks, particularly those of the State, neighboring States or countries, and principal trading partners;
- Population growth and location;
- Income and employment by industry and service sector, including the expected employment by each sector of the transportation industry;
- Freight attributes of industry and service sectors (including heavy freight, less than truckload freight, and small package delivery);
- Type, value, and quantity of imports and exports;
- Industrial and agricultural production forecasts; and
- Forecasts of freight movements by commodity type and location, including small package deliveries associated with e-commerce, and projected port or rail freight activity.

DOT notes that when there is a high degree of uncertainty about future economic, industrial, and technological conditions, (*e.g.,* changing energy markets, deployment of connected and autonomous freight vehicles), approaches, such as scenario planning, can help to develop alternative outlooks and investments that can accommodate more than one future outlook.

DOT recommends that the State Freight Plan describe the conditions and performance of the State's freight transportation system, including trends in conditions and performance. This analysis, if the State chooses to do it, would help to identify needs for future investment within the State. If a State has already conducted an analysis of the conditions and performance of its overall public infrastructure, that analysis could be referenced or incorporated into the State Freight Plan in so far as it pertains to the freight system.[13] Similarly, States may be able to develop such measures from State asset management systems, Highway Performance Monitoring System data, Level of Service data from Transportation Management Centers, National Performance Management Research Data Sets (NPMRDS), or other sources. It is recommended that the performance measures used correspond to those required under Item 2 (''A description of freight policies, strategies, and performance measures'') below.

Information on the condition and performance of private infrastructure is also encouraged, although it is acknowledged that this information is more difficult to obtain. State Rail Plans and other sources could be used to gather information on some aspects of freight rail and rail bridge data (*e.g.,* miles and locations of freight rail that can carry cars weighing 286,000 pounds or greater, tunnel heights adequate for double stack rail cars, dual track sections). Similarly, States may have commissioned reports on port and waterway conditions, or may be able to establish performance conditions. Metrics for States to assess truck parking capacity are offered for consideration in the summary report on the Jason's Law survey, available here: *http://www.ops.fhwa.dot.gov/freight/infrastructure/truck_parking/jasons_law/truckparkingsurvey/index.htm.*

Data on port and waterway conditions and performance may also be available from port authorities, in Port Master Plans, or from automatic identification systems (AIS) for vessels and Global Positioning System (GPS) probe data for trucks in port areas and operating on port access roads. More information about performance data for measuring mobility for non-highway modes is provided in Item 7, ''An inventory of facilities with freight mobility issues,'' below.

DOT acknowledges, however, that the FAST Act does not specifically require condition and performance data in State Freight Plans. States are not required or expected to undertake such an evaluation solely for the purpose of informing the State Freight Plan.

2. A description of freight policies, strategies, and performance measures that will guide the freight-related transportation investment decisions of the State;

This section of the State Freight Plan is important for providing the overall approach the State will take to address the challenges described in the preceding section. The policies and strategies in the State Freight Plan are likely to reflect a mix of State legislative direction, discretionary decisions by State DOTs and other State agencies, decisions by other States, plans by MPOs, local and tribal governments, special transportation authorities (including port, airport, and toll authorities); and the accommodation of plans by private sector companies, such as railroads, marine terminal operators, pipeline companies, trucking companies, and others. It is recommended that the State Freight Plan also identify any statutory and State constitutional constraints on freight-related investments and policies, such as prohibitions on spending State funds on certain kinds of infrastructure. The State could also discuss regional freight planning activities in which the State participates, identify freight-related institutions within the State, and explain the governance structures and funding mechanisms for such institutions.

DOT recommends that the State explain how it will measure the success of its strategies, policies, and investments in achieving the goals and

[12] There are many Transportation Research Board publications that can assist States in evaluation freight system trends and needs. Among them are NCFRP Report 8, Freight-Demand Modeling to Support Public-Sector Decision Making; NCHRP Report 606, Forecasting Statewide Freight Toolkit; NCHRP Report 388, A Guidebook for Forecasting Freight Transportation Demand; SHRP 2 Capacity Project C43, Innovations in Freight Demand Modeling and Data Improvement; NCHRP Report 750, Strategic Issues Facing Transportation, Volume 1: Scenario Planning for Freight Transportation Infrastructure Investment; and others. (See: *http://www.trb.org/FreightTransportation/FreightTransportation2.aspx*).

[13] Section 1203 of MAP–21 amended 23 U.S.C. 150 to require the establishment of performance management measures, some of which pertain specifically to freight movement. As of the issuance of this State Freight Plan guidance, some of these measures have not yet been finalized. For the purpose of the optional presentation of conditions and performance in the State Freight Plan, States may use any measure of conditions and performance already in use in the State.

objectives of the Plan. Such measurements may be qualitative, but preferably would be quantifiable and consistent with the measures (if any) used by the State to describe the conditions and performance of the freight infrastructure (including measures of pavement and bridge condition, traffic congestion and travel time, safety, emissions and water quality, and other factors). Where possible, the State should consider the use of performance measures in the State Freight Plan that are consistent with those used in other State planning documents and in reports and grant requests submitted to the Federal government. These would allow a State to determine if it is achieving its objectives and to quantify and assess outputs and outcomes relative to expectations.

3. When applicable, a listing of—

a. Multimodal critical rural freight facilities and corridors designated within the State under section 70103 of title 49; and

b. Critical rural and urban freight corridors designated within the State under section 167 of title 23;

Compliance with this requirement of the FAST Act is straightforward: If these corridors have been designated pursuant to the FAST Act, they should be included in the State Freight Plan. Therefore, Plans may need to be capable of being updated if or as these corridors are changed or redesignated. DOT also suggests, but does not require, States to provide an inventory of the State's freight transportation assets, both publicly and privately owned, that it deems most significant for its freight planning purposes. This optional list could include elements not included in the National Highway Freight Network or the National Multimodal Freight Network, such as locally important freight roads and bridges not on these networks, short line railroads, smaller border crossings, water (including port) facilities, waterways, pipeline terminals, smaller airports, etc. It also could include warehousing, freight transfer facilities, and foreign trade zones located in the State.

4. A description of how the plan will improve the ability of the State to meet the national multimodal freight policy goals described in section 70101(b) of title 49 and the national highway freight program goals described in section 167 of title 23;

DOT notes that the goals of the National Multimodal Freight Policy are extensive and pertain to the National Multimodal Freight Network (49 U.S.C. 70103). These goals are to:

(1) Identify infrastructure improvements, policies, and operational innovations that strengthen the contribution of the National Multimodal Freight Network to the economic competitiveness of the United States, reduce congestion and eliminate bottlenecks on the National Multimodal Freight Network, and increase productivity, particularly for domestic industries and businesses that create high-value jobs;

(2) Improve the safety, security, efficiency, and resiliency of multimodal freight transportation;

(3) Achieve and maintain a state of good repair on the National Multimodal Freight Network;

(4) Use innovation and advanced technology to improve the safety, efficiency, and reliability of the National Multimodal Freight Network;

(5) Improve the economic efficiency and productivity of the National Multimodal Freight Network;

(6) Improve the reliability of freight transportation;

(7) Improve the short- and long-distance movement of goods that travel across rural areas between population centers, travel between rural areas and population centers, and travel from the Nation's ports, airports, and gateways to the National Multimodal Freight Network;

(8) Improve the flexibility of States to support multi-State corridor planning and the creation of multi-State organizations to increase the ability of States to address multimodal freight connectivity;

(9) Reduce the adverse environmental impacts of freight movement on the National Multimodal Freight Network; and

(10) Pursue the goals described in this subsection in a manner that is not burdensome to State and local governments.

The goals of the NHFP (23 U.S.C. 167(b)) are similar, but focus on investing in infrastructure improvements and implementing operational improvements on the highways of the United States.

It is noteworthy that the National Multimodal Freight Policy goals are more comprehensive of freight transportation issues than are the required elements of State Freight Plans. States should strongly consider emphasizing aspects of their State goals and strategies intended to improve safety, security, and resiliency of the freight system, including through the use of enhanced designs, technologies, and multimodal strategies. Safety in particular is of paramount concern to the public and policy makers with more than 4,500 freight-related fatalities nationally in 2013.[14] New technologies offer great potential to reduce or even eliminate fatalities over the next several decades, but more conventional investments in safety are also highly effective in reducing accident risk.

It would be particularly informative to address how the State is addressing the role of climate change, which is increasingly likely to adversely affect the safety, reliability, and resiliency of the freight transportation system. Similarly, strong consideration should be given to describing how the State plans to mitigate the effects of freight transportation on communities, particularly minority and low-income communities, and the environment. They are encouraged to discuss plans to reduce noise, vibration, air, light pollution, barriers to movements in communities, etc. and provide information on freight investments that are intended to support economic opportunities for disadvantaged and low-income individuals, veterans, seniors, youths, and others with local workforce training, employment centers, health care, and other vital services.

Although not cited as a component of the National Multimodal Freight Policy or the NHFP goals, States are invited to provide information on how they will seek to develop and maintain an adequate workforce for the freight transportation industry, including opportunities for small and disadvantaged business enterprises.

DOT recommends that these goals be addressed sequentially in the State Freight Plan, but this is not mandatory. Where possible, DOT recommends that State goals and policies (addressed under Item 2, ''A description of freight policies, strategies, and performance measures,'' above) should be associated with comparable components of the National Multimodal Freight Policy and the NHFP. DOT also recommends that each State identify which goals it believes to be most important and merit the largest focus. DOT acknowledges that a State may not have specific goals or investments pertaining to all elements of the National Multimodal Freight Policy or the NHFP and notes that this is not required for a compliant State Freight Plan.

5. A description of how innovative technologies and operational strategies, including freight intelligent transportation systems, that improve the

[14] See Table 6.1 in Freight Facts and Figures 2015, *http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/data_and_statistics/by_subject/freight/freight_facts_2015/chapter6/table6_1*

safety and efficiency of freight movement, were considered;

In the last few years, the deployment of advanced driver assistance programs has accelerated rapidly. Connected autonomous vehicles, including trucks, will become increasingly common in the coming decades. Intermodal transfers will increasingly be automated at ports and inland facilities. These and other technologies, including intelligent transportation systems, promise to greatly improve the safety and efficiency of freight and passenger movements. They will enable freight carriers of all modes and passenger cars and trains to make safer and more efficient use of existing infrastructure capacity due to fewer collisions, more efficient and coordinated vehicle operations, and the ability to rapidly route around congested locations, including corridors with significant transit lines and high pedestrian and bicycle traffic. Freight mobility integration into communities with Complete Streets policies can reduce bicycle and pedestrian fatalities and injuries, and aid States in meeting new Safety Performance Measures. Safety improvements are already being realized through features such as automated braking and lane departure warning systems, but impacts will become much more pronounced over the next 10–20 years. As such, DOT strongly encourages States, when developing or updating their State Freight Plans, to thoroughly explore the abilities of these new technologies and how they will affect the need to modify or expand existing infrastructure.

The private sector has been leading the way with regard to applications of advanced driver assistance systems, large data sets to plan and coordinate vehicle and freight logistics, new vehicle and engine technologies, unmanned aircraft and ground systems, and many other innovative applications of technology. As such, it would be remarkably difficult to develop a credible forecast of the use of innovative technologies and operational strategies within a State or across its borders without extensive consultation with private terminal operators, freight carriers, third party logistics providers, academic institutions, and other participants in the freight transportation system. Forums such as State Freight Advisory Committees provide excellent opportunities for State and other public entities to consult with private interests to acquire information on their expected rate of adoption of new technologies, how these technologies will impact the freight system, and the means by with the public sector can best accommodate them with infrastructure investments, intelligent transportation system deployment investments, and regulatory support.

Special studies done by agency experts, consultants, and State academic institutions are a valuable source of information in the development and deployment of Vehicle to Vehicle (V2V) and Vehicle to Infrastructure (V2I) technologies.[15] Familiarity with the technology plans of other neighboring States, including through participation in their State Freight Advisory Committees or regional or corridor-based freight groups, will help to promote the use of compatible intelligent transportation systems for multistate system users. Ultimately, however, consultation with private sector interests about these technologies will help to ensure that public investments support private needs both within the State and across multistate regions.

6. In the case of roadways on which travel by heavy vehicles (including mining, agricultural, energy cargo or equipment, and timber vehicles) is projected to substantially deteriorate the condition of the roadways, a description of improvements that may be required to reduce or impede the deterioration;

The recent energy boom in the United States led to a tremendous increase in the exploration and production of energy resources. The heavy trucks and freight flows necessary to support the energy boom have in some cases led to accelerated deterioration of roads and bridges not originally built for large volumes of heavy trucks. These adverse impacts can be significant. Movement of agricultural products, lumber, and coal by trucks at overweight conditions can also contribute to road and bridge damage, as can some heavy containers handled through U.S. ports. Of course, not all States will be impacted in similar ways. DOT recommends that State Freight Plans make use of existing research, to the extent possible, to address the impacts of heavy vehicles.[16]

In general, the State Freight Plan should address the problems and strategies to manage heavy freight vehicles on roadways. This analysis can also consider the viability of shifting heavy freight to modes other than highways. DOT recommends, but does not require, that the State Freight Plan address special needs of waterways, ports, and railways to accommodate vessels and trains used to move very heavy resource-related materials.

7. An inventory of facilities with freight mobility issues, such as bottlenecks, within the State, and for those facilities that are State owned or operated, a description of strategies the State is employing to address the freight mobility issues;

The statute does not provide specific instructions as to what qualifies as a significant mobility impediment or bottleneck, leaving this determination to the State. States have a significant degree of flexibility to determine which facilities most concern them based on methods they employ to measure mobility. State Freight Plans may emphasize the identification of freight facilities that will likely be on the National Highway Freight Network and the National Multimodal Freight Network, but States are encouraged to identify any significant intermodal connector/first- and last-mile or other mobility problems even if not on these networks. States are strongly encouraged to describe mobility issues associated with non-highway modes, particularly when occurring on the National Multimodal Freight Network established under the FAST Act (49 U.S.C. 70103). States are also strongly encouraged to consider freight mobility areas occurring in urban settings that affect multiple transportation users including transit riders, bicyclists, and pedestrians.

Performance measurement to understand freight flows and bottlenecks is important for understanding where investments, both operational and capital, could best help improve the freight network. In the discussion of Item 1, ''An identification of significant freight system trends,'' DOT describes various forms of performance metrics available to States. However, with regard to measuring freight mobility, DOT also recommends consideration of methods that address the fluidity of freight movement through the use of multimodal data and analysis to understand source to destination freight trips. Many States have used truck probe data and truck counts to evaluate freight performance at the facility level. DOT and partners are making available resources for data and approaches to help with fluidity analyses that better illuminate freight bottlenecks at the system level, including through use of data provided

[15] For example: *http://www.its.dot.gov/evaluation/evaluation_deployment.htm.*

[16] For example, Texas DOT made use of information developed by its Energy Sector Impacts Task Force and other sources to inform its State Freight Plan. See the following for more information: Texas Department of Transportation, Task Force on Texas' Energy Sector Roadway Needs, Report to the Texas Transportation Commission, December 13, 2012, *http://ftp.dot.state.tx.us/pub/txdot-info/energy/final_report.pdf;* Texas Department of Transportation, Texas Freight Mobility Plan, Final, January 25, 2016.

by the private sector. As of yet, however, applications of fluidity measures are limited by a lack of data.

Until consistent national-level freight fluidity data are available, DOT notes that there are numerous potential sources of information on facilities with freight mobility issues. One particularly valuable resource is the State Freight Advisory Committee. Public and private participants in the State Freight Advisory committee will often have first-hand, specific data about freight mobility problems in and on public and private facilities throughout the State. A number of States, MPOs, and regional or corridor coalitions have developed detailed studies of mobility problems and solutions. States may also consult reports about the locations of major highway freight bottlenecks issued periodically by the American Transportation Research Institute (ATRI).[17]

Information about railroad bottlenecks may be available in State Rail Plans, or through consultation with railroads serving the State. Similarly, MPOs can provide information about locations where railroad-highway crossings or railroad-railroad crossings create congestion for vehicles, trains, pedestrians, and non-motorized vehicles, including bicycles. Railroad unions may be able to share important concerns about bottlenecks. DOT notes that, because railroad freight and railroad-highway grade crossing and separation projects are eligible for funding under the Nationally Significant Freight and Highway Projects (FASTLANE Grants) program and the NHFP, railroads will have significant new incentives to participate in multimodal freight planning at a State, MPO, and local level.

Port authorities, either participating through State Freight Advisory Committees, MPOs, or in direct consultation with the State, can provide valuable information about mobility and other constraints facing the port, including landside connections to highway and railroad systems, as well as connections to inland waterway systems and pipelines. Their Master Plans and other planning documents can also provide forecasted volumes that are useful for predicting where future mobility and other constraints may occur. In some States, the State DOT is responsible for port investments and will already have mobility issues identified. Port and maritime labor organizations, marine terminal operators, barge and vessel operators, and maritime and port industry associations can be accessed directly to identify facilities with mobility constraints or collectively through State Freight Advisory Committees.

All aspects of the energy transportation pipeline industry are regulated to some extent by Federal and State agencies, which may be able to provide information on congested segments and facilities. Similarly, pipeline operators and their associations may contribute useful information. Potential methods to present solutions to the mobility problems are identified in the next section, immediately below.

8. Consideration of any significant congestion or delay caused by freight movements and any strategies to mitigate that congestion or delay;

Once locations of facilities with mobility impediments to freight movement are identified, State DOTs may make quantitative or qualitative assessments of delay to freight movements on both local and network bases and the extent to which freight is a major contributor to the delay. Strategies to address congestion and delay can be drawn from any source preferred by the State, including pre-existing evaluations and plans, but States are encouraged to consider network effects of mitigation actions, and where possible, to look to a broad mix of solutions, including adding multimodal capacity, improved intelligent transportation systems and technological solutions, changed operating procedures (*e.g.,* longer port gate hours), incentives to use off-peak delivery times, regulatory changes to eliminate impediments to improved efficiency (*e.g.,* removing regulatory barriers to connected autonomous vehicles), and multimodal approaches to resolve freight congestion problems.

Consultation with the various parties participating in the State-wide assessment of mobility impediments can yield essential information about alternatives not previously considered, and, as noted earlier, can inform States about rapidly emerging technology deployments in the private sector. Private freight carriers may also share their plans to address rail, port, waterway, pipeline, and air cargo capacity problems, which may affect State plans for highway capacity projects linked to these facilities or otherwise affected by them.

9. A freight investment plan that, subject to 49 U.S.C. 70202(c)(2), includes a list of priority projects and describes how funds made available to carry out section 167 of title 23 would be invested and matched;

As required in 49 U.S.C 70202(c)(2), the freight investment plan component shall include a project, or identified phase of a project, only if funding for completion of the project can be reasonably anticipated to be available for the project within the time period identified in the freight investment plan. In the State Freight Plan, the term ''fiscally-constrained'' has the same meaning as is applied to TIPs and STIPs. Multi-state projects would require coordination of the States involved such that the project is accurately and consistently reflected in each State's Freight Plan.

All freight projects that are included in the State Freight Plan and which involve the expenditure of public funds should necessarily be included in TIPs, STIP, and be consistent with Long-Range Metropolitan and Statewide Transportation Plans. To the extent that States have prepared economic analysis for specific projects, DOT encourages States to consider the results of those analyses when determining which projects are included on their freight investment plan, and also to refer to the results of benefit-cost analyses, as appropriate, when and if the project is mentioned in the State Freight Plan.

10. Consultation with the State Freight Advisory Committee, if applicable.

Each State should provide information summarizing its consultation efforts with their State Freight Advisory Committee (if one has been established). Possible methods of doing this are to reference or summarize minutes of the meetings of the Committee with regard to discussions of the State Freight Plan. Other methods are acceptable, including the incorporation of a written position paper from the State Freight Advisory Committee. DOT notes that there is no statutory requirement that a State Freight Advisory Committee must approve a State Freight Plan.

VII. Other Encouragements

DOT encourages each State to designate a freight transportation coordinator to facilitate effective communication with the FHWA Division Office in that State regarding the submission of State Freight Plans and freight investment plans. A point of contact can help streamline information exchange with the operating administrations of DOT and freight stakeholders, and help ensure that freight transportation needs are given adequate consideration in the transportation planning process. Within

[17] ATRI, Congestion Impact Analysis of Freight Significant Highway Locations—2015, *http://atri-online.org/2015/11/18/congestion-impact-analysis-of-freight-significant-highway-locations-2015/.*

a State Freight Plan, States may provide DOT with information as to how they are organized to plan and implement freight programs across the network of highways, rail lines, waterways, airports, maritime ports, and distribution centers that constitute the multimodal freight system in their State.

This point of contact would also be useful in managing the flow of information between the State and DOT on other FAST Act elements, such as the designation of critical urban freight corridors, critical rural freight corridors, changes to the Primary Highway Freight System, and inputs to the National Freight Strategic Plan and National Multimodal Freight Network. The DOT-designated Marine Highway Network is also included on the Interim National Multimodal Freight Network, and the State points of contact can request edits or amendments to that network by contacting the Maritime Administration's Gateway Directors.[18]

VIII. Data and Analytical Resources for State Freight Planning

The operating administrations of DOT and other departments in the U.S. Government provide a wide range of data and analysis resources to assist States in the freight planning process. The following is a series of links to Internet Web sites that provide useful data and analysis resources:

General Data and Analysis Sources on Freight

DOT Freight Web site: *http://www.freight.dot.gov/*

Freight Analysis Framework, incorporating data from the BTS Commodity Flow Survey and TransBorder Freight Data; Census Foreign Trade Statistics; U.S. Army Corps of Engineers Waterborne Commerce Statistics; and other sources: *http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/subject_areas/freight_transportation/faf* and *http://www.ops.fhwa.dot.gov/freight/freight_analysis/faf/index.htm*

Commodity Flow Survey: *http://www.bts.gov/publications/commodity_flow_survey/*

Data on Demographics and Economic Censuses

http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml

National Transportation Atlas Database, GIS files across all modes: *http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/publications/national_transportation_atlas_database/index.html*

State Statistics: *http://www.rita.dot.gov/bts/publications/state_transportation_statistics* and *http://gis.rita.dot.gov/StateFacts/*

North American Industry Classification System (NAICS): *http://www.census.gov/eos/www/naics/*

Data Sources Related to Freight Transportation: *http://www.ops.fhwa.dot.gov/freight/freight_analysis/data_sources/index.htm* and *http://www.rita.dot.gov/bts/data_and_statistics/by_subject/freight.html*

Freight Performance Measures: *http://www.ops.fhwa.dot.gov/freight/freight_analysis/travel_time.htm*

Quick Response Freight Manual: *http://www.ops.fhwa.dot.gov/freight/publications/qrfm2/index.htm*

Examples of existing State Freight Plans (none are compliant with the FAST Act as of the issuance of this draft guidance): *http://www.ops.fhwa.dot.gov/freight/resources/frt_solutions/index.htm#freight_plans*

Truck Parking Information and Metrics for Assessing Truck Parking Capacity (Jason's Law): *http://www.ops.fhwa.dot.gov/freight/infrastructure/truck_parking/index.htm*

International Statistics

USA Trade Online—Census Foreign Trade Statistics: *https://usatrade.census.gov/*

International Trade Data and Analysis

http://trade.gov/data.asp

North American Transborder Freight Data: *http://transborder.bts.gov/programs/international/transborder/*

Border Crossing/Entry Data: *http://transborder.bts.gov/programs/international/transborder/TBDR_BC/TBDR_BC_Index.html*

Maritime Data and Statistics

Navigation Data Center, Waterborne Commerce Statistics Center, U.S. Army Corps of Engineers: *http://www.iwr.usace.army.mil/About/TechnicalCenters/WCSCWaterborneCommerceStatisticsCenter.aspx*

Navigation Data Center, Vessel Entrances and Clearances, U.S. Army Corps of Engineers: *http://www.navigationdatacenter.us/*

Maritime Data and Statistics, U.S. Maritime Administration: *http://www.marad.dot.gov/library_landing_page/data_and_statistics/Data_and_Statistics.htm*

St. Lawrence Seaway, under bilateral American and Canadian management: *https://www.seaway.dot.gov/publications/annual-reports* and *http://www.greatlakes-seaway.com/en/seaway/facts/index.html*

Rail Freight Resources and Statistics

The Preliminary National Rail Plan: *http://www.fra.dot.gov/eLib/details/L02695*

The National Rail Plan Progress Report: *http://www.fra.dot.gov/eLib/Details/L02696*

Final State Rail Plan Guidance: *http://www.fra.dot.gov/eLib/details/L04760*

Comparative Evaluation of Rail and Truck Fuel Efficiency on Competitive Corridors: *http://www.fra.dot.gov/eLib/Details/L04317*

Discussion of the confidential Carload Waybill Sample and State access: *http://www.stb.dot.gov/stb/industry/econ_waybill.html*

Online highway-rail grade crossing investment analysis tool: *http://gradedec.fra.dot.gov/*

Web-Based Screening Tool for Shared-Use Rail Corridors: *https://www.fra.dot.gov/Page/P0702*

Safety Data

FRA Office of Safety: *http://safetydata.fra.dot.gov/OfficeofSafety/default.aspx*

Interactive mapping application that allows users to view aspects of railroad infrastructure: *http://fragis.fra.dot.gov/GISFRASafety/*

Air Freight Statistics

FAA Aerospace forecasts: *http://www.faa.gov/about/office_org/headquarters_offices/apl/aviation_forecasts/*

Office of Airline Information: *http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/subject_areas/airline_information/index.html*

Community Impacts

OST Ladders Site: *https://www.transportation.gov/opportunity*

FHWA Bicyclist/Pedestrian Design Resources: *http://www.fhwa.dot.gov/environment/bicycle_pedestrian/*

EJ Screen: *https://www.epa.gov/ejscreen*

Issued in Washington, DC, on October 6, 2016.

Anthony Foxx,

Secretary.

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[18] Contact information for the Gateway Directors is available at *http://www.marad.dot.gov/about-us/gateway-offices/*.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Four Individuals and Nine Entities Pursuant to Executive Order 13581, ''Blocking Property of Transnational Criminal Organizations''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of four individuals and nine entities whose property and interests in property are blocked pursuant to Executive Order 13581 of July 24, 2011, ''Blocking Property of Transnational Criminal Organizations,'' and who have been added to OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: OFAC's actions described in this notice were effective on October 11, 2016.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622/2420, Associate Director for Sanctions Policy and Implementation, tel.: 202/622/2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622/2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION: The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site at *http://www.treas.gov/ofac.*

Notice of OFAC Actions

On October 11, 2016, OFAC blocked the property and interests in property of the following individuals and entities and placed them on the SDN List.

Individuals

1. KHANANI, Obaid Altaf (a.k.a. ''AHMED, Obaid''), Apt 411 and 412, Juma Al Majid Bldg, Tower B, Al Nadha, Sharjah, United Arab Emirates; 107 Kings Road, Old Trafford, Manchester, Lancashire M16 9WY, United Kingdom; DOB 20 Jul 1987; POB Karachi, Pakistan; Passport BF4108623 (Pakistan) (individual) [TCO] (Linked To: KAY ZONE GENERAL TRADING LLC; Linked To: LANDTEK DEVELOPERS; Linked To: ALTAF KHANANI MONEY LAUNDERING ORGANIZATION; Linked To: AL ZAROONI EXCHANGE).

2. KHANANI, Hozaifa Javed (a.k.a. KHANANI, Huzaifa Jawed), House No D–85 Block 5, Clifton, Karachi, Pakistan; DOB 04 May 1987; Passport AF6899813 (Pakistan); National ID No. 4220197869815 (Pakistan) (individual) [TCO] (Linked To: KAY ZONE BUILDERS & DEVELOPERS; Linked To: UNICO TEXTILES; Linked To: ALTAF KHANANI MONEY LAUNDERING ORGANIZATION).

3. KHANANI, Muhammad Javed (a.k.a. KHANANI, Javaid; a.k.a. KHANANI, Javed; a.k.a. KHANANI, Javed Muhammad; a.k.a. KHANANI, Javeed), D–85 Block, Clifton, Karachi, Pakistan; Third Floor, Penthouse, Osma Terrace PECHS, Flat No 9/1, Block 2, Karachi, Pakistan; DOB 02 May 1961; citizen Pakistan; Passport DW4100432 (individual) [TCO] (Linked To: ALTAF KHANANI MONEY LAUNDERING ORGANIZATION).

4. POLANI, Atif (a.k.a. POLANI, Atif Abdul Aziz), D–31, Block-5, Clifton, Karachi, Pakistan; Dubai, United Arab Emirates; DOB 09 Jan 1978; Passport KE155664 (Pakistan); National ID No. 42301–4685763–5 (Pakistan) (individual) [TCO] (Linked To: ALTAF KHANANI MONEY LAUNDERING ORGANIZATION; Linked To: AL ZAROONI EXCHANGE).

Entities

1. KAY ZONE BUILDERS & DEVELOPERS (a.k.a. KAY ZONE BUILDERS AND DEVELOPERS), House #D–85, Block-5, Clifton, Karachi, Pakistan [TCO] (Linked To: KHANANI, Hozaifa Javed).

2. KAY ZONE GENERAL TRADING LLC, Office No. 412, Abdul Ahmed Al Zarouni Building, Deira, Dubai, United Arab Emirates; Registration ID 1046349 (United Arab Emirates); Dubai Chamber of Commerce Membership No. 175229; Trade License No. 626883 (United Arab Emirates) [TCO] (Linked To: KHANANI, Obaid Altaf).

3. LANDTEK DEVELOPERS, 5th Floor, Emerald Tower, G–19, Block-5, Clifton Road, Clifton, Karachi, Pakistan [TCO] (Linked To: KHANANI, Obaid Altaf).

4. UNICO TEXTILES, S.f. Unit #5, Hub River Road, S.I.T.E., Karachi, Pakistan [TCO] (Linked To: KHANANI, Hozaifa Javed).

5. AYDAH TRADING LLC (a.k.a. AYDAH TRADING AL AIN), P.O. Box 89103, Dubai, United Arab Emirates; P.O. Box 16524, Al Ain, Abu Dhabi, United Arab Emirates; Rm. 413, Jumma Bldg., Naif Rd., Deira, Dubai, United Arab Emirates [TCO] (Linked To: ALTAF KHANANI MONEY LAUNDERING ORGANIZATION).

6. JETLINK TEXTILES TRADING, No. 1004 Dummy Deyar Developer Bldg., P.O. Box 203253, Dubai, United Arab Emirates; P.O. Box 41792, Office No. 1004 Deyaar Developer Building, Business Bay, Dubai, United Arab Emirates; P.O. Box 282158, Dubai, United Arab Emirates; P.O. Box 46584, Sheikh Zayed Road, Dubai, United Arab Emirates; Commercial Registry Number 1144902; License 717783 [TCO] (Linked To: ALTAF KHANANI MONEY LAUNDERING ORGANIZATION).

7. MAZAKA GENERAL TRADING L.L.C., 108 Al Safa Tower, Sheikh Zayed Road, P.O. Box 181176, Dubai, United Arab Emirates; PO BOX 181176, Al Souk Al Kabir Rd, Ben Daghen Building 6, Dubai, United Arab Emirates; 108 Al Safa Tower Trade Center, First Land No 23, PO Box No 181176, Dubai, United Arab Emirates; Govt. Of Dubai Real Estate Bldg. Bur, Main, P.O. Box 3162, Dubai, United Arab Emirates; Web site *http://mazakatrading.com;* National ID No. 214774 (United Arab Emirates); Trade License No. 683633 (United Arab Emirates) [TCO] (Linked To: ALTAF KHANANI MONEY LAUNDERING ORGANIZATION).

8. SEVEN SEA GOLDEN GENERAL TRADING LLC, Al Qasimiya Street 25022, Sharjah, United Arab Emirates; Ofc. 413, Al Jumma Bldg., Naif Rd., Deira, Dubai, United Arab Emirates [TCO] (Linked To: ALTAF KHANANI MONEY LAUNDERING ORGANIZATION).

9. WADI AL AFRAH TRADING LLC, P.O. Box 40553, Dubai, United Arab Emirates; P.O. Box 39807, Dubai, United Arab Emirates; Flat No. 405 Rahim Al Badri Bldg., Naif Road, Deira, Dubai, United Arab Emirates; Registration ID 620850 (United Arab Emirates) [TCO] (Linked To: ALTAF KHANANI MONEY LAUNDERING ORGANIZATION).

Dated: October 11, 2016.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–24926 Filed 10–13–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2016–30

AGENCY: Internal Revenue Service (IRS), Treasury.

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 IRS is soliciting comments concerning Revenue Procedure 2016–30, Pre-filing Agreement Program.

DATES: Written comments should be received on or before December 13, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6527, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 317–5746, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Pre-filing Agreement Program.

OMB Number: 1545–1684.

Regulation Project Number: Revenue Procedure 2016–30.

Abstract: This revenue procedure permits a taxpayer under the jurisdiction of the Large Business and International Division (LB&I) to request that the Service examine specific issues relating to tax returns before those returns are filed. This revenue procedure modifies and supersedes Rev. Proc. 2009–14, 2009–3 I.R.B. 324.

This revenue procedure provides the framework within which a taxpayer and the Service may work together in a cooperative environment to resolve, after examination, issues accepted into the program. If the taxpayer and the Service are able to resolve the examined issues before the tax returns that they affect are filed, this revenue procedure authorizes the taxpayer and the Service to memorialize their agreement by executing an LB&I Pre-Filing Agreement (PFA).

Current Actions: There are no changes to the total burden previously approved for this collection. However, updates are being requested to the estimated number of respondents/recordkeepers and the estimated time per response to be more consistent with taxpayer timeframes. We are making this submission for renewal purposes.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 18.

Estimated Time per Response: 729 hours, 40 minutes.

Estimated Total Annual Burden Hours: 13,134.

The following paragraph applies to all the collections of information covered by this notice.

The following paragraph applies to all of the collections of information covered by this notice:

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 6, 2016.

R. Joseph Durbala,

Tax Analyst, IRS.

[FR Doc. 2016–24820 Filed 10–13–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Office of the General Counsel

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Directive 15, pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Debra K. Moe, Deputy Chief Counsel (Operations)
2. Scott Dinwiddie, Associate Chief Counsel (Income Tax and Accounting)
3. Dustin Starbuck, Associate Chief Counsel (Finance & Management)
4. Mark Kaizen, Associate Chief Counsel (General Legal Services)
5. Barbara Franklin, Deputy Division Counsel (Large Business & International)

Alternate—Marjorie Rollinson, Associate Chief Counsel (International)

Alternate—Joseph Spires, Deputy Division Counsel (Small Business & Self Employed)

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: October 6, 2016.

William J. Wilkins,

Chief Counsel, Internal Revenue Service.

[FR Doc. 2016–24822 Filed 10–13–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Office of the General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Directive 15, pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Laura Hildner, Deputy General Counsel
2. Sunita B. Lough, Commissioner (Tax Exempt/Government Entities), IRS
3. Mary Beth Murphy, Commissioner (Small Business/Self Employed), IRS

Alternate—Donna C. Hansberry, Deputy Commissioner (Tax Exempt/Government Entities), IRS

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: October 6, 2016.

William J. Wilkins,

Chief Counsel, Internal Revenue Service.

[FR Doc. 2016–24825 Filed 10–13–16; 8:45 am]

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FEDERAL REGISTER

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Part II

Commodity Futures Trading Commission

17 CFR Part 50
Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 50

RIN 3038–AE20

Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is adopting an amendment to the Commission's regulations to expand the existing clearing requirement for interest rate swaps pursuant to the pertinent section of the Commodity Exchange Act (CEA). The amended regulation requires that interest rate swaps denominated in certain currencies and having certain termination dates, as described herein, be submitted for clearing to a derivatives clearing organization (DCO) that is registered under the CEA (registered DCO) or a DCO that has been exempted from registration under the CEA (exempt DCO).

DATES: The amended rule is effective December 13, 2016. Specific compliance dates are discussed in the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Sarah E. Josephson, Deputy Director, Division of Clearing and Risk (DCR), at 202–418–5684 or *sjosephson@cftc.gov;* Peter A. Kals, Special Counsel, DCR, at 202–418–5466 or *pkals@cftc.gov;* Melissa A. D'Arcy, Special Counsel, DCR, at 202–418–5086 or *mdarcy@cftc.gov;* Meghan A. Tente, Special Counsel, DCR, at 202–418–5785 or *mtente@cftc.gov;* Michael A. Penick, Economist, Office of the Chief Economist (OCE), at 202–418–5279 or *mpenick@cftc.gov;* or Lihong McPhail, Research Economist, OCE, at 202–418–5722 or *lmcphail@cftc.gov,* in each case at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Clearing Requirement Proposal

On June 16, 2016, the Commission published a notice of proposed rulemaking (NPRM) to establish an expanded interest rate swap clearing requirement under section 2(h)(1)(A) of the CEA and Commission regulation 50.4(a).[1] The Commission proposed requiring clearing of certain interest rate swaps offered for clearing at Chicago Mercantile Exchange, Inc. (CME), Eurex Clearing AG (Eurex), LCH.Clearnet Ltd. (LCH), and/or Singapore Exchange Derivatives Clearing Ltd. (SGX), each a Commission-registered DCO.[2] The interest rate swaps proposed in the NPRM were: Fixed-to-floating interest rate swaps denominated in Australian dollar (AUD), Canadian dollar (CAD), Hong Kong dollar (HKD), Mexican peso (MXN), Norwegian krone (NOK), Polish zloty (PLN), Singapore dollar (SGD), Swedish krona (SEK), and Swiss franc (CHF) (collectively, the nine additional currencies); basis swaps denominated in AUD; forward rate agreements (FRAs) denominated in AUD, NOK, PLN, and SEK; overnight index swaps (OIS) denominated in AUD and CAD; and OIS having termination dates of up to three years that are denominated in U.S. dollar (USD), euro (EUR), or sterling (GBP).[3]

For the reasons discussed below, this final rulemaking expands the existing interest rate swap clearing requirement by requiring the clearing of all of the swaps covered by the NPRM, except for AUD-denominated FRAs.

B. Regulatory Background

The Commission's first clearing requirement determination issued in 2012 applied to four classes of interest rate swaps and two classes of credit default swaps.[4] The Commission is adopting this clearing requirement determination to require the clearing of certain, additional interest rate swaps pursuant to section 2(h) of the CEA. Under section 2(h)(1)(A) of the CEA, it is unlawful for any person to engage in a swap unless that person submits such swap for clearing to a DCO that is registered under the CEA or a DCO that is exempt from registration under the CEA if the swap is required to be cleared. The Commission may initiate a clearing requirement determination pursuant to a swap submission from a registered DCO.[5] Section 2(h)(2)(B)(i) of

[1] Clearing Requirement Determination Under Section 2(h) of the CEA for Interest Rate Swaps, 81 FR 39506 (June 16, 2016).

[2] Two DCOs that the Commission has exempted from registration, ASX Clear (Futures) Pty Ltd. (Australia) (ASX) and OTC Clearing Hong Kong Ltd., clear some of the swaps covered by this determination (AUD- and HKD-denominated interest rate swaps, respectively). Pursuant to Commission orders, these two DCOs are permitted to clear for U.S. proprietary accounts but not for U.S. customers. However, as discussed further below, should either of these two exempt DCOs decide that they wish to offer clearing to U.S. customers, they would be eligible to apply for registration as full DCOs. Because these DCOs have not submitted filings under Commission regulation 39.5(b), this final rule addresses only those registered DCOs that have submitted swaps for consideration under that regulation.

[3] *See* Table 1 for information regarding which registered DCOs clear which interest rate swaps. Each DCO submitted information about the interest rate swaps subject to this rulemaking to the Commission pursuant to regulation 39.5(b), which is discussed further below.

[4] Clearing Requirement Determination Under Section 2(h) of the CEA, 77 FR 74284 (Dec. 13, 2012) [hereinafter the First Clearing Requirement Determination]. The four classes of interest rate swaps defined under Commission regulation 50.4(a) include fixed-to-floating, basis, FRA, and OIS. In 2012, the Commission required that, for the fixed-to-floating, basis, and FRA classes, the top four currencies as measured by total notional amount be subject to required clearing. Those top four currencies were EUR, USD, GBP, and Japanese yen (JPY). All four currencies were specified in the fixed-to-floating, basis, and FRA classes under regulation 50.4(a). For OIS swaps, all the currencies except JPY were specified under the rule.

[5] Section 2(h)(2) of the CEA provides the Commission with authority to issue a determination that a swap is required to be cleared pursuant to two separate review processes. Section 2(h)(2)(A) of the CEA provides for a Commission-initiated review process whereby the Commission, on an ongoing basis, must review swaps (or a group, category, type or class of swaps) to make a determination as to whether a swap (or group, category, type or class of swaps) should be required to be cleared. The other process provided under section 2(h)(2)(B) of the CEA entails the Commission's review of swaps that are submitted by DCOs. Specifically, section 2(h)(2)(B)(i) of the CEA requires that each DCO submit to the Commission each swap (or group, category, type or class of swaps) that it plans to accept for clearing. The swaps subject to this rulemaking were submitted by DCOs pursuant to section 2(h)(2)(B)(i) of the CEA and Commission regulation 39.5(b).

the CEA requires a DCO to submit to the Commission each swap, or any group, category, type, or class of swaps that it plans to accept for clearing and provide notice to its members of the submission. Commission regulation 39.5(b) implements the procedural elements of section 2(h)(2)(B)–(C) by establishing the specific process for the submission of swaps by a DCO to the Commission for a clearing requirement determination.[6]

Accordingly, the Commission is issuing this final rulemaking to adopt an amendment to § 50.4(a) such that the following products are subject to the clearing requirement as set forth in regulation 50.4: (1) Fixed-to-floating swaps denominated in the nine additional currencies; (2) basis swaps denominated in AUD; (3) FRAs denominated in NOK, PLN, and SEK; (4) OIS denominated in AUD and CAD; and (5) OIS denominated in USD, EUR, and GBP that have termination dates of up to three years.

C. Clearing Requirements in Other Jurisdictions

The following is an updated summary of actions taken by other jurisdictions towards implementing clearing mandates for interest rate swaps. The Commission believes that it is important to harmonize its swap clearing requirement with clearing mandates promulgated in other jurisdictions. For example, if a non-U.S. jurisdiction issued a clearing requirement and a swap dealer (SD) located in the U.S. were not subject to that non-U.S. clearing requirement, then a swap market participant located in the non-U.S. jurisdiction might be able to avoid the non-U.S. clearing requirement by entering into a swap with the SD located in the U.S.

As the Commission reviewed the regulation 39.5(b) submissions from DCOs, it considered whether those products offered for clearing at DCOs were subject, or were likely to be subject, to a clearing requirement in another jurisdiction. For those products that were the subject of a clearing requirement rule or proposal outside of the U.S., the Commission reviewed the specifications of the products and the processes used by non-U.S. regulators to impose a clearing mandate. In addition, the Commission reviewed data produced and made available to the public in connection with any rule proposals or final rules implementing a clearing requirement in non-U.S. jurisdictions. Finally, the Commission considered comments submitted in response to clearing mandate rule proposals in non-U.S. jurisdictions and any subsequent changes that regulators made to final rules implementing a clearing mandate. In this manner, the Commission was informed by its review of non-U.S. jurisdictions' clearing mandates and considered those mandates in preparing this determination.

Consequently, the scope of the swaps included in this final rulemaking reflects the Commission's desire to harmonize with our counterparts abroad and is informed by the work of those regulators, as described below. In addition, the product specifications of the swaps included in this clearing requirement determination are intended to be consistent with those referenced in clearing mandates published by the Commission's counterparts abroad.[7]

i. Australia

The Australian Securities and Investments Commission (ASIC) has published regulations that require certain Australian and non-Australian entities [8] to clear AUD-, USD-, GBP-, EUR-, and JPY-denominated fixed-to-floating interest rate swaps, basis swaps, and FRAs, as well as AUD-, USD-, GBP-, and EUR-denominated OIS. The regulations' swap classes are co-extensive with those described in existing Commission regulation 50.4(a), except for the addition of AUD-denominated swaps. The first compliance date for an Australian market participant to comply with the Australian clearing mandate for AUD-denominated fixed-to-floating interest rate swaps and basis swaps was April 4, 2016.[9] The first compliance date for the Australian clearing mandate for AUD-denominated OIS will be October 3, 2016 and for AUD-denominated FRAs April 2, 2018.[10]

As a result of this clearing requirement determination, the classes of swaps required to be cleared under Commission regulation 50.4(a) are expanded to include AUD-denominated fixed-to-floating interest rate swaps, basis swaps, and OIS swaps that are consistent with the AUD-denominated swaps that are, or will be, required to be cleared by ASIC.[11]

ii. Canada

In 2015, Canada's provincial securities regulators [12] published a draft rule that would require certain derivatives to be cleared.[13] On February 24, 2016, the Canadian provincial securities regulators published a revised draft rule that applies to certain

[6] Section 2(h)(2)(B)–(C) of the CEA describes the process by which the Commission is required to review swap submissions from DCOs to determine whether the swaps should be subject to the clearing requirement. On June 23, 2016, the Commission published on its Web site for public comment 34 submissions from DCOs submitted pursuant to section 2(h)(2)(B) of the CEA and CFTC regulation 39.5(b) over the past few years. The public comment period closed on July 25, 2016, and five letters were submitted by that date. *See* CFTC Press Release, CFTC Requests Public Comment on Swap Clearing Requirement Submissions (June 23, 2016), available at: *http://www.cftc.gov/PressRoom/PressReleases/pr7396-16.* Any future proposals for a new clearing requirement determination related to the swaps covered by those 34 submissions would be subject to a separate notice and comment rulemaking process. Market participants may offer additional comments or feedback on market developments related to those 34 submissions by contacting any of the DCR staff named above.

[7] In the future, it may be appropriate to propose a clearing requirement under the CEA covering swaps that are not yet the subject of a proposed or final clearing mandate issued by a non-U.S. jurisdiction. *See generally* comment letter from the International Swaps and Derivatives Association, Inc. (ISDA), at 5, (discussing the goal of harmonizing clearing mandates, commending the Commission's independent analysis in the NPRM, and noting that ''the CFTC does not have any control over the clearing mandates of its counterparts in non-U.S. jurisdictions and therefore should continue to conduct full and robust independent analysis prior to implementing any clearing mandates.'').

[8] As defined under ASIC's final clearing rules, clearing entities subject to the Australian clearing mandate include Australian authorized deposit-taking institutions (ADIs) and Australian financial services licensee (AFS Licensees) that hold a total gross notional outstanding position of AUD 100 billion or more under specific circumstances, as measured at particular points in time. To account for non-Australian entities, ASIC's final rules also define foreign clearing entities, opt-in clearing entities, and cross-reference to Australia's Corporations Regulations 2001 definition of foreign internationally active dealers. ASIC Derivative Transaction Rules (Clearing) 2015, available at: *https://www.comlaw.gov.au/Details/F2015L01960.*

[9] ASIC Derivative Transaction Rules (Clearing) 2015, at section 1.2.7.

[10] *Id.,* at section 1.2.3.

[11] For the reasons discussed below, the Commission is not finalizing its proposed requirement to clear AUD-denominated FRAs at this time.

[12] Canada's provincial securities regulators are collectively referred to as the Canadian Securities Administrators, including representatives from: The Alberta Securities Commission; the British Columbia Securities Commission; the Manitoba Securities Commission; the Financial and Consumer Services Commission of New Brunswick; the Office of the Superintendent of Securities Service Newfoundland and Labrador; the Office of the Superintendent of Securities of the Northwest Territories; the Nova Scotia Securities Commission; the Nunavut Securities Offices; the Ontario Securities Commission; the Office of the Superintendent of Securities of Prince Edward Island; the Autorité des marchés financiers; the Financial and Consumer Affairs Authority of Saskatchewan; and the Office of the Yukon Superintendent of Securities. *See also,* CSA Members, available at: *http://www.csa-acvm.ca/aboutcsa.aspx?id=80.*

[13] Draft National Instrument 94–101 respecting Mandatory Central Counterparty Clearing of Derivatives. Summary available at: *http://www.albertasecurities.com/Regulatory%20Instruments/5022685-v5-Proposed_NI_94-101_package.pdf.*

Canadian market participants [14] and proposes subjecting the following classes of interest rate swaps to a clearing mandate: CAD-, USD-, EUR-, and GBP-denominated fixed-to-floating interest rate swaps; USD-, EUR-, and GBP-denominated basis swaps; USD-, EUR-, and GBP-denominated FRAs; and CAD-, USD-, EUR-, and GBP-denominated OIS.[15] Subject to ministerial approvals, the Canadian provincial securities regulators' revised rule will take effect on May 9, 2017.[16] Consequently, it is the Commission's understanding that May 9, 2017 is the first compliance date upon which a Canadian market participant will be required to comply with the clearing mandate.[17]

As a result of this clearing requirement determination, the classes of swaps required to be cleared under Commission regulation 50.4(a) are expanded to include CAD-denominated fixed-to-floating interest rate swaps and OIS swaps that are consistent with the CAD-denominated swaps that will be required to be cleared by the Canadian provincial securities regulators.

iii. European Union

On August 6, 2015, the European Commission adopted an initial interest rate swap clearing obligation for certain financial counterparties and non-financial counterparties [18] that the European Securities and Markets Authority (ESMA) developed pursuant to the European Market Infrastructure Regulation (EMIR).[19] The initial European interest rate swap class is co-extensive with the clearing requirements under regulation 50.4(a), except that with respect to OIS, the European class covers OIS with a termination date range of up to three years instead of two. Similarly, the initial European class covers interest rate swaps denominated in USD, EUR, GBP, and JPY, but not any of the nine additional currencies.[20] Compliance with the European clearing obligation is required for transactions between clearing member counterparties at this time, and will be phased in between 2016 and 2018 for additional transactions by type of counterparty.[21] The first compliance date for a European market participant to comply with the clearing obligation for EUR-, USD-, and GBP-denominated OIS with termination dates ranging from seven days to three years was on June 21, 2016.[22] The EUR-, USD-, and GBP-denominated OIS with termination dates ranging from two years to three years that are included in this rulemaking are covered by the European Commission's initial clearing obligation.

On June 10, 2016, the European Commission adopted an expansion of the European Union clearing obligation for certain financial counterparties and non-financial counterparties [23] to cover NOK-, PLN-, and SEK-denominated fixed-to-floating interest rate swaps and FRAs.[24] The first compliance date for a European market participant to comply with the NOK-, PLN-, and SEK-denominated fixed-to-floating interest rate swaps and FRA clearing obligation will be on February 9, 2017.[25] The European Commission's expanded clearing obligation will apply only to transactions between clearing member counterparties on February 9, 2017; the clearing obligation will be phased in for additional transactions by type of counterparty from 2017 to 2019.[26]

As a result of this clearing requirement determination, the classes of swaps required to be cleared under Commission regulation 50.4(a) are expanded to include (1) EUR-, USD-, and GBP-denominated OIS with termination dates ranging from two years to three years; (2) NOK-, PLN-, and SEK-denominated fixed-to-floating interest rate swaps; and (3) NOK-, PLN-, and SEK-denominated FRAs that are, or will soon be, required to be cleared by the European Commission.

[14] The draft rule proposed by Canada's provincial securities regulators would require central counterparty clearing for transactions entered into between a local counterparty and: (i) A clearing member of a regulated clearing agency that clears a mandatory clearable derivative; (ii) an affiliated entity of the clearing member described in (i); or (iii) a local counterparty that has, together with its local affiliates, an aggregate gross notional amount of more than CAD 500 million outstanding (excluding intragroup transactions). *See,* Draft Regulation 94–101 respecting Mandatory Central Counterparty Clearing of Derivatives (2nd Publication). Summary available at: *http://www.lautorite.qc.ca/files/pdf/reglementation/instruments-derives/reglements/94-101/2016-02-24/2016fev24-94-101-avis-cons-en.pdf.*

[15] *Id.* The Canadian regulators' draft regulation does not propose to include CAD-denominated basis swaps or FRAs. Therefore, the Commission is adding only CAD-denominated fixed-to-floating interest rate swaps and OIS to the CFTC's clearing requirement under this determination.

[16] The Commission staff has consulted with Canadian provincial authorities to confirm the timetable for implementation of the clearing obligation.

[17] *Id.*

[18] The European Commission's clearing requirement applies to all financial counterparties (*e.g.,* banks, insurers, asset managers, etc.) and certain non-financial counterparties, which are European Union entities that do not fall within the definition of a financial counterparty, but exceed the clearing thresholds (non-financial counterparties above the applicable clearing threshold by asset class). The non-financial counterparty clearing threshold for interest rate swaps is EUR 3 billion in gross notional value. *See* European Commission Delegated Regulation (EU) No. 149/2013, available at: *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:052:0011:0024:EN:PDF.*

[19] European Commission press release announcing the European Clearing Obligation, available at: *http://europa.eu/rapid/press-release_IP-15-5459_en.htm. See also* Regulation (EU) No. 648/2012.

[20] European Commission Delegated Regulation (EU) No. 2015/2205, available at: *http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2205&from=EN.*

[21] *Id.* Under the European Commission Delegated Regulation (EU) No. 2015/2205, Category 1 counterparties are clearing members of at least one of the central counterparties authorized or recognized to clear at least one class of mandated derivatives, as of December 21, 2015; Category 2 counterparties are entities that meet the EUR 8 billion threshold of month-end average outstanding gross notional amounts of derivatives for a three month period, limited to financial counterparties or alternative investment funds that are non-financial counterparties; Category 3 counterparties are financial counterparties and alternative investment funds that are non-financial counterparties, that are not Category 1 or Category 2 counterparties; and Category 4 counterparties are non-financial counterparties that do not belong in Category 1, 2, or 3.

[22] European Commission Delegated Regulation (EU) No. 2015/2205, available at: *http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2205&from=EN.*

[23] *See* European Commission Delegated Regulation (EU) No. 2016/1178, available at: *http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1178&from=EN.* This regulation contains a description of the categories of financial counterparties and non-financial counterparties subject to the European Union's clearing obligation. This description is substantively the same as the one applicable to the European Union's first clearing obligation related to interest rates swaps denominated in USD, EUR, GBP, and JPY, including OIS with a termination date of up to three years.

[24] European Commission press release announcing new rules on central clearing for interest rate derivatives contracts denominated in specific European currencies, available at: *http://europa.eu/rapid/press-release_MEX-16-2171_en.htm#9. See also* European Commission Delegated Regulation (EU) No. 2016/1178, available at: *http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1178&from=EN.* The Commission notes that Poland and Sweden are members of the European Union, but Norway is not. Accordingly, the Commission staff has consulted separately with staff from Norway's financial regulators regarding this clearing requirement determination.

[25] European Commission Delegated Regulation (EU) No. 2016/1178, available at: *http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1178&from=EN.*

[26] *Id.* Under the European Commission Delegated Regulation (EU) No. 2016/1178, Category 1 counterparties are clearing members of at least one of the central counterparties authorized or recognized to clear at least one class of mandated derivatives, as of August 9, 2016; Category 2 counterparties are entities that meet the EUR 8 billion threshold of month-end average outstanding gross notional amounts of derivatives for a three month period, limited to financial counterparties or alternative investment funds that are non-financial counterparties; Category 3 counterparties are financial counterparties and alternative investment funds that are non-financial counterparties, that are not Category 1 or Category 2 counterparties; and Category 4 counterparties are non-financial counterparties that do not belong in Category 1, 2, or 3.

iv. Hong Kong

On February 5, 2016, the Hong Kong Securities and Futures Commission and the Hong Kong Monetary Authority jointly published conclusions to a consultation paper proposing mandatory clearing for certain interest rate swaps.[27] The Legislative Council adopted final rules to implement a clearing mandate for transactions between certain local and foreign-incorporated entities [28] covering fixed-to-floating interest rate swaps and basis swaps denominated in USD, GBP, EUR, JPY, and HKD, as well as OIS denominated in USD, GBP, and EUR.[29] The clearing mandate rules became effective on September 1, 2016. Although mandatory clearing for the designated products has not yet commenced, the first calculation period for determining which counterparties have an obligation to clear has begun.[30] During the calculation period, certain market participants have to count their transactions toward the clearing threshold to determine whether they will be subject to Hong Kong's clearing mandate.[31] The first compliance date for a Hong Kong market participant to comply with the Hong Kong authorities' clearing mandate will be on July 1, 2017.[32]

As a result of this clearing requirement determination, the classes of swaps required to be cleared under Commission regulation 50.4(a) are expanded to include HKD-denominated fixed-to-floating interest rate swaps that will be required to be cleared by the Hong Kong Securities and Futures Commission and the Hong Kong Monetary Authority.

v. Mexico

In 2015, Banco de México, the Mexican central bank, published a clearing mandate to require that certain Mexican financial institutions [33] clear MXN-denominated fixed-to-floating interest rate swaps having a termination date range of approximately two months to 30 years and that reference the Mexican ''Interbank Equilibrium Interest Rate'' (TIIE).[34] The first compliance date for a Mexican market participant to comply with the Banco de México's clearing mandate was on April 1, 2016.[35]

As a result of this clearing requirement determination, the classes of swaps required to be cleared under Commission regulation 50.4(a) are expanded to include MXN-denominated fixed-to-floating interest rate swaps that are required to be cleared by the Banco de México.

vi. Singapore

In 2015, the Monetary Authority of Singapore (MAS) published proposed regulations that would require financial institutions [36] to clear SGD-denominated fixed-to-floating interest rate swaps referencing the Swap Offer Rate (SOR) and USD-denominated fixed-to-floating interest rate swaps referencing LIBOR.[37]

As a result of this clearing requirement determination, the classes of swaps required to be cleared under Commission regulation 50.4(a) are expanded to include SGD-denominated fixed-to-floating interest rate swaps that are likely to be the subject of final regulatory action by MAS establishing a clearing requirement, which will commence in 2017.

vii. Switzerland

In 2015, the Swiss parliament adopted legislation providing a framework for a swap clearing requirement. A clearing requirement for certain financial counterparties and non-financial counterparties [38] is expected to be phased in from 2016.[39] It is not yet known exactly which products such a clearing requirement would cover, but based on the criteria required to be considered by the Swiss Financial Market Supervisory Authority (Finma), Finma may determine that the CHF-denominated fixed-to-floating interest rate swaps referencing LIBOR should be included.[40]

As a result of this clearing requirement determination, the classes of swaps required to be cleared under Commission regulation 50.4(a) are expanded to include CHF-denominated fixed-to-floating interest rate swaps that may be subject to a clearing requirement in 2017.

D. Submissions From DCOs

CME and LCH provided the Commission with regulation 39.5(b) submissions relating to: Fixed-to-floating interest rate swaps denominated in the nine additional currencies; AUD-denominated basis swaps; and USD-, EUR-, and GBP-denominated OIS with termination dates of up to 30 years. CME and LCH provided § 39.5(b) submissions pertaining to the FRAs and OIS listed in Table 1, below. CME and

[27] Consultation Conclusions and Further Consultation on Introducing Mandatory Clearing and Expanding Mandatory Reporting, available at: *http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/conclusion?refNo=15CP4.*

[28] The Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules impose a clearing obligation on transactions between prescribed persons, including local and foreign (i) licensed corporations, (ii) authorized financial institutions, and (iii) approved money brokers, that have reached the clearing threshold of USD 20 billion during the applicable three month calculation period. In addition, any transactions between such a prescribed person and a financial services provider must also be cleared. Financial services providers are designated by the Hong Kong Securities and Futures Commission, with the consent of the Hong Kong Monetary Authority.

[29] *Id. See also* Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules, The Government of the Hong Kong Special Administrative Region Gazette, available at: *http://www.gld.gov.hk/egazette/pdf/20162005/es22016200528.pdf.*

[30] Securities and Futures (OTC Derivative Transactions—Clearing and Record Keeping Obligations and Designation of Central Counterparties) Rules, The Government of the Hong Kong Special Administrative Region Gazette, available at: *http://www.gld.gov.hk/egazette/pdf/20162005/es22016200528.pdf.*

[31] *Id.*

[32] *Id.*

[33] Banco de México's Rules for Derivatives Transactions (Circular 4/2012) limit the clearing mandate to transactions between local banks, brokerage firms, and institutional investors. The Banco de México's Rules also contemplate an exemption for small entities with notional amounts outstanding below the specified threshold of 10 billion unidades de inversión.

[34] Rules for Derivatives Transactions (Circular 4/2012), Banco de México, available at: *http://www.banxico.org.mx/disposiciones/circulares/%7BD7250B17-13A4-B0B7-F4E5-04AF29F37014%7D.pdf.*

[35] *Id.*

[36] Under MAS' proposal, the clearing mandate applies to transactions between banks that exceed the SGD 20 billion gross notional outstanding derivatives contract threshold for each of the previous four calendar quarters.

[37] Summary published by MAS available at: *http://www.mas.gov.sg/News-and-Publications/Media-Releases/2015/MAS-Consults-on-Proposed-Regulations-for-Mandatory-Clearing-of-OTC-Derivatives.aspx.*

[38] According to guidance from the Swiss Financial Market Supervisory Authority, derivatives transactions executed by and among financial counterparties and non-financial counterparties that meet the threshold requirements will be subject to the clearing requirement. Financial counterparties meet the threshold if their rolling averages for gross positions in outstanding derivatives transactions (over 30 working days) are at or above CHF 8 billion. Non-financial counterparties meet the threshold if their rolling averages for gross positions in outstanding derivatives transactions (over 30 working days) are at or above amounts specific to each product (*e.g.,* CHF 3.3 billion in interest rate derivatives transactions).

[39] Financial Stability Board, OTC Derivatives Market Reforms, Eleventh Progress Report on Implementation, Appendix C (Implementation timetable: Central clearing of standardised transactions) (Aug. 26, 2016), available at: *www.fsb.org/2016/08/otc-derivatives-market-reforms-eleventh-progress-report-on-implementation/.*

[40] *See* Swiss Financial Market Supervisory Authority (FINMA), Guidance 01/2016 Financial Market Infrastructure Act: FINMA's next steps (July 6, 2016), available at: *https://www.finma.ch/en/~/media/finma/dokumente/dokumentencenter/myfinma/4dokumentation/finma-aufsichtsmitteilungen/20160707-finma-aufsichtsmitteilung-01-2016.pdf?la=en.*

SGX provided submissions relating to MXN- and SGD-denominated fixed-to-floating interest rate swaps, respectively. Eurex provided a submission relating to CHF-denominated fixed-to-floating interest rate swaps and OIS denominated in USD, EUR, and GBP with terms up to 30 years plus 10 business days.[41] LCH will begin offering MXN-denominated fixed-to-floating interest rate swaps in early October 2016.[42] Based on representations made by CME to the Commission, the Commission believes that CME will begin offering AUD- and CAD-denominated OIS before the end of 2016.[43]

Table 1 summarizes the relevant interest rate swaps submitted by CME, Eurex, LCH, and SGX.

TABLE 1—SUMMARY OF INTEREST RATE SWAP SUBMISSIONS UNDER REGULATION 39.5(b)

Currency	Floating rate index	Maximum stated termination date	CME	Eurex	LCH	SGX
Fixed-to-Floating Interest Rate Swaps						
AUD	BBSW	30 years	Yes	No	Yes	*No.
CAD	CDOR	30 years	Yes	No	Yes	No.
CHF	LIBOR	30 years	Yes	Yes	Yes	No.
HKD	HIBOR	10 years	Yes	No	Yes	No.
MXN	TIIE–BANXICO	21 years	Yes	No	Yes [44]	No.
NOK	NIBOR	10 years	Yes	No	Yes	No.
PLN	WIBOR	10 years	Yes	No	Yes	No.
SGD	SOR–VWAP	10 years	Yes	No	Yes	Yes.
SEK	STIBOR	30 years	Yes	No	Yes	No.
Basis Swaps						
AUD	BBSW	30 years	Yes	No	Yes	No.
Overnight Index Swaps						
USD	FedFunds	30 years	Yes	Yes	Yes	No.
EUR	EONIA	30 years	Yes	Yes	Yes	No.
GBP	SONIA	30 years	Yes	Yes	Yes	No.
AUD	AONIA–OIS	5.5 years	No [45]	No	Yes	No.
CAD	CORRA–OIS	2 years	No [46]	No	Yes	No.
Forward Rate Agreements						
AUD	BBSW	3 years	Yes	No	No	No.
NOK	NIBOR	2 years	Yes	No	Yes	No.
PLN	WIBOR	2 years	Yes	No	Yes	No.
SEK	STIBOR	3 years	Yes	No	Yes	No.

The Commission notes that these interest rate swaps are all single currency swaps without optionality, as defined by the applicable DCO.

The submissions from CME, Eurex, LCH, and SGX provided the information required by regulation 39.5(b)(3)(i)–(viii), which, along with other information, has assisted the Commission in making a quantitative and qualitative assessment that these swaps should be subject to a clearing requirement determination.[47] In making this clearing requirement determination, the Commission considered the ability of CME, Eurex, LCH, and SGX to clear a given swap, as well as data supplied cumulatively from each DCO for these swaps.[48] The Commission also reviewed the existing rule frameworks and risk management policies of each DCO.

Additionally, the Commission considered industry data[49] as well as other publicly available data sources, specifically data published by the Bank for International Settlements (BIS), and information that has been made publicly available pursuant to part 43 of the Commission's regulations (part 43 Data).[50]

This final rulemaking also reflects consultation with the staff of the Securities and Exchange Commission, U.S. prudential regulators, and international regulatory authorities. This consultation occurred prior to the approval of the NPRM, as well as prior to the approval of this final rulemaking by the Commission. The Commission

[41] The 39.5(b) submissions are available on the Commission's Web site at: *http://www.cftc.gov/IndustryOversight/IndustryFilings/index.htm.* Submission materials that a submitting DCO marked for confidential treatment are not available for public review, pursuant to Commission regulations 39.5(b)(5) and 145.9(d).

[42] LCH has filed a regulation 39.5(b) submission with the Commission as of September 23, 2016 for this swap.

[43] Prior to offering these swaps for clearing, CME will need to file §§ 40.6 and 39.5(b) submissions with the Commission.

[44] Based on its regulation 39.5(b) submission, LCH will offer clearing of MXN-denominated fixed-to-floating interest rate swaps in early October 2016.

[45] CME plans to offer clearing of AUD-denominated OIS interest rate swaps before the end of 2016.

[46] CME plans to offer clearing of CAD-denominated OIS interest rate swaps before the end of 2016.

[47] In their submissions, CME and LCH stated that they had provided notice of the submissions to members as required by regulation 39.5(b)(3)(viii). SGX stated that its § 39.5(b) submission was published on its Web site. Eurex stated that it would forward its § 39.5(b) submission to its members so that they could comment.

[48] CME, Eurex, LCH, and SGX are eligible to clear interest rate swaps under regulation 39.5(a).

[49] The Commission considered FIA SEF Tracker data and ISDA SwapsInfo data.

[50] The Commission notes that it also has access to data pursuant to part 45 of the Commission's regulations (part 45 Data), which is used in the cost benefit considerations in section V. However, for the purposes of this determination, the Commission decided to use the part 43 Data in its determination analysis in section II.B to enable commenters to review the same data that the Commission reviewed in making the determination. In the future, the Commission may analyze part 45 Data and provide the public with aggregated and anonymized summaries of such data when considering whether other swaps should be subject to the clearing requirement. The Commission also may refer to other non-public data sources, as available.

has benefitted from this close communication with its fellow authorities throughout this rulemaking process.

Finally, the Commission considered the ten public comments received in response to the NPRM.

E. Commission Processes for Review and Surveillance of DCOs

i. Part 39 Regulations Set Forth Standards for Compliance

Section 5b(c)(2) of the CEA sets forth 18 core principles with which DCOs must comply to be registered and to maintain registration. The core principles address numerous issues, including financial resources, participant and product eligibility, risk management, settlement procedures, default management, system safeguards, reporting, recordkeeping, public information, and legal risk.

Each of the DCOs that submitted the interest rate swaps subject to this rulemaking is registered with the Commission. The DCOs' regulation 39.5(b) submissions discussed herein identify swaps that the DCOs are currently clearing and are eligible to clear under regulation 39.5(a). Consequently, the Commission has been reviewing and monitoring compliance by the DCOs with the core principles for clearing the submitted swaps.

The primary objective of the Commission's supervisory program is to ensure compliance with applicable provisions of the CEA and implementing regulations, and, in particular, the core principles applicable to DCOs. A primary concern of the program is to monitor and mitigate potential risks that can arise in derivatives clearing activities for the DCO, its members, and entities using the DCO's services. Accordingly, the Commission's supervisory program takes a risk-based approach, and pays particular attention to the risks posed by stressed market conditions, and major market events, as well as market participants' reactions to such conditions and events.

In addition to the core principles set forth in section 5b(c)(2) of the CEA, section 5c(c) governs the procedures for review and approval of new products, new rules, and rule amendments submitted to the Commission by DCOs. Part 39 of the Commission's regulations implements sections 5b and 5c(c) of the CEA by establishing specific requirements for compliance with the core principles, as well as procedures for registration, for implementing DCO rules, and for clearing new products. Part 40 of the Commission's regulations sets forth additional provisions applicable to a DCO's submission of rule amendments and new products to the Commission.

The Commission has means to enforce compliance, including the Commission's ability to sue the DCO in federal court for civil monetary penalties,[51] issue a cease and desist order,[52] or suspend or revoke the registration of the DCO.[53] In addition, any deficiencies or other compliance issues observed during ongoing monitoring or an examination are frequently communicated to the DCO and various measures are used by the Commission to ensure that the DCO appropriately addresses such issues, including escalating communications within the DCO management and requiring the DCO to demonstrate, in writing, timely correction of such issues.

ii. Initial Registration Application Review and Periodic In-Depth Reviews

Section 5b of the CEA requires a DCO to register with the Commission. In order to do so, an organization must submit an application demonstrating that it complies with the core principles. During the review period, the Commission generally conducts an on-site review of the prospective DCO's facilities, asks a series of questions, and reviews all documentation received. The Commission may ask the applicant to make changes to its rules to comply with the CEA and the Commission's regulations.

After registration, the Commission conducts examinations of DCOs to determine whether each DCO is in compliance with the CEA and Commission regulations. Each examination begins with a planning phase where staff reviews information the Commission has to determine whether the information raises specific issues and to develop an examination plan. The examination team participates in a series of meetings with the DCO at its facility. Commission staff also communicates with relevant DCO staff, including senior management, and reviews documentation. Data produced by the DCO is independently tested. Finally, when relevant, walk-through testing is conducted for key DCO processes.

Commission staff also reviews DCOs that are systemically important (SIDCOs) at least once a year. Of the DCOs discussed in this rulemaking, only CME has been determined to be a SIDCO.

[51] *See* section 6c of the CEA.

[52] *See* section 6b of the CEA.

[53] *See* section 5e of the CEA.

iii. Commission Daily Risk Surveillance

Commission risk surveillance staff monitors the risks posed to and by DCOs, clearing members, and market participants, including market risk, liquidity risk, credit risk, and concentration risk. The analysis includes review of daily, large trader reporting data obtained from market participants, clearing members, and DCOs, which is available at the trader, clearing member, and DCO levels. Relevant margin and financial resources information also is included within the analysis.

Commission staff regularly conducts back testing to review margin coverage at the product level and follows up with the relevant DCO regarding any exceptional results. Independent stress testing of portfolios is conducted on a daily, weekly, and ad hoc basis. The independent stress tests may lead to individual trader reviews and/or futures commission merchant (FCM) risk reviews to gain a deeper understanding of a trading strategy, risk philosophy, risk controls and mitigants, and financial resources at the trader and/or FCM level. The traders and FCMs that have a higher risk profile are then reviewed during the Commission's on-site review of a DCO's risk management procedures.

Given the importance of DCOs within the financial system and the heightened scrutiny as more transactions are moved into central clearing, the goal of the Commission risk surveillance staff is: (1) To identify positions in cleared products subject to the Commission's jurisdiction that pose significant financial risk; and (2) to confirm that these risks are being appropriately managed. Commission risk surveillance staff undertakes these tasks at the trader level, the clearing member level, and the DCO level. That is, staff identifies both traders that pose risks to clearing members and clearing members that pose risks to the DCO. Staff then evaluates the financial resources and risk management practices of traders, clearing members, and DCOs in relation to those risks. Commission risk surveillance staff routinely monitors conditions in assigned markets throughout the day. Because of the work done in identifying accounts of interest, analysts are able to focus their efforts on those traders whose positions warrant heightened scrutiny under current market conditions.

To gain insight into how markets operate during stressed market conditions, an essential technique in

evaluating risk is the use of stress testing. Stress testing is the practice of determining the potential loss (or gain) to a position or portfolio based on a hypothetical price change or a hypothetical change in a price input such as option volatility. Commission risk surveillance staff conducts a wide array of stress tests. Some stress tests are based on the greatest price move over a specified period of time such as the last five years or the greatest historical price change. Another stress testing technique is the use of ''event based'' stress testing that replicates the price changes on a particular date in history, such as September 11, 2001, or the date that Lehman Brothers filed for bankruptcy in 2008. Other specific events might include Hurricane Katrina, the U.S. Board of Governors of the Federal Reserve System's implementation of the Commercial Paper Funding Facility as a liquidity backstop, or, most recently, the United Kingdom (U.K.)'s vote to exit from the European Union. Price changes can be measured as a dollar amount or a percentage change. This flexibility can be helpful when price levels have changed by a large amount over time. For example, the actual price changes in equity indices in October 1987 are not particularly large at today's market levels but the percentage changes are meaningful.

The general standard in designing stress tests is to use ''extreme but plausible'' market moves. After identifying accounts at risk and estimating the size of the risk, the third step is to compare that risk to the assets available to cover it. Because stress testing, by definition, involves extreme moves, hypothetical results will exceed initial margin requirements on a product basis, *i.e.,* the price moves will be in the 1% tail. Many large traders, however, carry portfolios of positions with offsetting characteristics. In addition, many traders and clearing members deposit excess initial margin in their accounts. Therefore, even under stressed conditions, in many instances the total initial margin available may exceed potential losses or the shortfall may be relatively small.

Each DCO maintains a financial resources package that protects the DCO against clearing member defaults. If a clearing member defaults on its obligations, the first layer of protection against a DCO default is the defaulting clearing member's initial margin, as well as the defaulting clearing member's guaranty fund contribution. The second layer of protection against a DCO default, after the defaulting clearing member's initial margin and guaranty fund contribution, is the DCO's capital contribution. The third layer of protection against a DCO default is the DCO's mutualized resources, which often include guaranty fund contributions of non-defaulting clearing members and assessments of non-defaulting clearing members. These layers of protection comprise the DCO's financial resources package.

Commission risk surveillance staff compares the level of risk posed by clearing members to a DCO's financial resources package on an ongoing basis. Pursuant to Commission regulation 39.11(a), a DCO must have sufficient financial resources to cover a default by the clearing member posing the largest risk to the DCO. Pursuant to Commission regulation 39.33(a), a SIDCO [54] must have sufficient financial resources to cover defaults by the clearing members posing the two largest risks to the DCO. Commission risk surveillance staff periodically compares stress test results with DCOs to assess their financial capacity.

Commission risk surveillance staff frequently discusses the risks of particular accounts or positions with relevant DCOs. For example, as a follow-up to a trader review, Commission risk surveillance staff might compare its stress test results with those of the DCO. As also noted above, in the case of FCMs, there have been instances where, as a result of Commission risk surveillance staff comments or inquiries, DCOs have taken action to revise their stress tests and/or financial resources package to align with Commission risk surveillance staff's recommendations.

II. Comments on the Notice of Proposed Rulemaking

A. Overview of Comments Received

The Commission received 10 comment letters during the 30-day public comment period following publication of the NPRM.[55]

[54] DCOs that elect to be covered under subpart C of part 39 of the Commission's regulations also are subject to this requirement.

[55] Comment letters received in response to the NPRM may be found on the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1711.* The following organizations submitted comment letters: Asset Management Group of the Securities Industry and Financial Markets Association (SIFMA AMG); ASX Clear (Futures) Pty Limited (ASX); Better Markets Inc. (Better Markets); Citadel LLC (Citadel); CME Group Inc. (CME Group); International Swaps and Derivatives Association, Inc. (ISDA); Japanese Bankers Association (JBA); LCH Group Limited (LCH Group); the Managed Funds Association (MFA); and Scotiabank Inverlat, S.A. (Scotiabank).

i. Majority of Commenters Express Support for Proposal

Seven commenters (Better Markets, Citadel, CME Group, ISDA, LCH Group, MFA, and SIFMA AMG) voiced support for the proposed expansion of the clearing requirement and agreed with the Commission's analysis that the expanded clearing requirement would enhance financial stability by reducing systemic risk, improving market integrity, or increasing transparency in the swap market. Two commenters, Scotiabank and ASX, provided clarifying comments with respect to product specifications, but did not express explicit support for the proposal overall. One commenter, JBA, requested that the Commission reconsider its proposal to expand the interest rate swaps clearing requirement in light of the increasing number of clearing brokers withdrawing from the swaps clearing business due to rising costs.

ii. Substantive Issues Related to Product Specifications

One commenter, Scotiabank, discussed the specifications of the MXN-denominated fixed-to-floating interest rate swaps included in the Commission's proposed expanded fixed-to-floating interest rate swap class.[56] Another commenter, ASX, addressed the Commission's proposed inclusion of AUD-denominated FRAs in the expanded FRA class.[57]

iii. Implementation and Harmonization

Most commenters responded to the NPRM's request for comment concerning the advantages and disadvantages of a simultaneous effective date versus a series of compliance dates that would coordinate implementation with clearing requirements issued by non-U.S. jurisdictions.[58]

Six commenters, CME Group, Citadel, ISDA, LCH Group, MFA, and SIFMA AMG all supported the Commission's goal of harmonizing its clearing requirement with those of non-U.S. jurisdictions. Citadel commented that such harmonization would lead to the benefit of eliminating regulatory arbitrage. LCH Group stated that such harmonization would promote certainty for market participants. SIFMA AMG commented that such harmonization would improve the functioning of swaps markets and reduce operational

[56] *See* discussion of Scotiabank's comment letter in section III.

[57] *See* discussion of ASX's comment letter in sections II and III.

[58] *See* discussion of implementation issues and related comment letters in section IV.

complexity. ISDA commented that harmonization is crucial to effective and efficient implementation of all of the reforms of the derivatives markets sought by the G20. MFA commented that the Commission's approach to harmonizing its clearing requirement with those of other jurisdictions would increase transparency and market integrity. MFA also suggested that if the Commission proceeds with the expanded clearing requirement, then other jurisdictions will follow.

iv. Data Considered by the Commission

One commenter, Citadel, complimented the Commission for assessing the extent of outstanding notional exposures of the swaps covered by the NPRM using multiple sources of data.[59] Another commenter, ISDA, suggested that the Commission review data indicating the impact of the proposed expanded clearing requirement on market participants in particular jurisdictions.[60]

v. Clarification

Two commenters, JBA and Scotiabank, requested clarification as to whether the expanded clearing requirement would only apply to new swaps entered into after the applicable compliance date and whether previously executed swaps would be required to be ''backloaded'' to clearing.[61]

vi. Access to DCOs and Clearing Members

One commenter, JBA, raised concerns about market participants needing to establish a clearing relationship with a new DCO in order to comply with the expanded clearing requirement.[62] Another commenter, CME Group, raised concerns about the ability of relatively small market participants to establish an account with a clearing member.[63]

vii. Trade Execution Requirement

Three comment letters discussed the possibility of a trade execution requirement applying to some or all of the interest rate swaps subject to this rulemaking.[64]

B. Determination Analysis

i. Background Information on Interest Rate Swaps

Interest rate swaps generally are agreements wherein counterparties agree to exchange payments based on a series of cash flows over a specified period of time, typically calculated using two different rates, multiplied by a notional amount. As of June 2015, according to an estimate by BIS, there was approximately $435 trillion in outstanding notional of interest rate swaps, which represents approximately 79% of the total outstanding notional of all derivatives.[65]

Section 2(h)(2)(A)(i) of the CEA provides that the Commission shall review each swap, or any group, category, type, or class of swaps to make a determination as to whether the swap or group, category, type, or class of swaps should be required to be cleared. This final rulemaking adds to the four classes of interest rate swaps that the Commission defined in the First Clearing Requirement Determination:

1. Fixed-to-floating swaps: Swaps in which the payment or payments owed for one leg of the swap is calculated using a fixed rate and the payment or payments owed for the other leg are calculated using a floating rate.
2. Basis swaps: Swaps for which the payments for both legs are calculated using floating rates.
3. Forward rate agreements: Swaps in which payments are exchanged on a pre-determined date for a single specified period and one leg of the swap is calculated using a fixed rate and the other leg is calculated using a floating rate that is set on a pre-determined date.
4. Overnight index swaps: Swaps for which one leg of the swap is calculated using a fixed rate and the other leg is calculated using a floating rate based on a daily overnight rate.

Interest rate swaps within the classes described above are currently required to be cleared pursuant to regulation 50.4(a) if they meet certain specifications: (i) Currency in which notional and payment amounts of a swap are specified; (ii) floating rate index referenced in the swap; and (iii) stated termination date of the swap. The Commission also included the following three ''negative'' specifications:[66] (i) No optionality; (ii) no dual currencies; and (iii) no conditional notional amounts.[67] This clearing requirement determination analyzes the additional interest rate swaps submitted by CME, Eurex, LCH, and SGX according to these classifications and specifications.

ii. Consistency With Core Principles for Derivatives Clearing Organizations

Section 2(h)(2)(D)(i) of the CEA requires the Commission to determine whether a clearing requirement determination would be consistent with the core principles for registered DCOs set forth in section 5b(c)(2) of the CEA and implemented in part 39 of the Commission's regulations.[68] CME, Eurex, LCH, and SGX, each a registered DCO, already clear the swaps identified in the regulation 39.5(b) submissions described above.[69] Accordingly, CME, Eurex, LCH, and SGX already are required to comply with the DCO core principles with respect to the interest rate swaps subject to this final rulemaking. Moreover, each of these DCOs has been, and is, subject to the

[59] *See* section III.B.iii.a.

[60] *See* discussion of ISDA's comment letter in section II.C.ii.

[61] *See* discussion of JBA's and Scotiabank's comment letters in section III.

[62] *See* discussion of JBA's comment letter in sections II.B.iii.d and V.C.

[63] *See* discussion of CME Group's comment letter in section II.C.i and section V.C.

[64] *See* discussion of Citadel's, ISDA's, and SIFMA AMG's comment letters in section II.C.iii.

[65] Semi-Annual OTC Derivatives Statistics at End-June 2015, published December 2015 available at: *https://www.bis.org/statistics/d5_1.pdf.* The BIS data provides the broadest market-wide estimates of interest rate swap activity available to the Commission. The Commission receives swaps market information pursuant to parts 43 and 45 of the Commission's regulations. *See also* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012); Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (Jan. 9, 2012). However, this data only includes swaps subject to the Commission's jurisdiction, *i.e.,* those swaps subject to the CEA. The BIS data represents the broader swaps market, some of which is not reportable to the Commission under the CEA.

[66] The negative specifications are product specifications that are explicitly excluded from the clearing requirement. All specifications are listed in regulation 50.4(a).

[67] The First Clearing Requirement Determination described the term ''conditional notional amount'' as ''notional amounts that can change over the term of a swap based on a condition established by the parties upon execution such that the notional amount of the swap is not a known number or schedule of numbers, but may change based on the occurrence of some future event. This term does not include what are commonly referred to as 'amortizing' or 'roller coaster' notional amounts for which the notional amount changes over the term of the swap based on a schedule of notional amounts known at the time the swap is executed. Furthermore, it would not include a swap containing early termination events or other terms that could result in an early termination of the swap if a DCO clears the swap with those terms.'' *See* 77 FR at 74302 n. 108.

[68] The core principles address numerous issues, including financial resources, participant and product eligibility, risk management, settlement procedures, default management, system safeguards, reporting, recordkeeping, public information, and legal risk. *See* sections 5b(c)(2)(A)–(R) of the CEA and 17 CFR part 39, subparts B and C.

[69] Currently, CME is the only registered DCO offering MXN-denominated fixed-to-floating interest rate swaps for clearing. As noted above, LCH has filed a § 39.5(b) submission regarding this swap and will begin offering MXN-denominated fixed-to-floating interest rate swaps for clearing beginning in early October 2016. Similarly, LCH is the only registered DCO clearing AUD- and CAD-denominated OIS at this time. CME has confirmed that it intends to file § 39.5(b) submissions regarding these swaps before the end of 2016, and it is not likely to need to change its risk management framework to do so.

Commission's review and surveillance procedures, as discussed above, with respect to these swaps.

For the purposes of reviewing whether the regulation 39.5(b) submissions are consistent with the DCO core principles, the Commission has relied on both the information received in the regulation 39.5(b) submissions and, as discussed above, its ongoing review and risk surveillance programs.

The Commission concludes that CME, Eurex, LCH, and SGX are capable of maintaining compliance with the DCO core principles following the adoption of this clearing requirement determination. The Commission has not found any evidence to conclude that subjecting any of the interest rates swaps identified herein to a clearing requirement would adversely affect compliance by CME, Eurex, LCH, or SGX with the DCO core principles. In response to the NPRM, LCH Group commented on this topic, stating that it does not believe that the clearing requirement would adversely impact its ability to comply with the DCO core principles. Accordingly, the Commission believes that each of the regulation 39.5(b) submissions discussed herein is consistent with section 5b(c)(2) of the CEA.

iii. Consideration of the Five Statutory Factors for Clearing Requirement Determinations

Section 2(h)(2)(D)(ii)(I)–(V) of the CEA identifies five factors that the Commission must ''take into account'' in making a clearing requirement determination.[70] In regulation 39.5(b), the Commission developed a process for reviewing DCO swap submissions to determine whether such swaps should be subject to a clearing requirement determination. The following is the Commission's consideration of the five factors as they relate to: (1) Fixed-to-floating interest rate swaps denominated in the nine additional currencies; (2) AUD-denominated basis swaps; (3) NOK-, PLN-, and SEK-denominated FRAs; and (4) USD-, EUR-, and GBP-denominated OIS with termination dates of up to three years; and AUD- and CAD-denominated OIS, as submitted by CME, Eurex, LCH, and/or SGX pursuant to regulation 39.5(b).

As it reviewed the five statutory factors for this clearing requirement, the Commission considered the effect a new clearing mandate will have on a DCO's ability to withstand stressed market conditions. The post-financial crisis reforms that have increased the use of central clearing also have increased the importance of ensuring that central counterparties are resilient, particularly in times of market stress. The Commission has been working with other domestic and international regulators to make sure that adequate measures are taken to address the potential financial stability risks posed by central counterparties.[71] The Commission is focused on the financial stability of DCOs and is committed to monitoring all potential risks they face, including those related to increased clearing due to a new clearing requirement determination. Accordingly, how DCOs manage risk during times of market stress, as well as whether DCOs could manage the incremental risk in stressed market conditions that may result from the Commission requiring that these swaps be cleared, are critical factors that the Commission considered in issuing this final rulemaking.

a. Factor (I)—Outstanding Notional Exposures, Trading Liquidity, and Adequate Pricing Data

The first of the five factors requires the Commission to consider ''the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data'' related to ''a submission made [by a DCO].'' [72] As explained in the proposal for the First Clearing Requirement Determination, there is no single source of data for notional exposures and trading liquidity for individual products within the global interest rate swap market.[73] Despite significant progress with regard to trade reporting over the years since the 2008 financial crisis, this remains true. Nonetheless, the Commission has considered multiple sources of data [74] on the interest rate swap market that provide the information the Commission needs to evaluate the first factor, including: (1) Publicly available real time data disseminated by DTCC Data Repository (U.S.) LLC (DDR), a provisionally-registered swap data repository (SDR),[75] pursuant to part 43 Data; (2) data from CME, Eurex, LCH, and SGX collected in their capacities as DCOs; (3) data from the BIS; (4) data from ISDA; and (5) data from the Futures Industry Association (FIA).[76]

[70] The factors are:

(1) The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data;

(2) The availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded;

(3) The effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the DCO available to clear the contract;

(4) The effect on competition, including appropriate fees and charges applied to clearing; and

(5) The existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

[71] The Commission's Market Risk Advisory Committee hosted a meeting on June 27, 2016, to discuss central counterparty coordination in default management, global systemically important bank resolution, and central counterparty resolution, webcast available at: *http://www.cftc.gov/Exit/index.htm?https:/youtu.be/fxQDh5lnh9c. See* CFTC Press Release PR7386–16, announcing the meeting agenda (June 16, 2016), available at: *http://www.cftc.gov/PressRoom/PressReleases/pr7391-16.*

[72] *See* section 2(h)(2)(D)(ii) of the CEA.

[73] *See* 77 FR 47170, 47193 and n. 100 (Aug. 7, 2012) (citing Bank of England, ''Thoughts on Determining Central Clearing Eligibility of OTC Derivatives,'' Financial Stability Paper No. 14, March 2012, at 11, available at:*http://www.bankofengland.co.uk/financialstability/Documents/fpc/fspapers/fs_paper14.pdf.*) As discussed above, the Commission receives data regarding swaps subject to its jurisdiction pursuant to parts 43 and 45 of the Commission's regulations. The Commission also receives regular reporting from registered DCOs, as well as its registered entities.

[74] The Commission reviews part 43 Data, as well as data from CME, Eurex, LCH, and SGX, on an ongoing basis. Although the part 43 Data that is included in section II.B.iii is dated as of the second quarter 2015, Commission staff has not observed significant changes in the level of trading activity that would cause the Commission to change its finding that there is regular trading activity in these markets, as well as a measurable amount of data, such that there are significant outstanding notional exposures and trading liquidity in the swaps subject to this determination. In addition, although the data from DCOs presented in section II.B.iii is dated as of the second quarter 2015, Commission staff has not observed significant changes in the notional amounts outstanding or the aggregate notional values of swaps being cleared that would cause the Commission to change its finding that there are significant outstanding notional exposures and trading liquidity in the swaps subject to this final rulemaking. No commenters raised concerns about this data or offered additional data.

[75] CME SDR and BSDR LLC, each a provisionally-registered SDR, accept data regarding interest rate swaps, but have not collected sufficient data relevant to the time periods considered by this determination. ICE Trade Vault, LLC, another provisionally-registered SDR, did not accept interest rate swap data during the time periods relevant to this final rulemaking.

[76] In the First Clearing Requirement Determination, the Commission also considered (i) market data published weekly by TriOptima that covered swap trade information submitted voluntarily by 14 large derivatives dealers and (ii) trade-by-trade data provided voluntarily by the 14 dealers to the OTC Derivatives Supervisors Group (ODSG). *See* 77 FR at 74307. The Commission is not using these sources for the determination adopted today because TriOptima no longer collects its data, and the ODSG data was a one-time exercise conducted between June and August 2010.

Outstanding Notional Exposures and Trading Liquidity: Fixed-to-Floating Interest Rate Swaps Denominated in the Nine Additional Currencies

In assessing the extent of outstanding notional exposures and trading liquidity for a particular swap, the Commission reviews various data series to ascertain whether there is an active market for the swap, including whether the swap is traded on a regular basis as reflected by trade count and whether there is a measurable amount of notional exposures, such that a DCO can adequately risk manage the swap. In particular, the Commission reviewed the aggregate notional exposure and the trade count data from a number of sources for each swap subject to this determination. While there is no defined standard for an active market,[77] the Commission believes the data indicates that there are sufficient outstanding notional exposures and trading liquidity for fixed-to-floating interest rate swaps denominated in the nine additional currencies to support a clearing requirement determination. The Part 43 Data presented in Table 2 generally demonstrates that there is significant activity in new fixed-to-floating interest rate swap trades denominated in each of the nine additional currencies. Table 2 presents aggregate notional values and trade counts of fixed-to-floating interest rate swaps denominated in these currencies that were executed during the three-month period from April 1 to June 30, 2015.[78]

The Commission notes the market for any swap is global. Even if the bulk of the activity in a particular swap occurs between counterparties located in a single jurisdiction, Table 2 demonstrates that there is significant participation by U.S. persons in each of the swaps covered by this determination.[79] Because Table 2 is based on Part 43 Data, it should include only data related to those swaps for which at least one counterparty is a U.S. person.[80]

TABLE 2—PART 43 DATA FIXED-TO-FLOATING INTEREST RATE SWAPS AGGREGATE NOTIONAL AMOUNTS AND TRADE COUNTS REPORTED SECOND QUARTER 2015[81]

Currency	Aggregate notional (USD)	Trade count
MXN	$403,621,757,132	15,492
CAD	318,497,173,863	4,125
AUD	322,042,446,624	4,898
SEK	82,092,397,444	1,779
PLN	47,267,162,195	1,463
NOK	23,974,272,144	659
SGD	45,618,398,397	995
CHF	48,986,953,725	899
HKD	21,704,787,338	469

Table 3.1 demonstrates the outstanding notional amounts of fixed-to-floating interest rate swaps, denominated in each of the nine additional currencies except for MXN, cleared at LCH as of July 17, 2015.[82]

TABLE 3.1—LCH DATA FIXED-TO-FLOATING INTEREST RATE SWAPS OUTSTANDING NOTIONAL AMOUNTS AS OF JULY 17, 2015[83]

Currency	Outstanding notional (USD)
CAD	$3,479,830,407,148
AUD	3,311,898,621,627
CHF	1,110,123,528,868
SEK	942,508,451,280
SGD	735,450,982,935
PLN	500,992,688,256
NOK	402,746,575,455
HKD	385,067,416,327

Table 3.2 describes the aggregate notional values and trade counts of fixed-to-floating interest rate swaps denominated in these currencies that were cleared at LCH during the three-month period from April 1 to June 30, 2015.

TABLE 3.2—LCH DATA FIXED-TO-FLOATING INTEREST RATE SWAPS AGGREGATE NOTIONAL AMOUNTS CLEARED AND TRADE COUNTS[84] SECOND QUARTER 2015

Currency	Aggregate notional[85] (USD)	Trade count
AUD	$747,580,867,222	11,675
CAD	591,935,914,049	8,097
SEK	192,434,187,521	5,827
SGD	188,573,379,738	4,872
CHF	175,203,370,522	3,659
PLN	99,184,390,887	4,249
NOK	72,569,065,080	2,855
HKD	65,655,762,520	1,868

[77] A line of economic research papers analyzing the impact of central clearing on liquidity in over-the-counter derivatives have used three or more alternative methods of calculating liquidity based on academic research. These transaction-based methods for measuring liquidity are informative for assessing and understanding what constitutes an active market. *See* Loon, Y. C. and Zhong, Z. K., The impact of central clearing on counterparty risk, liquidity, and trading: Evidence from the credit default swap market. Journal of Financial Economics, 112 (1), 91–115 (2014) at 98, available at: *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2176561. See also* Loon, Y. C. and Zhong, Z. K., Does Dodd-Frank affect OTC transaction costs and liquidity? Evidence from real-time CDS trade reports. Journal of Financial Economics, 119 (3), 645–672 (2016) at 647, available at: *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2443654.*

[78] The data on notional amounts the Commission receives for interest rate swaps pursuant to part 43 is subject to caps, which vary based on currency, reference rate, swap class (*e.g.,* FRA vs. OIS), and maturity of the underlying swap. As a result, the data in Table 2 will underestimate the amount of notional outstanding for the reported trades, as around 25% of the trades contained capped notional amounts. *See* 17 CFR 43.4(h). According to the adopting release accompanying part 43, the Commission caps notional amounts to ensure the anonymity of the parties to a large swap and maintain the confidentiality of business transactions and market positions. *See* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1213 (Jan. 9, 2012). The rules were amended in May 2013 as they relate to caps. *See* Procedures to Establish Appropriate Minimum Block Sizes for Large Notional Off-Facility Swaps and Block Trades, 78 FR 32866 (May 31, 2013).

[79] *See also* further discussion of this topic in response to a comment from ISDA at section II.C.ii.

[80] Under the Commission's general policy, neither part 43 reporting nor the clearing requirement apply to a swap where neither counterparty is a U.S. person (although these requirements generally would apply, with the possibility of substituted compliance, to certain swaps involving foreign branches of U.S. SDs or major swap participants (MSPs), or non-U.S. persons that are guaranteed by or affiliate conduits of U.S. persons). *See* Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292, 45369–70 (July 26, 2013). Therefore, part 43 reporting applies whenever at least one counterparty to a swap is a U.S. person.

[81] This table reflects data that was publically disseminated by DDR and reported to it by the reporting counterparty, a swap execution facility (SEF), or designated contract market (DCM) pursuant to part 43. As such, the Commission did not independently verify the accuracy of the swap data. The transactions disseminated to the public were rounded pursuant to regulation 43.4(g). As a result, this table may underestimate the amount of notional outstanding for the reported trades. This table does not include cancelled and corrected swaps that counterparties reported under part 43. The Commission converted the notional amounts to USD according to the exchange rates of June 30, 2015. Three other SDRs provisionally-registered with the Commission, CME SDR, BSDR LLC, and ICE Trade Vault LLC also accept information pursuant to part 43. During the second quarter of 2015, none of those SDRs collected sufficient information regarding the interest rate swaps subject to this rulemaking.

[82] As mentioned above, LCH will commence clearing fixed-to-floating interest rate swaps denominated in MXN in October 2016.

[83] Data includes zero coupon swaps and variable notional swaps and excludes basis swaps, FRAs, and OIS. LCH converted values to USD. All data from LCH cited in this rulemaking is ''single-sided,'' which means that the outstanding notional amounts correspond to the notional amounts of swaps submitted for clearing. Single-sided reporting from LCH, as well as data reported by CME and SGX, refers to the same concept insofar as all modes of reporting reflect the total notional amounts outstanding at the DCO based on the swaps submitted for clearing. When two counterparties submit a swap to the clearinghouse for clearing through novation, the clearinghouse becomes the new counterparty to each of the original counterparties. This novation process results in double-counting, and single-sided reporting reflects the actual number of trades submitted to a clearinghouse for clearing. *See* note 85 for an explanation of CME's single-sided data. LCH publishes outstanding notional amounts of the swaps it has cleared. *See* LCH's Web site, available at: *http://www.swapclear.com/what/clearing-volumes.html.*

Table 4.1 demonstratesthe outstanding notional amounts of fixed-to-floating interest rate swaps, denominated in each of the nine additional currencies, cleared at CME as of July 17, 2015.

TABLE 4.1—CME DATA FIXED-TO-FLOATING INTEREST RATE SWAPS OUTSTANDING NOTIONAL AMOUNTS [86] AS OF JULY 17, 2015 [87]

Currency	Outstanding notional (USD)
CAD	$295,213,937,641
MXN	283,989,842,748
AUD	192,208,979,188
SEK	30,834,434,233
NOK	25,396,100,018
CHF	18,322,872,584
PLN	4,157,627,521
HKD	1,937,495,645
SGD	1,014,201,616

Table 4.2 describes the aggregate notional values and trade counts of fixed-to-floating interest rate swaps denominated in these currencies that were cleared at CME during the three-month period from April 1 to June 30, 2015.

TABLE 4.2—CME DATA FIXED-TO-FLOATING INTEREST RATE SWAPS AGGREGATE NOTIONAL AMOUNTS CLEARED AND TRADE COUNTS SECOND QUARTER 2015

Currency	Aggregate notional (USD)	Trade count
MXN	$193,941,151,671	7,749
AUD	51,591,005,387	1,194
CAD	91,523,261,511	2,995
SEK	9,712,957,726	998
NOK	5,298,232,932	422
CHF	2,665,840,791	173
PLN	1,097,490,552	577
SGD	355,136,534	32
HKD	211,815,688	16

As of July 17, 2015, the outstanding notional amount of SGD-denominated fixed-to-floating interest rate swaps cleared at SGX was $58.5 billion.[88]

As another data source, the Commission looked to BIS data. BIS' 2013 triennial central bank survey for interest rate swaps describes the daily average notional values of interest rate swaps, including fixed-to-floating interest rate swaps, on a worldwide basis, denominated in each of the nine additional currencies.

TABLE 5—EXCERPT FROM BIS TRIENNIAL CENTRAL BANK SURVEY 2013 [89] OVER-THE-COUNTER SINGLE CURRENCY INTEREST RATE DERIVATIVES TURNOVER

Currency	Daily average notional of swaps (including fixed-to-floating), worldwide (USD) [90]
AUD	$62,854,000,000
CAD	26,794,000,000
SEK	14,618,000,000
MXN	9,285,000,000
CHF	5,335,000,000
SGD	3,349,000,000
NOK	2,560,000,000
PLN	2,138,000,000
HKD	1,992,000,000

More recently, BIS has published statistics showing significant outstanding notional amounts for CAD-, CHF-, and SEK-denominated interest rate swaps: Approximately $10.3 trillion CAD-denominated, approximately $3.2 trillion CHF-denominated, and approximately $2.4 trillion SEK-denominated.[91]

On a daily basis, using data collected from DDR, ISDA's ''SwapsInfo'' report publishes the notional value and trade counts of fixed-to-floating interest rate swaps denominated in four of the nine additional currencies.[92] For example, Table 6 shows the aggregate notional values and trade counts of such swaps entered into on September 15, 2015.

TABLE 6—EXCERPT FROM ISDA SWAPSINFO INTEREST RATE DERIVATIVES—PRICE/TRANSACTION DATA FIXED-TO-FLOATING INTEREST RATE SWAPS

Currency	Approximate aggregate notional amount executed on September 15, 2015 (USD) [93]	Aggregate trade count executed on September 15, 2015
AUD	$2,143,376,093	51
CAD	1,515,366,916	30
MXN	283,339,847	142
PLN	141,249,743	19

The Commission also reviewed data published by the FIA, in its ''SEF Tracker'' report,[94] consisting of weekly aggregate notional values of interest rate swaps, including FRAs, denominated in various currencies, including five of the nine additional currencies, which have been transacted on 12 SEFs that are now registered with the Commission.[95] Table 7 shows the aggregate notional values of interest rate swaps denominated in AUD, CAD, MXN, PLN, and SEK executed on SEFs during the week of May 25, 2015, as well as such swaps denominated in CHF, HKD, and NOK.[96]

[84] Like the outstanding notional data, this data includes zero coupon swaps and variable notional swaps.

[85] The aggregate notional amounts cleared at LCH will appear to be greater than that reflected in the part 43 Data because the part 43 Data captures only swap data subject to the CEA, while LCH, an entity organized in the United Kingdom, clears swaps for entities that may not be subject to the Commission's jurisdiction. The fact that LCH's notional amounts are higher supports this clearing requirement determination because it suggests that there may be greater liquidity in these swaps outside the U.S., of which DCOs could take advantage in order successfully to risk manage and price these swaps.

[86] CME uses the term ''open interest'' to refer to outstanding notional amounts. Both terms—''open interest'' and ''outstanding notional amounts''—refer to the same concept. CME converted the values to USD. As noted above, like the LCH data cited in this rulemaking, all data from CME is ''single-sided,'' which means that the outstanding notional amounts correspond to the notional amounts of swaps submitted for clearing.

[87] Data excludes basis swaps, FRAs, and OIS. CME publishes open interest amounts of the swaps it has cleared. *See* CME's Web site, available at: *http://www.cmegroup.com/trading/interest-rates/cleared-otc/#data.*

[88] SGX converted this value from SGD to USD. This figure is ''single-sided,'' which means that the outstanding notional amount corresponds to the notional amounts of swaps submitted for clearing. SGX publishes outstanding notional amounts on its Web site, available at: *http://www.sgx.com.*

[89] BIS Triennial Central Bank Survey, Interest Rate Derivatives Market Turnover in 2013, Tables 1 and 2.1–2.6 (December 2013), available at: *http://www.bis.org/publ/rpfxf13irt.pdf.*

[90] Data as of April 2013. BIS converted the figures to USD.

[91] Interest rate derivatives by instrument, counterparty, and currency. Notional amounts outstanding, expressed in USD, at end June 2015, available at: *http://stats.bis.org/statx/srs/table/d7?p=20151&c=.* This report does not provide data specific to interest rate swaps denominated in all nine additional currencies.

[92] SwapsInfo provides data from two SDRs—DDR and BSDR LLC—that is ''required to be disclosed under U.S. regulatory guidelines.'' SwapsInfo does not provide information specific to interest rate swaps denominated in all nine additional currencies. The SwapsInfo referenced in Table 6 only includes information from DDR. *See* SwapsInfo Web site, available at: *http://www.swapsinfo.org/charts/derivatives/price-transaction.*

[93] The Commission converted the values to USD as of Sept. 18, 2015. ISDA SwapsInfo does not provide data for CHF-, HKD-, NOK-, SEK-, or SGD-denominated interest rate swaps.

[94] SEF Tracker is published periodically on FIA's Web site, available at: *https://fia.org/sef-tracker.*

[95] The SEFs include: BGC Derivatives Markets, L.P.; Bloomberg SEF LLC; DW SEF LLC; GFI Swaps Exchange LLC; Javelin SEF, LLC; ICAP SEF (US) LLC; ICAP Global Derivatives Limited; LatAm SEF, LLC; Tradition SEF, Inc.; trueEx LLC; tpSEF Inc.; and TW SEF LLC. The Commission recognizes that under section 2(h)(8) of the CEA and Commission regulations 37.10 and 38.12, the Commission could in the future act to adopt a trade execution requirement for some or all of the interest rate swaps subject to the clearing requirement adopted in this rulemaking. The adoption of a clearing requirement determination is a prerequisite for any subsequent trade execution requirement. *See also* note 76.

[96] The published report does not contain information for CHF-, HKD-, and NOK-denominated

TABLE 7—FIA DATA WEEKLY NOTIONAL VOLUME OF INTEREST RATE SWAPS (INCLUDING FRAs) BY CURRENCY [97]

Currency	Aggregate weekly notional executed on SEFs week of May 25, 2015 (USD) [98]
AUD	$36,194,670,000
MXN	19,526,810,000
CAD	12,527,450,000
CHF	6,686,971,251
SEK	5,958,000,000
PLN	1,420,000,000
NOK	1,403,918,860
HKD	51,589,605

In summary, the data indicates varying levels of activity, measured by outstanding notional amounts and trade counts, in fixed-to-floating interest rate swaps denominated in the nine additional currencies. The Commission acknowledges that the data comes from various, limited periods of time that do not explicitly include periods of market stress. However, the Commission concludes that the data demonstrates sufficient regular trading activity and outstanding notional exposures in the fixed-to-floating interest rate swaps denominated in the nine additional currencies to provide the liquidity necessary for DCOs to successfully risk manage these products and to support the adoption of a clearing requirement. Accordingly, the Commission concludes that there is sufficient regular trading activity and outstanding notional exposures for all fixed-to-floating swaps subject to this rulemaking.

2. Outstanding Notional Exposures and Trading Liquidity: AUD-Denominated Basis Swaps

The First Clearing Requirement Determination required the clearing of certain USD-, EUR-, GBP-, and JPY-denominated basis swaps. As part of this clearing requirement determination, the Commission is expanding the basis swap class to include AUD-denominated basis swaps, as proposed.

According to part 43 Data, 366 new AUD-denominated basis swaps were executed during the three-month period from April 1 to June 30, 2015. The aggregate notional amount of these swaps was $32,559,762,900.[99] Also, during this period, there was no volume of AUD-denominated basis swaps cleared at CME, but the outstanding notional amount in such swaps cleared at CME as of June 30, 2015 was $69,662,645,400. During the second quarter of 2015, 786 new AUD-denominated basis swaps were cleared at LCH. The aggregate notional amount of these swaps was $74,012,261,949. As of July 17, 2015, the outstanding notional amount of AUD-denominated basis swaps cleared at CME and LCH was $183,995,548,759 and $443,819,944,145, respectively.[100]

While the data considered above comes from limited periods of time that do not explicitly include periods of market stress, the Commission concludes that the data demonstrates sufficient regular trading activity and outstanding notional exposures in AUD-denominated basis swaps to provide the liquidity necessary for DCOs to successfully risk manage these products and to support the adoption of a clearing requirement, as proposed. Accordingly, the Commission concludes that there is sufficient regular trading activity and outstanding notional exposures for AUD-denominated basis swaps subject to this rulemaking.

3. Outstanding Notional Exposures and Trading Liquidity: NOK-, PLN-, and SEK-Denominated FRAs

The First Clearing Requirement Determination required the clearing of certain USD-, EUR-, GBP-, and JPY-denominated FRAs. As part of the clearing requirement determination issued today, the Commission has decided to amend the FRA class to include only the NOK-, PLN-, and SEK-denominated FRAs proposed.

At this time, the Commission has decided not to include AUD-denominated FRAs as part of its expanded clearing requirement. This decision is based on several factors. First, the Australian authorities have postponed required clearing of AUD-denominated FRAs until July 2018.[101] Second, ASX commented that it would not be prudent for the Commission to finalize a clearing requirement for this product in light of the delay in the Australian clearing requirement for this product. Finally, ASX stated that it has observed a general trend in the Australian domestic market away from FRAs and towards single-period swaps instead.[102] While there is currently a date certain on which Australian authorities will require clearing in AUD-denominated FRAs, the Commission is electing not to finalize its proposal with regard to AUD-denominated FRAs, will continue to monitor the market for AUD-denominated FRAs, and may take further action with regard to this product as appropriate.

Table 8 presents aggregate notional amounts and trade counts of NOK-, PLN-, and SEK-denominated FRAs executed during the second quarter of 2015, collected by DDR.

TABLE 8—PART 43 DATA FRAs AGGREGATE NOTIONAL AMOUNTS AND TRADE COUNTS REPORTED SECOND QUARTER 2015 [103]

Currency	Aggregate notional (USD)	Trade count
SEK	$183,646,587,508	514
NOK	105,087,098,253	397
PLN	14,455,487,594	103

Table 9.1 presents the outstanding notional amounts of NOK-, PLN-, and SEK-denominated FRAs cleared at LCH as of July 17, 2015.

interest rate swaps. FIA provided figures for those swaps to the Commission. According to FIA, no SGD-denominated interest rate swaps were transacted on SEFs during the week of May 25, 2015. During the week of July 26, 2015, the aggregate notional amount of SGD-denominated interest rate swaps executed on SEFs was $7,305,402.

[97] May 2015 edition of FIA SEF Tracker, available at: *https://fia.org/articles/fia-releases-sef-tracker-report-may.*

[98] FIA converted the values to USD.

[99] This figure comes from data that was publically disseminated by DDR and reported to it by the reporting counterparty, a SEF, or a DCM pursuant to part 43. As such, the Commission did not independently verify the accuracy of the swap data. The transactions disseminated to the public were rounded pursuant to regulation 43.4(g). As a result, this figure may underestimate the amount of notional outstanding for the reported trades. This figure does not include cancelled and corrected swaps that counterparties reported under part 43. The Commission converted the aggregate notional amount to USD according to the exchange rates of June 30, 2015.

[100] CME and LCH converted these figures to USD.

[101] *See* ASIC Derivative Transaction Rules (Clearing) 2015, at 9, available at *https://www.comlaw.gov.au/Details/F2015L01960.*

[102] *See also* Aaron Woolner, ''Australian clearing volumes steady despite new mandate,'' Risk.net, Apr. 27, 2016, *http://www.risk.net/asia-risk/news/2456034/australian-clearing-volumes-steady-despite-new-mandate* (explaining that Australian dollar FRAs present clearinghouses with an operational challenge insofar as AUD-denominated FRAs settle and fix on the same day, which creates problems for clearinghouses because their end-of-day process will not complete until the start of the next Asia-Pacific trading day) (article on file with the Commission and available upon request).

[103] This table reflects data that was publically disseminated by DDR and reported to it by the reporting counterparty, a SEF, or DCM pursuant to part 43. As such, the Commission did not independently verify the accuracy of the swap data. The transactions disseminated to the public were rounded pursuant to regulation 43.4(g). As a result, this table may underestimate the amount of notional outstanding for the reported trades. This table does not include cancelled and corrected swaps that counterparties reported under part 43. The Commission converted the notional amounts to USD according to the exchange rates of June 30, 2015.

TABLE 9.1—LCH DATA FRAS OUTSTANDING NOTIONAL AMOUNTS AS OF JULY 17, 2015

Currency	Outstanding notional (USD)
SEK	$706,370,365,302
NOK	544,670,239,925
PLN	274,120,726,256

Table 9.2 presents the aggregate notional values and trade counts of NOK-, PLN-, and SEK-denominated FRAs cleared at LCH during the second quarter of 2015.

TABLE 9.2—LCH DATA FRAS AGGREGATE NOTIONAL AMOUNTS CLEARED AND TRADE COUNTS SECOND QUARTER 2015

Currency	Aggregate notional (USD)	Trade count
SEK	$369,900,226,814	1,600
NOK	348,764,102,890	1,874
PLN	232,246,791,831	1,029

Table 10.1 presents the outstanding notional amounts of NOK-, PLN-, and SEK-denominated FRAs cleared at CME as of July 17, 2015.

TABLE 10.1—CME DATA FRAS OUTSTANDING NOTIONAL AMOUNTS AS OF JULY 17, 2015

Currency	Outstanding notional (USD)
SEK	$1,448,168,085
PLN	360,386,524
NOK	122,512,986

Table 10.2 presents the aggregate notional amounts and trade counts of NOK-, PLN-, and SEK-denominated FRAs cleared at CME during the second quarter of 2015.

TABLE 10.2—CME DATA FRAS AGGREGATE NOTIONAL AMOUNTS CLEARED AND TRADE COUNTS SECOND QUARTER 2015 [104]

Currency	Aggregate notional (USD)	Trade count
SEK	$1,504,300,488	6
NOK	0	0
PLN	0	0

The Commission recognizes that the part 43 Data provided in Table 8 comes from a limited period of time that does not explicitly include periods of market stress. The Commission also notes the absence of any clearing activity at CME in NOK- or PLN-denominated FRAs during the second quarter of 2015. However, the Commission concludes that the part 43 Data provided in Table 8, together with the LCH data provided in Tables 9.1 and 9.2, demonstrate sufficient regular trading activity and outstanding notional exposures in NOK-, PLN-, and SEK-denominated FRAs to provide the liquidity necessary for DCOs to successfully risk manage these products and to support the adoption of a clearing requirement. Moreover, the Commission notes that like the other products subject to this determination, these FRAs are subject to a clearing requirement issued by another jurisdiction, in this case the European Union.[105] Accordingly, the Commission concludes that there is sufficient regular trading activity and outstanding notional exposures for all FRAs subject to this rulemaking.

4. Outstanding Notional Exposures and Trading Liquidity: OIS With Termination Dates of Up to Three Years; and AUD- and CAD-Denominated OIS

The First Clearing Requirement Determination required the clearing of certain USD-, EUR- and GBP-denominated OIS with a stated termination date range of seven days to two years. As part of this clearing requirement determination, the Commission is amending the maximum termination date to three years for USD-, EUR- and GBP-denominated OIS that have been required to be cleared pursuant to the First Clearing Requirement Determination. This will make the Commission's OIS clearing requirement consistent with that in effect in the European Union.[106]

Table 11 presents aggregate notional values and trade counts of USD-, EUR-, and GBP-denominated OIS with terms of two to three years executed during the second quarter of 2015, collected by DDR.

TABLE 11—PART 43 DATA 2–3 YEAR OIS AGGREGATE NOTIONAL AMOUNTS AND TRADE COUNTS REPORTED [107] SECOND QUARTER 2015

Currency	Aggregate notional (USD)	Trade count
EUR	$7,582,189,400	47
USD	4,611,000,000	32
GBP	1,377,942,400	15

Tables 12 and 13 present the outstanding notional amounts outstanding, the aggregate notional values cleared and trade counts, of USD-, EUR-, and GBP-denominated OIS with terms of two to three years.

TABLE 12—LCH DATA 2–3 YEAR OIS OUTSTANDING NOTIONAL AMOUNTS, AGGREGATE NOTIONAL AMOUNTS CLEARED, AND TRADE COUNTS [108]

Currency	Outstanding notional as of July 17, 2015 (USD)	Aggregate notional cleared second quarter 2015 (USD)	Trade count second quarter 2015
EUR	$456,729,830,424	$369,018,669,593	1,252

[104] Although there was no clearing activity in NOK- or PLN-denominated FRAs during the second quarter of 2015, CME continues to offer clearing of these products.

[105] In analyzing the volume and liquidity of NOK-, PLN-, and SEK-denominated fixed-to-floating interest rate swaps and FRAs, ESMA concluded that there was greater volume and liquidity in products denominated in these three currencies than in fixed-to-floating interest rate swaps and FRAs denominated in three other currencies (Czech koruna (CZK), Danish kroner (DKK), and Hungarian forint (HUF)). Therefore, ESMA included the NOK-, PLN-, and SEK-denominated products in its clearing obligation but not the CZK-, DKK-, and HUF-denominated products. In other words, ESMA ultimately determined that three currencies should be subject to the EU clearing obligation and three currencies should not be, a decision with which the European Commission concurred. *See* ESMA Final Report—Draft technical standards on the clearing obligation—interest rate OTC derivatives in additional currencies (ESMA/2015/1629, Nov. 10, 2015), available at: *https://www.esma_europa.eu/sites/default/files/library/2015/11/esma-2015-1629_-_final_report_clearing_obligation_irs_other_currencies.pdf.*

[106] *See* discussion of the pending European Union Clearing Obligation in section I.C.

[107] This table reflects data that was publically disseminated by DDR and reported to it by the reporting counterparty, SEF, or DCM pursuant to part 43. As such, the Commission did not independently verify the accuracy of the swaps. The transactions disseminated to the public were rounded pursuant to regulation 43.4(g). As a result, this table may underestimate the amount of notional outstanding for the reported trades. This table does not include cancelled and corrected swaps that counterparties reported under part 43. The Commission converted the notional amounts to USD according to the exchange rates of June 30, 2015.

TABLE 12—LCH DATA 2–3 YEAR OIS OUTSTANDING NOTIONAL AMOUNTS, AGGREGATE NOTIONAL AMOUNTS CLEARED, AND TRADE COUNTS [108]—Continued

Currency	Outstanding notional as of July 17, 2015 (USD)	Aggregate notional cleared second quarter 2015 (USD)	Trade count second quarter 2015
GBP	91,417,244,109	64,071,802,837	187
USD	90,058,657,103	46,523,581,500	120

TABLE 13—CME DATA 2–3 YEAR OIS OUTSTANDING NOTIONAL AMOUNTS, AGGREGATE NOTIONAL AMOUNTS CLEARED, AND TRADE COUNTS [109]

Currency	Outstanding notional as of July 17, 2015 (USD)	Aggregate notional cleared second quarter 2015 (USD)	Trade count second quarter 2015
EUR	$53,456,578,566	$6,888,346,279	12
USD	151,923,747,195	9,334,544,737	6
GBP	27,764,067,455	857,520,000	4

As part of this clearing requirement determination, the Commission also is adding AUD- and CAD-denominated OIS to the OIS class included in regulation 50.4(a). This will make the Commission's OIS clearing requirement consistent with the requirements that will begin to take effect in Australia in October 2016 and in Canada in 2017.[110]

Table 14 presents aggregate notional amounts and trade counts of AUD- and CAD-denominated OIS executed during the second quarter of 2015 collected by DDR.

TABLE 14—PART 43 DATA AUD- AND CAD–OIS AGGREGATE NOTIONAL AMOUNTS AND TRADE COUNTS REPORTED [111] SECOND QUARTER 2015

Currency	Aggregate notional (USD)	Trade count
AUD	$307,048,016,016	537
CAD	51,645,589,883	107

Tables 15.1 and 15.2 present the outstanding notional amounts outstanding, as well as aggregate notional values cleared and trade counts, of AUD- and CAD-denominated OIS cleared at LCH.[112]

TABLE 15.1—LCH DATA AUD-DENOMINATED OIS OUTSTANDING NOTIONAL AMOUNT, AGGREGATE NOTIONAL AMOUNT CLEARED, AND TRADE COUNT [113]

Currency	Outstanding notional as of January 15, 2016 [114] (USD)	Aggregate notional cleared January 4–15, 2016 (USD)	Trade count January 4–15, 2016
AUD	$25,739,497,700	$26,199,691,300	25

TABLE 15.2—LCH DATA CAD-DENOMINATED OIS OUTSTANDING NOTIONAL AMOUNT, AGGREGATE NOTIONAL AMOUNT CLEARED, AND TRADE COUNT [115]

Currency	Outstanding notional as of July 17, 2015 (USD)	Aggregate notional cleared second quarter 2015 (USD)	Trade count second quarter 2015
CAD	$506,221,411,997	$216,524,096,571	260

[108] LCH converted the EUR and GBP values to USD.

[109] CME converted the EUR and GBP values to USD.

[110] *See* discussion of the Australian and Canadian swap clearing requirements in section I.C.

[111] This table reflects data that was publically disseminated by DDR and reported to it by the reporting counterparty, SEF, or DCM pursuant to part 43. As such, the Commission did not independently verify the accuracy of the swaps. The transactions disseminated to the public were rounded pursuant to regulation 43.4(g). As a result, this table may underestimate the amount of notional outstanding for the reported trades. This table does not include cancelled and corrected swaps that counterparties reported under part 43. The Commission converted the notional amounts to USD according to the exchange rates of June 30, 2015.

[112] As discussed above, CME intends to begin offering to clear AUD- and CAD-denominated OIS before the end of 2016.

[113] LCH converted the AUD values to USD.

[114] LCH began clearing AUD-denominated OIS on January 4, 2016.

The fact that Australian and Canadian regulators have included AUD- and CAD-denominated OIS, respectively, in their clearing requirements demonstrates that they believe that these swaps represent an important part of the derivatives portfolios of Australian and Canadian banks. The part 43 Data cited in Table 14 demonstrates that there is also meaningful participation by U.S. swap market participants in these swaps. For example, U.S. SDs and their affiliated entities play an important role in the global swaps market, including in Australia and Canada. The Commission therefore believes that it is prudent for its clearing requirement to be consistent with those issued by other jurisdictions, even with respect to swaps that are relatively less frequently traded than other swaps.[116]

While the Commission recognizes that the data considered above comes from limited periods of time that do not explicitly include periods of market stress, the Commission concludes that the data demonstrates sufficient regular trading activity and outstanding notional exposures in USD-, GBP-, and EUR-denominated OIS with a termination date range of two to three years, as well as AUD- and CAD-denominated OIS, to provide the necessary liquidity for DCOs to successfully risk manage these products and to support the adoption of a clearing requirement. Accordingly, the Commission concludes that there is sufficient regular trading activity and outstanding notional exposures for all OIS subject to this rulemaking.

5. Pricing Data: Fixed-to-Floating Swaps Denominated in the Nine Additional Currencies; AUD-Denominated Basis Swaps; NOK-, PLN-, and SEK-Denominated FRAs; USD-, GBP, and EUR–OIS With Termination Dates of up to Three Years; and AUD- and CAD–OIS

The Commission regularly reviews pricing data on the interest rate swaps subject to this rulemaking and has found that these swaps are capable of being priced off of deep and liquid markets. Commission staff receives and reviews margin model information from CME, Eurex, LCH, and SGX that addresses how such DCOs would follow particular procedures to ensure that market liquidity exists in order to exit a position in a stressed market, including the products subject to this determination. In particular, Commission staff analyzes the level of liquidity in the specific product markets and assesses the time required to determine a price. Based on this information, the Commission staff has no reason to believe that there is, or will be, difficulty pricing the products subject to this determination in a stressed environment.

Because of the stability of access to pricing data from these markets, the pricing data for non-exotic interest rate swaps that are currently being cleared is generally viewed as reliable. In addition, CME, Eurex, LCH, and SGX provided information that supports the Commission's conclusion that there is adequate pricing data to warrant a clearing requirement for the swaps subject to this rulemaking. LCH and CME believe there is adequate pricing data for risk and default management. CME stated that its interest rate swap valuations are fully transparent and rely on pricing inputs obtained from wire service feeds. In its § 39.5(b) submission, SGX asserted that the valuation rate sources it uses, and the manner in which it determines mark-to-market prices, are in alignment with industry practices. CME, Eurex, LCH, and SGX obtain daily prices from third-party data providers, clearing members, and/or major banks.

As discussed above, the Commission reviews margin models and related pricing data submitted by CME, Eurex, LCH, and SGX. One source of information that they use to determine adequate pricing data is a regular survey of swap traders that asks the traders to estimate what it would cost to liquidate positions of different sizes in different currencies. The information obtained during these market participant surveys is incorporated into each of CME, Eurex, LCH, and SGX's internal margin models so that each is confident that it will be able to withstand stressed market conditions. Establishing accurate pricing data is one component of each of CME, Eurex, LCH, and SGX's ability to risk manage their interest rate swaps offered for clearing. The Commission believes that the methods used by these DCOs provide information on pricing that is accurate and demonstrates the ability to price the products subject to this determination successfully. Accordingly, the Commission concludes that there is adequate pricing data to support an extension of the clearing requirement to the swaps subject to this rulemaking.

6. Comments Received Regarding Factor (I)

In response to the NPRM, three commenters, Better Markets, Citadel, and CME Group agreed with the Commission's analysis of the first factor under section 2(h)(2)(D)(ii). That is, these commenters agreed that there is sufficient outstanding notional exposures in all of the swaps covered by the NPRM for DCOs successfully to risk manage such swaps and that this supports a clearing requirement determination. In its comment letter, Citadel complimented the Commission for assessing the extent of outstanding notional exposures using multiple sources of data. Citadel noted further that the various sources of data the Commission referenced in discussing the extent of outstanding notional exposures demonstrate the variety of sources a DCO may rely on to access price data for risk and default management purposes. In addition, Better Markets, Citadel, and MFA commented that there is sufficient trading activity and liquidity in the swaps subject to this rulemaking to support a clearing requirement. MFA highlighted the fact that, as noted in the NPRM, a significant percentage of the market already clears the swaps voluntarily at Commission-registered DCOs. Citadel commented that the clearing requirement would enhance liquidity in cleared instruments to the benefit of investors. Similarly, SIFMA AMG commented that clearing improves market liquidity.

With respect to pricing data, in their comment letters, CME Group and LCH Group agreed with the Commission that there is sufficient pricing data available for the swaps subject to this rulemaking such that CME Group and LCH Group can adequately manage the risks that would arise from the default of a clearing member. The Commission received no other comments related to the level of outstanding notional exposures and trading liquidity or adequacy of pricing data for the swaps subject to this rulemaking.

For the reasons described above and in light of the comments received, the Commission reaffirms its conclusion stated in the NPRM that there are sufficient outstanding notional exposures and trading liquidity, as well as adequate pricing data, to expand the clearing requirement to include the swaps subject to this rulemaking, which are referenced in revised regulation 50.4(a).

b. Factor (II)—Availability of Rule Framework, Capacity, Operational Expertise and Resources, and Credit Support Infrastructure

Section 2(h)(2)(D)(ii)(II) of the CEA requires the Commission to take into account the availability of rule

[115] LCH converted the CAD values to USD.

[116] *See* section II.C.ii for a more lengthy discussion and analysis of BIS data with regard to U.S.-based market participants' activity in global interest rate swap markets.

framework, capacity, operational expertise and resources, and credit support infrastructure to clear the swaps subject to this rulemaking on terms that are consistent with the material terms and trading conventions on which they are now traded. The Commission believes that CME, Eurex, LCH, and SGX have developed rule frameworks, capacity, operational expertise and resources, and credit support infrastructure to clear the interest rate swaps that they currently clear, including those products subject to this determination, on terms that are consistent with the material terms and trading conventions on which those swaps are being traded.

1. Background

The Commission subjects CME, Eurex, LCH, and SGX to ongoing review and risk surveillance programs to ensure compliance with the core principles for the submitted swaps.[117] As discussed above, as part of a registered DCO's initial registration review and periodic in-depth reviews thereafter, the Commission reviews the DCO's rule framework, capacity, and operational expertise and resources to clear the submitted swaps. The Commission may request that the DCO or DCO applicant change its rules to comply with the CEA and Commission regulations.

After registration, the Commission conducts examinations of DCOs to determine whether the DCO is in compliance with the CEA and Commission regulations. Moreover, Commission risk surveillance staff monitors the risks posed to and by the DCO, in ways that include regularly conducting back testing to review margin coverage at the product level and following up with the DCO and its clearing members regarding any exceptional results.

CME, Eurex, LCH, and SGX have procedures pursuant to which they regularly review their clearing of the interest rate swaps subject to this rulemaking in order to confirm, or make adjustments to, margins and other risk management tools. When reviewing CME, Eurex, LCH, and SGX's risk management tools, the Commission considers whether the DCO is able to manage risk during stressed market conditions to be one of the most significant considerations.

CME, Eurex, LCH, and SGX have developed detailed risk management practices, including a description of the risk factors considered when establishing margin levels such as historical volatility, intraday volatility, seasonal volatility, liquidity, open interest, market concentration, and potential moves to default, among other risks.[118] The Commission reviews and oversees CME's, Eurex's, LCH's, and SGX's risk management practices and development of margin models. Margin models are further refined by stress testing and daily back testing. When assessing whether CME, Eurex, LCH, and SGX can clear swaps safely during stressed market conditions, stress testing and back testing are key tools the Commission considers as well.

CME, Eurex, LCH, and SGX design stress tests to simulate ''extreme but plausible'' market conditions based on historical analysis of product movements and/or based on hypothetical forward-looking scenarios that are created with the assistance of market experts and participants. Commission staff monitors and oversees the use and development of these stress tests. CME, Eurex, LCH, and SGX conduct stress tests daily. In addition, CME, Eurex, LCH, and SGX conduct reverse stress testing to ensure that their default funds are sized appropriately. Reverse stress testing uses plausible market movements that could deplete guaranty funds and cause large losses for top clearing members.[119] These four DCOs analyze the results of stress tests and reverse stress tests to determine if any changes to their financial resources or margin models are necessary. Commission risk surveillance staff also monitors markets in real-time, performs stress tests against the DCOs' margin models as an additional level of oversight, and may recommend changes to a margin model.

CME, Eurex, LCH, and SGX conduct back testing on a daily basis to ensure that the margin models capture market movements for member portfolios. Back testing serves two purposes: It tests margin models to determine whether they are performing as intended and it checks whether the margin models produce margin coverage levels that meet the DCO's established standards. CME conducts daily back testing for each major asset class, and SGX performs daily back testing on a contract level to examine margin models in more detail. LCH may call additional margin from clearing members if back testing demonstrates margin erosion. The back testing process helps CME, Eurex, LCH, and SGX determine whether their clearing members satisfy the required margin coverage levels and liquidation time frame.

Before offering a new product for clearing, such as the interest rate swaps subject to this rulemaking, CME, Eurex, LCH, and SGX take stress tests and back testing results into account to determine whether the clearinghouse has sufficient financial resources to offer new clearing services. In addition, the Commission reviews margin models and default resources to ensure that the DCOs can risk manage their portfolio of products offered for clearing. The Commission believes that this combination of stress testing and back testing in anticipation of offering new products for clearing provides CME, Eurex, LCH, and SGX with greater certainty that new product offerings will be risk-managed appropriately. The process of stress testing and back testing also gives the DCOs practice incorporating the new product into their models.

In addition to the Commission's surveillance and oversight, CME, Eurex, LCH, and SGX continue to monitor and test their margin models over time so that they can operate effectively in stressed and non-stressed market environments. CME, Eurex, LCH, and SGX review and validate their margin models regularly and in the case of CME and SGX, no less than annually. To risk manage their margin coverage levels for interest rate swaps denominated in

[117] Section 5c(c) of the CEA governs the procedures for review and approval of new products, new rules, and rule amendments submitted to the Commission by DCOs. Parts 39 and 40 of the Commission's regulations implement section 5c(c) by: (i) Establishing specific requirements for compliance with the core principles as well as procedures for registration, implementing DCO rules, and clearing new products; and (ii) establishing provisions for a DCO's submission of rule amendments and new products to the Commission.

[118] Each of CME, Eurex, LCH, and SGX has published a document outlining its compliance with the Principles for Financial Market Infrastructures (PFMIs) published by the Committee on Payments and Market Infrastructures (CPMI formerly CPSS) and the International Organization of Securities Commissions (IOSCO). *See* CME Clearing: Principles for Financial Market Infrastructures Disclosure, available at: *http://www.cmegroup.com/clearing/risk-management/files/cme-clearing-principles-for-financial-market-infrastructures-disclosure.pdf. See* Assessment of Eurex Clearing AG's compliance against the CPSS–IOSCO Principles for financial market infrastructures (PFMI) and disclosure framework associated to the PFMIs, available at: *http://www.eurexclearing.com/blob/148684/58e6fe89e3f54ebe169e530ac2235b43/data/cpss-iosco-pfmi_assessment_2014_en.pdf. See* LCH's CPMI–IOSCO Self Assessment 2014, available at: *http://www.lchclearnet.com/documents/731485/762558/CPMI_IOSCO_Assessment_of_LCH+ClearnetLtd+2014.pdf/45876bd6-3818-4b76-a463-2952a613c326. See* SGX PFMI Disclosure Documents, available at: *http://www.sgx.com/wps/portal/sgxweb/home/clearing/derivatives/pfmi_disclosure.*

[119] For example, CME, Eurex, LCH, and SGX may use scenarios for stress testing and reverse stress testing that capture, among other things, historical price volatilities, shifts in price determinants and yield curves, multiple defaults over various time horizons, and simultaneous pressures in funding and asset markets.

various currencies, CME and LCH also regularly survey traders to estimate what it would cost to liquidate positions of different sizes in different currencies and then incorporate those costs into the amount of initial margin that a clearing member is required to post, and tailor their margin models to account for several attributes specific to various currencies.

Finally, aside from margin coverage requirements, CME, Eurex, LCH, and SGX can monitor and manage credit risk exposure by asset class, clearing member, account, or even by individual customers. They manage credit risk by establishing position and concentration limits based on product type or counterparty. The Commission recognizes that these limits reduce potential market risks so that DCOs are better able to withstand stressed market conditions. CME, Eurex, LCH, and SGX monitor exposure concentrations and may require additional margin deposits for clearing members with weak credit scores, with large or concentrated positions, with positions that are illiquid or exhibit correlation with the member itself, and/or where the member has particularly large exposures under stress scenarios. The ability to call for any additional margin, on top of collecting initial and variation margin, to meet the current DCO exposure is another tool that CME, Eurex, LCH, and SGX may use to protect against stressed market conditions.

In support of its ability to clear the products subject to this rulemaking, CME's § 39.5(b) submissions cite to its rulebook to demonstrate the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear interest rate swap contracts on terms that are consistent with the material terms and trading conventions on which the contracts are then traded. LCH's submissions state that LCH has the capability and expertise not only to manage the risks inherent in the current book of interest rate swaps cleared, but also to manage the increased volume that a clearing requirement for additional currently clearable products could generate. SGX's submission states that SGD-denominated fixed-to-floating interest rate swaps are cleared under an established rule framework and operational infrastructure that has been accepted by SGX's clearing members. SGX asserted further that it has the appropriate risk management, operations, and technology capabilities in place to ensure that it is able to liquidate positions in these swaps in an orderly manner should a default occur. Similarly, Eurex's submission states that it clears interest rate swaps pursuant to its well-developed rule framework and support infrastructure.

Importantly, the Commission notes that CME, Eurex, LCH, and SGX each developed their interest rate swap clearing offerings in conjunction with market participants and in response to the specific needs of the marketplace. In this manner, CME's, Eurex's, LCH's, and SGX's clearing services are designed to be consistent with the material terms and trading conventions of a bilateral, uncleared market.

When assessing whether CME, Eurex, LCH, and SGX can clear the swaps subject to this rulemaking safely during times of market stress, the Commission reviewed the public disclosures published by CME, Eurex, LCH, and SGX. In addition, the Commission reviewed the risk management practices used by these DCOs, and the Commission has determined that the application of such practices to the products subject to this clearing requirement determination should ensure that the products can be cleared safely during times of market stress. Accordingly, the Commission concludes that at each of the four DCOs discussed above, there is an available rule framework, capacity, operations expertise and resources, and credit support infrastructure to clear the swaps subject to this rulemaking on terms that are consistent with the material terms and trading conventions on which they are now traded.

2. Comments Received Regarding Factor (II)

In response to the NPRM, Citadel agreed with the Commission's conclusion that the existing DCO rule frameworks and infrastructure are satisfactory for clearing the swaps subject to the determination. Citadel commented that the already significant amount of voluntary clearing of these swaps demonstrates the suitability of the DCOs' frameworks and infrastructures. LCH Group commented that its rule framework, capacity, operational expertise, resources, and credit support structure are adequate to clear the swaps covered by the rulemaking, including during times of market stress. Similarly, CME Group commented that it is capable of offering uninterrupted clearing services of these swaps, even during times of market stress. Finally, Better Markets commented that the second factor under section 2(h)(2)(D)(ii) is satisfied because registered DCOs are already clearing the swaps subject to the NPRM in compliance with the DCO core principles. Better Markets also urged the Commission strictly to surveil DCOs' risk management procedures.

The Commission received no other comments related to the existence of satisfactory DCO rule frameworks and infrastructure to support this expanded clearing requirement determination.

For the reasons described above and in light of the comments received, the Commission reaffirms its conclusion stated in the NPRM that there are available rule frameworks, capacity, operations expertise and resources, as well as credit support infrastructures consistent with material terms and current trading conventions, to expand the clearing requirement to include the swaps subject to this rulemaking, which are referenced in revised regulation 50.4(a).

c. Factor (III)—Effect on the Mitigation of Systemic Risk

Section 2(h)(2)(D)(ii)(III) of the CEA requires the Commission to take into account the effect of the clearing requirement on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the DCO available to clear the contract. The Commission believes that the market for the swaps covered by this determination is significant and that mitigating counterparty risk through clearing likely will reduce systemic risk in that market generally. Data collected by SDRs demonstrates that Commission-registered SDs are counterparties to an overwhelming majority of swaps reported to the Commission. Because only SDs with a significant volume of swaps activity are required to register with the Commission,[120] by expanding the swap clearing requirement, a greater percentage of an SD's swap activity will be centrally cleared and risk managed. For example, central clearing reduces the interconnectedness of the swap positions of SDs, and other swap market participants, because the DCO, an independent third party that takes no market risk, guarantees the collateralization of swap counterparties' exposures. Mitigating counterparty credit risk for SDs with systemically important swap positions through clearing likely would reduce systemic risk in the swap market and the financial system as a whole.[121]

[120] *See* definition of SD, codified in Commission regulation 1.3(ggg).

[121] In its regulation 39.5(b) submission, SGX asserts that central clearing reduces counterparty credit risk because the central counterparty interposes itself between the initial buyer and seller and because clearing creates efficiencies through the consolidation of collateral management.

In addition to managing counterparty credit risk, centrally clearing the swaps covered by this rulemaking through a DCO will reduce systemic risk through the following means: Providing counterparties with daily mark-to-market valuations and exchange of variation margin pursuant to a risk management framework; requiring posting of initial margin to cover potential future exposures in the event of a default; offering multilateral netting to substantially reduce the number and notional amount of outstanding bilateral positions; reducing swap counterparties' operational burden by consolidating collateral management and cash flows; eliminating the need for novations or tear-ups because clearing members may offset opposing positions; and increasing transparency.

The Commission recognizes that the new margin requirements for uncleared swaps for SDs and MSPs require some market participants to post and collect margin for those swaps not subject to the Commission's clearing requirement.[122] Neither the Commission's nor the prudential regulators' uncleared margin requirement was finalized at the time the Commission issued the First Clearing Requirement Determination. As a result, the Commission considered the clearing requirement in light of existing market practice. Going forward, the requirement to margin uncleared swaps in certain instances will mitigate the accumulation of risk between counterparties in a manner similar to that of central clearing.

However, the Commission believes that central clearing, including required clearing such as that described herein, offers greater risk mitigation than bilateral margining for swaps that are sufficiently standardized and meet the Commission's other requirements for suitability. First, absent any applicable exception or exemption,[123] the clearing requirement applies to all transactions in swaps identified in regulation 50.4, whereas, generally speaking, the new uncleared margin requirements apply only to swaps executed between SDs and MSPs, and between an SD or MSP and its counterparty that is a ''financial end-user.'' [124] Second, this clearing requirement requires all swap counterparties to post initial margin with a DCO, whereas under the uncleared swap margin regulations, for certain swaps, specifically those between an SD or MSP and a financial end-user, initial margin is required to be posted and collected only if the financial end-user (together with its affiliates) has over $8 billion in gross notional exposures for uncleared swaps.[125] Third, swaps transacted through a DCO are secured by the DCO's guaranty fund and other available financial resources, which are intended to cover extraordinary losses that would not be covered by initial margin (''tail risk''), whereas swaps subject to the uncleared margin requirements are not secured by a guaranty fund or other financial resources available to the DCO but covered by unencumbered assets of the counterparty.

1. DCO Mitigation of Risk and Concentration of Risk

In their § 39.5(b) submissions, CME, Eurex, and LCH stated that subjecting interest rate swaps to central clearing helps mitigate systemic risk. According to LCH, if all clearable swaps were required to be cleared at a small number of central counterparties rather than being held bilaterally by a much larger group of swap counterparties, the robust risk management frameworks of clearinghouses, such as that operated by LCH, would serve to reduce operational and systemic risk in the interest rate swap market. CME stated that the 2008 financial crisis demonstrated the potential for systemic risk arising from the interconnectedness of over-the-counter (OTC) derivatives market participants and asserted that centralized clearing will reduce systemic risk.

While a clearing requirement removes a large portion of the interconnectedness of current OTC markets that leads to systemic risk, the Commission notes that central clearing, by its very nature, concentrates risk in a handful of entities. Similarly, SGX, in its § 39.5(b) submission, noted that the risk reducing and other benefits of central clearing must be weighed against the concentration of risk in a few clearinghouses. However, the Commission observes that central clearing was developed and designed to handle such concentration of risk. Moreover, as discussed at length above, the Commission's review and risk surveillance programs monitor and attempt to mitigate potential risks that can arise in derivatives clearing activities for the DCO, its members, and other entities using the DCO's services.

Part of a DCO's risk management framework includes procedures for responding in stressed circumstances, such as a clearing member's default on its obligations. As discussed below, each of CME, Eurex, LCH, and SGX has a procedure for closing out and/or transferring a defaulting clearing member's positions and collateral.[126] Transferring customer positions to solvent clearing members in the event of a default is critical to reducing systemic risk. DCOs are designed to withstand defaulting positions and to prevent a defaulting clearing member's loss from spreading further and triggering additional defaults. If the introduction of this expanded clearing requirement for interest rate swaps increases the number of clearing members and market participants in the swap market, then DCOs may find it easier to transfer positions from defaulting clearing members to other clearing members because there may be a larger pool of potential clearing members to receive the positions. If this were to occur, then this expanded interest rate swap clearing requirement would help to reduce systemic risk by increasing the number of clearing members and market participants in these swaps, which would be expected to provide DCOs with additional recipients for defaulting clearing members' positions in the event of a default.

Each DCO has experience risk managing interest rate swaps, and the Commission has determined that each of CME, Eurex, LCH, and SGX has the necessary resources available to clear the swaps that are the subject of its submission. Accordingly, the Commission concludes that it has considered the effect of the expanded clearing requirement on the mitigation of systemic risk and found that mitigating counterparty risk through required central clearing likely will

[122] Margin Requirements for Uncleared Swaps for SDs and MSPs, 81 FR 636 (Jan. 6, 2016) (codified in subpart E of part 23 of the Commission's regulations) (establishing initial and variation margin requirements for certain SDs and MSPs for which there is no prudential regulator); and Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) (establishing minimum margin and capital requirements for certain registered SDs, MSPs, security-based swap dealers, and major security-based swap participants regulated by one of the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration or the Federal Housing Finance Agency). *See also* section V for further discussion of this issue.

[123] The exception and exemptions to the clearing requirement are codified in subpart C to part 50 of the Commission's regulations.

[124] *See* Commission regulation 23.151 (defining financial end user). *See also* Margin and Capital Requirements for Covered Swap Entities, 80 FR at 74900 (defining financial end user for rules that are applicable to SDs and MSPs that have a prudential regulator).

[125] Commission regulation 23.152.

[126] For further discussion of treatment of customer and swap counterparty positions, funds and property in the event of a the insolvency of a DCO or one or more of its clearing members, please see Factor (V)—Legal certainty in the event of insolvency. *See* section II.B.iii.

generally reduce systemic risk in the swaps markets for the products subject to this determination.

2. Comments Received Regarding Factor (III)

Several comment letters agreed with the Commission's conclusion that the clearing requirement would reduce systemic risk. Citadel commented that it believes that clearing reduces systemic risk by promoting open, efficient, and transparent markets and by reducing interconnectedness. In its comment letter, Citadel agreed with the Commission that central clearing does more to mitigate systemic risk than bilateral margining requirements. Citadel noted that unlike bilateral margining requirements, clearing eliminates the complex web of interconnected bilateral counterparty credit exposures. Citadel also commented that it believes that market participants benefit from the risk and default management frameworks that clearinghouses provide, including margin collection, end-of-day pricing, multilateral netting and compression, and a guaranty fund.

SIFMA AMG commented that clearing promotes market integrity. Better Markets commented that increased clearing may reduce systemic risk because of a potential increase in the number of DCO-clearing members. LCH Group commented that its risk management framework is calibrated to the particular characteristics of the swaps covered by the NPRM. LCH Group commented further that it is capable of handling any increased risk that could result from the clearing requirement, including during stressed market conditions.

The Commission received no other comments related to the effect of the expanded clearing requirement on the mitigation of systemic risk.

For the reasons described above and in light of the comments received, the Commission reaffirms its conclusion, stated in the NPRM that CME, Eurex, LCH, and SGX would be able to manage the risks posed by clearing the additional swaps that will be required to be cleared by virtue of the expanded clearing requirement. In addition, the Commission believes that the required central clearing of the interest rate swaps subject to this rulemaking will serve to mitigate counterparty credit risk, and might increase the number of clearing members and market participants in these swaps, thereby potentially reducing systemic risk. Thus, the Commission has decided to expand the clearing requirement so that it includes the swaps subject to this rulemaking, which are referenced in revised regulation 50.4(a).

d. Factor (IV)—Effect on Competition

Section 2(h)(2)(D)(ii)(IV) of the CEA requires the Commission to take into account the effect on competition, including appropriate fees and charges applied to clearing. As discussed above, of particular concern to the Commission is whether this determination would harm competition by creating, enhancing, or entrenching market power in an affected product or service market, or facilitating the exercise of market power. Market power is viewed as the ability to raise prices, including clearing fees and charges, reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives.

1. Competition Analysis

In the NPRM, the Commission identified one putative service market as potentially affected by this clearing requirement determination: A DCO service market encompassing those clearinghouses that currently clear, or could reasonably be expected to clear, the types of interest rate swaps subject to this rulemaking, *i.e.,* CME, Eurex, LCH, and SGX. Without defining the precise contours of this market, the Commission recognizes that, depending on the interplay of several factors, this clearing requirement determination potentially could impact competition within the affected market.[127] Several factors may influence whether any impact on competition is, overall, positive or negative. Of particular importance are: (1) Whether the demand for these clearing services and swaps is sufficiently elastic that a small but significant increase above competitive levels would prove unprofitable because users of the interest rate swaps and DCO clearing services would substitute other clearing services co-existing in the same market(s); and (2) the potential for new entry into this market. The availability of substitute clearing services to compete with those encompassed by this determination, and the likelihood of timely, sufficient new entry in the event that prices do increase above competitive levels, each operate independently to constrain anticompetitive behavior.

Any competitive import from this determination likely would stem from the fact that it removes the alternative of not clearing for interest rate swaps subject to this rulemaking. On the other hand, this clearing requirement determination does not change who may or may not compete to provide clearing services for the interest rate swaps subject to this rulemaking (as well as those not required to be cleared).

Removing the alternative of not clearing is not determinative of negative competitive impact. Other factors—including the availability of other substitutes within the market or potential for new entry into the market—may constrain market power. The Commission does not foresee that this determination constructs barriers that would deter or impede new entry into a clearing services market.[128] Indeed, there is some basis to expect that the determination could foster an environment conducive to new entry. For example, this clearing requirement determination, and the prospect that more may follow, is likely to reinforce, if not encourage, growth in demand for clearing services. Demand growth, in turn, can enhance the sales opportunity, a condition hospitable to new entry.[129]

The Commission notes further, that while Eurex and SGX each clear only one of the interest rate swaps subject to this rulemaking, they are generally eligible to clear interest rate swaps under Commission regulation under § 39.5(a) and may decide to add to their interest rate swap offerings in light of this rulemaking.

[127] *See* section II.C.ii for a further discussion of the market for interest rate swaps.

[128] That said, the Commission recognizes that to the extent the clearing services market for the interest rate swaps subject to this rulemaking, after removing the alternative of not clearing such swaps, would be (1) limited to a concentrated few participants with highly aligned incentives, and (2) insulated from new competitive entry through barriers—*e.g.,* high sunk capital cost requirements; high switching costs to transition from embedded incumbents; and access restrictions—this clearing requirement determination could have a negative competitive impact by increasing market concentration. However, no commenters agreed with this specific argument as articulated in the NPRM.

[129] *See, e.g.,* U.S. Dep't. of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines (2010) section 9.2 (entry likely if it would be profitable which is in part a function of ''the output level the entrant is likely to obtain''). In addition, the Commission notes that there are clearing organizations that clear the swaps subject to this rulemaking that are not Commission-registered DCOs: (1) OTC Clearing Hong Kong, which the Commission has exempted from DCO registration and clears HKD-denominated interest rate swaps; (2) ASX, which the Commission also has exempted from DCO registration and clears AUD-denominated interest rate swaps; and (3) Asigna (Mexico), which clears MXN-denominated interest rate swaps. The Commission observes that each of these clearing organizations would be eligible to apply for registration as a DCO if the organization were interested in offering client clearing to U.S. customers. Exemptions from registration are conditioned on clearing only for U.S. proprietary accounts.

2. Comments Received Regarding Factor (IV)

Better Markets, Citadel, and MFA commented that the clearing requirement would have a positive effect on competition. According to both Citadel and Better Markets, central clearing of swaps generally increases the range of execution counterparties, increases liquidity and price competition, narrows bid-ask spreads, and improves access to best execution. Similarly, MFA commented that the clearing requirement would increase competition among potential trading counterparties and liquidity providers by reducing counterparty credit and operational risk and by allowing market participants to trade with a wider range of execution counterparties. Better Markets also commented that the clearing requirement could promote competition because it could remove barriers to entry to the market and suggested that the clearing requirement could enhance the ability of relatively small SDs and other relatively small swap participants to compete with larger dealers and participants.

Citadel commented that by eliminating bilateral counterparty credit exposure and trading documentation, clearing can lead to market structure innovations such as trading solutions that allow investors to trade directly with one another instead of through intermediaries.

Citadel also commented that clearing lowers execution costs in addition to increasing liquidity. Citadel cited academic research published in 2016 indicating that the Commission's existing IRS clearing requirement, together with trading reforms, have enabled swap market participants to save as much as $20 million to $40 million per day, with between $7 million and $13 million of the savings by market participants being attributed to market participants that do not act as dealers in the swaps market.[130]

Two commenters, JBA and Citadel, voiced contrasting views concerning the effects of only one DCO offering a swap subject to a clearing requirement. JBA stated that when only one DCO offers a swap for clearing, costs might increase for market participants to join that DCO or enter into new client clearing arrangements with clearing members of that DCO. JBA also commented that there may be lower liquidity for swaps newly offered at a particular DCO.

By contrast, Citadel commented that the possibility of only one DCO offering to clear a particular swap would not have adverse effects because swap market participants generally prefer to clear swaps at one DCO instead of at multiple DCOs in order to reduce costs by maximizing netting, compression, and margin offsets. Citadel also commented that fees charged by FCMs, rather than fees charged by DCOs, are the major source of clearing costs.[131] Moreover, according to Citadel, the fees charged by FCMs depend primarily on the portfolio the customer wishes to clear rather than on the number of DCOs offering to clear a particular swap. Finally, Citadel commented that the clearing requirement could lead a DCO or FCM to expand its clearing offerings because of the increased clearing volumes that may result from the clearing requirement. As more DCOs and/or FCMs enter the market or expand clearing offerings, price competition would increase and costs for customers would be expected to decrease.

With regard to JBA's comment, in light of the fact that there are only three swaps covered by the determination that are currently offered for clearing by solely one DCO (MXN-denominated fixed-to-floating interest rate swaps, currently offered for clearing only at CME; and AUD- and CAD-denominated OIS, currently offered for clearing only at LCH), and LCH and CME have indicated that they intend to begin offering to clear each of these swaps, respectively, before the end of 2016, the Commission believes that JBA's competitive concerns about only one DCO offering a particular swap will be largely addressed.

While not explicitly addressing the fourth factor under section 2(h)(2)(D)(ii) of the CEA, ISDA expressed concern about how the clearing requirement for AUD- and HKD-denominated interest rate swaps might affect competition due to the fact that the Commission exempted ASX and OTC Clearing Hong Kong from DCO registration, meaning that they may clear these swaps for U.S. proprietary accounts but not for U.S. customer accounts.[132] As stated in note 127 above, the Commission notes that these entities could apply to the Commission for DCO registration in order to clear for U.S. customer accounts should they decide to pursue that line of business at any time in the future.

Citadel's comments suggest that extinguishing bilateral counterparty credit exposure and eliminating complex bilateral trading documentation for swaps subject to a clearing requirement enables market participants to access a wider range of execution counterparties and encourages the entry of new liquidity providers.[133] In Citadel's view, competition among FCMs is more relevant to ensuring that the overall fees and charges applied to clearing are set at a reasonable level. In addition, the imposition of a clearing requirement may itself create the commercial rationale for another DCO or FCM to launch or expand its clearing offering. Under this view, price competition tends to increase, execution costs for investors and customers tend to decrease, and overall market liquidity would therefore improve for the swaps subject to the clearing requirement.[134]

For the reasons described above and in light of the comments received, the Commission concludes that it has considered the effect of the expanded clearing requirement on competition and found that it potentially could impact competition within the affected market, but anticompetitive behavior is likely to be constrained and demand for clearing services is expected to grow. Accordingly, the Commission reaffirms its conclusion stated in the NPRM that its consideration of competitiveness is sufficient to expand the clearing requirement to include the swaps subject to this rulemaking, which are referenced in revised regulation 50.4(a).

e. Factor (V)—Legal Certainty in the Event of Insolvency

Section 2(h)(2)(D)(ii)(V) of the CEA requires the Commission to take into account the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property. The Commission is issuing this clearing requirement based on its view that, as stated in the NPRM, there is reasonable legal certainty with regard to the treatment of customer and swap counterparty positions, funds, and property in connection with cleared

[130] *See* Citadel letter for further discussion of academic papers and possible cost savings.

[131] FCMs provide their customers with access to DCOs in their capacity as DCO clearing members.

[132] Commission regulation 1.3(y) defines proprietary account, and Commission regulation 1.3(gggg) defines customer account.

[133] Commission regulation 39.12(b)(6) requires a DCO to establish rules providing that upon acceptance of a swap for clearing, the original swap is extinguished and replaced by an equal and opposite swap between the DCO and each clearing member acting as principal for a house trade or acting as agent for a customer trade. This process extinguishes counterparty credit risk between the original executing counterparties.

[134] *See* section V for additional discussion on the implications of clearing fees. In the aggregate clearing fees may go up, but clearing fees as measured by per unit cost may go down after the implementation of a new clearing requirement determination.

swaps, namely the fixed-to-floating interest rate swaps, basis swap, OIS, and FRAs subject to this determination, in the event of the insolvency of the relevant DCO or one or more of the DCO's clearing members.[135]

1. Applicable Legal Regime—U.S.

The Commission concludes that, in the case of a clearing member insolvency at CME, where the clearing member is the subject of a proceeding under the U.S. Bankruptcy Code, subchapter IV of Chapter 7 of the U.S. Bankruptcy Code (11 U.S.C. 761–767) and parts 22 and 190 of the Commission's regulations would govern the treatment of customer positions.[136] Pursuant to section 4d(f) of the CEA, a clearing member accepting funds from a customer to margin a cleared swap must be a registered FCM. Pursuant to 11 U.S.C. 761–767 and part 190 of the Commission's regulations, the customer's interest rate swap positions, carried by the insolvent FCM, would be deemed ''commodity contracts.'' [137] As a result, neither a clearing member's bankruptcy nor any order of a bankruptcy court could prevent CME from closing out/liquidating such positions. However, customers of clearing members would have priority over all other claimants with respect to customer funds that had been held by the defaulting clearing member to margin swaps, such as the interest rate swaps subject to this rulemaking.[138] Thus, customer claims would have priority over proprietary claims and general creditor claims. Customer funds would be distributed to swap customers, including interest rate swap customers, in accordance with Commission regulations and section 766(h) of the Bankruptcy Code. Moreover, the Bankruptcy Code and the Commission's rules thereunder (in particular 11 U.S.C. 764(b) and 17 CFR 190.06) permit the transfer of customer positions and collateral to solvent clearing members.

Similarly, 11 U.S.C. 761–767 and part 190 would govern the bankruptcy of a DCO where the DCO is the subject of a proceeding under the U.S. Bankruptcy Code, in conjunction with DCO rules providing for the termination of outstanding contracts and/or return of remaining clearing member and customer property to clearing members.

2. Applicable Legal Regime—U.K.

With regard to LCH, the Commission understands that the default of a clearing member of LCH would be governed by LCH's rules. LCH, a DCO based in the U.K., has represented that pursuant to European Union law, LCH's rules would supersede English insolvency laws.[139] Under its rules, LCH would be permitted to close out and/or transfer positions of a defaulting clearing member that is an FCM pursuant to the U.S. Bankruptcy Code and part 190 of the Commission's regulations. According to LCH's submission, the insolvency of LCH itself would be governed by English insolvency law, which protects the enforceability of the default-related provisions of LCH's rulebook, including in respect of compliance with applicable provisions of the U.S. Bankruptcy Code and part 190 of the Commission's regulations. LCH has obtained, and shared with the Commission, legal opinions that support the existence of such legal certainty in relation to the protection of customer and swap counterparty positions, funds, and property in the event of the insolvency of one or more of its clearing members.[140]

The Commission also considered the implications of the U.K.'s recent referendum vote to withdraw from the European Union. The terms of any such withdrawal cannot be known at this time. Negotiations have not begun, and the U.K. has not yet given notice under Article 50 of the Treaty on the European Union to begin the withdrawal process. Thus, there is no indication at this time that there will be changes to the U.K.'s financial regulation regime that is based on European Union law. On June 24, 2016, the day after the vote, the Bank of England Governor Mark Carney indicated that the Bank of England's responsibilities for monetary and financial stability were unchanged by the referendum's result.[141] In addition, the U.K.'s Financial Conduct Authority issued a statement confirming that U.K. financial regulation derived from European Union legislation would ''remain applicable until any changes are made.'' [142]

LCH has advised the Commission that it does not anticipate proposing any changes to its rulebook in light of the referendum, nor does it anticipate any changes to applicable law at this time. The Commission therefore expects LCH's legal opinions related to insolvency to remain valid until further notice and expects that a default of a clearing member of LCH will continue to be governed by LCH's rules. The Commission will continue to monitor developments related to the U.K. referendum.

3. Applicable Legal Regime—Singapore

With regard to SGX, the Commission understands that the default of an SGX clearing member, or SGX itself, would be governed by Singapore law, except for certain SGX rules relating to cleared swaps customer collateral, as part 22 of the Commission's regulations defines that term, which are governed by U.S. law. Like LCH, SGX has obtained, and shared with the Commission, a legal opinion that support the existence of such legal certainty.[143]

4. Comments Received

Better Markets and Citadel commented that they agree with the Commission that reasonable legal certainty exists in the event of an insolvency of a DCO or one or more of its clearing members with respect to the interest rate swaps covered by the NPRM. Citadel noted that the legal framework set forth in the CEA, the U.S. Bankruptcy Code, and Commission regulations applies equally to any swap cleared by a DCO. Citadel believes that the implementation of the Dodd-Frank Act has strengthened this legal framework. The Commission received no other comments related to legal certainty in the event of insolvency.

[135] In this case, the relevant DCOs are CME, LCH, and SGX. The Commission is not discussing Eurex in terms of this factor because Eurex's DCO registration order does not currently permit Eurex to clear for customers. *See* Eurex DCO registration order, available at: *http://www.cftc.gov/idc/groups/public/@otherif/documents/ifdocs/orgdcoeurexclrorder212016.pdf.*

[136] The Commission observes that an FCM or DCO also may be subject to resolution under Title II of the Dodd-Frank Act to the extent it would qualify as a covered financial company (as defined in section 201(a)(8) of the Dodd-Frank Act). Under Title II, different rules would apply to the resolution of an FCM or DCO. Discussion in this section relating to what might occur in the event an FCM or DCO defaults or becomes insolvent describes procedures and powers that exist in the absence of a Title II receivership.

[137] If an FCM also is registered as a broker-dealer, certain issues related to its insolvency proceeding also would be governed by the Securities Investor Protection Act.

[138] Claims seeking payment for the administration of customer property would share this priority.

[139] The U.K. is bound by European Union legislation, including the Settlement Finality Directive (Council Directive 98/26/EC). The U.K.'s implementing legislation (The Financial Markets and Insolvency (Settlement Finality) Regulations 1999) acts to disapply, in certain instances, national U.K. insolvency law in favor of the rules of a designated system, and LCH has been so designated.

[140] Letters of counsel on file with the Commission.

[141] Bank of England, Governor Mark Carney's statement following EU referendum result (June 24, 2016), available at: *http://www.bankofengland.co.uk/publications/Documents/news/2016/056.pdf.*

[142] U.K. Financial Conduct Authority, Statement on European Union referendum result (June 24, 2016), available at: *https://www.fca.org.uk/news/european-union-referendum-result-statement.*

[143] Letter of counsel on file with the Commission.

For the reasons described above and in light of the comments received, the Commission reaffirms its conclusion stated in the NPRM that reasonable legal certainty exists in the event of the insolvency of each of the relevant DCOs or one or more of their clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property to expand the clearing requirement so that it includes the swaps subject to this rulemaking, which are referenced in revised regulation 50.4(a).

C. Generally Applicable Comments

The Commission received a number of generally applicable comments that are separated into three broad topics for discussion below: (i) Access to DCOs, (ii) additional data considered by the Commission in response to ISDA's request, and (iii) the Commission's trade execution requirement.

i. Access to DCOs

JBA raised concerns about possibly needing to establish a clearing relationship with a new DCO in order to comply with the proposed expanded clearing requirement.[144] In light of the fact that there are only three swaps covered by the determination that currently are offered for clearing by solely one DCO (MXN-denominated fixed-to-floating interest rate swaps, currently offered for clearing only at CME; and AUD- and CAD-denominated OIS, currently offered for clearing only at LCH), and LCH and CME have indicated that they intend to begin offering to clear each of these swaps, respectively, before the end of 2016, the Commission believes that JBA's concerns about a swap market participant having to establish a new clearing arrangement even if the participant already has a clearing arrangement in place at CME or LCH will be largely addressed. For certain products, if market participants do not have clearing arrangements in place at CME or LCH, they may need to establish a new clearing arrangement (either as a clearing member or as a customer of a clearing member) at one of those DCOs.

CME Group raised concerns about market participants being able to establish an account with a clearing member. In response to comments about access to DCOs, the Commission notes, as it did in the First Clearing Requirement Determination, that any market participant may petition for relief under Commission regulation 140.99 if the entity is unable to find an FCM to clear its swaps or if it needs additional time to complete requisite documentation.[145]

ii. Additional Data Considered by the Commission

One commenter, ISDA, raised an issue about the type of data and analysis included in the NPRM. In its comment letter, ISDA said that based on the data presented in the NPRM, ''it is difficult to determine the impact that the [clearing requirement expansion] would have on market participants,'' particularly for ''market participants in an individual jurisdiction.'' ISDA requested data on (1) the volume of transactions entered into by entities subject to the CFTC's new clearing requirement that currently enter into swaps subject to this rulemaking on an uncleared basis, and (2) the percentage of each swap subject to this rulemaking that is cleared voluntarily, on a jurisdiction-by-jurisdiction basis.

The Commission notes that ISDA's suggested data analysis is not specifically required under the five statutory factors that the Commission must consider when making a clearing requirement determination, as outlined in sections 2(h)(2)(D)(ii)(I)–(V) of the CEA.[146] Furthermore, the Commission observes that it is difficult to determine with precision, at this point in time, what effect a new, expanded clearing requirement will have on market participants because some may choose to clear their transactions for the risk-reducing benefits of clearing, regardless of whether the Commission adopts a new clearing requirement for such swaps.[147] Nonetheless, the Commission considered relevant, publicly available data and conducted an analysis in order to address, and respond to, the concerns expressed in ISDA's comment letter. This data and analysis is described below.

a. Data Analysis

Recognizing that the interest rate swaps market is global and market participants are interconnected, the Commission reviewed worldwide data collected in the BIS triennial central bank survey for interest rate derivatives[148] to consider further the effect that the expanded clearing requirement could have on market participants (data from this survey also is presented in Table 5 above). Table 16 shows the daily average turnover of OTC single currency interest rate derivatives, in each of the nine additional currencies, by currency and by country.[149]

[144] *See also* discussion of JBA's comment in section II.B.iii.

[145] First Clearing Requirement Determination, 77 FR at 74320. *See also* further discussion of this issue in the cost benefit consideration section below.

[146] The Commission's analysis and data used to support its assessment of each of the five factors is discussed in section II.B.iii.

[147] It is also possible that some market participants would respond to the new clearing requirement by decreasing their use of such swaps. *See also* the discussion in section V.B.ii.

[148] BIS data refers to interest rate derivatives transactions, which include forward rate agreements, interest rate swaps, and interest rate options. For the purposes of this discussion on BIS data, the Commission uses the term ''interest rate derivatives'' because that is the terminology used by BIS to describe the interest rate swaps market. A description of the instruments included in the BIS' Triennial Survey results is included in the BIS Triennial Bank Survey, OTC interest rate derivatives turnover in April 2013: preliminary global results (Sept. 2013), at 14, available at *http://www.bis.org/publ/rpfx13ir.pdf.*

[149] ISDA requested data based on ''jurisdiction'' and the BIS reports its data by ''country.'' For purposes of this analysis and discussion, the terms ''country'' and ''jurisdiction'' can be understood to mean the same thing. Furthermore, a market for a swap denominated in a particular currency can be understood to include both trading in the home country for that currency and trading outside of the home country for that currency.

Table 16
BIS Triennial Central Bank Survey 2013 Data[150]
Geographical Breakdown of OTC Single Currency
Interest Rate Derivatives, Daily Average Turnover[151]

		A	B	C								
				Daily average turnover by currency (in millions of USD)								
	OTC Interest Rate Derivatives (IRD) Turnover April 2013	**Total for the Country (in millions of USD)**	**Percent-age of domestic currency of total for the country**	**AUD**	**CAD**	**HKD**	**MXN**	**NOK**	**PLN**	**SGD**	**SEK**	**CHF**
D	Australia	$66,184	83%	$54,744	$15	$2	...	...	...	$119	...	...
	Canada	$33,975	48%	$493	$16,337	...	$46	...	...	...	...	$2
	Hong Kong	$27,897	6%	$7,342	...	$1,773	...	...	...	$568	...	$9
	Mexico	$2,390	94%	...	...	...	$2,255	$1	...	...	...	...
	Norway	$5,651	80%	...	$2	...	...	$4,536	$11	...	$133	...
	Poland	$3,038	96%	...	...	...	...	...	$2,916	...	...	$82
	Singapore	$37,143	9%	$8,879	$23	$283	...	$1	...	$3,255	$7	...
	Sweden	$16,998	78%	...	...	...	...	$778	...	...	$13,228	...
	Switzerland	$32,618	10%	$234	...	...	...	$246	$0	...	$394	$3,132
E	Percentage in domestic country			53%	46%	64%	18%	39%	32%	70%	30%	18%
F	United States	$628,153	...	$3,535	$17,834	$263	$9,074	$118	$140	$318	$360	$276
G	**Percentage of the U.S. IRD market**	...	...	**0.56%**	**2.84%**	**0.04%**	**1.44%**	**0.02%**	**0.02%**	**0.05%**	**0.06%**	**0.04%**
H	**Percentage turnover in the U.S.**	...	...	**3%**	**51%**	**10%**	**74%**	**1%**	**2%**	**7%**	**1%**	**2%**
I	Total IRD Swaps per Currency (all countries)	...	...	$102,405	$35,261	$2,752	$12,337	$11,706	$9,244	$4,650	$44,257	$17,025

In addition to the data on a jurisdiction-by-jurisdiction basis, Table 16 includes calculations by Commission staff[152] presented in order to convey the relative amount of swaps activity taking place in each jurisdiction, as compared to other jurisdictions and the U.S.[153] As this BIS data demonstrates, the turnover in each of the nine additional currencies represents a small percentage of the overall interest rate derivatives turnover in the U.S. market, especially as compared with the USD-denominated swaps subject to the First Clearing Requirement Determination.[154] The data also shows that for most of these currencies, a significant percentage of the activity in the derivatives denominated in a particular currency occurs in the home country that issues that currency.

According to Row E in Table 16, anywhere from 18% to 70% of the interest rate derivatives denominated in a particular currency are transacted in the home country that issued the currency. The percentage of activity that occurs in the home country supports the decision made by each domestic authority to establish a clearing mandate for particular interest rate swaps denominated in that currency. But in each case, there also is measurable trading activity taking place outside of the home country jurisdiction.

In terms of which market participants are trading in particular markets, the BIS data available does not categorize the daily average turnover by transactions entered into by U.S. or non-

[150] BIS Triennial Central Bank Survey, Interest Rate Derivatives Market Turnover in 2013, Tables 3.1–3.6 (Dec. 2013), available at: *http://www.bis.org/publ/rpfxf13irt.pdf*; CFTC staff calculations.

[151] Data as of April 2013. BIS converted the figures to USD.

[152] Commission staff calculated percentages reflected in column B and rows E, G, and H.

[153] The Commission notes that similar BIS data was presented in ESMA's Consultation Paper on the Clearing Obligation under EMIR (no.4), at 26, available at: *https://www.esma.europa.eu/sites/default/files/library/2015/11/esma-2015-807_-_consultation_paper_no_4_on_the_clearing_obligation_irs_2.pdf*.

[154] Based on the same data from the BIS Triennial Central Bank Survey, Interest Rate Derivatives Market Turnover in 2013, the following represent percentages of turnover for each of the currencies that were subject to the Commission's First Clearing Requirement Determination: Turnover of USD-denominated interest rate derivatives represented 86.96% of the U.S. market; turnover of EUR-denominated interest rate derivatives represented 4.31% of the U.S. market; turnover of GBP-denominated interest rate derivatives represented 0.50% of the U.S. market; and turnover of JPY-denominated interest rate derivatives represented 0.69% of the U.S. market.

U.S. market participants. As a result, the Commission cannot estimate *precisely* what portion of these transactions would be subject to this clearing requirement determination based on the BIS data. However, the estimated overall percentage of activity in the U.S. is shown in Rows G and H. In April 2013, the interest rate derivatives denominated in the currencies subject to this rulemaking represented between 0.02% and 2.84% of the total U.S.-based interest rate derivatives market (*i.e.,* the amount of daily average turnover that BIS estimated was taking place in the U.S.). The Commission recognizes that the interest rate derivatives transacted in the nine additional currencies do not represent a large percentage of the overall U.S. market for interest rate swaps, but the levels transacted are significant in the specific market for each currency.[155]

b. Policy Considerations

Foreign jurisdictions have expressed concern that potential market dislocation and competitive disadvantage may result if there is no U.S. clearing requirement covering the same swaps that are mandated to be cleared by non-U.S. jurisdictions. This concern is driven by the fact that a market participant's choice in counterparty may be influenced by the existence or absence of a clearing requirement. Similarly, from the U.S. perspective, distortion of market participants' choices could be competitively detrimental to the extent that U.S. market participants are subject to a clearing requirement under U.S. law, but their competitors in a foreign jurisdiction are not. Recognizing this concern, international authorities agreed to harmonize clearing mandates across jurisdictions to the extent practicable and as appropriate.[156]

Another variable that likely is affecting decisions made by both U.S. and non-U.S. market participants vis-à-vis central clearing is the imposition of margin for uncleared swaps. The new uncleared margin regulations began phasing in on September 1, 2016.[157] To the extent that market participants have a choice of counterparties, and perceive the costs of maintaining uncleared transactions to be lower than the costs of clearing, market participants may choose to transact with counterparties that are not subject to mandatory clearing. Conversely, if market participants view the costs of clearing as less than the costs of margining their uncleared swaps then there will be an incentive to clear regardless of whether it is required under CFTC regulations or not.

The Commission cannot predict exactly how market participants will be affected by the implementation of an analogous clearing requirement in the U.S., particularly in the current environment where multiple, changing factors, including new margin requirements, may influence a market participant's decision about whether to clear a swap. The Commission and its staff are committed to monitoring market activity in order to assess the impact of its regulations on market behavior. In its ongoing work, the Commission intends to rely on publicly available data, such as the forthcoming BIS triennial survey, as well as the data market participants report to SDRs under part 45 of the Commission's regulations.

iii. Trade Execution Requirement

Three comment letters discussed the possibility of a trade execution requirement concerning some or all of the interest rate swaps subject to this rulemaking.[158] ISDA expressed concern that an expanded clearing requirement could lead to new trade execution requirements for swaps that have limited liquidity. Consequently, ISDA urged the Commission to take any available steps to ensure that a trade execution requirement applies only to swaps with sufficient trading liquidity. Finally, ISDA expressed particular concern about the interpretation of the term ''U.S. person'' described in the Commission's cross-border guidance concerning swaps regulations,[159] which ISDA asserted could lead to a potentially detrimental impact on trading liquidity outside the U.S., including possible market fragmentation.

SIFMA AMG commented that the Commission should temporarily suspend acceptance of ''made-available-to-trade'' submissions, under Commission regulations 37.10 and 38.12, for swaps covered by the expanded clearing requirement until amendments to the made-available-to-trade process have been adopted. SIFMA AMG provided five specific comments on how the made-available-to-trade regulations should be amended.

Finally, Citadel commented that the Commission should proceed with finalizing the expanded clearing requirement despite the ongoing discussions regarding a revised made-available-to-trade process.

As the Commission stated in the NPRM, pursuant to section 2(h)(8) of the CEA and Commission regulations 37.10 and 38.12, a trade execution requirement could, in the future, apply to some or all of the interest rate swaps covered by this rulemaking.[160] The process for determining which swaps are subject to the trade execution requirement is separate from the clearing requirement determination process. Therefore, it is beyond the scope of this rulemaking for the Commission to address the suitability of particular swaps for a trade execution requirement or to address issues related to the ''made-available-to-trade'' process.

III. Expanded and Amended Regulation 50.4(a)

The Commission promulgated regulation 50.4 in 2012 when it issued the First Clearing Requirement Determination, which applied to certain interest rate swaps and credit default swaps.[161] Regulation 50.4 sets forth the basic specifications of the classes of swaps that the Commission requires to be cleared in order to allow counterparties contemplating entering into a swap to quickly determine whether or not the particular swap may be subject to a clearing requirement.[162] Paragraph (a) of regulation 50.4 sets forth the four classes of interest rate

[155] For example, daily average turnover in MXN-denominated interest rate derivatives in the U.S. represented only 1.44% of the daily average turnover of all interest rate derivatives in the U.S. during April 2013 but represented 74% of the MXN-denominated interest rate derivatives market globally.

[156] *See, e.g.,* Report of the OTC Derivatives Regulators Group (ODRG) to G20 Leaders on Cross-Border Implementation Issues, November 2015, available at: *http://www.cftc.gov/idc/groups/public/@internationalaffairs/documents/file/odrgreportg20_1115.pdf* (''ODRG members previously agreed to a framework for consulting one another on mandatory clearing determinations, with the aim of harmonizing mandatory clearing determinations across jurisdictions to the extent practicable and as appropriate, subject to jurisdictions' determination procedures. Inconsistent clearing mandates across jurisdictions may create the potential for regulatory arbitrage. ODRG members are considering ways to enhance the existing framework for such cooperation.'')

[157] See section V.C.ii for a discussion about the costs related to collateralization of cleared swaps positions compared to the costs of complying with the uncleared swap margin regulations.

[158] Pursuant to section 2(h)(8) of the CEA, once a swap is subject to a Commission-issued clearing requirement, then a market participant must execute the swap on a SEF or DCM, if a SEF or DCM makes the swap available to trade (''made-available-to-trade''). The Commission issued regulations 37.10 and 38.12 to implement the trade execution requirement.

[159] Interpretive Guidance and Policy Statement Regarding Compliance with Certain Swap Regulations, 78 FR 45292 (July 26, 2013).

[160] 81 FR at 39516, n. 66.

[161] First Clearing Requirement Determination, 77 FR 74284 (Dec. 13, 2012).

[162] *Id.*

swaps that are currently required to be cleared.

For the reasons discussed above, the Commission has decided to expand regulation 50.4(a) as proposed, with the exception of not adopting a requirement to clear AUD-denominated FRAs. Thus the Commission is adopting amendments to regulation 50.4(a) as follows: (i) Adding fixed-to-floating interest rate swaps denominated in the nine additional currencies; (ii) adding AUD-denominated basis swaps; (iii) adding NOK-, PLN-, and SEK-denominated FRAs; (iv) changing the maximum stated termination date for USD-, GBP-, and EUR-denominated OIS to three years from two years; and (v) adding AUD- and CAD-denominated OIS. The specifications of the swaps set forth in revised regulation 50.4(a) are consistent with those that are the subject of clearing requirements proposed or issued by other jurisdictions.[163]

In its comment letter, Scotiabank suggested that four of the specifications in proposed regulation 50.4(a) describing MXN-denominated fixed-to-floating interest rate swaps should be finalized differently from the specifications proposed. For the reasons described below, the Commission has decided to finalize the specifications as proposed.

First, Scotiabank suggested that the floating rate index should be described as ''TIIE 28'' instead of ''TIIE'' [164] because the Mexican clearing requirement covers swaps referencing the 28-day average Mexican interbank interest rate. The Commission agrees that ''TIIE 28'' is the rate referenced in the Mexican clearing requirement, and it is also the rate to which amended regulation 50.4(a) is intended to refer. The Commission understands that (1) the 28-day average is the rate referenced by the MXN-denominated fixed-to-floating interest rate swaps accepted for clearing at CME; and (2) the 28-day average is the rate specified in the MXN-denominated fixed-to-floating interest rate swaps that will be offered for clearing at LCH. Therefore, the Commission intends for ''TIIE–BANXICO'' in amended regulation 50.4(a) to refer to the 28-day TIIE.[165] However, the Commission is opting to finalize the description of that rate without specifying the particular version of floating rates because it has not done so with regard to the other rates referenced in regulation 50.4(a), such as 3-month LIBOR or 6-month LIBOR.

Second, Scotiabank commented that the maximum termination date range for MXN-denominated fixed-to-floating interest rate swaps covered by expanded regulation 50.4(a) should be 30 years in order to match the exact product specifications of the Mexican clearing requirement, instead of 21 years, as the Commission proposed. The Commission notes that CME, the only registered DCO currently offering to clear these swaps, offers to clear swaps having a maximum term of 21 years. Therefore, the Commission is finalizing the termination date range as proposed.

Third, Scotiabank suggested that MXN-denominated fixed-to-floating interest rate swaps subject to the Commission's clearing requirement should cover only swaps having notional amounts in multiples of MXN 100,000 because Asigna, a Mexican clearinghouse, offers to clear only swaps having such notional amounts.[166] However, because CME's product specifications do not limit clearing MXN-denominated fixed-to-floating interest rate swaps to notional amounts in multiples of MXN 100,000, the Commission does not believe that it is necessary to limit regulation 50.4(a) in this manner.

Fourth, Scotiabank suggested that the MXN-denominated fixed-to-floating interest rate swaps subject to the Commission's clearing requirement should contain an exception for counterparties having ''low net exposure,'' in order to match the Mexican clearing requirement. As an initial matter, section 2(h) of the CEA defines the participant scope of the Commission's clearing requirement: All swap market participants are expected to comply with a Commission-issued clearing requirement, except for certain non-financial end-users.[167] The Commission has implemented this statutory exception, along with other limited exemptions, in subpart C of part 50. This statutory and regulatory framework does not contemplate exclusions based on level of market activity, and the Commission believes it would not be appropriate to deviate from this framework for the MXN-denominated fixed-to-floating interest rate swaps subject to this rulemaking.

In their comment letters, JBA and Scotiabank requested confirmation that a market participant subject to the expanded clearing requirement would be required to clear swaps subject to this final rulemaking that are executed on or after the effective date of the final rulemaking, but not be required to backload swaps executed prior to that date. In response to this comment, the Commission confirms, as it did in the First Clearing Requirement Determination, that market participants will not be required to clear swaps subject to this rulemaking that are executed prior to the effective date of this final rulemaking.[168] In addition, the Commission will not require the backloading of swaps subject to this rulemaking that are executed after the effective date but before the applicable compliance date for this final rulemaking.

IV. Implementation Schedule

In the NPRM, the Commission stated that it did not intend to rely upon its schedule for phasing-in the clearing requirement by market participant type, as codified in Commission regulation 50.25 and relied upon for the First Clearing Requirement Determination. The Commission further proposed two alternative methods for establishing a CFTC clearing requirement compliance date.

The Commission received comments on four aspects of the overall proposed implementation schedule. First, commenters discussed whether the Commission should offer a compliance date phase-in by market participant type. The Commission addresses these comments in section IV.A below. Second, commenters discussed whether the Commission should adopt a single compliance date for all products subject to this determination, or whether the Commission should adopt compliance dates based on the effective date of a non-U.S. jurisdiction's clearing mandate. The Commission addresses these comments in section IV.B below. Third, commenters requested clarifications on a number of discrete points related to the implementation schedule. The Commission addresses these comments in section IV.C below. Finally, commenters discussed whether

[163] *See* discussion of clearing requirements in other jurisdictions in section I.C.

[164] ''TIIE'' refers to the Mexican interbank equilibrium interest rate.

[165] In this final rulemaking, regulation 50.4(a) is amended to specify the ''TIIE–BANXICO'' rate instead of ''TIIE,'' as was proposed in the NPRM. CME's regulation 39.5(b) submission specified the ''TIIE–BANXICO'' rate. LCH's offering in MXN-denominated fixed-to-floating swaps will reference this same rate. The Commission observes that ''TIIE'' and ''TIIE–BANXICO'' both refer to the same rate; ''BANXICO'' simply refers to the Banco de Mexico, which calculates the ''TIIE.''

[166] Asigna is not a Commission-registered DCO, and the Commission has not exempted Asigna from registration under section 5b(h) of the CEA.

[167] Section 2(h)(7) of the CEA.

[168] *See* Commission regulation 50.5(b) (exempting from required clearing those swaps that are entered into *after* July 21, 2010 (the enactment date of the Dodd-Frank Act) but ''*before* the application of the clearing requirement for a particular class of swaps under §§ 50.2 and 50.4 of this part''). *See also* implementation schedule described in section IV.

the Commission should change the scope of its clearing requirement to match the categories of market participants that are required to clear the products under a non-U.S. jurisdiction's clearing requirement. The Commission addresses these comments in section IV.D below.

A. No Compliance Date Phase-In by Type of Market Participant

The Commission proposed adopting one compliance date for all market participant types, rather than rely on the phase-in schedule codified in regulation 50.25.[169] The Commission has decided that because many market participants are currently clearing the products subject to this determination and because the Commission previously adopted a clearing requirement determination for the class of interest rate swaps subject to this final rulemaking, there is no need to phase-in the compliance dates by type of market participant.[170] A number of commenters agreed with the Commission's position and advocated for a compliance date without a phase-in by market participant type.

i. Comments Received

MFA supported the Commission's proposal not to phase-in the compliance date by market participant type and agreed that market participants are ready, willing, and able to clear the swaps subject to this rulemaking. Citadel agreed with the Commission's position that the phase-in by counterparty type is not necessary. Citadel pointed out that because market participants, in most cases, have established clearing arrangements with DCOs and are familiar with the process of central clearing, there is no need to delay compliance dates by including a phase-in by market participant type. LCH Group commented that while the use of a compliance date phase-in by market participant type was successful in connection with the Commission's First Clearing Requirement Determination, it would not be equally beneficial in this context.

Of the two commenters that requested a compliance date phase-in by market participant type, one thought that market participants would be unable to comply with the clearing requirement in the time frame established. ISDA urged the Commission to adopt an implementation schedule that incorporates the 270-day phase-in schedule outlined in Commission regulation 50.25. ISDA expressed concern about the consequences for entities that currently may not be subject to an analogous clearing mandate outside of the U.S. in terms of addressing legal, documentation, operational, and other considerations. SIFMA AMG also recommended that the Commission use a phase-in schedule by market participant type, but did not specify a reason for this recommendation.

The Commission recognizes that the compliance date phase-in by market participant type was beneficial in the context of the First Clearing Requirement Determination. However, because market participants are experienced in clearing USD, EUR, GBP, and/or JPY-denominated interest rate swaps and there is a substantial amount of voluntary clearing activity in the swaps subject to this rulemaking, the Commission has decided that there is no need to phase-in the compliance dates for this clearing requirement by market participant type in accordance with regulation 50.25 or otherwise. Regulation 50.25 provides the Commission with the discretion to phase in compliance. Regulation 50.25(b) provides that upon issuing a clearing requirement determination under section 2(h)(2) of the CEA, the Commission *may* determine, based on the group, category, type, or class of swaps subject to such determination, that the specified schedule for compliance with the requirements of section 2(h)(1)(A) of the CEA shall apply.

A broad cross-section of market participants, including both direct clearing members and their clients or customers, has experience clearing the four classes of interest rate swaps under regulation 50.4(a) and has been clearing certain swaps subject to this final rulemaking on a voluntary basis. The Commission believes that most market participants that would be subject to the expanded clearing requirement already clear, or have clearing service arrangements in place to clear, the types of interest rate swaps subject to the existing clearing requirement. The Commission does not expect that these types of market participants, for the most part, would need to establish connectivity to DCOs, document new client clearing arrangements, or otherwise prepare themselves and/or their customers in order to comply with this clearing requirement determination as they may have needed to do in order to comply with the First Clearing Requirement Determination. The Commission will consider carefully any concerns raised by market participants that cannot gain access to a DCO in order to clear swaps subject to this rulemaking before an applicable compliance date.

The Commission received similar comments concerning the difficulty market participants may have in accessing DCOs and establishing relationships with FCMs at the time it was considering the First Clearing Requirement Determination. In response to those comments, the Commission noted that ''any market participant may petition for relief under regulation 140.99 if that entity is unable to find an FCM to clear its swaps or if it needs additional time to complete requisite documentation.'' [171] If a market participant is unable to find an FCM to clear its swaps, the Commission reaffirms the fact that market participants may petition for relief under regulation 140.99.[172]

B. Compliance Date Tied to a Non-U.S. Jurisdiction Clearing Requirement

The Commission proposed two alternative implementation scenarios in the NPRM. Under the first scenario, all swaps subject to this rulemaking would be required to be cleared on the same date—60 days after the final rulemaking is published in the **Federal Register** (Scenario I). Under the second scenario, the compliance date for each swap product would be the earlier of: (a) 60 days after the effective date of an analogous clearing mandate adopted by a regulator in a non-U.S. jurisdiction, provided that such requirement would not be effective until at least 60 days after the Commission's final rule is published in the **Federal Register**, and (b) two years after the Commission's final rule is published in the **Federal Register** (Scenario II).

After reviewing comments on the two implementation scenarios proposed, the Commission has determined that it will adopt Scenario II and will tie the CFTC's compliance date for each product to the first compliance date for a market participant in a non-U.S. jurisdiction.

[169] *See* Swap Transaction Compliance and Implementation Schedule: Clearing Requirement Under Section 2(h) of the CEA, 77 FR 44441 (July 30, 2012), [hereinafter referred to as the Implementation Release].

[170] In the Implementation Release, the Commission stated that the ''use of the schedule contained in this [release] is at the Commission's discretion; in situations where the Commission determines that the benefits of delayed implementation do not justify the additional costs of such a delay, the Commission may require immediate compliance. . . .'' 77 FR 44441, 44450 (July 30, 2012).

[171] First Clearing Requirement Determination, 77 FR at 74320 and n.172.

[172] Commission regulation 140.99 sets forth the process for addressing requests for exemptive, no-action, and interpretative letters.

i. Comments Received

The Commission received eight comments on whether to implement Scenario I or Scenario II. MFA supported Scenario I because it would allow the Commission to move forward promptly with expanding the clearing requirement for the products subject to this determination. MFA noted that Scenario II was a reasonable option, but preferred Scenario I. Citadel stated that Scenario I was realistic and concluded that most market participants were prepared for the clearing requirement and had infrastructure in place to comply. Scenario I received support for its simple application and because it would bring the clearing requirement into force for certain products more quickly than under Scenario II. While the Commission agrees with these points, and notes that Scenario I would provide market participants with certainty and simplicity, it has decided to adopt Scenario II.

To the extent practicable, the Commission believes it is important to account for non-U.S. jurisdictions' timelines for mandating clearing when imposing a compliance date for U.S. market participants. The implementation schedule under Scenario II will provide flexibility for market participants, will facilitate compliance by phasing-in the clearing requirement by specific product, and will further the Commission's goals of harmonizing clearing requirements with those abroad.

Six commenters supported adoption of implementation Scenario II. JBA requested that the Commission adopt Scenario II in order to promote market liquidity and stability and to harmonize with clearing requirements issued by non-U.S. jurisdictions. ASX advocated for the Commission to adopt Scenario II to minimize any potential disruptions caused by differences in implementation timing of clearing mandates across jurisdictions. ISDA preferred Scenario II on the grounds that it would promote global harmonization and is consistent with maximizing liquidity and reducing risk. SIFMA AMG recommended Scenario II because it would further the Commission's efforts to harmonize with other jurisdictions. LCH Group agreed with the Commission that Scenario II would provide flexibility and certainty and would foster further international harmonization of adoption of clearing requirements. Finally, CME Group stated that the Commission should work cooperatively with regulators in other jurisdictions and that it supports the extension of the Commission's clearing requirement determination where it is necessary for global harmonization.

The Commission has determined that Scenario II will be used to determine compliance dates for market participants subject to the Commission's clearing requirements (hereinafter referred to as the Implementation Schedule). Thus, the Commission's clearing requirement compliance date for each interest rate swap product covered by this determination will be the earlier of: (i) The first date that U.S. markets are open 60 calendar days after any person is first required to comply with an analogous clearing requirement that has been adopted by a regulator in a non-U.S. jurisdiction, provided that any such date for any swap covered by the final rule shall not be earlier than the date which is 60 calendar days after the Commission's final rule is published, or (ii) the first date U.S. markets are open two years after the Commission's final rule is published in the **Federal Register**. If the clearing requirement compliance date falls on a Saturday, Sunday, or U.S. federal public holiday, the compliance date shall be the next available business day. No compliance date shall be set on a day when markets are not open in the U.S.

C. Clarifications to the Implementation Schedule

A number of commenters raised questions about details in the Commission's proposed implementation schedule, as it was described in the NPRM. The Commission responds below to each of the comments and provides clarifications to the Implementation Schedule, as appropriate.

i. Comments Received—60-Day Delay

SIFMA AMG suggested that the Commission extend the time period that will elapse between a non-U.S. jurisdiction adopting a clearing mandate and the Commission's implementation of a compliance date for swaps subject to amended regulation 50.4(a). Specifically, SIFMA AMG recommended that the Commission wait 180 days after an effective date in a non-U.S. jurisdiction before requiring compliance with this final rulemaking.

The Commission has considered the timeframe necessary for U.S. market participants to prepare for, and comply with, a clearing requirement for the swaps subject to this determination and decided that 60 calendar days will provide enough time for U.S. market participants to comply.[173] As noted above, the Commission does not expect market participants to need significant, additional time to prepare for this expansion of the clearing requirement because a number of market participants clear these products already and/or are familiar with clearing other interest rate swaps products.[174]

ii. Comments Received—Effective Date is the First Date Upon Which a Product is Required to be Cleared

Citadel asked the Commission to clarify how the Commission would establish the ''effective date'' in a non-U.S. jurisdiction, which is used to determine the CFTC compliance date. Citadel pointed out that when a non-U.S. jurisdiction's uses of a phased-in compliance schedule it could create ambiguity if the Commission's rule is not clarified.

The Commission recognizes that the term ''effective date'' can have a different meaning in different jurisdictions based on local law and procedure. Therefore, the Commission is clarifying that the CFTC's clearing requirement will be based on the first date upon which any person in the non-U.S. jurisdiction is initially subject to a clearing mandate for new trades, *i.e.,* any front-loading or back-loading requirements if they take effect earlier would not be relevant for purposes of the Implementation Schedule.

iii. Comments Received—Two-Year Time Limit

As proposed in the NPRM, Scenario II included a two-year time limit providing that compliance with the expanded clearing requirement would be required no later than two years after the final rule is published in the **Federal Register**. The Commission received five comment letters related to Scenario II's two-year time limit and certainty regarding compliance dates.

MFA commented that, while it preferred Scenario I, Scenario II was a reasonable option because the Commission included a two-year time limit. In its comment letter, Citadel recognized the importance of retaining the two-year time limit and noted that ''it is important to retain an outer bound

[173] The Commission is clarifying the language in this final release to specify that the 60-day time period will be measured in calendar days; however, the Commission's clearing requirement will begin only on the next available business day. *See* Projected Compliance Dates in section IV.E. This change was made in response to one commenter's request to the Commission to clarify whether the 60-day delay (between the date on which a non-U.S. jurisdiction's clearing requirement takes effect and the date that compliance will be required with the Commission's clearing requirement) is measured in calendar days or business days. *See* Scotiabank letter.

[174] *See also* the discussion in section IV.A.

of two years for when the final Commission rule may become effective in order to provide certainty to market participants regarding implementation.'' LCH Group supported Scenario II because ''this approach provides flexibility and certainty . . . [that] . . . will foster further international harmonization in the adoption of clearing requirements.''

SIFMA AMG recommended that the Commission revise its proposed implementation schedule to remove the ''proviso'' that would cause an automatic effective date no later than two years after the date that the final rulemaking is published in the **Federal Register**. SIFMA AMG expressed concern based on the idea that ''clearing mandates [are] being imposed on U.S. market participants in the name of harmonization when there is ultimately no foreign clearing mandate with which to harmonize.'' JBA noted that some uncertainty would remain even with a schedule that implements all clearing requirements no later than two years after publication, unless non-U.S. regulators align their regulatory actions with the Commission's implementation schedule.

The Commission observes that since the publication of the NPRM, significant progress has been made with regard to the status of clearing requirements in almost all non-U.S. jurisdictions relevant to this rulemaking. Five of the seven jurisdictions have established compliance dates for their market participants to begin clearing pursuant to their analogous clearing mandates. Only Singapore and Switzerland have not yet finalized their clearing mandates and set compliance dates.

In order to assure market participants that there will be a date certain by which they will be required to comply with the clearing requirement for these swaps, particularly for the SGD-denominated fixed-to-floating and CHF-denominated fixed-to-floating interest rate swaps, the Commission has decided to retain the two-year time limit in the Implementation Schedule. In reaching this conclusion, the Commission is cognizant of its obligations to provide legal certainty under applicable statutory procedures. The Commission also recognizes the importance of providing market participants with certainty about compliance dates so that they can begin operational planning and preparation for required clearing of all swaps subject to this final rulemaking. To the extent that market participants need adequate time to onboard clients and establish connectivity to eligible DCOs, retaining the two-year time limit is important.

In finalizing this rulemaking, the Commission seeks to balance flexibility with certainty in its Implementation Schedule. In the event that Singapore and Switzerland do not finalize their clearing mandates and set compliance dates within the two-year time limit, the Commission and Commission staff would be open to considering options for modifying the compliance deadline as necessary and appropriate.

D. Scope of Entities Subject to the Implementation Schedule

The Commission received a number of comments that requested an analysis of the scope of entities subject to the non-U.S. jurisdiction's clearing requirement and consideration of whether the entities subject to the CFTC's clearing requirement were ''analogous.'' ASX suggested that the CFTC's assessment of analogous clearing requirements in non-U.S. jurisdictions should include an analysis of the classes of counterparties that are subject to such clearing requirements. Scotiabank asked the Commission to consider the fact that the Banco de México's regulations contain an exception from the clearing mandate for entities with low net derivatives exposure. And ISDA pointed out that the scope of entities subject to a non-U.S. clearing mandate may be narrower than the scope of market participants subject to the Commission's clearing requirement rules under part 50.

By contrast, in its comment letter, Citadel cautioned that if the Commission were to adopt rules that incorporated the entity scope of each non-U.S. jurisdiction's clearing mandate, the U.S. framework would ''become a confusing patchwork of foreign regulation, compelling U.S. market participants to apply different criteria on a currency-by-currency basis to determine whether (and when) they are in-scope.''

As discussed above, section 2(h)(7) of the CEA sets forth the participant scope for the clearing requirement: It shall be unlawful for any person not to clear a swap if that swap is required to be cleared, except if one of the counterparties to the swap meets certain conditions enumerated in section 2(h)(7) of the CEA. The Commission has implemented the statutory exception under section 2(h)(7), along with other limited exemptions, in subpart C of part 50 of the Commission's regulations. Based on this statutory and regulatory framework as well as its consideration of the comments presented, the Commission confirms that this final rulemaking applies to the same scope of market participants to which Commission regulation 50.4(a) currently applies.

E. Projected Compliance Dates

The Commission has been monitoring, and will continue to follow closely, clearing mandate developments in other jurisdictions that relate to this clearing requirement determination. As discussed above, the Commission's clearing requirement compliance date is specific to each product and will be calculated by following the Implementation Schedule presented herein. With respect to products that do not yet have a compliance date set for an analogous clearing mandate in a non-U.S. jurisdiction, the Commission is including the date that is two years after the date of publication in the **Federal Register**. If a non-U.S. jurisdiction modifies any existing initial clearing requirement compliance date, or adopts a clearing requirement for either the CHF-denominated fixed-to-floating interest rate swaps or the SGD-denominated fixed-to-floating interest rate swaps that would require a CFTC compliance date for a market participant earlier than two years after the publication date in the **Federal Register**, then the Commission staff will publish a press release on the CFTC's Web site setting forth the Commission's clearing requirement compliance date for the relevant interest rate swaps in advance of the date upon which compliance will be required.

Below is a chart identifying the projected compliance date for each of the products subject to this determination.

[175] Section I.C. contains a more detailed discussion of the regulatory regimes and compliance dates for mandatory clearing of these products adopted by non-U.S. regulators.

Product	First clearing requirement compliance date in a non-U.S. jurisdiction[175]	CFTC clearing requirement compliance date
AUD-denominated Fixed-to-floating interest rate swap.	April 4, 2016	60 days after publication of this final rulemaking in the **Federal Register**.
CAD-denominated Fixed-to-floating interest rate swap.	May 9, 2017	July 10, 2017.
CHF-denominated Fixed-to-floating interest rate swap.	None to date	No later than 730 days after publication of this final rulemaking in the **Federal Register**.
HKD-denominated Fixed-to-floating interest rate swap.	July 1, 2017	August 30, 2017.
MXN-denominated Fixed-to-floating interest rate swap.	April 1, 2016	60 days after publication of this final rulemaking in the **Federal Register**.
NOK-denominated Fixed-to-floating interest rate swap.	February 9, 2017	April 10, 2017.
PLN-denominated Fixed-to-floating interest rate swap.	February 9, 2017	April 10, 2017.
SEK-denominated Fixed-to-floating interest rate swap.	February 9, 2017	April 10, 2017.
SGD-denominated Fixed-to-floating interest rate swap.	None to date	No later than 730 days after publication of this final rulemaking in the **Federal Register**.
AUD-denominated basis swap	April 4, 2016	60 days after publication of this final rulemaking in the **Federal Register**.
NOK-denominated FRA	February 9, 2017	April 10, 2017.
PLN-denominated FRA	February 9, 2017	April 10, 2017.
SEK-denominated FRA	February 9, 2017	April 10, 2017.
EUR-denominated OIS (2–3 year term)	June 21, 2016	60 days after publication of this final rulemaking in the **Federal Register**.
GBP-denominated OIS (2–3 year term)	June 21, 2016	60 days after publication of this final rulemaking in the **Federal Register**.
USD-denominated OIS (2–3 year term)	June 21, 2016	60 days after publication of this final rulemaking in the **Federal Register**.
AUD-denominated OIS	October 3, 2016	60 days after publication of this final rulemaking in the **Federal Register**.
CAD-denominated OIS	May 9, 2017	July 10, 2017.

V. Cost Benefit Considerations

A. Statutory and Regulatory Background

Expanded Commission regulation 50.4(a) identifies certain swaps that would be required to be cleared under section 2(h)(1)(A) of the CEA in addition to those currently required to be cleared by existing regulations 50.2 and 50.4(a). This clearing requirement determination is designed to standardize and reduce counterparty risk associated with swaps, and in turn, mitigate the potential systemic impact of such risks and reduce the likelihood for swaps to cause or exacerbate instability in the financial system. As stated in the NPRM, the Commission believes this determination is consistent with one of the fundamental premises of the Dodd-Frank Act and the 2009 commitments adopted by the G20 nations: The use of central clearing can reduce systemic risk.

Regulation 39.5 provides an outline for the Commission's review of swaps for required clearing. Regulation 39.5 allows the Commission to review swaps submitted by DCOs. Under section 2(h)(2)(D) of the CEA, in reviewing swaps for a clearing requirement determination, the Commission must take into account the following factors: (1) Significant outstanding notional exposures, trading liquidity and adequate pricing data; (2) the availability of rule framework, capacity, operational expertise and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded; (3) the effect on the mitigation of systemic risk; (4) the effect on competition; and (5) the existence of reasonable legal certainty in the event of the insolvency of the DCO or one or more of its clearing members.[176] Regulation 39.5 also directs DCOs to provide to the Commission other information, such as product specifications, participant eligibility standards, pricing sources, risk management procedures, a description of the manner in which the DCO has provided notice of the submission to its members and any additional information requested by the Commission.[177] This information is designed to assist the Commission in identifying those swaps that are required to be cleared.

The following discussion is a consideration of the costs and benefits of the Commission's action in this rulemaking, pursuant to the regulatory requirements above. The Commission exercises its discretion under section 2(h)(2)(D) of the CEA to determine whether swaps that are submitted for a clearing requirement determination are required to be cleared.

[176] Section 2(h)(2)(D) of the CEA.

[177] Commission regulation 39.5(b)(3)(ii).

B. Overview of Swap Clearing

i. How Clearing Reduces Risk

When a bilateral swap is cleared, the DCO becomes the counterparty to each original counterparty to the swap. This arrangement mitigates counterparty credit risk because the DCO: (1) Monitors and mitigates the risk of a counterparty default; (2) collects sufficient initial margin to cover potential future exposures and regularly collects and pays variation margin to cover current exposures; (3) facilitates netting within portfolios of swaps and among counterparties; and (4) holds collateral in a guaranty fund in order to mutualize the remaining tail risk not covered by initial margin contributions among clearing members. Central clearing mitigates the interconnectedness among swap market participants, insofar as, upon acceptance of a swap for clearing, a DCO becomes the new counterparty to each of the original counterparties and guarantees performance on the contract. Moreover, DCOs are independent third parties that are subject to regulatory oversight—including, among other things, financial resources requirements and risk management requirements. Accordingly, from the perspective of market participants, DCOs pose significantly less counterparty credit risk than their original counterparties.

DCOs have demonstrated resilience in the face of past market stress. DCOs remained financially sound and effectively settled positions in the midst of turbulent financial conditions in 2007–2008 that threatened the financial health and stability of many other types of entities.

The Commission believes that central clearing through DCOs will continue to mitigate systemic risk because DCOs have numerous risk management tools available that are effective in monitoring and managing counterparty credit risk. These tools include the contractual right to: (1) Collect initial and variation margin associated with outstanding swap positions; (2) mark positions to market regularly, usually multiple times per day, and issue margin calls whenever the margin in a clearing member's or customer's account has dropped below predetermined levels set by the DCO; (3) adjust the amount of margin that is required to be held against swap positions in light of changing market circumstances, such as increased volatility in the underlying product; and (4) close out the swap positions of a clearing member or customer that does not meet margin calls within a specified period of time.

Moreover, in the event that a clearing member defaults on its obligations to the DCO, the DCO has numerous remedies available to manage risk, including transferring the swap positions of the defaulted member to another clearing member, and covering any losses that may have accrued with the defaulting member's margin on deposit. In order to transfer the swap positions of a defaulting member and manage the risk of those positions, the DCO has the ability to take a number of steps, including: (1) Hedge the portfolio of positions of the defaulting member to limit future losses; (2) partition the portfolio into smaller pieces; and (3) auction off the pieces of the portfolio, together with their corresponding hedges, to other members of the DCO. In order to cover the losses associated with such a default, the DCO would typically draw from: (1) The initial margin posted by the defaulting member; (2) the guaranty fund contribution of the defaulting member; (3) the DCO's own capital contribution; (4) the guaranty fund contributions of non-defaulting members; and (5) an assessment on the non-defaulting members. These mutualized risk mitigation capabilities are largely unique to clearinghouses and help to ensure that they remain solvent and creditworthy swap counterparties even when clearing members default or there are stressed market circumstances.

ii. The Clearing Requirement and Role of the Commission

With the passage of the Dodd-Frank Act, Congress gave the Commission the responsibility for determining which swaps would be required to be cleared pursuant to section 2(h)(1)(A) of the CEA. Therefore, the costs and benefits associated with a clearing requirement are attributable to both the CEA, as amended by the Dodd-Frank Act, and the Commission acting in accordance with the CEA. As a result, it is difficult to distinguish between the costs associated with the Dodd-Frank Act itself, and the costs associated with the Commission exercising the authority granted to it by the Dodd-Frank Act.

There also is evidence that the interest rate swaps market has been migrating into clearing for many years in response to market incentives, in anticipation of the Dodd-Frank Act's clearing requirement, and as a result of the First Clearing Requirement Determination. This shift can be seen in the volumes of interest rate swaps currently being cleared by CME and LCH, the two DCOs that submitted a significant portion of the information contained in the NPRM as well as this determination. The open notional value of interest rate swaps cleared at CME has increased from approximately $2.2 trillion to over $5.5 trillion between June 10, 2013 and September 10, 2013, two implementation dates for the First Clearing Requirement Determination.[178] Because the volume of interest rate swaps being cleared also has increased voluntarily, it is impossible to precisely determine the extent to which any increased use of clearing would result from statutory or regulatory requirements, as compared to the desire of swap market participants to clear swaps for the risk-mitigating benefits.[179]

For these reasons, the Commission has determined that the costs and benefits related to the required clearing of the interest rate swaps subject to this rulemaking are attributable, in part to (1) Congress's stated goal of reducing systemic risk by, among other things, requiring clearing of swaps and (2) the Commission's exercise of its discretion in selecting swaps or classes of swaps to achieve those ends. The Commission will discuss the costs and benefits of the overall move from voluntary clearing to required clearing for the swaps subject to this rulemaking below.

In the NPRM, the Commission requested comment concerning its assumption that a shift towards clearing may be due to the Dodd-Frank Act's general clearing requirement or other motivations including independent business reasons and incentives from other regulators, such as prudential authorities. While no commenter answered this question directly, Citadel suggested that a shift towards clearing may be due to cost savings attributable to clearing swaps at central counterparties.[180]

C. Consideration of the Costs and Benefits of the Commission's Action

i. CEA Section 15(a)

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations (collectively referred to herein as the Section 15(a) Factors). Accordingly, the Commission considers the costs and benefits associated with the clearing requirement determination in light of the Section 15(a) Factors.

The Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving U.S. firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the

[178] *See* CME Group comment letter of Sept. 16, 2013 in response the Commission's notice of proposed rulemaking concerning DCOs and International Standards, 78 FR 50260 (Aug. 16, 2013). The CME Group comment letter is available on the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1391.*

[179] It is also possible that some market participants would respond to the rule's requirement that certain interest rate swaps be cleared by decreasing their use of such swaps. This possibility contributes to the uncertainty regarding how the determination will affect the quantity of swaps that are cleared.

[180] According to Citadel's description of academic research, ''the implementation of the Commission's clearing and trading reforms in the USD interest rate swap market led to a significant improvement in liquidity and a significant reduction in execution costs.'' (citations omitted). This comment from Citadel also is discussed in the Commission's analysis of the fourth factor under section 2(h)(2)(D) in section II.B.iii.

Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of the final rules on all activity subject to the amended regulations, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under section 2(i) of the CEA.

As stated above, the Commission received 10 comment letters following publication of the NPRM, seven of which supported the proposed determination. Some commenters generally addressed the costs and benefits of the current rule.

In the sections that follow, the Commission considers: (1) The costs and benefits of required clearing for the swaps subject to this clearing requirement determination; (2) the alternatives contemplated by the Commission and their costs and benefits; and (3) the impact of required clearing for the swaps subject to this final rulemaking and listed in expanded regulation 50.4(a) in light of the Section 15(a) Factors.

ii. Costs and Benefits of Required Clearing Under the Final Rule

Market participants may incur certain costs in order to clear the interest rate swaps included in this adopting release. For example, market participants that are not already clearing interest rate swaps either voluntarily or pursuant to the First Clearing Requirement Determination may incur certain startup and ongoing costs related to developing technology and infrastructure, updating or creating new legal agreements, service provider fees, and collateralization of the cleared positions. The per-entity costs described above are likely to vary widely depending on the needs of each market participant. Such costs likely will be lower for the market participants that have experience clearing the interest rate swaps covered by the First Clearing Requirement Determination and/or that have been clearing the interest rate swaps subject to this clearing requirement determination on a voluntary basis. The opposite likely would be true for market participants that must begin clearing because of this expanded determination. Although these market participants may have otherwise incurred costs associated with margining their uncleared swaps with bilateral counterparties, as well as incurring other costs associated with bilateral uncleared swaps, such as startup or ongoing costs related to developing technology and infrastructure, and updating or creating new legal agreements related to their uncleared swaps positions. Moreover, operational costs for these market participants would increase based on the number of different counterparties with whom they enter into uncleared swaps. The overall costs of collateralization are likely to vary depending on whether or not an entity is subject to the new margin requirements for uncleared swaps,[181] whether or not an entity is subject to capital requirements, and the differential between the cost of capital for the assets they use as collateral, and the returns realized on those assets.

Market participants that would begin clearing the interest rate swaps subject to this rulemaking also will obtain the benefits associated with clearing. These benefits include reduced and standardized counterparty risk, increased transparency, and easier access to the swap markets. Together, these benefits will contribute significantly to the stability and efficiency of the financial system. However, these benefits are difficult to quantify with any degree of precision, and market participants already clearing these swaps already realize the benefits of clearing.

In the NPRM, the Commission requested comment concerning the costs of clearing, including from both U.S. and non-U.S. swap counterparties that may be affected by the determination. The Commission also requested comment as to the benefits that market participants could realize as a result of the proposed rule. JBA generally commented that it was opposed to the proposed determination because rising costs incurred by clearing brokers, due to capital leverage requirements, for example, have decreased the number of available clearing brokers.[182] By contrast, as mentioned above, Citadel suggested that the clearing requirement would create cost savings for market participants because central clearing, together with execution of swaps on SEFs, has brought down costs significantly.[183]

[181] The Commission's margin requirements for uncleared swaps are codified in subpart E of part 23 of the Commission's regulations. The prudential regulators also established minimum margin and capital requirements for certain registered SDs, MSPs, security-based swap dealers, and major security-based swap participants in November 2015.

[182] *See* discussion of JBA's comment in section II.A. In its comment letter, CME Group also generally expressed concern about participants being able to access cleared markets in light of capital considerations arising from the calculation of leverage ratio.

[183] *See* discussion of Citadel's comment letter in sections II.B.iii.d and V.B.

a. Technology, Infrastructure, and Legal Costs

Market participants already clearing their swaps may incur costs in making necessary changes to technology systems to support the clearing required by the final rule. Market participants that are not currently clearing swaps may incur costs if they need to implement middleware technology to connect to FCMs that will clear their transactions. Similarly, legal costs will vary depending on the extent to which a market participant is already clearing swaps. The Commission does not have the information necessary to determine either the costs associated with entities that need to establish relationships with one or more FCMs or the costs associated with entities that already have relationships with one or more FCMs but need to revise their agreements.[184] The costs are likely to depend on the specific business needs of each entity and would therefore vary widely among market participants. As a general matter, the Commission would expect that most market participants already will have undertaken the steps necessary to accommodate the clearing of required swaps based on the First Clearing Requirement Determination and that the burden associated with these additional interest rate swaps should be lessened.

In the NPRM, the Commission requested comment, including any quantifiable data and analysis, on the changes that market participants will have to make to their technological and legal infrastructures in order to clear the interest rate swaps that would be subject to the expanded clearing requirement. JBA commented that swap market participants may incur costs as a result of having to become a clearing member of a new DCO, or enter into a new client clearing relationship with a DCO clearing member, if there is only one DCO offering to clear a particular swap

[184] The Commission does not have current information regarding such fees. In the NPRM and in the First Clearing Requirement Determination (77 FR 74284 at 74324), the Commission noted that it had been estimated that it would cost smaller financial institutions between $2,500 and $25,000 to review and negotiate legal agreements to establish a new business relationship with an FCM (citing comment letters from Chatham Financial and Webster Bank submitted to the Commission in 2012 in response to the Commission's request for comment concerning the cost benefit analysis regarding a potential clearing exception for certain small financial institutions under the end-user exception, available at: *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58077* and *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58076*). The Commission received no new information from commenters regarding the costs of establishing a clearing relationship.

subject to the determination, and the swap market participant is not already a clearing member, or customer of a clearing member, of that DCO.[185] As the Commission noted above, in light of the fact that there are three swaps covered by the determination that are currently offered for clearing by only one DCO (MXN-denominated fixed-to-floating interest rate swaps, currently offered for clearing only at CME; and AUD- and CAD-denominated OIS, currently offered for clearing only at LCH), and LCH and CME have indicated that they intend to begin offering to clear each of these swaps, respectively, before the end of 2016, the Commission believes that JBA's concerns about a swap market participant having to establish a new clearing arrangement even if the participant already has a clearing arrangement in place at CME or LCH will be largely addressed.[186] Moreover, Citadel commented that swap market participants generally prefer to clear swaps at one DCO instead of at multiple DCOs in order to reduce costs by maximizing netting, compression, and margin offsets.[187]

b. Ongoing Costs Related to FCMs and Other Service Providers

In addition to costs associated with technological and legal infrastructures, market participants transacting in swaps subject to the expanded clearing requirement will face ongoing costs associated with fees charged by FCMs. DCOs typically charge each FCM an initial transaction fee for each cleared interest rate swap its customers enter, as well as an annual maintenance fee for each open position. CME, LCH, Eurex, and SGX offer a variety of fee schedules for clearing interest rate swaps. In general, the schedules depend on the length of a swap's term, the number of swaps cleared per year, and/or a clearing member's initial margin requirement at the DCO. For example, at LCH and Eurex, different fee schedules are available depending on whether a clearing member is clearing for its proprietary account or for a customer account.[188] In the case of customer clearing, fees are generally charged to the clearing member, not the customer.

The Commission understands that FCMs generally pass onto their customers the fees that they have been charged by the DCO. In addition, as noted in the NPRM, the Commission understands that customers that occasionally transact in swaps are typically required by their FCMs to pay a monthly or annual fee to each FCM.[189]

As discussed above, it is difficult to predict precisely how the requirement to clear the additional swaps covered by this final rulemaking will increase the use of swap clearing, as compared to the use of clearing that would occur in the absence of the requirement. The Commission expects that the expanded clearing requirement generally will increase the use of clearing, leading in most cases to an incremental increase in the clearing fees noted above. However, while total clearing fees may increase, it may nonetheless be the case that total costs come down due to offsetting benefits. For instance, market competition could cause swap prices to decrease, and market participants may realize benefits due to netting, compression, offsets, and portfolio margining. The Commission expects that most market participants already will have undertaken the steps necessary to accommodate the clearing of required swaps, and that the burden associated with the additional interest rate swaps should be lessened.

In response to the NPRM, Citadel commented that fees charged by FCMs, rather than fees charged by DCOs, are the major source of clearing costs.[190] Moreover, according to Citadel, the fees charged by FCMs depend primarily on the portfolio the customer wishes to clear rather than on the number of DCOs offering to clear a particular swap. Citadel also commented that the clearing requirement could lead a DCO or FCM to expand its clearing offerings because of the increased clearing volumes that may result from the clearing requirement.

Finally, CME Group generally expressed concern about market participants being able to access clearinghouses due to the general reduction in clearing members' ''appetite to provide clearing services for smaller firms.'' CME Group referenced an ESMA consultation paper proposing a postponement of the implementation of its clearing mandate on such smaller market participants. The Commission is aware that ESMA released a consultation paper on July 13, 2016, requesting comments on a proposal to extend the phase-in period for the clearing obligation for counterparties in a third category under the European Union's clearing regime.[191] ESMA acknowledges that the participant scope of Europe's clearing obligation regulation is different than in most other jurisdictions because the underlying legislation (EMIR) does not contain the same types of exemptions from mandatory clearing for counterparties with limited activity.[192]

The Commission's statutory authority under Dodd-Frank contains certain enumerated exceptions and exemptions from the clearing requirement.[193] In light of the fact that there are counterparties that qualify for an exception or exemption from the CFTC's clearing requirement, the Commission does not face the same policy considerations as its European counterparts with regard to certain entities under EMIR.[194] As noted above, in response to CME Group's comment, the Commission reiterates, that any market participant may petition for relief under Commission regulation 140.99 if the entity is unable to find an FCM to clear its swaps or if it needs additional time to complete requisite documentation.[195]

c. Costs Related to Collateralization of Cleared Swap Positions

Market participants that enter into the interest rate swaps subject to the amended rule will be required to post initial margin at a DCO. The Commission understands that some of the swaps subject to this rulemaking are currently being cleared on a voluntary

[185] *See* also discussion of JBA's comment in the Commission's analysis of the fourth factor under section 2(h)(2)(D) in section II.B.iii.

[186] *Id.*

[187] *See* also discussion of Citadel's comment in the Commission's analysis of the fourth factor under section 2(h)(2)(D) in section II.B.iii.

[188] LCH and Eurex their fees schedules on their Web sites, available at: *http://www.lch.com/asset-classes/otc-interest-rate-derivatives/fees* and *http://www.eurexclearing.com/clearing-en/markets-services/eurex-otc-clear/about-eurex-otc-clear*.

[189] The Commission does not have current information regarding such fees. In the NPRM and in the First Clearing Requirement Determination (77 FR 74284 at 74325), the Commission noted that customers that occasionally transact in swaps are typically required to pay a monthly or annual fee to each FCM that ranges from $75,000 to $125,000 per year (citing comment letters from Chatham Financial and Webster Bank). The Commission received no new information from commenters regarding these costs.

[190] FCMs provide their customers with access to DCOs in their capacity as DCO-clearing members.

[191] *See* Consultation Paper: On the clearing obligation for financial counterparties with a limited volume of activity, Jul. 13, 2016, available at: *https://www.esma.europa.eu/press-news/consultations/consultation-clearing-obligation-financial-counterparties-limited-volume*.

[192] *Id.* at 9.

[193] *See* Section 2(h)(7) of the CEA and subpart C of part 50 of the Commission's regulations.

[194] In particular, ESMA's consultation focuses on financial counterparties, and certain investment funds that qualify as non-financial counterparties, that satisfy the threshold level of derivatives activity (*e.g.,* a gross notional value of EUR 3 billion for interest rate derivatives contracts) but have an outstanding gross notional amount of derivatives below EUR 8 billion for a particular point in time.

[195] First Clearing Requirement Determination, 77 FR at 74320.

basis.[196] In the NPRM, the Commission published the following estimates.

TABLE 17—PART 45 DATA—ESTIMATED PERCENTAGES OF THE INTEREST RATE SWAP MARKET CLEARED VOLUNTARILY

[Second Quarter 2015] [197]

Product	Percentage of market cleared
AUD-denominated fixed-to-floating interest rate swap	65
CAD-denominated fixed-to-floating interest rate swap	72
CHF-denominated fixed-to-floating interest rate swap	83
HKD-denominated fixed-to-floating interest rate swap	49
MXN-denominated fixed-to-floating interest rate swap	25
NOK-denominated fixed-to-floating interest rate swap	40
PLN-denominated fixed-to-floating interest rate swap	66
SEK-denominated fixed-to-floating interest rate swap	45
SGD-denominated fixed-to-floating interest rate swap	24
AUD-denominated basis swap	28
NOK-denominated FRA	94
PLN-denominated FRA	32
SEK-denominated FRA	25
EUR-denominated OIS (2–3 year term)	100
GBP-denominated OIS (2–3 year term)	100
USD-denominated OIS (2–3 year term)	100
AUD-denominated OIS	18
CAD-denominated OIS	88

With information provided by CME, LCH, and SGX,[198] the Commission has estimated the amounts of initial margin currently on deposit at these three DCOs allocable to the interest rate swaps subject to this rulemaking. Using this information, the Commission estimated in the NPRM that this clearing requirement determination would require market participants to post the following amounts of additional initial margin with DCOs for each of the interest rate swaps covered by this determination.[199] The amounts in Table 18 below do not, however, account for any additional margin market participants would post to their bilateral counterparties under the new rules for uncleared swap margin.

TABLE 18—AGGREGATE INITIAL MARGIN DUE TO DCOS UNDER CLEARING REQUIREMENT DETERMINATION

Swap	Amount of margin USD equivalent
AUD-denominated Fixed-to-floating interest rate swap	$1,107,287,108
CAD-denominated Fixed-to-floating interest rate swap	419,208,078
CHF-denominated Fixed-to-floating interest rate swap	105,963,972
HKD-denominated Fixed-to-floating interest rate swap	216,677,823
MXN-denominated Fixed-to-floating interest rate swap	1,867,370,001
NOK-denominated Fixed-to-floating interest rate swap	241,288,835
PLN-denominated Fixed-to-floating interest rate swap	84,789,768
SEK-denominated Fixed-to-floating interest rate swap	603,185,677
SGD-denominated Fixed-to-floating interest rate swap	1,113,041,264
AUD-denominated basis swap	612,166,597
NOK-denominated FRA	10,746,747
PLN-denominated FRA	186,238,075
SEK-denominated FRA	942,845,508
EUR-denominated OIS (2–3 year term)	0
GBP-denominated OIS (2–3 year term)	0
USD-denominated OIS (2–3 year term)	0
AUD-denominated OIS	84,254,007

[196] *See* Clarus Newsletter by Chris Barnes (June 14, 2016) available at: *https://www.clarusft.com/the-cftcs-new-clearing-mandate-2016/* (discussing the NPRM, its data, and the percentage of the interest rate swap market already cleared on a voluntary basis).

[197] The Commission used part 45 Data to make these estimates based on swap activity occurring during the second quarter of 2015. Like the part 43 Data referenced above, part 45 Data includes swaps entered into by U.S. persons as well as by certain non-U.S. persons. *See* Interpretive Guidance and Policy Statement Regarding Compliance With Certain Swap Regulations, 78 FR 45292, 45368–69 (July 26, 2013). The data set used for Table 17 does not include swaps entered into by affiliated counterparties. Data from the third and fourth quarters of 2015 were used to calculate the estimates for EUR-, GBP-, and USD-denominated OIS with terms of two to three years. Data from January 2016 was used to calculate the estimates for AUD- and CAD-denominated OIS.

[198] The Commission is not including margin data from Eurex for purposes of this calculation because it does not affect the overall percentages significantly.

[199] The Commission made these calculations using the following formula:

$X/Y - X$.

X = Current value of margin on deposit at DCOs for an interest rate swap denominated in a particular currency.

Y = Percentage of the market for that swap that is currently cleared. This same methodology was used in the First Clearing Requirement Determination as a rough proxy for estimating the total costs of required clearing in terms of initial margin. As discussed above, commission risk surveillance staff has sophisticated tools for assessing risk-based margin methodologies and coverage levels.

TABLE 18—AGGREGATE INITIAL MARGIN DUE TO DCOS UNDER CLEARING REQUIREMENT DETERMINATION—Continued

Swap	Amount of margin USD equivalent
CAD-denominated OIS	6,630,342
Total	7,601,693,801

As noted in the NPRM, the Commission believes that these estimates may be higher than the actual amounts of initial margin that would need to be posted as a result of this determination because these estimates are based on several assumptions. First, the estimates assume that none of the swaps that are currently executed on an uncleared basis are currently collateralized. By contrast, an ISDA survey reported that as of December 31, 2014, 88.9% of all uncleared fixed income derivative transactions are subject to a credit support annex.[200] Moreover, uncleared swaps between certain SDs, MSPs, and ''financial end-users,'' will be subject to initial and variation margin requirements pursuant to the Commission's and the prudential regulators' margin regulations for uncleared swaps, as discussed further below.[201] Second, the estimates listed in Table 18 are based on the assumption that none of the swaps, when entered into on an uncleared basis, are priced to include implicit contingent liabilities and counterparty risk borne by the counterparty to the swap. Third, not all swaps having the additional denominations or maturities adopted herein will necessarily be eligible for clearing if they are not otherwise covered by the clearing requirement (*i.e.,* the specifications set forth in revised regulation 50.4(a)) or if the swaps have terms that prevent them from being cleared. Finally, certain entities may elect an exception or exemption from the clearing requirement, which would not require such an entity to clear the swaps covered by this determination.[202]

The amounts of initial margin that the Commission estimates would be required to be posted due to this rule (listed in Table 18) do not include the costs that some market participants may incur to obtain this collateral. Some entities may have to raise funds to acquire assets that a DCO accepts as initial margin. The greater the funding cost relative to the rate of return on the asset used as initial margin, the greater the cost of procuring this asset. Quantifying this cost with any precision is challenging because different entities may have different funding costs and may choose assets with different rates of return. Moreover, funding costs will vary as interest rates and interest rate spreads vary. One way to estimate the funding cost of procuring assets to be used as initial margin is to compare the rate of return, or yield, on an asset that is usually accepted by a DCO for initial margin with the cost of funding the asset with debt financing. Based on the Commission's experience and understanding, the Commission has decided to estimate this cost using an average borrowing cost of 3.35% [203] and then subtracting the 1.14% return that a 5-year U.S. Treasury bond yields.[204] This calculation produces an estimated funding cost of 2.21%. By multiplying the total estimated initial margin amount of $7,601,693,801 (Table 18) by 2.21%, the Commission estimates that the cost of funding the total initial margin that will be required to be posted due to this rule is approximately $167,997,433. It also should be noted that some entities, such as pension funds and asset managers, may use as initial margin assets that they already own. In these cases, the market participants would not incur a funding cost in order to post initial margin.

The Commission received no comments in response to its question about the cost of funding initial margin or funding costs that market participants may face due to interest rates on bonds issued by a sovereign nation.

The Commission recognizes further that the new initial margin amounts that will be required to be posted as a result of this clearing requirement will, for entities required to post initial margin under either the clearing requirement or the uncleared swap margin regulations, replace current bilateral market practice. The new uncleared swap margin regulations require SDs and MSPs to post and collect initial and variation margin for uncleared swaps executed with their counterparties that are other SDs or MSPs or are ''financial end-users,'' subject to various conditions and limitations.[205]

The Commission expects that the initial margin that will be required to be posted for a cleared swap subject to this determination will typically be less than the initial margin that would be required to be posted for uncleared swaps pursuant to the uncleared swap margin regulations. Whereas the initial margin requirement for cleared swaps must be established according to a margin period of risk of at least five days,[206] under the uncleared swap margin regulations, the minimum initial margin requirement is generally set with a margin period of risk of 10-days or, under certain circumstances, less or no initial margin for inter-affiliate transactions.[207] The uncleared swap margin regulations are being phased in

[200] *See* ISDA Margin Survey 2015 at page 12, Table 6, available at: *http://www2.isda.org/functional-areas/research/surveys/margin-surveys/.* Although it is unclear exactly how many of the derivatives covered by this survey are swaps, it is reasonable to assume that a large part of them are.

[201] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016) and Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) (together the ''uncleared swap margin regulations'').

[202] *See* Subpart C of part 50 (Exceptions and Exemptions to the Clearing Requirement). There also is a possibility that the estimates listed in Table 18 are lower than the actual figures because certain market participants with directional portfolios may be unable to benefit from margin offsets that could come from clearing. However, the Commission believes that the estimates listed in Table 18 are more likely to overstate the required additional margin amounts than to underestimate them.

[203] Bank of America Merrill Lynch U.S. Corporate BBB effective yield for August 8, 2016.

[204] On August 8, 2016, a 5-year U.S. treasury bond yielded 1.14%.

[205] *See* Subpart E of part 23 of the Commission's regulations. Swap clearing requirements under part 50 of the Commission's regulations apply to a broader scope of market participants than the Commission's uncleared swap margin rules. For example, under subpart E of part 23, a financial end-user that does not have ''material swaps exposure'' (as defined by regulation 23.151) is not required to post initial margin, but such an entity may be subject to the swap clearing requirement.

[206] Commission regulation 39.13(g)(2)(ii)(C).

[207] Commission regulations 23.154(b)(2)(i) and 23.159. *See also* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015). For an uncleared swap, entered into by an SD or MSP supervised by a prudential regulator, which would be subject to the Commission's clearing requirement under part 50 but is not cleared due to the election of the exemption for a swap between certain affiliated entities (Commission regulation 50.52), the margin period of risk is at least five days. For an uncleared swap, entered into by an SD or MSP supervised by the Commission, no margin is required if the swap is exempt from the uncleared margin regulations.

between September 1, 2016 and September 1, 2020.

With respect to swaps that will be subject to this clearing requirement determination, but not subject to the uncleared swap margin regulations, the Commission believes that the new initial margin amounts that will be posted at the DCO will be a displacement of a cost that is currently embedded in the prices and fees for transacting the swaps on an uncleared and perhaps uncollateralized basis rather than a new cost.[208] Entering into a swap is costly for any market participant because of the default risk posed by its counterparty, whether the counterparty is a DCO, SD, MSP, or other market participant. When a market participant faces the DCO, the DCO accounts for that counterparty credit risk by requiring collateral to be posted, and the cost of capital for the collateral is part of the cost that is necessary to maintain the swap position. When a market participant faces an SD or other counterparty in an uncleared swap, however, the uncleared swap contains an implicit line of credit upon which the market participant effectively draws when its swap position is out of the money.

Counterparties charge for this implicit line of credit in the spread they offer on uncollateralized, uncleared swaps. It has been argued that the cash flows of an uncollateralized swap (*i.e.,* a swap with an implicit line of credit) are, over time, substantially equivalent to the cash flows of a collateralized swap with an explicit line of credit.[209] And because the counterparty credit risk created by the implicit line of credit is the same as the counterparty risk that would result from an explicit line of credit provided to the same market participant, to a first order approximation, the charge for each should be the same as well.[210] This means that the cost of capital for additional collateral posted as a consequence of requiring uncollateralized swaps to be cleared takes a cost that is implicit in an uncleared, uncollateralized swap and makes it explicit. This observation applies to capital costs associated with both initial margin and variation margin.

In addition, the rule may result in added operational costs. With uncleared swaps, counterparties may agree not to collect variation margin until certain thresholds of exposure are reached, thus reducing or entirely eliminating the need to exchange variation margin as exposure changes. DCOs, on the other hand, collect and pay variation margin on a daily basis and sometimes more frequently. As a consequence, increased required clearing may increase certain operational costs associated with exchanging variation margin with the DCO (although the exchange of variation margin may be expected to provide the benefit of lowering the build-up of current exposure). On the other hand, increased clearing also could lead to reduced operational costs related to valuation disputes about posted collateral, as parties to cleared swaps agree to post collateral that is less susceptible to valuation disputes.

The rule also may result in additional costs for clearing members in the form of guaranty fund contributions. However, it also could decrease guaranty fund contributions for certain clearing members. Once the expanded clearing requirement takes effect, market participants that currently transact swaps bilaterally must either become clearing members of a DCO or submit such swaps for clearing through an existing clearing member. A market participant that becomes a direct clearing member must make a guaranty fund contribution, while a market participant that clears its swaps through a clearing member may pay higher fees if the clearing member passes the costs of the guaranty fund contribution to its customers. While not certain, the possible addition of new clearing members and/or new customers for existing clearing members may result in an increase in guaranty fund requirements. However, it should be noted that if (1) any new clearing members are not among the two clearing members used to calculate the guaranty fund and (2) any new customers trading through a clearing member do not increase the size of uncollateralized risks at either of the two clearing members used to calculate the guaranty fund, all else held constant, existing clearing members may experience a decrease in their guaranty fund requirement.

In the NPRM, the Commission requested comment regarding the total amount of additional collateral that would be required due to the proposed clearing requirement. In particular, the Commission sought quantifiable data and analysis.[211] No commenter addressed the quantitative approach laid out by the Commission in the NPRM. Nor did any commenter provide quantifiable data and analysis to support or refute such analysis.

d. Benefits of Clearing

As noted above, the benefits of swap clearing are generally significant. The Commission believes that while the requirement to margin uncleared swaps in certain circumstances also will mitigate counterparty credit risk, such risk is mitigated further for swaps that are cleared through a central counterparty. Moreover, as discussed above, the clearing requirement under part 50 of the Commission regulations applies to a larger set of market participants than the uncleared swaps margin regulations.[212] Thus, to the extent that the clearing requirement for additional interest rate swaps leads to increased clearing, these benefits are likely to be realized.

As is the case for the costs noted above, it is impossible to predict the precise extent to which the use of clearing will increase as a result of the final rule, and therefore the benefits of the final rule cannot be precisely quantified. However, the Commission believes that the benefits of increased central clearing resulting from the rule will be substantial, because the additional swaps required to be cleared by the rule have significant volumes within the overall interest rate swap market.

[208] Under part 50 of the Commission's regulations, the clearing requirement applies to all market participants except for those subject to an exception or exemption under subpart C of part 50. Under part 23 of the Commission's regulations, the Commission's uncleared swap margin rules apply only to swaps between Commission-registered SDs and/or MSPs that do not have a prudential regulator and to swaps between such an entity and certain ''financial end users.'' *See* Commission regulations 23.151 (definition of financial end users), 23.152 (collection and posting of initial margin), and 23.153 (collection and posting of variation margin). Commission-registered SDs and MSPs that have a prudential regulator are subject to uncleared swap margin rules promulgated by those authorities. Thus, part 50 has a broader scope than part 23. *See also* note 212.

[209] *See* Antonio S. Mello and John E. Parsons, ''Margins, Liquidity, and the Cost of Hedging.'' MIT Center for Energy and Environmental Policy Research, May 2012, available at: *http://dspace.mit.edu/bitstream/handle/1721.1/70896/2012-005.pdf?sequence=1.*

[210] *See id.,* Mello and Parsons state in their paper: ''[h]edging is costly. But the real source of the cost is not the margin posted, but the underlying credit risk that motivates counterparties to demand that margin be posted.'' *Id.* at 12. They go on to demonstrate that, ''[t]o a first approximation, the cost charged for the non-margined swap must be equal to the cost of funding the margin account. This follows from the fact that the non-margined swap just includes funding of the margin account as an embedded feature of the package.'' *Id.* at 15–16.

[211] 81 FR at 39531.

[212] Section II.B.iii sets forth the Commission's view that central clearing offers greater risk mitigation than bilateral margining for swaps. Included in that section was a summary of Citadel's comment agreeing with the Commission's view. As noted above, the clearing requirement applies to a broader scope of market participants than the Commission's uncleared swap margin rules.

The rule's requirement that certain swaps be cleared is expected to increase the use of central clearing, as well as the number of swap market participants that will benefit from reduced counterparty credit risk and the other risk mitigating tools offered by central clearing through DCOs that are subject to CFTC regulation and supervisory oversight.

As noted above, several commenters praised the Commission's approach to further harmonizing the Commission's swap clearing requirement with requirements issued by non-U.S. jurisdictions.[213] Citadel commented that such harmonization would lead to the benefit of eliminating regulatory arbitrage. LCH Group stated that such harmonization would promote certainty for market participants. SIFMA AMG commented that such harmonization would improve the functioning of swaps markets and reduce operational complexity. ISDA commented that harmonization is crucial to effective and efficient implementation of all of the reforms of the derivatives markets sought by the G20. MFA commented that the Commission's approach to harmonizing its clearing requirement with those of other jurisdictions would increase transparency and market integrity. MFA also suggested that if the Commission proceeds with the expanded clearing requirement, then other jurisdictions will follow.

D. Costs and Benefits of the Commission's Action as Compared to Alternatives

As noted in the NPRM, this determination is a function of both the market importance of these products and the fact that they already are widely cleared. The Commission believes the interest rate swaps subject to this rulemaking are appropriate to require to be cleared because they are widely used and already have a blueprint for clearing and risk management.

Given the implementation of the Commission's First Clearing Requirement Determination for interest rate swaps, and the widespread use of central clearing for the additional products included in this determination, DCOs, FCMs, and market participants already have experience clearing the types of swaps subject to this rulemaking. The Commission therefore expects that DCOs and FCMs are prepared to handle the increases in volumes and outstanding notional amounts in these swaps that are likely to result from this determination. Because of the widespread use of these swaps and their importance to the market, and because these swaps are already successfully being cleared, the Commission has determined that certain additional interest rate swaps be subject to the clearing requirement.

The Commission considered two alternative implementation scenarios. First, the Commission considered a scenario under which the clearing requirement for all swaps subject to the rulemaking would take effect at the same time, regardless of whether an analogous clearing requirement has been promulgated by an authority of a non-U.S. jurisdiction. The benefits associated with implementing the clearing requirement for all swaps subject to this rulemaking on a single date would include giving market participants certainty and making it easier for industry members to update relevant policies and procedures at one time.

As a second option, the Commission considered a scenario under which compliance with the clearing requirement would be required upon the earlier of (a) the date 60 days after the effective date of an analogous clearing requirement that has been adopted by a regulator in a non-U.S. jurisdiction, provided that any such date for any swap covered by the final rule shall not be earlier than the date which is 60 days after the Commission's final rule is published in the **Federal Register**, or (b) the date two years after the Commission's final rule is published in the **Federal Register**. As described in the NPRM, the second scenario allows the Commission to coordinate compliance dates with the effective dates set by non-U.S. jurisdictions in order to promote international harmonization of clearing requirements while maintaining certainty that compliance with the expanded clearing requirement will be required within a specific time period (*i.e.,* all products subject to the determination will be subject to a clearing requirement no later than two years after the final rule is published).

As discussed above, after considering comments on the two proposed implementation schedules, the Commission has decided to proceed with the second option, a schedule that is tied to the first date upon which any person in a non-U.S. jurisdiction is first subject to a clearing mandate issued by a non-U.S. jurisdiction, not including any front-loading or back-loading requirements.[214] Compared to the first option of requiring implementation of the clearing requirement for all products on a single date, the second option will delay implementation of the clearing requirement for certain products, and thus will delay the realization of the costs and benefits of mandatory clearing for these products. However, the Commission is adopting the second option in light of the benefits of international harmonization of clearing requirements on a jurisdiction-by-jurisdiction basis, including mitigation of regulatory arbitrage.

E. Section 15(a) Factors

As noted above, the requirement to clear the fixed-to-floating interest rate swaps, basis swaps, FRAs, and OIS covered by this adopting release is expected to result in increased use of central clearing, although it is not feasible to quantify with certainty the extent of that increase. Thus, this section discusses the expected results from an overall increase in the use of swap clearing in terms of the factors set forth in section 15(a) of the CEA.

i. Protection of Market Participants and the Public

As described above, required clearing of the interest rate swaps identified in this clearing requirement determination is expected to most likely reduce counterparty risk for market participants that clear those swaps because they will face the DCO rather than another market participant that lacks the full array of risk management tools that the DCO has at its disposal. This also reduces uncertainty in times of market stress because market participants facing a DCO are less concerned with the impact of such stress on the solvency of their counterparty for cleared trades.

By requiring clearing of certain interest rate swaps, all of which are already available for clearing, the Commission expects, as it stated in the NPRM, that this rule will encourage a smooth transition by creating an opportunity for market participants to work out challenges related to required clearing of swaps while operating in familiar terrain. More specifically, the DCOs currently clearing these interest rate swaps, CME, Eurex, LCH, and SGX, will clear an increased volume of swaps that they already understand and have experience managing. Similarly, FCMs likely will realize increased customer and transaction volume as a result of the requirement, but will not have to simultaneously learn how to operationalize clearing for the covered interest rate swaps. The experience of FCMs with these types of products also is likely to benefit any customers that are new to clearing, as the FCM guides

[213] *See* summary of these comments in section II.B.

[214] *See* discussion, including summary of comments received, in section IV.

them through initial experiences with cleared swaps.

In addition, uncleared swaps subject to collateral agreements can be the subject of valuation disputes. These valuation disputes sometimes require several months or longer to resolve. Potential future exposures can grow significantly and even beyond the amount of initial margin posted during that time, leaving one of the two counterparties exposed to counterparty credit risk. DCOs significantly reduce and potentially may eliminate valuation disputes for cleared swaps, as well as the risk that uncollateralized exposure can develop and accumulate during the time when such a dispute would have otherwise occurred, thus providing additional protection to market participants that transact in swaps that are required to be cleared.

As far as costs are concerned, market participants that do not currently have established clearing relationships with an FCM will have to set up and maintain such a relationship in order to clear swaps that are required to be cleared. As discussed above, market participants that conduct a limited number of swaps per year likely will be required to pay monthly or annual fees that FCMs charge to maintain both the relationship and outstanding swap positions belonging to the customer. In addition, the FCM is likely to pass along fees charged by the DCO for establishing and maintaining open positions.[215]

It is expected that most market participants already will have had experience complying with prior clearing requirements and that the incremental burdens associated with clearing the additional interest rate swaps subject to this rulemaking should be minimal, especially given the similarities that these products have to those already included within the prior clearing requirement determination and the fact that they are already widely cleared products.

ii. Efficiency, Competitiveness, and Financial Integrity of Swap Markets

The Commission continues to expect that swap clearing will reduce counterparty risk in times of market stress and promote liquidity and efficiency during those times. Increased liquidity promotes the ability of market participants to limit losses by exiting positions effectively and efficiently when necessary in order to manage risk during a time of market stress.

In addition, to the extent that positions move from facing multiple counterparties in the bilateral market to being cleared through a smaller number of clearinghouses, clearing facilitates increased netting. This reduces the amount of collateral that a party must post in margin accounts.

As discussed above, in setting forth this new clearing requirement determination, the Commission took into account a number of specific factors that relate to the financial integrity of the swap markets. Specifically, the NPRM and the discussion above include an assessment of whether CME, Eurex, LCH, and SGX, each of which currently clears interest rate swaps, have the rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear these swaps on terms that are consistent with the material terms and trading conventions on which the contract is now traded. The Commission also considered the resources of DCOs to handle additional clearing during stressed and non-stressed market conditions, as well as the existence of reasonable legal certainty in the event of a clearing member or DCO insolvency.[216]

In considering the efficiencies, competitiveness, and financial integrity of the swap markets associated with this clearing requirement determination, the Commission observes that the use of bilateral swaps generates a need for market participants to conduct due diligence on each potential counterparty due to concerns about counterparty credit risk. Requiring certain types of swaps to be centrally cleared reduces the number of separate counterparties for which such due diligence is necessary, thereby potentially contributing to the overall efficiency and competitiveness of the swap markets.

In support of this reasoning, Citadel's comments suggest that extinguishing bilateral counterparty credit exposure and eliminating complex bilateral trading documentation for swaps subject to a clearing requirement enables market participants to access a wider range of execution counterparties and encourages the entry of new liquidity providers.[217] As a result, when a clearing requirement is in effect, price competition tends to increase, execution costs for investors and customers tend to decrease, and overall market liquidity would therefore improve for the swaps subject to the clearing requirement. Citadel also notes that the imposition of a clearing requirement may create the commercial rationale for another DCO or FCM to launch or expand its clearing offering given the expected increase in overall cleared volumes.

In adopting this clearing requirement for interest rate swaps, the Commission must consider the effect on competition, including appropriate fees and charges applied to clearing. As discussed in more detail in section II.B.iii, there are a number of potential outcomes that may result from required clearing. Some of these outcomes may impose costs, such as if a DCO possessed market power and exercised that power in an anticompetitive manner, and some of the outcomes would be positive, such as if the clearing requirement facilitated a stronger entry opportunity for competitors.[218]

iii. Price Discovery

As the Commission noted in the NPRM, central clearing, in general, encourages better price discovery because it eliminates the importance of counterparty creditworthiness in pricing swaps cleared through a given DCO. That is, by making the counterparty creditworthiness of all swaps of a certain type essentially the same, prices should reflect factors related to the terms of the swap, rather than the idiosyncratic risk posed by the entities trading it.

As discussed in section II.C.iii.a above, CME, Eurex, LCH, and SGX obtain adequate pricing data for the interest rate swaps that they clear. Each of these DCOs establishes a rule framework for its pricing methodology and rigorously tests its pricing models to ensure that the cornerstone of its risk management regime is as sound as possible.

iv. Sound Risk Management Practices

If a firm enters into uncleared and uncollateralized swaps to hedge certain positions and then the counterparty to those swaps defaults unexpectedly, the firm could be left with large outstanding exposures. Even for uncleared swaps that are subject to the new uncleared swap margin regulations, some counterparty credit risk remains.[219] As

[215] *See* sections II.B.iii. and V.C.ii for a summary of JBA's comment concerning the potential costs of establishing a new clearing arrangement at a DCO in response to this rulemaking, and the Commission's response to that comment.

[216] *See* section II.C.iii.

[217] Commission regulation 39.12(b)(6) requires a DCO to establish rules providing that upon acceptance of a swap for clearing, the original swap is extinguished and replaced by an equal and opposite swap between the DCO and each clearing member acting as principal for a house trade or acting as agent for a customer trade. This process extinguishes counterparty credit risk between the original executing counterparties.

[218] *See* section II.B.iii for full discussion of comments related to competition issues.

[219] For example, there is a small risk of a sudden price move so large that a counterparty would be unable to post sufficient variation margin to cover

explained in the NPRM and as stated above, when a swap is cleared the DCO becomes the counterparty facing each of the two original participants in the swap. This standardizes and reduces counterparty risk for each of the two original participants. To the extent that a market participant's hedges comprise swaps that are required to be cleared, the requirement enhances the market participant's risk management practices by reducing its counterparty risk.

In addition, required clearing reduces the complexity of unwinding or transferring swap positions from large entities that default. Procedures for transfer of swap positions and mutualization of losses among DCO members are already in place, and the Commission anticipates that they are much more likely to function in a manner that enables rapid transfer of defaulted positions than legal processes that would surround the enforcement of bilateral contracts for uncleared swaps.[220]

Central clearing has evolved since the 2009 G20 Pittsburgh Summit, when G20 leaders committed to central clearing of all standardized swaps. The percentage of the swap market that is centrally cleared has increased significantly, clearinghouses have expanded their offerings, and the range of banks and other financial institutions that submit swaps to clearinghouses has broadened. At the same time, the numbers of swap clearinghouses and swap clearing members has remained highly concentrated. This has created concerns about a concentration of credit and liquidity risk at clearinghouses that could have systemic implications.[221] However, the Commission believes that DCOs are capable of risk managing the interest rate swaps subject to this rulemaking. Moreover, because only a very small percentage of the swap market will be affected by this clearing requirement determination and because significant percentages of the swaps covered by this determination are already cleared voluntarily, this clearing requirement determination will not significantly increase credit risk and liquidity risk to DCOs. The Commission requested comment on this issue and did not receive any comments in response.

v. Other Public Interest Considerations

In September 2009, the President and the other leaders of the G20 nations met in Pittsburgh and committed to a program of action that includes, among other things, central clearing of all standardized swaps.[222] The Commission believes that this clearing requirement will represent another step toward the fulfillment of the G20's commitment.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[223] As stated in the NPRM, this clearing requirement determination will not affect any small entities, as the RFA uses that term.[224] Pursuant to section 2(e) of the CEA, only eligible contract participants (ECPs) may enter into swaps, unless the swap is listed on a DCM. The Commission has previously determined that ECPs are not small entities for purposes of the RFA.[225] As stated in the NPRM, the clearing requirement determination will only affect ECPs because all persons that are not ECPs are required to execute their swaps on a DCM, and all contracts executed on a DCM must be cleared by a DCO, as required by statute and regulation, not by operation of any clearing requirement determination. The Commission did not receive comments on this conclusion. Therefore, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA)[226] imposes certain requirements on federal agencies, including the Commission, in connection with conducting or sponsoring any collection of information as defined by the PRA. This rulemaking will not require a new collection of information from any persons or entities. The Commission did not receive any comments relating to the PRA in response to the NPRM.

List of Subjects in 17 CFR Part 50

Business and industry, Clearing, Swaps.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 50 as follows:

PART 50—CLEARING REQUIREMENT AND RELATED RULES

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 7 U.S.C. 2(h) and 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376.

■ 2. Revise § 50.4(a) to read as follows:

§ 50.4 Classes of swaps required to be cleared.

(a) *Interest rate swaps.* Swaps that have the following specifications are required to be cleared under section 2(h)(1) of the Act, and shall be cleared pursuant to the rules of any derivatives clearing organization eligible to clear such swaps under § 39.5(a) of this chapter.

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the loss, which may exceed the amount of initial margin posted, and could be forced into default.

[220] As discussed in sections I.E.iii, II.B.iii, and V.B., sound risk management practices are critical for all DCOs, especially those offering clearing for interest rate swaps. In section II.B.ii, the Commission considered whether each § 39.5(b) submission under review was consistent with the core principles for DCOs. In particular, the Commission considered the DCO submissions in light of Core Principle D, which relates to risk management. *See also* section II.B.iii for a discussion of the effect on the mitigation of systemic risk in the interest rate swap market, as well as the protection of market participants during insolvency events at either the clearing member or DCO level.

[221] *See* Dietrich Domanski, Leonardo Gambacorta, and Cristina Picillo, ''Central clearing: Trends and current issues,'' BIS Quarterly Review (Dec. 2015), available at: *http://www.bis.org/publ/qtrpdf/r_qt1512g.pdf.* and 2015 Financial Stability Report published by the Office of Financial Research of the U.S. Department of the Treasury (Dec. 15, 2015), available at: *http://financialresearch.gov/financial-stability-reports/files/OFR_2015-Financial-Stability-Report_12-15-2015.pdf.*

[222] The G20 Leaders Statement made in Pittsburgh is available at: *http://www.g20.utoronto.ca/2009/2009communique0925.html.*

[223] 5 U.S.C. 601 *et seq.*

[224] 81 FR at 39534–39535.

[225] 66 FR 20740, 20743 (Apr. 25, 2001).

[226] 44 U.S.C. 3507(d).

TABLE 1a

Specification	Fixed-to-floating swap class					
1. Currency	Australian Dollar (AUD).	Canadian Dollar (CAD).	Euro (EUR)	Hong Kong Dollar (HKD).	Mexican Peso (MXN).	Norwegian Krone (NOK).
2. Floating Rate Indexes	BBSW	CDOR	EURIBOR	HIBOR	TIIE–BANXICO	NIBOR.
3. Stated Termination Date Range.	28 days to 30 years	28 days to 30 years	28 days to 50 years	28 days to 10 years	28 days to 21 years	28 days to 10 years.
4. Optionality	No	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No	No	No.

TABLE 1b

Specification	Fixed-to-floating swap class						
1. Currency	Polish Zloty (PLN).	Singapore Dollar (SGD).	Swedish Krona (SEK).	Swiss Franc (CHF).	Sterling (GBP)	U.S. Dollar (USD)	Yen (JPY).
2. Floating Rate Indexes.	WIBOR	SOR–VWAP	STIBOR	LIBOR	LIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range.	28 days to 10 years.	28 days to 10 years.	28 days to 15 years.	28 days to 30 years.	28 days to 50 years.	28 days to 50 years.	28 days to 30 years.
4. Optionality	No	No	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No	No	No	No.

TABLE 2

Specification	Basis swap class				
1. Currency	Australian Dollar (AUD)	Euro (EUR)	Sterling (GBP)	U.S. Dollar (USD)	Yen (JPY).
2. Floating Rate Indexes	BBSW	EURIBOR	LIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range.	28 days to 30 years	28 days to 50 years	28 days to 50 years	28 days to 50 years	28 days to 30 years.
4. Optionality	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No	No.

TABLE 3

Specification	Forward rate agreement class						
1. Currency	Euro (EUR)	Polish Zloty (PLN).	Norwegian Krone (NOK).	Swedish Krona (SEK).	Sterling (GBP)	U.S. Dollar (USD)	Yen (JPY).
2. Floating Rate Indexes.	EURIBOR	WIBOR	NIBOR	STIBOR	LIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range.	3 days to 3 years	3 days to 2 years	3 days to 2 years	3 days to 3 years	3 days to 3 years	3 days to 3 years	3 days to 3 years.
4. Optionality	No	No	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No	No	No	No.

TABLE 4

Specification	Overnight index swap class				
1. Currency	Australian Dollar (AUD)	Canadian Dollar (CAD)	Euro (EUR)	Sterling (GBP)	U.S. Dollar (USD).
2. Floating Rate Indexes	AONIA–OIS	CORRA–OIS	EONIA	SONIA	FedFunds.
3. Stated Termination Date Range.	7 days to 2 years	7 days to 2 years	7 days to 3 years	7 days to 3 years	7 days to 3 years.
4. Optionality	No	No	No	No	No.
5. Dual Currencies	No	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No	No.

* * * * *

Issued in Washington, DC, on September 28, 2016, by the Commission.

Christopher J. Kirkpatrick,

Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Clearing Requirement Determination Under Section 2(h) of the Commodity Exchange Act for Interest Rate Swaps—Commission Voting Summary and Chairman's Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Timothy G. Massad

Central clearing is one of the great innovations of the financial system. Indeed, increasing the use of central clearing for over-the-counter swaps is one of the most important goals of the 2009 G20 Leaders' agreement and the Dodd-Frank Act.

Of course, central clearing does not eliminate the risk of transactions. But clearinghouses can monitor and mitigate that risk, which can make our financial system more stable.

In just a few short years, the percentage of over-the-counter swaps being cleared has increased substantially. And today, I am very pleased that we are continuing this progress by expanding the Commission's swap clearing requirement to include interest rate swaps denominated in nine additional currencies. Our counterparts in the relevant non-U.S. jurisdictions have mandated, or are expected soon to mandate, central clearing for these products, and our requirements will be phased based on when the corresponding clearing requirements have taken effect in non-U.S. jurisdictions.

The Commission's first clearing requirement, adopted in 2012, applied to interest rate swaps denominated in four currencies—U.S. dollar, euro, British sterling, and Japanese yen. Today, we have expanded the interest rate swap clearing requirement to include those denominated in the Australian dollar, Canadian dollar, Hong Kong dollar, Singapore dollar, Mexican peso, Norwegian krone, Polish zloty, Swedish krona, and Swiss franc.

Requiring clearing for these swaps will further reduce risk within our financial system. Today's determination also represents another important step toward cross-border harmonization of swaps regulations, which is critically important to creating an effective regulatory framework.

This rule reflects the CFTC's close coordination with our fellow regulatory authorities from the various jurisdictions with whom we are seeking to harmonize. We also consulted and coordinated with our fellow financial regulators here in the United States.

I want to thank the hardworking CFTC staff for their efforts on this important measure. I'd also like to thank my fellow Commissioners Bowen and Giancarlo for their support.

[FR Doc. 2016–23983 Filed 10–13–16; 8:45 am]

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Part III

Department of Housing and Urban Development

24 CFR Part 200

Retrospective Review—Improving the Previous Participation Reviews of Prospective Multifamily Housing and Healthcare Programs Participants; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–5850–F–04]

RIN 2502–AJ28

Retrospective Review—Improving the Previous Participation Reviews of Prospective Multifamily Housing and Healthcare Programs Participants

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD's regulations for reviewing the previous participation in federal programs of certain participants seeking to take part in multifamily housing and healthcare programs administered by HUD's Office of Housing. The final rule clarifies and simplifies the process by which HUD reviews the previous participation of participants that have decision-making authority over their projects as one component of HUD's responsibility to assess financial and operational risk to the projects in these programs. The final rule, together with an accompanying Processing Guide, clarifies which individuals and entities will undergo review, HUD's purpose in conducting such review, and describe the review to be undertaken. By targeting more closely the individuals and actions that would be subject to prior participation review, HUD not only brings greater certainty and clarity to the process but provides HUD and program participants with flexibility as to the necessary previous participation review for entities and individuals that is not possible in a one-size fits all approach. Through this rule, HUD replaces the current previous participation regulations in their entirety.

DATES: *Effective Date:* November 14, 2016.

FOR FURTHER INFORMATION CONTACT: Danielle Garcia, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 6148, Washington, DC 20410; telephone number 202–402–2768 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

HUD's Previous Participation Review regulations, codified at 24 CFR part 200, subpart H (Subpart H regulations), set forth the HUD process, which applicants seeking to participate in HUD's multifamily housing and healthcare programs must undergo to ensure, including providing a certification, that all principals of the applicant involved in a proposed HUD project have acted responsibly and have honored their legal, financial, and contractual obligations in their previous participation in HUD programs, as well as in certain programs administered by the U.S. Department of Agriculture, and in projects assisted or insured by state and local government housing finance agencies. HUD's regulations governing the assessment of previous participation require applicants to complete a very detailed and lengthy certification form (HUD Form 2530).[1]

The 2530 form requires disclosure of all principals to be involved in the proposed project, a list of projects in which those principals have previously participated or currently participate in, a detailed account of the principals' involvement in the listed project(s), and assurances that the principals have upheld their responsibilities while participating in those programs. HUD's Subpart H regulations govern not only the content of the certification submitted by applicants, but the types of parties that must certify, the process for submitting the certification, the standards by which submissions are evaluated, and the delegations and duties of HUD officials involved in the evaluation of the certifications. The regulations also contain procedures by which applicants can appeal adverse determinations.

The Subpart H regulations, first established in 1980, with some updates over the years, were overdue for significant updating to reflect the deal structures and transaction practices taking place today that were not in place over 20 years ago. For example, the currently codified regulations pre-date the development of limited liability companies as an organizational entity. HUD recognized that the currently codified regulations have not kept step with contemporary organizational structures or transactional practices, and were both over-inclusive and under-inclusive of applicants that should undergo the previous participation review process, creating unnecessary burdens for participants and HUD alike. Further, participants in HUD's multifamily housing and healthcare programs have long complained about the delays with the previous participation review process because of the overly detailed information required to be submitted. Complaints focused on the difficulties associated with obtaining information from all the limited partner investors in individual projects and in duplicating information for multiple levels of affiliates. Participants in HUD's multifamily housing and healthcare programs also stated that the previous participation process requires participants to complete the Form 2530 for each project, regardless of the number of Forms 2530 each participant completed in the recent past, regardless of how many projects the participant is involved in each year, and regardless of whether the participant is a well-established, experienced institutional entity already familiar to HUD.

II. The Proposed Rule

On August 10, 2015, at 80 FR 47874, HUD published a proposed rule that is designed to comprehensively overhaul the Subpart H regulations.[2] As described in the August 10, 2015, proposed rule, HUD made several efforts over the years to improve the process and minimize the time and collection burden it takes to undergo the previous participation review process, but none of the efforts achieved the success that HUD desired.[3] Therefore on August 10, 2015, HUD submitted a rule for public comment that proposed to revise the Subpart H regulations in their entirety, replacing the current prior participation review process. The August 10, 2015, proposed rule noted that while the current regulations mandate that Form HUD 2530 be used, the proposed rule would shift the emphasis of the regulations from this specific form to the substance of what is being asked from whom. One of the goals of the August 10, 2015, proposed rule is to provide HUD and its program participants with greater flexibility by avoiding a one-size-fits-all approach, and allowing for HUD to seek information tailored to certain programs, expand electronic data practices for gathering information, and decrease the information collection imposed, generally across-the-board on all applicants regardless of the applicant entity and the program to which the applicant seeks to participate. The specific changes proposed by the August 10, 2015 rule can be found at 80 FR 47876 through 47877.

At the close of public comment period on October 9, 2015, HUD received 33

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[1] See *http://portal.hud.gov/hudportal/documents/huddoc?id=2530.pdf.*

[2] See *https://www.gpo.gov/fdsys/pkg/FR-2015-08-10/pdf/2015-19529.pdf.*

[3] See preamble to proposed rule at 47875 and 47876.

public comments. Overall the commenters were supportive and appreciative of HUD's efforts to reform the regulations. Commenters stated that, in addition to reforms to the regulations and reforms to the review process, additional guidance and training materials were also needed. Several commenters stated, however, that the regulations were broad and vague and lacked the specificity that participants desired to bring clarity and certainty to the previous participation review process. The public comments and HUD's responses to the public comments on the proposed rule are addressed in Section V of this preamble.

III. Supplemental Notice of Proposed Rulemaking

On May 17, 2016, at 81 FR 30495, HUD supplemented its August 10, 2015, proposed rule with a Supplemental Notice of Proposed Rulemaking (Supplemental Notice). To address commenters' concerns about the need for more specificity in the proposed rule, HUD proposed through this supplemental document to use an approach that HUD has taken in certain of its other regulations and that is to supplement codified regulations with a document specifically referenced in the codified regulations that addresses the specific procedures (processing requirements) to be followed.[4] When HUD has taken this approach, HUD commits to provide notice and opportunity for comment for any significant changes made to the document.

In the May 17, 2016, document, HUD proposed to issue with its final regulations a ''Processing Guide for Previous Participation Reviews of Prospective Multifamily Housing and Healthcare Programs' Participants'' (Processing Guide). This Processing Guide, to be posted on HUD's Web site, will provide the details on procedures which commenters are seeking and which HUD proffered is more appropriate for a process guide than for regulatory text. As provided in the May 17, 2016, document, HUD advised that the Processing Guide will provide applicants for and participants in HUD's multifamily housing and healthcare programs the detailed information desired on the previous participation review process, information about how ''flags'' are assigned and addressed,[5] and elaborates on terms and information in Form 2530. HUD provided that the codified regulations would reference the Processing Guide and provide a 30-day advance notice and comment period for significant changes proposed to the Processing Guide. HUD reiterated that the Processing Guide offered an appropriate procedural approach for addressing the previous participation review process because it would give HUD the ability to make changes as may be needed or desired by HUD as well as program participants to address specific procedural circumstances that may arise in the previous participation process and to keep up-to-date with changes that may arise in the housing market. HUD noted that one of the longstanding complaints about HUD's previous participation review process is that the process and the regulations that govern the process are very outdated and do not keep up with the times. HUD submitted that a lean set of regulations supplemented by a detailed processing guide that is subject to notice and comment for any significant changes is the best approach for this process and one that will endure successfully for some time.

The public comment period on the May 17, 2016, notice closed on June 16, 2016, and HUD received 11 comments. The commenters strongly supported this approach but some commenters stated that greater specificity was still necessary. The public comments and HUD's responses to the public comments on the Supplemental Notice are addressed in Section V of this preamble.

IV. Changes Made at This Final Rule Stage

This section highlights the changes made to the proposed rule at this final rule stage.

- The final rule references the Processing Guide as a supplement to HUD's regulations and provides for changes to the guide to be done through advance notice and opportunity for comment.
- The final rule reorganizes information relating to the evaluation of risk into a separate definition of risk.
- The final rule clarifies that Covered Projects include projects subject to continuing HUD requirements only if those requirements are made in connection with a program administered by HUD's Office of Housing.
- The final rule revises terminology to clarify that Controlling Participants include both Specified Capacities and the individuals and entities that control the Specified Capacities.
- The final rule includes construction managers as Controlling Participants in hospital projects insured under section 242 of the National Housing Act.
- The final rule specifies that individuals or entities with the ability to direct the day-to-day operations of a Specified Capacity or a Covered Project are Controlling Participants.
- The final rule specifies that board members of a non-profit that do not otherwise control the day-to-day operations of the non-profit are not Controlling Participants.
- The final rule clarifies that a change in Controlling Participants is a Triggering Event if HUD consent is required for such change.
- The final rule provides more detail on when a Controlling Participant may be disapproved from participation in a Triggering Event on the basis of being restricted from doing business with other government agencies.
- The final rule specifies that reconsideration decisions shall not be rendered by the same individual who rendered the initial review.
- The final rule specifies that Controlling Participants shall receive at least 7 business-days advance notice of a reconsideration.
- The final rule eliminates the bid to purchase a Covered Project or mortgage note held by the Commissioner from the list of Triggering Events.

V. The Public Comments on the Proposed Rule and Supplemental Notice and HUD's Responses

A. Comments on the Proposed Rule

1. General Comments on the Proposed Rule

Many commenters expressed support for HUD's initiation of the proposed rule, which was designed to streamline and improve the previous participation process. One commenter stated: ''This proposed rule is a step in the right direction to streamline a tedious process in HUD multifamily and healthcare programs.'' Commenters also suggested changes that they thought would further improve this process. The following are the significant comments raised by the commenters.

Comment: The proposed rule is overly broad. Several commenters stated that the proposed regulations are overly broad and open to various interpretations by HUD. The

[4] See, for example, 24 CFR 207.254, pertaining to mortgage insurance premiums; 24 CFR 203.605, pertaining to tier ranking systems and methodology applicable to loss mitigation performance; 24 CFR 290.9, pertaining to setting rental rates for certain multifamily housing projects; 24 CFR 570.712(b) pertaining to setting a fee for the Section 108 Loan Guarantee Program; and 24 CFR part 902, pertaining to scoring notices for HUD's Public Housing Assessment System.

[5] Flags refer to an issue or issues in a prospective participant's application for which further review is necessary.

commenters stated that the final rule should provide a comprehensive outline of the previous participation review requirements so that industry partners and HUD staff alike have a primary resource from which to identify the governing requirements and be detailed enough not to have to be dependent on additional guidance. Commenters stated that it is essential that the process be as transparent as possible. The commenters stated that because the proposed rule does not specify how HUD intends to determine whether Controlling Participants have control over the finances or operation of a Covered Project, this could actually increase the number of responses required by a program participant rather than reduce such processes. A commenter stated that the proposed rule is so vague that HUD may violate the Administrative Procedures Act (APA) if HUD neglects to provide the public a meaningful opportunity to review and comment on forthcoming revisions. The commenters stated that before proceeding to a final rule, HUD must solicit additional comment by re-issuing a revised proposed 2530 rule.

HUD Response: HUD understood the concerns made by these commenters about the need for further elaboration on various aspects of the rule, and it was these concerns that prompted HUD to issue the Supplemental Notice of Proposed Rulemaking through which HUD proposed to supplement the previous participation regulations with a Processing Guide. The Processing Guide would serve as a primary resource and provide the specificity for the procedural requirements governing the previous participation review process. HUD solicited public comment on this Processing Guide. As noted in Section IV, HUD is adopting the Processing Guide as part of the final rule changes. With the Processing Guide, HUD believes it has achieved the appropriate balance between specificity and flexibility. Comments on the Processing Guide and HUD's responses to these comments are provided in Section V.B. of this preamble.

Comment: Method of filing. Several commenters asked whether a participant's ability to file would be done electronically or would paper forms have to be used.

HUD Response: The regulations do not require filing electronically or paper filing. Both formats remain available, but HUD encourages electronic filing.

Comment: Clarify that existing regulations are replaced in entirety. A commenter asked that HUD clarify that the new regulations replace the existing regulations in their entirety. The commenter stated that while the proposed rule clearly stated this, it was not repeated in the regulatory text.

HUD Response: The regulatory text does not need to specify that it is superseding previous regulations. The final regulations will replace the existing regulations in their entirety, and the existing regulations will then no longer be contained in the Code of Federal Regulations.

Comment: Clarify whether a single purpose entity wholly owned by a public housing agency (PHA) is exempt from the previous participation process. A commenter stated that it was not clear from the proposed rule if any single purpose entity wholly owned by a public housing agency (PHA) is still excluded from previous participation. The commenter asked for HUD to clarify.

HUD Response: Yes, entities that are wholly owned by a PHA are considered public housing agencies. For the commenter's reference, see HUD's regulation at 24 CFR 5.100, which defines ''Public Housing Agency'' to include ''or instrumentality of these entities.'' Further, HUD's Office of Public and Indian Housing (PIH) issued PIH Notice 2007–15,[6] which defines ''instrumentality'' as ''an entity related to the PHA whose assets, operations, and management are legally and effectively controlled by the PHA.'' The notice further states that ''For the Department's purposes, an Instrumentality assumes the role of the PHA and is the PHA under the public housing requirements for purposes of implementing public housing development activities and programs.''

Comment: Address ''flags'' in regulatory text. A commenter stated that HUD, in the preamble to the proposed rule, is absolutely correct in stating that use of flags under the current system has created serious obstacles to participation in HUD programs, even when such flags are not indicative of real risk. The commenter stated that if HUD is going to continue its practice of issuing ''2530 flags,'' this policy should be clearly explained in the regulations. Other commenters similarly stated that, in many instances, program participants do not receive prior notice of flags; they do not know why they've been ''flagged;'' they do not know whether they can ''appeal'' the flags; and/or they don't know how to get flags removed or ''resolved.''

HUD Response: HUD agrees that prior dealings with ''flags'' have been frustrating for all parties. HUD, however, does not agree that the level of detail asked by the commenters is appropriate for regulations. The role of flags in the previous participation process is one of the reasons that HUD has proposed the Processing Guide. The Processing Guide is the better vehicle to address flags and HUD did in fact address flags in the Processing Guide, published for comment on May 17, 2016. HUD provides additional comments received on flags and HUD's responses to these comments on Section V.B. of this preamble.

Comment: Have one 2530 form, not multiple forms. Commenters expressed opposition to HUD's intention, as they stated was presented in the preamble to the proposed rule, to allow the development of multiple previous participation forms specifically tailored to particular HUD programs. The commenters stated that multiple forms will only further complicate a process that HUD itself recognizes is overly burdensome and time-consuming. The commenters also stated that the existing 2530 form at least provides applicants the following: (i) Assurance that there is one consistent form for participation in all HUD programs, and (ii) guidance on what information must be provided and updated (in the Schedule A attached to the existing 2530 form) regarding prior participation in HUD projects (status of HUD loan, current Real Estate Assessment Center (REAC) score, etc.).

HUD Response: HUD is not proposing new previous participation forms at this time. In the preamble to the proposed rule, HUD simply noted that through the revised previous participation review process that HUD proposed in the August 10, 2015, rule, HUD may determine that 2530 forms more tailored to HUD-specific forms, rather than an across-the-board form, may be more appropriate, helpful, and facilitate the processing of a specific HUD transaction. For example, the structure of a Multifamily Housing transaction is vastly different from that of a Healthcare transaction or a Hospital transaction. It is not intuitive to fit a healthcare transaction's operator into the 2530 form used for a Multifamily Housing transaction. HUD's Office of Residential Care Facilities (ORCF) has advised that many submissions of the Form 2530 in connection with Healthcare transactions are completed incorrectly and do not yield adequate information to promptly process the healthcare transaction. For this reason, in its 2013 PRA information collection, ORCF developed as part of its consolidated certification, more

[6] See PIH Notice 2007–15 on ''Applicability of Public Housing Development Requirements to Transactions between Public Housing Agencies and their Related Affiliates and Instrumentalities,'' issued on June 20, 2007, at *https://portal.hud.gov/hudportal/documents/huddoc?id=DOC_9278.pdf.*

targeted questions that are easier to understand and fit more easily with a Healthcare transaction.[7] Since the existing regulations require the submission of the specific Form 2530, ORCF has been using both the current Form 2530, which does not reflect a healthcare transaction, and its improved Consolidated Certification. With these revised previous participation regulations, ORCF now has the ability, if it so chooses, to require only the more targeted and accurate disclosures and more complete certifications of the Consolidated Certification. Time will tell whether other programs, such as the Rental Assistance Demonstration program or the HUD Hospitals program, will consider submitting similarly tailored forms through the PRA process. The 242 program is currently in the process of document reform and is not proposing a change from the 2530 form at this time, but may do so in the future.

Whether HUD chooses to develop 2530 forms tailored for specific HUD transactions, the public should keep in mind that changes to the existing 2530 form or development of new previous participation forms must undergo the notice and comment process (a minimum of 90 days) required by the Paperwork Reduction Act (PRA).

Comment: Exclude limited liability investors. Commenters stated that the final rule should clarify that limited liability corporate investor (''LLCI'') certification is no longer required of low-income housing tax credit (LIHTC) investors or any other passive investors. Another commenter stated that it supports expanding the exemption given to LIHTC investors to all passive investors in other tax credit programs, such as the New Markets Tax Credit.

HUD Response: HUD believes 24 CFR 200.216(c)(1) is clear that passive investors are not Controlling Participants, and are not required to undergo previous participation review. However, HUD reserves the right to perform appropriate due diligence review of investors, including reviewing their financial capacity and understanding the organizational structure of proposed entities.

2. Comments on the Proposed Rule Regulatory Text

Definitions (§ 202.212)

Comment: Define Key Principal. Commenters stated that the term ''Key Principal'' is a widely used term in the Active Partners Performance System (APPS) but is not included in the regulations, and should be.

HUD Response: The term ''key principal'' continues to be used for underwriting purposes. HUD believes that the term ''key principal'' has been confusing in past practice with respect to previous participation review and has determined that the new terms Specified Capacity and Controlling Participant are more appropriate for previous participation review purposes. The APPS system will be updated to ensure consistency between the APPS system and the previous participation regulations.

Comment: Distinguish between applicant entities and those that control them. Commenters stated that HUD should use separate terms for the applicant entities requiring approval and those individuals and entities that control them.

HUD Response: HUD has added the term ''Specified Capacity'' and revised the definition of ''Controlling Participant'' to include the listed ''Specified Capacities'' and those entities and individuals that control the Specified Capacities. In addition, the Processing Guide elaborates on specified capacity and provides a chart that shows the specified capacities for the listed programs. See the Processing Guide, published for comment on May 17, 2016, at 81 FR 30497.

Comment: Define Risk. Commenters stated that the proposed rule does not adequately define ''risk'' or how HUD will evaluate risk.

HUD Response: In response to these commenters, HUD proposed in the Supplemental Notice, published on May 17, 2016, to include a definition of ''risk'' in § 200.212, that would clarify that in order to determine whether a Controlling Participant's participation in a project would constitute an unacceptable risk, the FHA Commissioner must determine whether the Controlling Participant could be expected to participate in the Covered Project (as defined in the August 10, 2015, proposed rule) in a manner consistent with furthering HUD's purposes. The proposed definition of ''risk'' and comments received on this definition and HUD's responses are addressed in Section V.B. below.

Comment: Clarify programs covered by previous participation review. A commenter stated that there appears to be in the rule an inconsistency in the definition of previous participation. The commenter stated that specifically in § 200.212 the term is described as participation in Federal programs only, but the first paragraph of the Background section in the preamble to the proposed rule suggests that participation in State and local government financed or assisted programs must also undergo the previous participation review process. Commenters stated that currently many participants disclose only their participation in HUD programs, which the commenters stated should be HUD's concern. The commenters further stated that the assessment of risk by HUD of State and local participation greatly delays the clearance process since it requires HUD staff to track down the appropriate State or local officials who may have absolutely no interest in the 2530 process and therefore may not be inclined to cooperate.

HUD Response: The definition of risk, as proposed in the Supplemental Notice, clarifies this issue. The commenters are correct that HUD's primary concern is previous participation in HUD programs. Previous participation in HUD programs is most relevant to HUD and HUD regards the information received with regard to previous participation in HUD programs (as opposed to other Federal, State or local programs) to be the most complete and most reliable because the information should correspond with HUD's records. However, previous participation in other Federal, State or local programs may also be relevant to the evaluation of risk, and therefore HUD reserves the right to request this information when it is relevant and can be gathered reliably. It is possible that such information may prove valuable when evaluating the risk of a flag in the context of a Controlling Participant's performance relative to their overall portfolio, especially if participation in HUD programs is minor compared with participation in other programs.

In this final rule, the regulations have been revised to clarify that previous participation must include HUD programs but that the FHA Commissioner may request and consider previous participation in any Federal, State or local government program if the Commissioner determines that such information is reliably available and necessary in evaluating financial or operational risk. Further, the Commissioner may exclude any previous participation from the previous participation review process if the Commissioner determines that such information is not relevant or cannot be reliably gathered. This regulatory structure allows greater specificity to be set forth in forthcoming guidance and to evolve as housing programs and risks evolve. HUD notes that in order to request any such previous participation information, HUD must follow the PRA

[7] See ORCF's notice announcing final approval of HUD's Healthcare Facility documents published in the **Federal Register** on March 14, 2013, at 78 FR 16279. See especially page 16281, third column.

process for information collection. The form 2530 already requires limited disclosure of State and local housing programs; the form requires Schedule A disclosures to list ''every project assisted . . . by . . . State and local government housing finance agencies . . .''

Covered Projects (§ 200.214(d), (e))

Comment: Covered projects subject to use restrictions should be limited to those administered by HUD's Office of Housing. Commenters stated that the category established by § 200.214(d), relating to projects with affordability restrictions, should be limited to projects whose use restrictions are administered by HUD's Office of Housing.

HUD Response: These regulations govern only projects administered by HUD's Office of Housing. For clarity, HUD has accepted the commenters' suggestion to revise the language and add the phrase ''administered by HUD's Office of Housing.''

Comment: Exclude project-based vouchers (PBVs) administered by HUD's Office of Public and Indian Housing. Commenters asked that HUD exclude from previous participation review projects with project-based voucher contracts.

HUD Response: The proposed regulations exclude PBVs, and this final rule retains that exclusion. See the exclusion in § 200.214(e)(3) of projects authorized by ''section 8(o)(13) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(13),'' which pertains to PBVs.

Comment: Do not exclude PBVs. In contrast to the preceding comment, a commenter stated that projects participating in the Rental Assistance Demonstration (RAD) and receiving PBVs are not required to obtain previous participation clearance for a change in ownership or management agent but would be under the Project-Base Rental Assistance program administered by the HUD Office of Housing. Commenter suggested projects in the PBV program should be subject to previous participation review.

HUD Response: These regulations do not govern programs administered by the Office of Public and Indian Housing. There are several differences between the PBV and PBRA programs, which accomplish different policy goals and allow for various effects.

Controlling Participant (§ 200.216)

Many commenters stated that the definition of ''Controlling Participant'' in the proposed rule was too broad and needed further clarity and specificity. Commenters offered suggestions on how Controlling Participant should be defined. Their suggestions are as follows:

Comment: Limit and list specifically the individuals required to undergo previous participation review. Commenters stated that if HUD intends to include officers and directors, and individuals with authority to bind the entity as Controlling Participants, HUD should specify the parties required to file.

HUD Response: HUD submits that the more appropriate document for listing the entities and individuals that HUD determined are Controlling Participants is in the Processing Guide that HUD published on May 17, 2016. That list of entities that HUD determined are Controlling Participants and those that HUD determined are not Controlling Participants can be found in the Guide at 81 FR 30498. HUD reminds the public that the Processing Guide is subject to advance notice and opportunity for comment for any substantive changes.

Comment: Replace ''authority to bind'' phrase (§ 200.216(b)). Commenters objected to proposed § 200.216(b) inclusion of individuals with the ''ability to bind'' such entity with respect to Triggering Events. Other commenters suggested replacing this phrase with the phrase ''ability to direct the entity in entering into agreements.''

HUD response: HUD has revised this provision with the commenters' suggested language.

Comment: Define ''Influence.'' Commenters stated that § 200.216(c)(2) introduces the new concept of ''influence'' but HUD has not previously defined or given any direction on what this term means. The commenters requested that HUD define or remove this term. Another commenter suggested using the language ''the ability to direct day-to-day operations or policy of a Covered Project.''

HUD Response: HUD has revised § 200.216(c)(2) to be consistent with the terminology used elsewhere in the rule. HUD has also revised § 200.216(b) to focus on those with control over ''day-to-day operations.''

Comment: How many ''tiers'' are included? Commenters asked how many ''tiers'' within a given entity may be deemed to include ''Controlling Participants.''

HUD Response: HUD is interested in reviewing the previous participation of the entities and individuals in control of a project, no matter how many ''tiers'' of entities are structured in between. HUD expects Controlling Participants to include at least one natural person. However, HUD is not interested in receiving superfluous filings of several tiers of shell entities in an entity's organizational structure. Shell entities that do not exercise control are excluded from filing requirements. This difference is reflected in the regulations and further clarified in the Processing Guide.

Comment: Do not define control as a percentage of ownership. Commenters stated that the language in § 2001.216(c)(2) meant to allow for exclusions limiting the scope of the review is undermined by the language defining ''control'' in § 2001.216(b) as a certain percentage of ownership. Commenter suggested revisions to this section to separate the exclusion language and eliminate the reference to percentage ownership.

HUD Response: HUD agrees in part and has revised this language. HUD has revised this language so that percentage ownership does not ''define'' control. Because other commenters have asked for greater clarity, HUD has retained the 25 percent ownership as an indicator of control. Participants should expect to undergo previous participation review if they own 25 percent of a Specified Capacity or a Controlling Participant. However, HUD has further revised this section to limit this 25 percent threshold by inserting the phrase ''unless otherwise determined by HUD.'' In other words, although having a 25 percent interest creates a presumption that a person or entity exercises control, HUD may make a determination otherwise if given other evidence indicating that the person or entity that owns the 25 percent share does not actually exercise control. The Processing Guide provides further clarity on this matter. This is now consistent with the limitation in the revised § 2001.216(c)(2), excluding entities and individuals not exercising control.

Comment: Percentage of ownership is an outdated way to determine ownership. Similar to the immediately preceding comment, a commenter stated that the concept of 25 percent or more ownership is an outdated notion of how modern organizations are structured and controlled. The commenters stated that investor entities have no rights to current control of entities, despite owning a majority of the interests. The commenters stated that HUD's focus should be not on who owns how much, but ultimately on who controls what (financially or operationally).

HUD Response: HUD agrees in part with the commenters. As HUD noted above, HUD has revised the regulations to separate percentage interest from the definition of control. However, except

in the case of tax credit and other passive investors, HUD notes that in the majority of organizational structures, ownership of 25 percent or more of the ownership interests is a good indicator of control. Therefore, in response to other comments seeking greater clarity, HUD has retained this indicator but revised the language to indicate that HUD may make a determination that the person or entity does not exercise control, if there is a basis for such determination. Further, HUD notes that tax credit and passive investors are specifically excluded from review.

Comment: Exemption of PHA from definition of Controlling Participant is not appropriate. A commenter stated that the exclusion of PHAs in § 200.216(c)(4) is overly broad.

HUD Response: PHAs are public entities that are overseen by HUD. HUD has determined that HUD has other methods of monitoring PHAs and that previous participation review in unnecessary given HUD's other oversight over PHAs.

Comment: Specify Controlling Participants for nonprofit entities, real estate investment trusts (REITs) and public companies. Commenters stated that the regulations should specifically identify who is subject to previous participation review for nonprofit corporations, REITs, and public companies. The commenters stated that there can be significant differences in how ''control'' is held in each of these types of corporations, and that these differences have been the subject of much confusion over the years, by HUD staff and industry members alike. Another commenter stated that § 200.216(a)(7), which speaks to hospital Boards of Directors, leaves unclear how HUD intends to treat Boards of Directors in the non-hospital context, as the proposed rule is silent on this matter.

HUD Response: With respect to hospitals under the Section 242 program, it is reasonable for the regulations to specifically address members of the hospital's board of directors because it is the typical structure for projects in the hospital program to have a nonprofit board of directors in a way that is not true for the variable organizational possibilities in other programs. However, HUD agrees with the commenters that confusion has arisen in recent years with regard to nonprofit entities, REITs and public companies. HUD agrees that the reference to hospital nonprofit entities without clarifying the approach for other nonprofit organizations may increase this confusion.

In response to these comments, HUD has revised the language to clarify that unless members of a nonprofit board of directors are exercising day-to-day control over a Specified Capacity or a Covered Project, they need not submit for previous participation review. HUD does not believe the same clarity can be achieved through regulation with respect to REITs or public companies, nor does HUD believe that any regulation can keep pace with the ever-changing corporate organizational conventions. Therefore, HUD clarifies in the Processing Guide the requirements for REITs and public companies. The Processing Guide allows HUD to adhere to the concept expressed in the regulations that those individuals and entities that exercise control over a Specified Capacity and Covered Project are subject to previous participation review.

Comment: Explicitly exclude certain entities. Commenters stated that the following should be explicitly excluded from review:

- Any passive investor (*e.g.,* limited partner), regardless of whether the funding involves tax credits, provided that the entity is not on the General Service Administration's (GSA) most recently published list of parties debarred, suspended or disqualified by federal agencies (the ''GSA List'');
- Any publicly-traded corporation, REIT, or other entity that is listed on any exchange regularly reported in the Wall Street Journal, provided that such entity is not on the GSA List; and
- Any entity subject to regulatory oversight by the Securities Exchange Commission (SEC), the Federal Trade Commission (FTC), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC) and/or the Federal Reserve Board (FRB), provided that such entity is not on the GSA List.
- Directors of nonprofit boards, including PHA boards, who have no day-to-day responsibility or authority. Commenters stated that PHA and nonprofit boards typically consist of volunteers, and for PHAs, often at least one public housing resident.

HUD Response: These concerns have already been largely addressed by HUD's exclusion of passive investors, publicly traded companies and nonprofit entities. Although HUD does not believe that its previous participation regulations should categorically exclude entities overseen by other Federal regulatory entities (whose oversight may not adequately account for HUD programs and whose standards for oversight may change), HUD is nevertheless open to further considering (on a case-by-case basis, or perhaps in future issuances on the previous participation review process) that the review sought by the regulations is achieved through the oversight conducted by these other entities.

Comment: Require an entity's attorneys to certify as to who the controlling participants of the entity are. A commenter suggested that in order to increase the efficiency and accuracy of HUD's determination as to the individual who exercises operational or financial control over an entity, HUD should require the entity's attorneys to certify as to who such individuals are.

HUD Response: Although HUD does not believe that this process is appropriate for regulation and HUD is not imposing this requirement at this time, an attorney certification may be a valuable tool for determining control and HUD is open to further discussions and consideration on this topic in the future.

Comment: Suggestions for limited liability companies (LLCs), limited partnerships (LPs), nonprofit entities, REITs and management companies. Commenters made several suggestions regarding LLCs, LPs, nonprofit entities, REITs and management companies that to some extent overlap with and to some extent vary from the comments summarized above. A commenter asserted that variations from standard ownership structures rarely occur and that the following individuals be identified for review: Managing members of LLCs and the person with controlling stock in the LLC; the person with control of 51 percent or more general partner of a LP; the person who controls 51 percent or more of the parent entity of a REIT or the person who voted in public filings; and the individual or entity owning 51 percent or more of the management company. The commenter stated that nonprofit entities will likely ''follow the same rules as LLCs or general partnerships,'' but does not explain what this means or how to apply the rules for LLCs or general partnerships to a nonprofit corporation (that does not typically have owners, majority members or partners).

HUD Response: HUD appreciates the suggestions and the Processing Guide addresses these concerns. This comment also illustrates the difficulty that HUD faces with leaving only to regulations to address a changing lending market, and changing structures of lending/financial institutions. Although most organizational structures may align along certain conventions, variations are not infrequent. HUD needs regulations that are sufficiently flexible to be used in all scenarios—or at least all but those very few worthy of a waiver. This is not

only impossible but, in fact, probable that if HUD sets up overly detailed regulations based on contemporary organizational structures, corporate practice will be able to easily side-step the rule. To illustrate, consider that no person owns 51 percent or more of a company and two business partners each owns 49 percent of a company and a third owns 2 percent. The question therefore arises as to whether no partner should be identified for previous participation review. HUD believes that the commenter does not mean to suggest that no one controls an entity if they do not own 51 percent of that entity. Indeed, the 25 percent ownership, long-established as a threshold for control for HUD's purposes, has been side-stepped on a number of occasions by complicated organizational structures that appear to limit any individual's control to 24 percent or less or obscure related interests. It is exactly for this reason that HUD believes the best place for this level of detail is in the Processing Guide, rather than in the regulations themselves, and again HUD reminds its prospective participants that the Guide will be subject to advance notice and public comment if substantive changes are made.

Comment: Clarify how HUD will determine control of finances or operational decisions. Commenters stated that in § 200.216(b), HUD did not clarify how it would determine whether an individual participating actually controls the financing or operational decisions of the participant. Another commenter stated that proposed § 200.216(a)(7) does not clarify how HUD proposes to determine whether the hospital Board of Directors and its executive management have control over the finances or operation of a Covered Project.

HUD Response: The Processing Guide addresses the commenters' concerns. Again, HUD anticipates that as corporate conventions evolve, who controls an organization may change. HUD does not seek to lock onto the corporate structures of today but rather establish a framework under which those who control a Covered Project receive adequate review.

Comment: Remove reference to general contractor. Commenters stated that, in § 200.216(a)(6), reference to management agents and general contractors lacks clarity.

HUD Response: The Processing Guide elaborates on these terms.

Comment: Provide Controlling Participant opportunity to appeal any adverse decision against the Controlling Participant: Commenters stated that the final rule should allow the Controlling Participant an opportunity to appear in person before the committee/officer to present its documents/arguments. Another commenter stated that it is essential that Controlling Participants have a right to appeal, and that HUD should inform the applicant of how to appeal in its notice informing the participant of the disapproved, limited or conditional approval. The commenter stated that the notice should include procedures for the appeal, identify to whom the appeal should be directed, and specify the information to submit with the appeal. The commenter further stated that HUD should also be required to acknowledge the appeal and make a determination within 30 days of receipt, which is the same timeframe to file an appeal provided for the Controlling Participant.

HUD Response: HUD does not believe an in-person appearance is necessary. Given the changing nature of the workplace and increasing technology, HUD submits that it is not necessary for everyone providing input on a reconsideration of a determination to be physically in the same room. In addition, just as the changing nature of corporate structures may affect who a Controlling Participant is under future corporate conventions, it is not clear that one structure for seeking reconsideration of a HUD determination will be appropriate in perpetuity. As HUD offices and positions change, the person/persons responsible for reconsideration requests may also change. HUD agrees with the commenters that an opportunity for reconsideration is essential and has structured the final rule accordingly. The final regulations make clear that applicants will be given advance written notice of the reconsideration and an opportunity to submit supporting materials. This means that the matter will not be reconsidered prior to the date provided so that any arguments and materials provided by the participant can be considered. In response to these and similar comments, the final rule specifies that notice of reconsideration shall provide at least 7-days advance notice, which is meant to provide a meaningful opportunity for the submitter to provide supporting materials. HUD has also included in the Processing Guide that HUD will send the required notice of reconsideration no later than 30 days after receipt of the request for reconsideration.

Triggering Events (§ 200.218)

Comment: Avoid duplication of review. A commenter stated that in § 200.218(f), HUD provides only one opportunity to avoid duplication of review, under ‘‘sale of a HUD Held Mortgage’’ but urged HUD to consider other circumstances under which HUD might avoid duplicative review. The commenter stated that the industry feels there is significant duplicative review for ‘‘well-known established institutional entity already familiar to HUD.’’ Identifying additional opportunities to avoid duplicative review would alleviate burden for industry partners and HUD staff alike.

HUD Response: HUD believes that the exclusion of non-controlling members and the other exclusions set forth in the Processing Guide help to reduce duplication of review. HUD is interested in continuing conversations with the industry to identify additional ways to reduce duplication and welcomes additional suggestions.

Comment: Do not make 2530 process applicable to note sale bidder. A commenter stated that § 200.218(e) makes the 2530 process applicable to a mortgage note sale bidder. The commenter stated that such entities are looking to purchase the note/operate the project outside of the HUD system and HUD risk factors in that instance appear to be irrelevant where HUD will no longer have involvement with the note or the asset. The commenter stated that in the event there may occur something like a housing assistance payment (HAP) assignment down the road, the clearance for that purpose can be handled at that time.

HUD Response: HUD agrees in part and has revised § 200.218 in response to this comment. HUD notes that note sale bidders and bidders in foreclosure sales have been and will continue to be vetted by HUD. However, note sale bidders have not been required to complete a full-previous participation submission as part of this vetting. In contrast, bidders at foreclosure sales or other forms of property disposition are often required to operate the projects with continued use restrictions administered by the Office of Housing and thus in many instances have been required to undergo previous participation review. Due in part to the variable circumstances surrounding such sales, and because the statutory and regulatory authorities governing note sales and property dispositions provide broad discretion for HUD to set the requirements for such sales, the requirements are set forth in instructions commonly referred to as the ‘‘Bidder Qualification Statement’’ or ‘‘bid kit.’’ HUD has revised the regulations to clarify that the requirements for note sales and property dispositions continue to remain governed by their program

requirements, including without limitation the requirements set forth in the Bidder Qualification Statement or other instructions. These documents may require some vetting of previous participation of applicants, but depending on the individual circumstances and the time pressures associated with such sales, the Bidder Qualification Statement or other instructions may dictate modifications to the process, including for example, a shortening of the period to request a reconsideration. The final regulations continue to allow HUD to require through the note sale and foreclosure sale bidder qualification requirements, appropriate vetting of bidders in accordance with the relevant statutory and regulatory authorities.

Comment: Limit application of funds to those administered by the Office of Housing. A commenter suggested limiting the language in § 200.218(b) relating to ''[a]n application for funds provided by HUD, such as but not limited to supplemental loans or flexible subsidy loans'' to such funds providing pursuant to a program administered by HUD's Office of Housing. Another commenter similarly suggested limiting this triggering event to an application for funds in HUD multifamily programs.

HUD Response: It is HUD's intention to limit these regulations to those programs administered by HUD's Office of Housing, and this final rule reflects this limitation.

Previous Participation Review (§ 200.220)

Comment: Clarify scope of review. Commenters stated that HUD's proposed rule indicates that the FHA Commissioner's previous participation review ''shall include previous financial and operational performance in federal programs that may indicate a financial or operating risk . . .;'' and that the Commissioner ''shall consider financial stability; previous performance in accordance with [HUD requirements]; general business practices and other factors . . . .'' The commenters stated that if HUD is truly committed to ensuring that the 2530 process does not become even more burdensome and overly inclusive the 2530 review should be limited to evaluating the Controlling Participant's performance as it relates solely to the information required on the 2530 form for the Controlling Participant's Covered Projects.

HUD Response: HUD agrees in part and the definition of risk that has been added at this final rule stage addresses these comments. However, regardless of the regulations, HUD is limited to collecting the information for which it has PRA approval. If HUD wishes to change the form 2530 or ask for additional information, it must complete the PRA process, including the requirement for public comment, for a new form.

Comment: Provide standards for disapproval. A commenter stated that the scope of review needs some specific details/clarification and that HUD should consider addressing standards for disapproval.

HUD Response: The standards for disapproval remain the same as they have always been: An unacceptable risk to HUD. In response to this comment and similar other comments, HUD has revised the language in § 200.220 and separated out a more focused definition of risk to clarify the scope of review.

Comment: Distinguish between prior ownership and current ownership. Commenters stated that organizations that purchase distressed HUD properties for the purpose of stabilizing and improving them have periodically gotten hung up by flags that relate to the actions and omissions of prior owners from whom the properties were purchased. Commenters stated that HUD needs to improve its systems for recognizing and distinguishing between issues related to prior ownership and issues of current owners.

HUD Response: HUD appreciates this comment and the commenter's raising awareness on this issue. In response to these comments and comments received on the Processing Guide, the Processing Guide has been revised to elaborate on these issues. HUD continues to work on standardizing asset management practice and improving all aspects of the previous participation review. HUD acknowledges that there has been inconsistency and unintended consequences in the past. However, flags are issued to ownership entities, not to properties. Flags are not to be issued to new owners for violations of a prior owner. If this has happened, it is in error and the owner should contact the appropriate HUD office to resolve the flag.

Comment: Define general business practices and other factors. A commenter stated that proposed § 200.220(a)(1) states that the Commissioner's review shall consider undefined ''general business practices and other factors'' in determining whether a Controlling Participant is expected to operate a Covered Project in a manner consistent with HUD's purposes. The commenter stated that this term needs to be defined.

HUD Response: As provided in response to similar comments, the final rule includes a more focused definition of risk and has eliminated this ''general business practices'' language. Further, HUD reiterates that any information HUD collects in connection with the previous participation review is subject to the PRA and the PRA process, giving the public an opportunity for comment.

Comment: Identify risk factors and define impermissible risk. A commenter stated that current regulations include a section titled ''Content of Certifications'' which indicates a portion of the risk elements that HUD will review, but that the proposed rule does not include this detail and is relatively silent on the exact nature of HUD's expectations regarding what constitutes Impermissible Risk.

HUD Response: HUD's more focused definition of risk addresses the commenter's concern.

Comment: Have the review include reviews of credit history. Commenters stated that the proposed rule would have authorized HUD to take into account ''mortgage defaults, assignments, or foreclosures'' [not limited to HUD direct loans or FHA-insured loans] and ''instances of noncompliance with the regulations, programmatic or contractual requirements of HUD.'' The commenters stated that recently some of its members have observed sales of HUD-assisted properties at prices that are above their own estimates of long-term economic viability, sometimes to investors with little experience in real estate or assisted property management, and that some of these same properties subsequently are found out of programmatic compliance due to insufficient funding for rehabilitation, maintenance, or deposits to replacement reserves. The commenters stated while they do not support deeper review of proposed transaction terms, they urge that HUD conduct consistent reviews on credit history and past programmatic compliance (when available) to better guard against purchasers with a record of default or failure to meet rehabilitation and maintenance requirements (if HUD is not otherwise conducting a Transfer of Physical Assets (TPA), assignment of the HAP contract, or other review).

HUD Response: These previous performance regulations address the disclosure of deficiencies in past performance; they are not the vehicle for highlighting the absence of sufficient relevant experience. Disclosure of overall experience and capacity is addressed in other elements of applications related to a particular triggering event. HUD continues to make improvements in its various application

processes, and welcomes suggestions for further improvements in that respect.

Comment: Clarify ''extent requested by HUD.'' A commenter stated that the language in § 200.220(a)(3) ''to the extent requested by HUD'' is too broad and open-ended. HUD needs to clarify their requirements.

HUD Response: ''To the extent requested by HUD'' refers to the information requested on PRA-authorized forms, such as the Form 2530.

Comment: Clarify meaning of ''limit'' or ''otherwise condition'' approval. Commenters stated that in § 200.220(b)(1) HUD must clarify what it means to ''limit'' or ''otherwise condition'' approval for the Controlling Participant to continue to participate in a Covered Project. The commenters stated that such limits and/or conditional approvals should specify the time limits associated with each alternative. The commenters stated that in § 200.220(d)(1) HUD should define what it means to ''condition'' or ''limit'' approval and also specify the time period for such actions. The commenters stated that such time periods should be reasonably related to the rationale for such a determination, and clearly articulated by HUD.

HUD Response: The concept of conditional or limited approval is an accommodation on HUD's part to provide a middle ground between disapproval and approval. Whereas current practice withholds approval until all ''flags'' are lifted, conditional approval is intended to clarify the path forward. HUD's intention is to provide the conditions necessary for approval in such circumstances. The regulations cannot contemplate all potential scenarios for limited or conditional approval. The revised Processing Guide elaborates on this concept.

Comment: Provide timing for identification of a Controlling Participant when a Triggering Event occurs. Commenters stated that where proposed § 200.220(a)(3) requires that an applicant in connection with a Triggering Event ''shall identify the Controlling Participants,'' HUD should provide greater clarity regarding the timing of HUD's determination and the basis for that determination. The commenters stated that it would be more efficient and provide greater predictability for applicants if HUD would clearly identify who, at a minimum, are the ''Controlling Participants'' of a project, such as the general partner of a limited partnership and the managing member and managers of a limited liability company.

HUD Response: The Processing Guide addresses the commenters' concerns.

Comment: Specify time for HUD to conclude previous participation review, and provide notification of conclusion of review. Commenters stated that at proposed § 200.220(b)(2) HUD does not specify the timeframe in which HUD shall provide notice of a previous participation determination. The commenters stated that HUD should provide such notice within 14 calendar days of reaching such a determination. The commenters further stated that the proposed rule does not specify which other parties, aside from the FHA-approved lender in the transaction, may receive notice of a previous participation determination from HUD. The commenters stated that presumably only those parties actually involved in the transaction at issue should be notified, and, if this is correct, HUD should clarify this in its rule. The commenters further stated that HUD should be mindful of concerns about privacy and disclosure of trade secrets as well as releases of information that may be pre-decisional and prejudicial, particularly because HUD's determination may not necessarily be based on a complete record if the Controlling Participant has yet to appeal HUD's decision and present additional evidence and HUD has not adequately weighed such additional material.

HUD Response: HUD is not aware of problems in providing notification to parties after a determination has been made and believes current practice is providing timely notice. However, it is difficult to determine how long it will take HUD to make a determination in any particular transaction because the facts of each transaction, and therefore the review necessary, vary so widely. HUD is mindful of privacy and other concerns and continues to be held bound by such limitations on its authority and practice. Except to the extent that HUD is an agency of the Federal government and individuals' expectations for privacy are limited among Federal government actors once information is disclosed to the federal government, HUD does not foresee sharing information on determinations with parties not involved with a transaction or their agents.

Comment: Clarify what is meant by ''any federal program.'' Commenters stated that the reference to ''any federal program'' should be clarified because it is unclear which programs HUD intends to cover. Commenters stated that currently, there is much confusion regarding HOME Investment Partnerships (HOME) program, the Community Development Block Grant (CDBG) program, LIHTC and other programs that may be essentially a pass-thru of Federal funds via a State or local jurisdiction. The commenters asked whether it is HUD's intent to review these properties as part of previous participation review and, if not, a clarification needs to be included.

A commenter stated that the reference to ''federal programs'' in the second sentence of § 200.220(a)(1) should be limited to the programs administered by HUD's Multifamily Housing Office.

Another commenter stated that while previous performance in Federal programs is relevant for determination of risk, the proposed language allows for too detailed a review for the purposes of the regulations. The commenter specifically stated the language includes financial and operational performance in non-federal environments and general business practices. The commenter stated that § 200.220(a) should be changed as follows: ''The Commissioner's review of a Controlling Participant's previous participation shall include previous financial and operational performance in federal programs that may indicate a financial or operating risk in approving the Controlling Participant's participation in the subject Triggering Event. The Commissioner's review shall consider previous performance in accordance with HUD statutes, regulations and program requirements; and other factors that indicate that the Controlling Participant could not be expected to operate the project in a manner consistent with furthering the HUD's purposes.

HUD Response: All HUD and other Federal funding come from a single source—the taxpayer. To the extent HUD has the capacity and capability of ascertaining and reviewing an applicant's previous stewardship of any Federal funds, HUD intends to do so. However, HUD is limited in two important ways: (1) Such capabilities are currently limited; and (2) any additional information that HUD wishes to collect from applicants or other filers must complete the PRA process.

Comment: Clarify what it means to be ''restricted from doing business.'' Commenters stated that in § 200.220(c)(2)(i) HUD should clarify what it means to be ''restricted'' from doing business with any other department or agency of the federal government, because this term is undefined and could conceivably capture relatively minor limitations on a Controlling Participant's activities. The commenter stated that this ambiguous basis for disapproval also fails to consider the nexus between the

restriction and the relevant HUD programs.

HUD Response: HUD agrees and the final rule reflects this change.

Comment: Clarify what is a ''record'' of ''significant risk.'' A commenter stated that in § 200.220(c)(2)(ii) HUD should clarify what constitutes a ''record'' of ''significant risk'' that would form the basis for disapproval, and that otherwise the regulation would be at risk of being found void for vagueness.

HUD Response: To address these and similar comments, HUD has included a more focused definition of risk in the final rule.

Comment: Specify time for withholding previous participation determination. Commenters stated that in § 200.220(d)(2) HUD should clarify how long it may temporarily withhold issuing a previous participation determination so as not to interfere with transactions or unnecessarily hinder the business decisions of prospective participants.

HUD Response: It is difficult to put a time limit on determinations because the facts of each transaction, and therefore the review necessary may vary so widely from one transaction to the next. HUD commits to reach a final decision as promptly as possible given the nature of the transaction and the documentation that HUD has received.

Comment: Clarify scope of expected remedial measures. A commenter stated that in § 200.220(d)(3) HUD should clarify the scope of expected remediation or remedial measures that Controlling Principals may be required to undertake. The commenter stated that the language in this section of ''to the Commissioner's satisfaction'' is incredibly vague and open-ended and must be adequately defined. The commenter stated that if this phrase is not clarified Controlling Participants will not have adequate notice of the regulatory requirements they are expected to abide by.

HUD Response: The concept of remedial measures is an accommodation on HUD's part to provide a middle ground between approval and disapproval. Any remedial measures must be targeted at reducing the risk posed by the subject Controlling Participant. The more focused definition of risk in the final rule and addresses the commenter's concern and the Processing Guide elaborates on this concept.

Comment: Limit look back at prior performance to 10 years. Commenter stated that HUD should clarify that it is only reviewing Previous Participation for the past 10 years, which is the current requirement per the HUD 2530 Form. The commenters stated that HUD has not specified how far back it will look when evaluating the previous participation record of Controlling Participants, and they stated that they saw no reason for HUD to depart from the ten (10) year period specified in the existing regulations.

HUD Response: The Processing Guide reflects that HUD is retaining the look-back period with respect to information gathering for 10 years. However, the Processing Guide notes that HUD reserves the right to review and consider a participant's previous participation in a Federal project beyond the 10-year period when determining whether to approve participation in the project associated with an application. For example, as stated in the Processing Guide, Tier 1 flags reflect such a high degree of risk that HUD reserves the right to consider those violations, in the context of the Controlling Participant's other participation, even beyond a 10-year period.

Comment: Clarify obligation of Controlling Participant to file HUD Form 2530. A commenter stated that HUD should clarify the obligation of a Controlling Participant to file the HUD form 2530 and reference the form in the regulations.

HUD Response: HUD has determined that it is inappropriate to reference a specific form in the regulations. As discussed earlier in this preamble, HUD wants to retain the flexibility to develop and authorize other forms, through the PRA process, if HUD determines another form or more tailored 2530 form is appropriate.

Comment: Rule expands not reduces scope of review. A commenter stated that § 200.220 expands HUD's ability to increase the scope of the previous participation review by determining, on an ad hoc basis, what the HUD reviewer may deem a ''significant risk'' at any particular time. The commenter stated that the proposed rule does not clarify what ''financial and operational performance'' HUD would consider ''a financial or operating risk.'' The commenter stated that in order to avoid arbitrary or capricious determinations, HUD must provide more specific guidance on what is to be reviewed and how HUD will determine what is considered a ''financial or operating risk'' or a ''significant risk.'' The commenter stated that in the preamble to the proposed rule, HUD sets forth examples of unacceptable risks, which include those currently existing in § 200.230, such as: (1) Mortgage defaults, assignments or foreclosures; (2) suspension or termination of payments under any HUD assistance contract; (3) significant work stoppages; and (4) instances of noncompliance with the regulations, programmatic or contractual requirements of HUD or a State or local government's Housing Finance Agency in connection with an insured or assisted project. The commenter asked that the examples be incorporated into the regulatory text to provide additional clarity on the types of ''significant risks'' for which HUD will be reviewing.

HUD Response: HUD has addressed these concerns by including a more focused definition of risk in the final rule.

Request for Reconsideration (§ 200.222)

Comment: Identify who serves on Review Committee. Commenter stated that the proposed rule indicates that requests for reconsideration shall come before ''. . . a review committee or reviewing officer . . . .'' Commenters stated that the final rule should identify the title(s) of the persons that may serve on the review committee or as a reviewing officer; require participation by the Deputy Assistant Secretary for Multifamily Housing (the ''DAS'') or the designee of the DAS, and expressly exclude from the committee/reviewing officer any HUD employee or official that was involved in rendering the initial disapproval or limited/conditioned approval.

HUD Response: HUD does not agree that specific titles or positions should be identified in the regulations, nor does HUD believe that reconsiderations should necessarily rise to the level of involvement by the DAS. Further, HUD does not believe that the individuals reviewing the initial applications should be wholly excluded from the reconsideration process, as they are the individuals in HUD with the greatest knowledge of the submission. However, HUD does agree that the submission should be reviewed and reconsidered by one individual. As a result, HUD has provided in the final rule that reconsideration decisions shall not be rendered by the same individual who rendered the initial decision.

Comment: Specify time frame for reconsideration review. Commenters stated that HUD should specify the timeframe in which the HUD review committee or reviewing officer shall schedule a review of any requests for reconsideration, because in the past there were no deadlines incumbent on HUD to resolve 2530 flags, which resulted in closing delays, delayed property improvements, and losses of tax credits and investment dollars in a number of cases. The commenters

recommended that HUD schedule such a review no later than 14 calendar days following receipt of a request for reconsideration.

HUD Response: As HUD noted in response to a similar comment, formalizing one reconsideration structure in perpetuity in the regulations is not a beneficial approach. However, HUD has provided in the Processing Guide that HUD will send the required notice of reconsideration no later than 30 days after receipt of the request for reconsideration.

Comment: Impose time limit on review. Commenters stated that in the interest of ensuring that decisions do not languish and resolution of open matters is achieved in a timely fashion, HUD should impose an upper time limit during which the review committee or reviewing officer may affirm, modify or reverse the initial decision. Commenters stated that a reasonable time frame would be 30 days following receipt of the Controlling Participant's submission of supplemental materials in support of reconsideration.

HUD Response: As HUD noted in response to a similar comment, it is difficult to put a time limit on reviews because information from transaction to transaction varies so widely.

B. Comments on the Supplemental Notice of Proposed Rulemaking and Processing Guide

1. General Comments

Similar to comments that commenters made on the proposed rule, commenters commended HUD for the additional changes proposed in the Supplemental Notice and Processing Guide, but recommended further changes. A few commenters sought more specificity and clarity. The signature issues raised by the commenters are as follows:

The Processing Guide provides or does not provide the specificity requested. Several commenters supported HUD's approach to supplement the updated previous participation regulations with a guidance document. A commenter stated that the Processing Guide: (i) Includes details about the 2530 process; (ii) is referenced in the regulation; and (ii) is subject to public comment for significant changes. The commenter stated that as a precedent for this approach, HUD cites regulations that require publication in the **Federal Register** and a 30-day comment period for proposed changes to multifamily mortgage insurance premiums (MIPs). The commenter stated that it is familiar with this process, as well as HUD's Multifamily Accelerated Processing (MAP) guide, which provides detailed instructions to lenders about the application, endorsement and closing processes for MAP loans. The commenter stated that, in its previous comment letter on the proposed rule, the commenter stated that it asserted that stakeholders must be able to find all 2530 policies in one place. The commenter stated that it previously commented that a reasonable person should be able to find everything they need to know about the previous participation review with minimal effort. The commenter stated that by referring to the Processing Guide in the actual regulation and including a mandatory notice and comment period for significant changes, HUD has satisfied the commenter's concerns.

In contrast to this commenter, a few commenters stated that the proposed Processing Guide needed additional detail and specificity. The commenters stated that the Processing Guide provide HUD too much discretion to identify Controlling Participants. The commenters stated that this lack of clarity adds complexity and significant time for both HUD staff and industry applicants in reviewing organization documents, evaluating the role of executive management positions and debating the issue of ''control.'' The commenters asked that HUD re-issue the proposed rule and Processing Guide for additional public comment. Another commenter similarly stated that because the proposed regulations and Processing Guide are interdependent policy documents, and HUD should re-issue the proposed rule concurrently with the Processing Guide and provide the public with an additional 60-day opportunity to comment on the complete set of policies and procedures in order to provide greater transparency and commitment to the regulatory process.

HUD Response: HUD agrees with the commenters that additional detail can be included in the Processing Guide and has revised the Processing Guide in response to the specific issues identified in the comments submitted. The remainder of this section details the specific issues raised and HUD's responses. HUD declines to reissue the rule and Processing Guide for further public comment. However, HUD does not need to issue a formal call for public comment. HUD program participants are welcome at any time to propose changes to the rule, 2530 Form, and Processing Guide that they believe will improve the previous participation process and HUD will always consider such suggestions.

Convene a meeting with industry before issuance of the final rule and Processing Guide. A commenter stated that it appreciated HUD tackling the 2530 process, but the commenter expressed concern with the discretion granted to HUD to make determinations and sought uniformity and standardization in implementing changes, especially with respect to the determination of who constitutes ''controlling participants'' and the placement and permanence of flags. The commenter urged HUD to convene a meeting as soon as possible with all interested parties to discuss concerns and further encouraged HUD to consider making additional revisions to the proposed regulations to address new concerns raised by comments to the Processing Guide. The commenter also cautioned HUD to ensure appropriate delegations of authority and coordination with the MAP Guide, RAD Notices, the APPS Guide and Closing Guide. The commenter urged HUD to consider how the revised Previous Participation policies and requirements will interact with existing HUD program requirements.

HUD Response: HUD agrees that uniformity and standardization are necessary in the implementation of these regulations and Processing Guide. To the extent such standardization can be assisted with greater clarity and specificity in the Processing Guide, HUD has attempted to revise the document accordingly. HUD has also coordinated revisions with policies in the MAP Guide and with HUD programs. HUD also agrees that implementation of the regulations and Processing Guide warrants meetings, discussions and trainings with both HUD staff and with interested outside parties. HUD notes that it has held numerous meetings over the past several years, as detailed in the Proposed Rule, seeking industry input. HUD has also participated in numerous conference panels and other discussions where industry concerns and opinions have been discussed. HUD does not believe that a meeting is necessary at this time to discuss additional comments to the regulations and Processing Guide. Interested parties have had numerous and sufficient opportunities, including through this regulatory process, to voice their concerns and explain their comments.

Appropriate comment period for changes to Processing Guide. A few commenters stated that HUD should provide a minimum period of 60 days for public comment on significant changes to the Processing Guide. Another commenter stated that it supported HUD's Processing Guide approach but that in the absence of a

definition of what constitutes a ''significant'' change, HUD should err on the side of transparency and disclosure.

HUD Response: HUD maintains the minimum comment period of 30 days as proposed in the May 17, 2016, Supplemental Notice of Proposed Rulemaking. A 30-day minimum comment period is the typical minimum comment period that HUD uses in other regulations, such as the change in premiums as provided in 24 CFR 207.254. HUD emphasizes that 30 days is the minimum period, and HUD has the discretion to increase the comment period if it determines a longer period would be beneficial.

Establish a streamlining process for higher volume participants. A commenter encouraged HUD to adopt a process that would allow a participant with a higher volume of HUD transactions and who has a strong track record of compliance and performance to submit a single annual report.

HUD Response: HUD finds this idea interesting but does not have the systems infrastructure to appropriately implement this idea at this time. Further, HUD believes the changes being made through these final regulations and Processing Guide provide a significant reduction in burden and create significant challenges in implementation independent of the additional changes the commenter requests.

Provide specific guidance on HUD responsibility for review. A commenter stated that inconsistent application and interpretation of requirements between different HUD offices in the previous participation review process has long been a concern. The commenter stated that HUD should provide detailed and specific guidance on timing and locus of responsibility for review and approval of initial applications and appeals. Another commenter urged HUD to provide contact information for the HUD staff contacts who are involved in the previous participation approval and reconsideration processes.

HUD Response: HUD agrees that standardization and uniformity are a goal in implementation. To the extent such standardization can be assisted with greater clarity and specificity in the Processing Guide, HUD has attempted to revise the document accordingly. HUD notes that the Processing Guide includes tables stating the specific roles within HUD that have the responsibility for approving participants with flags, disapproval of participants and reconsideration. The Processing Guide has also been revised to include a link to a Web site with more specific contact information. HUD also notes that the Previous Participation review is only one, limited aspect of HUD review of applicants and transactions. Previous Participation review cannot substitute for underwriting and other HUD application reviews.

Update MAP Guide. A commenter requested that the MAP Guide be updated as soon as possible after the Previous Participation final rule is issued.

HUD Response: HUD believes the MAP Guide is consistent with these final regulations and Processing Guide. If commenters know of inconsistencies, they are always welcome to bring them to HUD's attention.

Importance of training for HUD staff. A commenter stated that it recognizes that training for HUD staff on how to interpret and apply the new regulation and Processing Guide is important, and the commenter offered assistance with providing the training. The commenter stated that it appreciated the extensive work HUD has undertaken to update this regulation and some of the appropriate flexibility that is to be incorporated in HUD's administration of the previous participation review.

HUD Response: HUD fully agrees with the commenter and HUD staff will undergo training to ensure they properly implement the new regulations.

B. Specific Comments

2530 Form

Retain the current 2530 Form. A commenter stated that it understands that HUD is proposing to eliminate existing 2530 Form. The commenter urged HUD to retain the clarity and predictability that was intrinsic to the prior 2530 Form and instructions.

HUD Response: HUD did not propose and is not proposing to eliminate the 2530 Form. As HUD responded to a similar comment submitted on the proposed rule, HUD advised that, based on experience under the new regulations, HUD may propose alternative versions of the 2530 form more tailored to a specific HUD program. However, at this point in time, HUD is not proposing any alternative versions and HUD is not proposing elimination of the 2530 Form.

Exclude defaults that are beyond the participant's control. A commenter stated that the Processing Guide directs participants to disclose on Schedule A defaults in housing projects participating in other Federal, State or local government program but should recognize that lenders and other parties are often required to ''declare'' technical defaults that are quickly corrected. The commenter also suggested that HUD should exclude defaults that were beyond the participant's reasonable control.

HUD Response: HUD has revised the Processing Guide's instructions on Schedule A to indicate that only defaults declared and remaining after applicable cure periods should be disclosed. HUD has also revised the Processing Guide to include considerable guidance as to when participation should be approved despite the presence of flags and lists the default being outside the participant's control as a factor to be considered and documented.

Definitions

Support for definition of ''Risk.'' A commenter expressed support for the definition of ''risk'' and stated that, in its previous comment on the proposed rule, it requested that, ''HUD should clearly explain in the rule what constitutes acceptable and unacceptable risks to a property's finances and operations.'' The commenter stated that HUD addressed its concerns by proposing a definition of risk in the regulatory text, and listing specific types of flags in the Processing Guide.

HUD Response: HUD is gratified that it was able to address the commenter's concern.

Clarify definition of Covered Projects. Two commenters recommended that HUD revise the Processing Guide to expressly indicate whether ''Covered Projects'' include non ''Subsidized Projects'' with no HUD-insured/HUD-held loan or HUD subsidy, but with a HUD Use Agreement or similar document (*e.g.,* deed) imposing HUD use restrictions. The commenters asked, for example, whether a project subject to an Interest Reduction Payment (IRP) decoupling Use Agreement (236(e)(2) Use Agreement), but where the IRP has already been exhausted, a ''Covered Project'' subject to 2530 review. The commenters also asked whether a project subject to an Emergency Low-Income Housing Preservation Act (ELIHPA) or Low-Income Housing Preservation and Resident Homeownership Act (LIHPRHA) Use Agreement, but with no HUD insured/held loan and no remaining HUD subsidy, is a ''Covered Project.''

HUD Response: HUD has revised the Processing Guide to state more clearly that projects with Use Agreements administered by HUD's Office of Housing are Covered Projects. As such, the examples the commenter lists would be Covered Projects.

Repeat definitions in Processing Guide. A commenter stated that it would be beneficial and remove any room for uncertainty, if a definition section were added to the Processing Guide. The commenter pointed to use of the terms ''controlling stockholder'' and ''controlling shareholder'' as undefined and ambiguous. The commenter further stated that it would benefit all interested parties if there were consistency between the MAP Guide and the previous participation regulations and the Processing Guide. The commenter stated that the MAP Guide draws the line at 10 percent ownership for corporations and stockholders, but the Processing Guide is silent on it and therefore creates ambiguity.

HUD Response: HUD believes that a definition sections would be largely duplicative and might not catch all the terms the commenter is looking for. HUD agrees that use of the terms ''controlling stockholder'' and ''controlling stakeholder'' was ambiguous and that coordination with the MAP Guide would be beneficial. HUD has revised the Processing Guide accordingly.

Define ''significant changes.'' A commenter stated that the Processing Guide contains numerous references to ''significant changes,'' a term which is not defined. The commenter stated that this term is ambiguous and should be clarified in a meaningful way.

HUD Response: ''Significant changes'' is a concept often used and sufficiently clear. For example, if HUD were to change what violations result in flags, that is a significant change. If HUD were to clarify the language describing the flag, without a substantive difference in the violation that is triggering the flag, that is not a significant change. If HUD were to change a policy relating to who is considered to be a Controlling Participant, this would be a significant change. If HUD were to clarify the language describing who a Controlling Participant is, but not change whether or not such an individual or entity is considered to be a Controlling Participant, such change would not be significant. Individual determinations on specific transactions are not changes to the Processing Guide.

Definition of ''risk.'' A commenter noted that HUD stated its intention to provide a definition of ''Risk'' in 24 CFR 200.212, but HUD did not include the actual proposed regulatory definition for review or comment. With respect to the definition of ''risk,'' the commenter stated that there are no time restrictions set forth in HUD's description of what constitutes risk and no consideration of whether such risks have been mitigated.

HUD Response: With respect to the commenter's concern about the absence of proposed regulatory changes presented in a non-codified manner, it is important to note that an agency may propose regulatory text without setting out the regulatory text in the manner it would be codified provided the agency presents a sufficient description of the regulation to be issued.[8] HUD provided a sufficient description of the proposed changes. With respect to the concerns regarding the substance of what constitutes ''risk,'' in response to this comment and others, HUD has revised the Processing Guide to specify what factors shall be considered in evaluating the risks posed by flags and clarifying when it is appropriate to approve or disapprove an applicant.

Determining Who Is Subject to Previous Participation Review

HUD retains broad discretion to determine who is subject to previous participation review. A commenter stated that the proposed regulations reserve to HUD the ability to unilaterally determine who is subject to review, which creates uncertainty in the review process. The commenter stated that it supports the effort to identify and restrict the participation of individuals with a record of poor performance, but is concerned about the broad discretion for HUD to add individuals subject to previous participation review. The commenter stated that since it is difficult for HUD to clarify how or when it might determine additional individuals to be subject to review, HUD should limit the identification of additional individuals (beyond those with specified roles) to individuals for whom there is some reason to believe represent a risk to HUD programs. Another commenter stated that HUD must specify in a meaningful way how it would unilaterally ''determine'' that an individual or entity does or does not exercise financial or operational control, otherwise the lack of specificity regarding HUD's determinative process makes the regulation vulnerable to a void for vagueness claim and increases uncertainty.

HUD Response: HUD agrees in part and disagrees in part. HUD notes that the Processing Guide provides examples of every kind of entity that we can currently think of and who would be considered a Controlling Participant in such circumstance. HUD has also provided a specific list of exclusions of who HUD does not consider to be Controlling Participant. However, due to the volume of transaction that HUD oversees, it is unavoidable that HUD will not be able to list definitively every possible scenario. In fact, this is one problem with the current regulations which contemplate a number of scenarios, but not every possible scenario. For these unanticipated scenarios, HUD must be able to use discretion. Further, HUD notes that there are sometimes errors in the disclosure, whether advertent or inadvertent. Where HUD has reason to believe that an entity or individual other than those disclosed is actually exercising control over the Covered Project, HUD's oversight responsibilities require HUD to inquire about such entities and individuals. This is the essence of the regulations. It is not sufficient to structure a project in technical compliance of the anticipated scenarios that HUD lists in its guidance and shield controlling parties from appropriate review of their previous participation. Parties are unequivocally on notice—whoever actually controls a project is subject to Previous Participation Review.

However, HUD agrees great clarity where possible is beneficial. HUD has clarified in the Processing Guide that it is the lender's (in FHA-insured transactions) and applicant's responsibility the first instance to make the determination in accordance with HUD guidance of who is a Controlling Participant. HUD has also clarified that once HUD provides final approval for a Triggering Event, HUD will not re-open the question of who is a Controlling Participant. Finally, HUD has revised the Processing Guide to clarify some of the provisions that other comments indicated were ambiguous.

Commencing the Previous Participation Review Process

Incorporate guidance in the Processing Guide that instructs reviewing offices to commence previous participation with their review of the application for mortgage insurance. A commenter stated that requiring the reviewing office to initiate the previous participation review when the application is accepted will allow for any flags to be identified and mitigated simultaneously with the processing of the application for mortgage insurance.

HUD Response: HUD has revised the Processing Guide to indicate that previous participation review occur concurrent with the review of the

[8] ''[T]he agency usually publishes the regulatory text of the proposal in full. The regulatory text sets out amendments to the standing body of law in the Code of Federal Regulations. If the amendments are not set out in full text, the agency must describe the proposed action in a narrative form.'' See *https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf.*

application for mortgage insurance or other request for approval of a Triggering Event.

Defining Controlling Participant

Clarify meaning of construction manager. Three commenters stated that HUD should provide additional clarification and a definition regarding the title of construction manager.

HUD Response: As shown on the Processing Guide, ''construction manager'' is only a Controlling Participant for section 242 hospital transactions and it is a clearly known term in such transactions.

Make clear the controlling participants that have operational or policy control. Three commenters stated HUD should clarify whether the enumerated List of Controlling Participants in the Processing Guide is meant to define the participants that HUD is identifying as those HUD determines to have operational or policy control.

HUD Response: HUD has revised the text to clarify that the enumerated list are those entities and individuals considered to exercise financial or operational control in the stated circumstances.

Identify separate standards for determining Controlling Participants for public companies. A commenter stated that titles and roles of participants with control over a Covered Project can vary greatly between a publicly held company and a private company, and HUD should identify separate standards for determining Controlling Participants for publicly held companies, REITs and private corporations.

HUD Response: HUD notes that REITs are already separately listed. HUD has revised the language in the Processing Guide to be more specific and believes that for both public and private corporations, the officers and other equivalent executive management who are directly responsible to the board of directors and who have the ability to prevent or resolve violations or circumstances giving rise to flags related to the Covered Project are the appropriate submitters.

Lists of Controlling Participants

Suggested changes to List of Controlling Participants. Commenters submitted the following suggested changes to the list of Controlling Participants:

Item 2—''and other executive management'' is far too broad and supplies HUD with too much discretion. Commenters stated that Item 2 needs to be refined to drill down to only the officers/individuals with decision-making and/or financial capacity.

HUD Response: HUD has revised this item to focus on officers and other equivalent executive management who are directly responsible to the board of directors and who have the ability to prevent or resolve violations or circumstances giving rise to flags related to the Covered Project.

Item 7—Executive Director of a nonprofit sponsor. HUD needs to specifically define when a Sponsor comes into play and when it does not.

HUD Response: HUD has deleted the word ''Sponsor.'' The Controlling Participant of a non-profit is the Executive Director or equivalent position.

Item 10—There is no definition supplied for Controlling Stockholder, and the industry should have the right to comment on such definition, as it relates directly to principals and reporting disclosure. One of the commenters stated that HUD needs to define or clarify that it adheres to the MAP Guide.

HUD Response: HUD has clarified this item.

Item 14—This language is way too broad. If an entity is an ''excluded entity'', by definition it is not considered a Controlling Participant, so its officers, directors, or executive management team should be excluded as well (unless there is an indication of interest (IOI) with other identified Participants or the combined financial percent exceeds other stated requirements.)

HUD Response: HUD has revised this section to provide greater clarity.

Address inconsistency in Processing Guide on the applicable ownership percentage. A commenter stated that there appears to be some conflicting guidance between these two items, which span the ''List of Controlling Participants'' section (item 1) and the ''List of Exclusions'' section (item 7). The commenter stated that Item 1 appears to be implying that the applicable ownership percentage is to be calculated based upon that entity's or individual's effective ownership in the Specified Capacity whereas item 7 implies that the applicable ownership is based on the actual ownership on an entity by entity basis.

HUD Response: HUD has revised the text to clarify this discrepancy.

Provide notification when additions are made to list of controlling participants. Two commenters stated that portions of the Processing Guide indicate that any person or entity ''determined by HUD to exercise day-to-day control over a Specified Capacity'' is a Controlling Participant. The commenters stated that if HUD intends to reserve the right to expand the list, we recommend that HUD identify (a) how/when the proposed participant will receive notice of any additional parties that must be included as Controlling Participants, and (b) what standards HUD will apply for such purpose.

HUD Response: HUD has added additional specificity to this provision.

Supplement the list of controlling participants with examples. A commenter expressed support for HUD's efforts to streamline and clarify the previous participation process by limiting 2530 approval requirements to those who have day-to-day financial or operational control of properties. The commenter stated that it was especially pleased that tax credit investors and passive participants are excluded from requirements to seek approval. The commenter recommended that HUD provide additional guidance, and perhaps a few examples, to determine which for-profit and nonprofit board members must seek approval.

HUD Response: HUD has clarified the language regarding for-profit board of directors. Members of a non-profit's board of directors do not need to file.

Protect innocent fee managers from punitive measures. A commenter stated that it recognized HUD's interest in having management agents file for 2530 approval, but that it remained concerned that the Processing Guide offers no safe harbor to protect innocent, unrelated, third-party fee managers from being flagged or otherwise penalized for owners' decisions outside of their control. The commenter stated that provided such managers did not participate in health or safety violations or financial impropriety, these fee managers can only affect the property operations to the extent the owner permits funds to be released. The commenter urged HUD to shield innocent fee managers who acted in good faith from punitive measures, so that capable managers are not discouraged from taking over troubled properties.

HUD Response: HUD notes that property managers do sometimes contribute to the violations relating to a covered project. However, HUD has revised the Processing Guide to indicate more clearly that HUD will not flag Controlling Participants who did not contribute to or fail to prevent, when in a position to do so, the violation giving rise to the flag.

Clarify whether ''ability to bind'' will remain in the final rule. A commenter asked whether ''ability to bind'' will remain as a threshold in the final rule.

HUD Response: A similar comment was submitted and HUD retains the concept but revises the language in the final rule to state the ''ability to direct the entity in entering into agreements.''

List of Exclusions From Controlling Participants

Suggested changes to List of Exclusions. Commenters submitted the following suggested changes to the list of exclusions:

Item 5 –HUD should not require ''all of the officers of the entity to certify as to who have significant or insignificant involvement . . .''

HUD Response: HUD agrees that it may not be practical to have all officers certify and has revised the Processing Guide to provide an alternate standard.

Item 7—The language ''less than 25 percent interest in an entity should be excluded'' should be changed to read ''less than 25 percent interest in a Specified Capacity should be excluded'' to conform with Item 1 under List of Controlling Participants.

HUD Response: HUD agrees that the two items should be consistent but has revised Item 1 under the List of Controlling Participants to conform with this item.

Item 10—HUD has not clearly identified how they are determining who has financial or operational control. The commenters stated that this must be addressed under the List of Controlling Participants.

HUD Response: HUD has clarified the language in the List of Controlling Participants to be more specific.

Clarify why HUD used different definitions of Controlling Participant in the proposed rule and in the proposed Processing Guide. A commenter asked why HUD used different definitions of a ''Controlling Participant'' in the proposed regulations and the Processing Guide. The commenter asked whether these definitions could be made consistent. The commenter stated that alternatively, the definition and concept of a ''Specified Capacity'' could be added to the proposed regulations.

HUD Response: HUD has added the concept of ''Specified Capacity'' to the regulations and has made all definitions more consistent.

Clarify distinction between shell-entity and wholly-owned entity. A commenter noted that the list of exclusions includes wholly-owned entities and shell entities, but noted that they are the same.

HUD Response: HUD agrees that many wholly-owned entities are shell entities, but shell entities are not necessarily wholly-owned entities. HUD includes both listings for completeness and believes this listing will provide greater clarity.

Describe how HUD determines whether an identity of interest or other conflict of interest exists. A commenter stated that HUD should define in a meaningful way how it would unilaterally determine whether an identity of interest or conflict of interest exists.

HUD Response: HUD has corrected the typo in this section. HUD notes that this item clearly states that the program requirements, which have extensive identity of interest provisions, govern. It is only in the instances when the program in question fails to include identity of interest provisions would HUD need to make a determination on this issue.

The 25 percent ownership presents a complicated method of inclusion or exclusion. A commenter stated that some of HUD's exclusions are very helpful (including tax credit investors, passive participants, minor officers, members of a board), but that others are complicated—such as the less than 25 percent ownership interest, particularly having to aggregate your percentage with others with whom you have an identity of interest or conflict of interest.

HUD Response: HUD thanks the commenter for the support. If the commenter has a simpler suggestion to replace the 25 percent ownership interest concept that adequately protects HUD's interest, HUD encourages the commenter to make a suggestion.

Organizational Chart

Suggested Changes to Organizational Chart. Commenters submitted the following suggested changes to the organizational chart:

Item 2—The commenters stated that it takes great exception to the requirement for provision of an Organization Chart that requires the disclosure of ''all participants''. The commenters stated that shareholders, members and limited partners with no operational or policy control and/or those with minimum financial interest should not be required. The commenters stated that the required Organization Chart should be limited to Controlling Participants, and pass-through entities and shell entities that culminate in revealing a Controlling Participant. The commenters stated that Passive Participants and other excluded parties should not be required on the Organization Chart.

HUD Response: HUD notes that organizational charts are already required with the applications for Triggering Events. Further, HUD notes that the purpose of the organizational chart is to help HUD confirm that the appropriate individuals and entities are identified as Controlling Participants and they cannot serve this purpose if they only disclose those individuals already disclosed. However, HUD agrees that in some instances the identification of each ownership interest may be overly burdensome and has revised this requirement accordingly.

Item 6—Individuals and entities that are not Controlling Participants should not be reviewed for limited denial of participation (LDP). The commenters stated that if there is no ability to control, this is not relative to assessing risk.

HUD Response: HUD agrees and has removed this requirement.

Item 7—If a Director is not considered to be a Controlling Participant then the Director should not be required to be listed on the Organization Chart. The commenters stated that this is specifically onerous for REITs or publicly held companies or any organization with a large investment pool, but is also an unnecessary burden for private corporations and nonprofit entities.

HUD Response: HUD has revised the requirements for entities in which the requirement may be overly burdensome.

The requirement for an organizational chart for all parties in all roles regardless of ownership percentages and decision-making capacities is onerous and prohibitive to the intent and spirit of the original rule. A commenter made a similar comment to that made by other commenters about the organizational charts, and largely focused on burden. The commenter stated that lenders go through significant due diligence during underwriting to determine the true and correct ownership structure(s), and they do this through reviewing ownership agreements, partnership documents, organizational charts and discussions with the borrower and their attorney.

HUD Response: If the applicant is already gathering the information needed for other portions of an application, it is difficult to understand why submitting this information into the APPS system for the purpose of previous participation review would be onerous. Further, as stated above, the purpose of the organizational chart is to make sure that the individuals and entities identified as Controlling Participants make sense. Finally, HUD has revised these provisions to clarify HUD's intent and reduce the burden where appropriate.

Eliminate all references to ''all officers.'' A commenter suggested that HUD eliminate reference to ''all officers'' of a corporation throughout the

Processing Guide and limit previous participation review and approval to only those officers who are in an executive managerial position and exercise financial or operational control over the borrower, owner, etc.

HUD Response: HUD has revised this provision to exclude the officers of wholly owned entities, tax credit investors and other investors that are not exercising day-to-day control, which HUD believes addresses the majority of situations that the commenter is referring to. HUD has further revised this section to indicate that HUD may accept an organizational chart without a full listing of an entity's Board of Directors if HUD determines that such a listing would be unduly burdensome.

Establish one clear criterion for determining when an officer must obtain previous participation approval. A commenter stated it would be more efficient and provide greater predictability for applicants if HUD establishes one clear objective criterion for determining whether an officer must obtain previous participation approval.

HUD Response: HUD has clarified this requirement.

The chart is helpful in demonstrating financial and operational control. A commenter stated that the chart is very helpful in demonstrating who has financial and/or operational control over the property.

HUD Response: HUD agrees.

It is unclear if HUD has authority to review any information requested by HUD regarding widely held interests without regard to the connection to the Covered Project. A commenter stated that it is unclear whether HUD possesses the authority to review ''all participants'' beyond those defined as principals or Controlling Participants. The commenter stated that it is unclear if HUD has the authority to review ''any information requested by HUD'' regarding widely held interests without regard to the connection to the Covered Project.

HUD Response: HUD does not propose reviewing the previous participation of entities or individuals who are not Controlling Participants. HUD does not propose examining information that is unrelated to a Covered Project. The information provided through the organizational chart is meant to confirm the information presented to HUD identifying who the Controlling Participants are—how can HUD know if applicants are submitting the entities in control unless the full organizational structure is disclosed? That being said, HUD has revised this section to eliminate undue burden and clarify these requirements.

Filing the Previous Participation Certification

Provide a separate section in the Processing Guide for Participant Disclosure. A commenter stated that it appreciated the detail and attention that HUD has put into this section of the proposed Processing Guide, as these elements will be most helpful for applicants, but that the commenter felt strongly that a separate section in the Processing Guide titled ''Participation Disclosure'' should be included, immediately following the section on Organization Charts and before the section on Filing of Previous Participation Certification. The commenter stated that traditionally, the detail on which projects must be included as previous participation has been cause for much confusion by applicants. The commenter stated that it greatly appreciated the new detail and clarity on previous participation found in the proposed Processing Guide, but this detail is buried in the instructions to the paper forms. The commenter stated that it assumes that HUD intends this to apply to all filing methods, not just the paper HUD 2530, and as such, this should receive separate treatment in the Processing Guide under a separate section header.

HUD Response: This has been clarified in Section C in the Processing Guide.

Clarify the required certifications. A commenter stated that the current previous participation regulations include a section titled Content of Certifications. The commenter stated that neither the proposed rule nor the proposed Processing Guide identify the specific nature of the certifications that will be part of a previous participation submission.

HUD Response: The certifications are stated on the form 2530. As HUD has indicated, HUD is not changing the certifications to the 2530 at this time. If HUD were to do so, it would put the form through the PRA process, including the necessary notice and comment period.

Support for HUD's provisions. A commenter expressed its support for HUD's provisions that allow participants to utilize either the electronic APPS or a paper alternative (currently known as the Form HUD–2530). The commenter expresses support that HUD only requires participants to list all projects that they have participated in over the previous 10-year period. The commenter noted that HUD reserves the right to review and consider a Participant's previous participation in a Federal project beyond the 10-year period when determining whether to approve participation in the project associated with an application. The commenter stated that in its previous comments on the proposed rule, it recommended limiting the timeframe covered in the review to a 10-year look-back period, consistent with instructions of the current Form HUD–2530.

HUD Response: HUD appreciates the support.

Explain why HUD may review a participant's previous participation beyond the 10-year period. A commenter stated that HUD should meaningfully clarify the reasoning behind its reservation of rights to review and consider participant's previous participation in a federal project beyond the 10-year certification period.

HUD Response: Only Tier 1 flags, which are permanent flags, would survive beyond the 10-year period. HUD believes these violations are so severe that they warrant permanent documentation in the record. However, HUD has clarified how HUD will evaluate the risk presented by these flags and when it is appropriate to approve a participant with these flags.

Approval of Participants

Clarify whether approval of participant is prohibited by any flag (i.e. historical flag) or only an active flag. A commenter stated that the opening paragraph of this section indicates that HUD intends to provide approval of a submission if applicants do not have flags and are able to make all the certifications. The commenter stated that HUD should clarify whether this applies to any historical flags or only to active flags.

HUD Response: Only active flags require review. However, HUD notes that an underlying issue may be ''resolved'' but the flag may be ''active'' until the time period indicated in the Processing Guide expires. Tier 1 flags remain active permanently. Tier 2 flags remain active until the time periods specified expire.

Require HUD to provide a participant with written approval or denial. Two commenters stated that the Processing Guide identifies the circumstances under which a 2530 submission will be approved. The commenters recommended that the Processing Guide also require HUD to, within 30 days of its receipt of the submission, provide the proposed Participant with (a) written evidence of HUD's approval or denial of the submission (and the justification for any denial), or (b) a

written statement identifying what additional information, if any, is required for HUD to complete its consideration of the submission.

HUD Response: HUD does not agree with the specific suggestions made by the commenter but agrees that greater detail regarding notice and documentation is needed and has revised the Processing Guide accordingly.

Provide notification of the duration of 2530 clearance. Two commenters recommended revising the Processing Guide to indicate how long a Controlling Participant's 2530 clearance remains in effect—and what procedures, if any, a Participant can follow to extend the effective period of the clearance without making a whole new submission.

HUD Response: HUD believes the charts indicating the duration of the flags address the commenters concerns.

Clarify approval of participants as it relates to various HUD offices. A commenter stated that it would be beneficial for HUD to include guidance in this section on the processing responsibilities of the approval process as it relates to Satellite Offices, Hub Offices and Headquarters.

HUD Response: HUD has provided a web address linking to the additional contact information requested.

Clarify how quickly HUD will issue approval. A commenter stated HUD should clarify how quickly it will issue approvals. The commenter suggested that HUD should commit to approving such submissions within 14 days of receipt. The commenter further stated that the fourth bullet point of this section should clarify how far back in time HUD will retain and judge participants' flag history. The commenter stated that as currently worded, it appears HUD may hold and consider such flag history indefinitely.

HUD Response: HUD cannot commit to a response within 14 days. Only Tier 1 flags are permanent. The charts detailing the flags specifically list the duration of the flags.

Clarify what it means to limit or otherwise condition approval of the Controlling Participant to continue to participate in the Triggering Event. A commenter stated that HUD must clarify what it means to ''limit'' or ''otherwise condition'' approval for the Controlling Participant to continue to participate in the Triggering Event.

HUD Response: HUD has revised these provisions to provide greater clarity and specificity.

Clarify how a participant presents a significant risk to HUD. A commenter stated that HUD should clarify in a meaningful way how it determines that a participant presents a ''significant risk'' to HUD and also define what remedies and/or mitigation of outstanding violations will satisfy the criteria ''to the FHA Commissioner's satisfaction''.

HUD Response: HUD has added considerable detail to clarify what factors must be considered in evaluating the risks identified by flags.

Flags

Comments on flags: A commenter provided the following comments on flags:

Who to flag. Specifically stipulate that participants who are not Controlling Participants should not be flagged.

HUD Response: HUD has added greater detail on who should and should not be flagged.

Tier 1—The commenter stated that it takes exception with the notion of permanent flags outlined in the proposed Processing Guide. The commenter stated that HUD appears to advocate that individuals cannot rehabilitate and that one instance of past behavior is a permanent indicator of all future actions.

HUD Response: HUD believes that the violations resulting in Tier 1 flags are so serious that they warrant permanent consideration. However, HUD has added greater clarity regarding what factors to consider in evaluating this risk and has specified when it may be appropriate to approve a participant with a Tier 1 flag.

Tier 2—The commenter stated that in all instances where the reason includes the qualifier ''repeated'', HUD should clearly identify if the intent is concurrent repeated acts or a certain number within a given time frame.

HUD Response: HUD has clarified the definition of ''Repeated'' in the text immediately above that chart.

Tier 3—Unacceptable Physical Condition—The commenter stated that this does not match the current policy in place at REAC. REAC should be prepared to issue a revised policy concurrent with the release of this proposed Processing Guide.

HUD Response: The Processing Guide is the revised policy.

Subject of flags must address HUD's failure to abide by its own contractual, statutory or regulatory requirements. A commenter stated that no allowances are made for events of non-compliance that may be due to HUD failure to abide by its own contractual, statutory or regulatory requirements. The commenter stated that, for example, late payments of funds owed by HUD that result in late payment of loans should not be penalized and no flags should be placed. The commenter stated that similarly, flags for unsatisfactory management reviews should be removed because of HUD's failure or inability to conduct or contract for management reviews within a 12-month period of the last unsatisfactory review due to conditions that are outside of the control of program participants.

HUD Response: The Processing Guide was updated to address situations outside of the controlling participant's control. In addition, HUD has clarified situations where projects can be approved despite a Tier 3 flag.

Define ''minor infractions'' and clarify that flags may not be used to induce certain action. A commenter stated that in addition to the prohibition that flags shall not be placed for ''minor infractions,'' which should be defined, HUD should clarify that likewise flags may not be used by HUD punitively to induce a participant to undertake a desired action or to punish a participant for action(s) HUD deems undesirable.

HUD Response: The Processing Guide has been revised in accordance with this comment. The Processing Guide sets forth reasons that flags may be placed: Punishment or inducement to take action are not among them. One example of a ''minor infraction'' would be a situation where a new participant to HUD accidentally took unauthorized distributions, but immediately repaid them upon realizing the mistake.

Define ''Repeated Offense.'' A commenter stated that HUD should define a ''Repeated Offense'' to be three or more occurrences within the most recent five (5) year period, otherwise participants' distant past would cloud perceptions of recent performance, and recent performance arguably should be the most relevant criteria and of most interest to HUD.

HUD Response: HUD agrees that a time period should be specified here. The Processing Guide has been clarified to provide for a seven (7) year period.

No flag should be permanent. A commenter stated that HUD should recognize that in many instances, a default occurs due to circumstances beyond the Participant's reasonable control. The commenter recommended that HUD expressly indicate that the imposition of any flag shall be based on the particular facts and circumstances relating to the subject project. The commenter stated, that for example, if a participant is able to demonstrate that a loan default occurred due to a downturn in the local market, and the participant undertook reasonable efforts to cure the default (*e.g.,* seeking to increase occupancy and/or revenues, seeking to

reduce expenses), the participant should not have a ''permanent flag'' or, for that matter, any Tier 2 or Tier 3 flag on its record. This commenter and two other commenters recommended that no flag should be ''permanent.''

HUD Response: The Processing Guide has been updated to reflect situations outside of a participant's control. HUD does want to maintain permanent flags on the Tier 1 events due to their severity but has clarified when approval is appropriate, even if a Tier 1 flag exists.

Expressly state that passive investors are not subject to 2530 flags. Two commenters stated that HUD should revise the Processing Guide to expressly indicate that investors/syndicators/passive investors who do not exercise day-to-day control should not be subject to 2530 flags based on the actions/inactions of other persons/entities.

HUD Response: The Processing Guide addresses this in exclusions three and four.

Enter Tier 1, 2, or 3 flags for only Controlling Participants that participate during the violation. Three commenters stated that HUD should indicate that flags will only be entered against Controlling Participants that exercise day-to-day control over the operations of the Covered Project during the period the default actually occurred and a proposed incoming participant will not be flagged based on a violation occurring prior to the participant's participation in the Covered Project.

HUD Response: The Processing Guide has been updated to reflect this.

Eliminate automatic flag triggers. A commenter urged HUD to eliminate ''automatic'' flag triggers, such as those generated by a change in ownership that do not necessarily represent additional risk to HUD but inevitably create additional reporting burdens for owners.

Another commenter urged HUD to refrain from placing automatic system flags. The commenter stated that APPS generates unnecessary automatic flags, which the participant must then go to the trouble of having them removed. The commenter stated, for example, one member reported multiple problems with automatic flags after properties are refinanced and sold to a newly created entity. The commenter stated that according to one of its members, the participant cannot file financial statements into HUD's Financial Assessment Subsystem—Multifamily Housing (FASSUB) until an audit template is ready in the Integrated Real Estate Management System (iREMS).

HUD Response: The only automatic flag is for Failure to File Financial Statements. HUD staff has readily available access to determine whether the financial statements have been filed and can easily remove flags once the financial statements are filed in HUD's system. Refinement of this process is outside the scope of the regulation. HUD will continue to review this system and determine whether additional changes would be feasible. HUD will explore alternative solutions to make sure AFS filings after ownership transfers happen in a timely manner, such as staff training and adding the item to the checklist of standard work on ownership transfers.

Expressly indicate that the imposition of any flag shall be based on the particular facts and circumstances relating to the subject project. Two commenters stated that HUD should recognize that in many instances, a default occurs due to circumstances beyond the participant's reasonable control. The commenters recommended that HUD expressly indicate that the imposition of any flag shall be based on the particular facts and circumstances relating to the subject project, stating, for example, if a participant is able to demonstrate that a loan default occurred due to a downturn in the local market, or the occurrence of an uninsured or underinsured natural disaster (such as an earthquake) and the participant undertook reasonable efforts to cure the default (*e.g.,* seeking to increase occupancy and/or revenues, seeking to reduce expenses), the Participant should not have a flag on its record.

HUD Response: The Processing Guide has been updated to address this.

Reconcile duration of Tier 1 flags with duration of 10-year look-back. A commenter urged HUD to reconcile the duration of these flags with the 10-year look back period. In other words, Tier I flags should not remain on a participant's record longer than 10 years.

HUD Response: While a participant is not required to report participation beyond the 10-year period, HUD believes that Tier 1 violations are severe enough to warrant a permanent record. In response to concerns raised in the comments, HUD has clarified the factors that should be considered when evaluating Tier 1 flags and has explicitly provided for circumstances under which participants with Tier 1 flags may be approved.

Reduce duration of Tier 2 flags from 5 years to 3 years. A commenter urged HUD to reduce the timeframe for retaining Tier 2 flags from 5 years to 3 years, provided the cause of the flag is corrected. The commenter stated that it believes 3 years provides sufficient time for HUD to determine whether the problem that led to the flag has been addressed.

Two commenters similarly urged HUD to modify the inflexibility of the duration of Tier 2 Flags. The commenters stated that resolution of flags is an important tool for HUD when negotiating settlement of disputes between owners and HUD, which will be lost if HUD cannot settle a matter and lift a Tier 2 Flag. The commenters stated, for example, assertion of audit findings by the Office of Inspector General, or by FASS may be contested by the Owner, but will nevertheless result in a Tier 2 Flag. The commenters stated that in order to resolve the audit findings, without resorting to litigation by HUD or the Owner, HUD should be free to resolve the Flag issue and remove the flag, without waiting out the five-year period.

HUD Response: HUD does not believe that three years is a sufficient amount of time to indicate a complete resolution of the risk. The Processing Guide has been revised to provide explicitly considerations to evaluate whether approval is warranted despite the presence of flags.

Tier 3 flags should be removed when the underlying reason for the flag is cured or 3 years after placement, whichever is sooner. A commenter stated that a number of Tier 3 flags will be considered repeat violations and may occur over a period of years. The commenter strongly urged HUD to develop safeguards for innocent owners and third party management agents who take over troubled properties. The commenter stated that, as HUD is aware, it will take time to put the necessary resources, personnel and procedures in place to turn around such properties. The commenter stated that it serves the public interest to have the most capable owners and agents rise to meet these challenges, but in the absence of a safe harbor which protects the new owners and managers from being flagged as a result of their predecessors' decisions, high-performing ownership and management teams may be deterred from assuming responsibility associated with these projects. The commenter requested that HUD add written safe-harbor policies to protect innocent owners and managers from flags as they are turning around troubled properties. Another commenter similarly stated that Tier 3 flags should be removed when the unauthorized distribution is repaid ''or is otherwise resolved'', because not all alleged unauthorized distributions are indeed unauthorized payments and may be resolved via means other than repayment.

HUD Response: The Processing Guide has been revised in accordance with this comment.

An appropriate time frame for a Tier 3 flag is one year. A commenter stated that the maximum time frame that Tier 3 flags should remain active is one year.

HUD Response: HUD disagrees. Flags are a reflection of non-compliance with HUD obligations, which is considered serious. The Processing Guide has been updated to provide additional guidance for situations in which Controlling Participants can be approved despite a flag.

Disconnect between REAC policy and unacceptable physical condition for Tier 3. Two commenters stated that the unacceptable physical condition for Tier 3 does not match the current policy in place at REAC. The commenters asked whether REAC would issue a revised policy concurrent with the release of this Processing Guide. Another commenter stated that placement of flags for unacceptable physical conditions departs from current policy guidance, which requires consecutive below-60 scores before flags are placed. The commenter stated that a look back period of 5 years is unduly harsh for conditions posing a temporary risk to the department, and that a two- or three-year period would be more appropriate.

HUD Response: HUD takes REAC scores very seriously. The Processing Guide is an update to HUD's policy and future notices; guidance issued by REAC will follow. The Processing Guide has been revised to clarify that participants will be approved despite having initially scored between 30–59 at a property, on the condition they perform a 100 percent unit inspection and complete necessary repairs within 60 days. A subsequent score below 60 within the 5-year time period will merit a flag.

Incorporate a routine process to release flags without the participant's request. A commenter stated that HUD has incorporated guidance on its protocol for placing flags on participants which is helpful, particularly with regard to the tiers and weighting of certain flags, but the commenter asked HUD to be cautious in adding many automatic flags on participants. The commenter also asked whether HUD could incorporate a routine process to release flags without the participant's request. The commenter stated that this would be particularly helpful at the Tier 3 level when events known to HUD occur and trigger a flag through no fault of the borrower. The commenter stated, for example, when Section 8 PBRA payments have not been distributed as scheduled, it could potentially cause a borrower to miss mortgage payments.

HUD Response: While this is beyond the scope of the regulations or Processing Guide, HUD is working on a process to standardize the removal of flags, which process should not be predicated on a request from the Participant.

Inability to see "critical findings" and the need for easier method for program participant to accept certain findings. A commenter stated that, in the APPS system, the owner/agent can see flags, but not "critical findings." The commenter recommended that HUD develop an easier method than program participants having to "Accept" every management and occupancy review (MOR) and REAC finding, specifically having to "Accept" them on each entity. It is repetitive and unnecessary to "Accept" each finding on the ownership entity, the management entity, and each corporate officer's entity. The commenter reiterated that it seems like there should be an easier method.

HUD Response: The commenter is confused; "critical findings" in the APPS system mean that there are flags on the record. The system processing of "accepting" reviews is outside the scope of this final rule, but HUD will look into the feasibility of updating the system to simplify the submission process.

Chart on Approval of Participants With Flags

Include in the chart links to relevant HUD staff. A commenter stated that while HUD's chart is helpful, further clarification is needed. The commenter stated that the chart uses HUD staff titles that correspond with the ongoing Multifamily for Tomorrow Transformation Initiative, but participants may or may not yet be familiar with this structure. The commenter recommended including links to contact information for each official noted, stating, for example, that HUD should include links and/or additional charts that list each branch chief, production division director and asset management division director within the new multifamily field office structure.

HUD Response: HUD agrees that additional information would be helpful and will provide such information on its Web site. The Processing Guide has been revised to reflect this additional resource.

Rejection of Participants

Support for notification requirement. A commenter stated that it strongly supported HUD's proposal that HUD staff will notify the participant, or lender, if applicable, in advance of the recommended decision. The commenter stated that this notification will allow an opportunity for the participant to provide additional arguments for HUD's consideration to preserve processing efficiency and cut down on requests for reconsideration. Two other commenters recommended that the Processing Guide also indicate that HUD will identify in writing to the proposed participant, in reasonable detail: (a) The anticipated basis for the denial, and (b) what information, if any, is needed to resolve HUD's concerns. Another commenter stated that HUD should specify how much advance notice participants and lenders shall receive before a recommendation for rejection is proposed. The commenter stated that meaningful notice periods must be provided for due process purposes.

HUD Response: The Processing Guide has been revised in accordance with this comment. HUD believes that it is quite strongly in compliance with any due process considerations.

Reconsideration of a Rejection

Stipulate that the HUD individual making the appeal decision is not the same HUD individual who initially rejected the Participant's appeal. A commenter expressed support that participants have the right to request reconsideration of HUD's decisions to reject participants. The commenter requested that the Processing Guide stipulate the individual (*i.e.,* HUD staff) making the decision on the appeal must not be the same person who initially rejected the participant. The commenter stated that the contact information for the Director or Delegate should be provided.

HUD Response: The Processing Guide has been revised in accordance with this comment.

VI. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order 13563 also directs that, where

relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined not to be a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, nor was it found to be an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order.

This rule responds to the direction of Executive Order 13563 to reduce burden. As discussed in this preamble, HUD stakeholders have long complained about the previous participation process, and HUD has offered measures over the past to improve this process. However, these measures were not successful in providing a significant overhaul of the previous participation review process sufficient to remedy the common complaints. HUD believes that this final rule and accompanying Processing Guide strikes the appropriate balance between allowing HUD to effectively assess the suitability of applicants to participate in HUD's multifamily housing and healthcare programs, while interjecting sufficient flexibility into the process in order to remove a one-size-fits-all review process. Such a balance best allows HUD to make determinations of suitability in order to accurately access risk.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.

As has been discussed in this preamble, this rule streamlines HUD's previous participation review process, responding to longstanding complaints by HUD participants that this is an overly burdensome process. The changes made by this final rule allow HUD to better consider the differences of any applicant and tailor requested information to that applicant, including whether the applicant is a small entity. For these reasons, HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempts state law within the meaning of the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned the following OMB control numbers—2502–0118 and 2502–0605

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs-housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, for the reasons stated in the preamble above, and in accordance with HUD's authority under 42 U.S.C. 3535(d), HUD amends 24 CFR part 200 as follows

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z-21; 42 U.S.C. 3535(d).

■ 2. Revise subpart H to read as follows:

Subpart H—Participation and Compliance Requirements

Sec.
200.210 Policy.
200.212 Definitions.
200.214 Covered Projects.
200.216 Controlling Participants.
200.218 Triggering Events.
200.220 Previous Participation review.
200.222 Request for reconsideration.

Subpart H—Participation and Compliance Requirements

§ 200.210 Policy.

(a) *Regulations.* It is HUD's policy that, in accordance with the intent of the National Housing Act (12 U.S.C. 1701 *et seq.*), and with other applicable federal statutes, participants in HUD's housing and healthcare programs be responsible individuals and organizations who will honor their legal, financial and contractual obligations. Accordingly, as provided in this subpart, HUD will review the prior participation of Controlling Participants, as defined in § 200.212 and § 200.216, as a prerequisite to participation in HUD's multifamily housing and healthcare programs listed in § 200.214.

(b) *Processing Guide.* The regulations in this subpart are supplemented by the Processing Guide for Previous Participation Reviews of Prospective Multifamily Housing and Healthcare Programs' Participants (Guide), which is found on HUD's Web site at *www.hud.gov.* This Guide elaborates on the basic procedures involved in the previous participation review process. For any significant changes made to this Guide, HUD will provide advance notice and the opportunity to comment, providing a comment period of no less than 30 days.

§ 200. 212 Definitions.

As used in this subpart:

Commissioner means the Assistant Secretary for Housing-Federal Housing Commissioner, or the Commissioner's delegates and designees.

Controlling Participant means an individual or entity serving in a capacity for a Covered Project that makes the individual or entity subject to Previous Participation review under this

subpart, as further described in § 200.216.

Covered Project means a project in which the participation of a Controlling Participant is conditioned on Previous Participation review under this subpart, as further described in § 200.214.

Previous Participation means a Controlling Participant's previous participation in Covered Projects, and, if applicable, other federal, state and local housing programs, in accordance with the definition of Risk.

Risk. In order to determine whether a Controlling Participant's participation in a project would constitute an unacceptable risk, the Commissioner must determine whether the Controlling Participant could be expected to participate in the Covered Project in a manner consistent with furthering the Department's purposes. The Commissioner's review of Previous Participation shall consider compliance with applicable statutes, regulations and program requirements. The Commissioner must consider the Controlling Participant's previous financial and operational performance in Covered Projects that may indicate a financial or operating risk in approving the Controlling Participant's participation in the subject Triggering Event. At the Commissioner's discretion, as necessary to determine financial or operating risk and to the extent the Commissioner determines such information to be reliably available, the Commissioner may consider the Controlling Participant's participation and performance in any federal, state or local government program. The Commissioner may exclude any Previous Participation the Commissioner determines to be of limited value, unreliable or irrelevant in evaluating risk and/or any Previous Participation in which the Controlling Participant did not exercise, actually or constructively, control. Any information collection in connection with review of Previous Participation must follow all applicable requirements for information collection.

Triggering Event means an occurrence in connection with a Covered Project that subjects a Controlling Participant to Previous Participation review under this subpart, as further described in § 200.218.

§ 200.214 Covered Projects.

The following types of multifamily and healthcare projects are Covered Projects subject to the requirements of this subpart, provided however that single family projects are excluded from the definition of Covered Projects:

(a) *FHA insured projects.* A project financed or which is proposed to be financed with a mortgage insured under the National Housing Act, a project subject to a mortgage held by the Secretary under the National Housing Act, or a project acquired by the Secretary under the National Housing Act.

(b) *Housing for the elderly or persons with disabilities.* Housing for the elderly financed or to be financed with direct loans or capital advances under section 202 of the Housing Act of 1959, as amended; and housing for persons with disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act.

(c) *Risk Share projects.* A project that is insured under section 542(b) or 542(c) of the Housing and Community Development Act of 1992(12 U.S.C. 17107 note).

(d) *Projects subject to continuing HUD requirements.* A project that is subject to a use agreement or any other affordability restrictions pursuant to a program administered by HUD's Office of Housing.

(e) *Subsidized Projects.* Any project in which 20 percent or more of the units now receive or will receive a subsidy in the form of:

(1) Interest reduction payments under section 236 of the National Housing Act (12 U.S.C. 1715z–1);

(2) Rental Assistance Payments under section 236 of the National Housing Act (12 U.S.C. 1715z–1);

(3) Rent Supplement payments under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); or

(4) Project-based housing assistance payment contracts under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) administered by HUD's Office of Housing.

§ 200. 216 Controlling Participants.

(a) *Definition.* Controlling Participants are those entities and individuals (i) serving as a Specified Capacity with respect to a Covered Project and (ii) the entities and individuals in control of the Specified Capacities. Each of the following capacities for a Covered Project is a ''Specified Capacity:''

(1) An owner of a Covered Project;

(2) A borrower of a loan financing a Covered Project;

(3) A management agent;

(4) An operator (in connection with healthcare projects insured under the following section of the National Housing Act: Section 232 (12 U.S.C. 1715w) and section 242 (12 U.S.C. 1715z–7));

(5) A master tenant (in connection with any multifamily housing project insured under the National Housing Act (12 U.S.C. 1701 *et seq.*) and in connection with certain healthcare projects insured under sections 232 or section 242 of the National Housing Act);

(6) A general contractor; and

(7) In connection with a hospital project insured under section 242 of the National Housing Act (12 U.S.C. 1715z–7), a construction manager;

(b) *Control of entities.* To the extent any Specified Capacity listed in paragraph (a) of this section is an entity, any individual(s) or entities determined by HUD to control the financial or operational decisions of such Specified Capacity shall also be considered Controlling Participants. Without limiting the foregoing and unless otherwise determined by HUD, the following individuals or entities shall be considered Controlling Participants:

(1) Individuals or entities with the ability to direct the day-to-day operations of a Specified Capacity or a Covered Project;

(2) Individuals or entities that own at least 25 percent of an entity that is a Specified Capacity;

(3) Individuals or entities with the ability to direct the entity to enter into agreements relating to the Triggering Event that necessitates review of Previous Participation, including without limitation individuals or entities that own at least 25 percent of entities determined to control an entity that is a Specified Capacity; and

(4) In connection with a hospital project insured under section 242 of the National Housing Act (12 U.S.C. 1715z–7), members of a hospital Board of Directors (or similar body) and executive management (such as the Chief Executive Officer and Chief Financial Officer) that HUD determines to have control over the finances or operation of a Covered Project.

(c) *Exclusions from definition.* The following individuals or entities are not Controlling Participants for purposes of this subpart:

(1) Passive investors and investor entities with limited liability in Covered Projects benefiting from tax credits, including but not limited to low-income housing tax credits pursuant to section 42 of title 26 of the United States Code, whether such investors are syndicators, direct investors or investors in such syndicators and/or investors;

(2) Individuals or entities that do not exercise financial or operational control over the Covered Project, a Specified Capacity or another Controlling Participant;

(3) Unless determined by HUD to exercise day-to-day control over the

operations or finances of a Specified Capacity or Covered Project, board members of a non-profit corporation who are not officers or otherwise part of the executive management teams of the non-profit;

(4) Mortgagees acting in their capacity as such; and

(5) Public housing agencies (PHAs).

§ 200.218 Triggering Events.

(a) Each of the following is a Triggering Event that may subject a Controlling Participant to Previous Participation review under § 200.220:

(1) An application for FHA mortgage insurance;

(2) An application for funds provided by HUD pursuant to a program administered by HUD's Office of Housing, such as but not limited to supplemental loans;

(3) A request to change any Controlling Participant for which HUD consent is required with respect to a Covered Project; or

(4) A request for consent to an assignment of a housing assistance payment contract under section 8 of the United States Housing Act of 1937 or of another contract pursuant to which a Controlling Participant will receive funds in connection with a Covered Project.

(b) The Commissioner may also require a review of a potential owner's Previous Participation in connection with a loan sale or other form of property disposition, including foreclosure sale. Notwithstanding anything contained in the regulations in this subpart to the contrary, any such review shall be in accordance with the terms, conditions, provisions and other requirements set forth by the Commissioner in connection with such loan sale or property disposition which may differ, in whole or in part, from the regulations in this subpart.

§ 200.220 Previous Participation review.

(a) *Scope of review.* (1) Upon the occurrence of a Triggering Event, as provided in § 200.218, the Commissioner shall review the Previous Participation of the relevant Controlling Participants in considering whether to approve the participation of the Controlling Participants in connection with the Triggering Event in accordance with the definition of Risk in § 200.212.

(2) The Commissioner will not review Previous Participation for interests acquired by inheritance or by court decree.

(3) In connection with the submittal of an application for any Triggering Event, applicants shall identify the Controlling Participants and, to the extent requested by HUD, make available to HUD the Controlling Participant's Previous Participation in Covered Projects.

(b) *Results of review.* (1) Based upon the review under paragraph (a) of this section, the Commissioner will approve, disapprove, limit, or otherwise condition the continued participation of the Controlling Participant in the Triggering Event, in accordance with paragraphs (c) and (d) of this section.

(2) The Commissioner shall provide notice of the determination to the Controlling Participant including the reasons for disapproval or limitation. The Commissioner may provide notice of the determination to other parties as well, such the FHA-approved lender in the transaction.

(c) *Basis for disapproval.* (1) The Commissioner must disapprove a Controlling Participant if the Commissioner determines that the Controlling Participant is suspended, debarred or subject to other restriction pursuant to 2 CFR part 180 or 2 CFR part 2424;

(2) The Commissioner may disapprove a Controlling Participant if the Commissioner determines:

(i) The Controlling Participant is materially restricted, including voluntarily, from doing business with HUD (other than the restrictions listed in paragraph (c)(1) of this section) or any other governmental department or agency if the Commissioner determines that such restriction demonstrates a significant risk to proceeding with the Triggering Event; or

(ii) The Controlling Participant's record of Previous Participation reveals significant risk to proceeding with the Triggering Event.

(d) *Alternatives to disapproval.* In lieu of disapproval, the Commissioner may:

(1) Condition or limit the Controlling Participant's participation;

(2) Temporarily withhold issuing a determination in order to gather more necessary information; or

(3) Require the Controlling Participant to remedy or mitigate outstanding violations of HUD requirements to the Commissioner's satisfaction in order to participate in the Triggering Event.

§ 200.222 Request for reconsideration.

(a) Where participation in a Triggering Event has been disapproved, otherwise limited or conditioned because of Previous Participation review, the Controlling Participant may request reconsideration of such determination by a review committee or reviewing officer as established by the Commissioner. Reconsideration decisions shall not be rendered by the same individual who rendered the initial review.

(b) The Controlling Participant shall submit requests for such reconsideration in writing within 30 days of receipt of the Commissioner's notice of the determination under § 200.220.

(c) The review committee or reviewing officer shall schedule a review of such requests for reconsideration. The Controlling Participant shall be provided written notification of such a review; such notice shall provide at least 7 business days advanced notice of the reconsideration. The Controlling Participant shall be provided the opportunity to submit such supporting materials as the Controlling Participant desires or as the review committee or reviewing officer requests.

(d) Before making its decision, the review committee or reviewing officer will analyze the reasons for the decision(s) for which reconsideration is being requested, as well as the documents and arguments presented by the Controlling Participant. The review committee or reviewing officer may affirm, modify, or reverse the initial decision. Upon making its decision, the review committee or reviewing officer will provide written notice of its determination to the Controlling Participant setting forth the reasons for the determination(s).

Dated: October 4, 2016.

Edward L. Golding,

Principal Deputy Assistant Secretary for Housing.

Approved: October 5, 2016.

Nani A. Coloretti,

Deputy Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Processing Guide for Previous Participation Reviews of Prospective Multifamily Housing and Healthcare Programs' Participants

Purpose

This Processing Guide (Guide) supplements HUD's Previous Participation Review regulations in 24 CFR part 200, subpart H. The Guide defines Controlling Participants for previous participation review, new flag approval, and rejection guidance and flag protocols in federal programs of certain participants seeking to take part in multifamily housing and healthcare programs administered by HUD's Office of Housing. The Guide aids in clarifying and simplifying the process by which HUD reviews previous participation of participants that have decision making authority over their projects as one component of HUD's responsibility to assess financial and operational risk to projects in these programs.

Pursuant to 24 CFR part 200, subpart H, HUD will not make substantial changes to this Guide without providing a 30-day notice and an opportunity to comment to the public. However, HUD notes that many titles of HUD officials and other contact information are noted in this Guide for many purposes. By way of illustration and not limitation, HUD may update any reference to titles, email addresses, Web sites or other information regarding HUD officials in this Guide (whether such update is necessary because of changes to titles, responsibilities, personnel, reorganization or for any other reason) without providing notice and an opportunity for comment. HUD may make other non-substantial changes made to this Guide without notice and comment.

This Guide updates and clarifies previous procedures and supersedes outstanding policy and guidance concerning previous participation review found in previous Housing notices and in the following: Multifamily Accelerated Processing (MAP) Guide Handbook 4430.G, Multifamily Asset Management and Project Servicing Handbook 4350.1, Healthcare Mortgage Insurance Program Handbook 4232.1, and Mortgage Insurance for Hospitals 4615.1. HUD will incorporate elements of this Guide into these handbooks. In addition, the Guide supersedes the Previous Participation (HUD–2530) Handbook 4065.1.

Applicability of the Previous Participation Review

This Guide applies to Covered Projects administered by the Office of Multifamily Housing and the Office of Healthcare Programs, as listed in HUD's regulations in 24 CFR part 200 subpart H:

a. *FHA-Insured Projects.* A project financed or proposed to be financed with a mortgage insured under the National Housing Act, a project subject to a mortgage held by the Secretary under the National Housing Act, or a project acquired by the Secretary under the National Housing Act; these may include projects that are insured under the following sections of the National Housing Act: Sections 213, 220, 221(d)(3), 221(d)(4), 223(a)(7), 223(d), 223(e), 207/223(f), 232/223(f), 242/223(f), 231, 232, 232(i), 236, 241(a), 241(f) or 242;

b. *Housing for the elderly or persons with disabilities.* Non-insured projects that include Section 202 Direct Loans or Section 202 or Section 811 Capital Advances;

c. *Risk-share projects.* Projects that are insured under sections 542(b) or 542(c) of the Housing and Community Development Act of 1992;

d. *Projects subject to continuing HUD requirements:* Projects subject to a use agreement or any other affordability restrictions pursuant to a program administered by HUD's Office of Housing; and

e. *Subsidized Projects.* Projects in which 20 percent or more of the units now receive or will receive a subsidy in the form of:

- Interest reduction payments under section 236 of the National Housing Act (12 U.S.C. 1715z–1);
- Rental Assistance Payments under section 236 of the National Housing Act (12 U.S.C. 1715z–1);
- Rent Supplement payments under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); or
- Project-based rental assistance pursuant to housing assistance payment contracts under Section 8 of the Housing Act of 1937. This includes projects converting to PBRA assistance pursuant to the Rental Assistance Demonstration (RAD). This does not include project-based assistance provided under the Housing Choice Voucher program administered by HUD's Office of Public and Indian Housing or project-based assistance provided under the McKinney Act, administered by HUD's Office of Community Planning and Development.

For the Sections 223(a)(7), 223(f), 241(a), 232(i) and 223(d) programs Controlling Participants are only subject to Previous Participation review if they were not previously approved to participate in that project (provided they have not changed roles in the project without prior approval).

Change in Controlling Participants

To the extent the program requirements (including without limitation any contractual documents) governing a Covered Project require HUD consent for a change in a Specified Capacity or other Controlling Participant, consent to such change is subject to Previous Participation review.

Waiver Authority

Program offices may waive any portion of this Guide that is not a regulatory requirement, subject to an appropriate justification, as required by HUD for all waivers. HUD expects waivers to be rare and in response to unique circumstances meeting the intent of HUD's Previous Participation review regulations.

Program Requirements

The sections below outline who is subject to a Previous Participation review; the submission requirements and review procedures; considerations for approval and rejection; and the participant flagging process.

A. Controlling Participants for Previous Participation Review Purposes

Submittal of Controlling Participants. Previous Participation review is required for Controlling Participants. In connection with each Triggering Event, Lenders in insured projects and entities serving in the Specified Capacities listed below in non-insured projects shall provide to HUD a list of all Controlling Participants. As stated throughout this Guide, HUD makes the ultimate determination of who is deemed to be a Controlling Participant. In reviewing the information submitted or if circumstances change prior to final HUD approval of a Triggering Event, HUD may determine that other individuals or entities are Controlling Participants necessary to review. However, HUD providing final approval of a Triggering Event confirms that all Controlling Participants with respect to that Triggering Event have been properly identified to HUD's satisfaction. Unless HUD discovers that individuals or entities have not been properly disclosed in accordance with the organizational chart requirements listed in this Processing Guide, HUD shall not change a determination of whether or not an individual or entity is a Controlling Participant after providing final approval for a Triggering Event.

Controlling Participants are those entities and individuals (i) serving as a Specified Capacity with respect to a Covered Project and (ii) the entities and individuals in control of the Specified Capacities. At least one natural person must be identified as a Controlling Participant for each Specified Capacity. The chart below shows the Specified Capacities for the listed programs.

SPECIFIED CAPACITIES

	Multifamily Housing	Office of Residential Care Facilities	Office of Hospital Facilities
Borrower or Owner	X	X	X
Management Agent	X	X	X
Operator		X	X
General Contractor	X	X	X
Construction Manager			X
Master Tenant/Landlord		X	X

Controlling Participants. The entities serving as a Specified Capacity are Controlling Participants of the Covered Project for the programs listed. In addition, the individuals and entities determined by HUD to exercise financial or operational

control over these entities are also Controlling Participants. Controlling Participants require Previous Participation review and must complete Previous Participation review submissions. Any individual or entity who exercises financial or operational control of a Specified Capacity is considered to be a Controlling Participant and required to complete a Previous Participation review submission, unless excluded below. Controlling Participants include both entities and natural persons. If a Controlling Participant is an entity, the submission must include the people who exercise the day-to-day financial or operational control for that entity. Notwithstanding the foregoing or anything else in this Guide, if HUD determines that an individual or entity does not actually exercise financial or operational control of a Covered Project or Specified Capacity, such individual or entity shall not be considered a Controlling Participant.

List of Controlling Participants: For purposes of Previous Participation review, unless excluded below or otherwise determined by HUD not to be a Controlling Participant, the following shall be considered to exercise financial or operational control over the listed entities and shall be considered Controlling Participants:

1. Entities and individuals owning, directly or indirectly, 25% or more of a Specified Capacity.

2. The controlling owners (entities and/or individuals) of the entity that controls the Specified Capacity, these include individuals or entities with the ability to direct the Specified Capacity to enter into agreements relating to the Triggering Event, including without limitation individuals or entities that own at least 25 percent of entities determined to control an entity that is a Specified Capacity.

3. Any officers and other equivalent executive management (including Executive Director and other similar capacities) of the Specified Capacity or Controlling Participant who are directly responsible to the board of directors (or equivalent oversight body) and who have the ability to prevent or resolve violations or circumstances giving rise to flags related to the Covered Project.

4. Managers or managing members of Limited Liability Companies (LLCs).

5. General partners of limited partnerships, including ''administrative'' general partners or other general partners if they exercise day-to-day control over the entity.

6. Partners in a general partnership.

7. Executive Director (or equivalent position) of a non-profit corporation.

8. With respect to non-profit Borrowers under the Section 242 program, the executive management (Chief Executive Officer, Chief Financial Officer, and Chief Operating Officer, or equivalents) of the Borrower and the members of the Board of Directors that HUD determines have control over the finances or operation of the hospital (typically the President, Vice President, Treasurer, and Chairman of the Finance Committee, or equivalents).

9. Members of a for-profit corporation's Board of Directors who are also officers of the corporation.

10. Controlling stockholders of a corporation. A controlling stockholder is the holder of sufficient voting stock or shares in a corporation to prevail in any stockholders' motion. In most cases the controlling stockholder will be subject to the previous participation filing requirements of those owning at least 25% of a Specified Capacity or Controlling Participant. However, this listing is meant to trigger filing requirements for shareholders who may technically evade the 25% ownership filing requirement but exercise financial or operational control over the Specified Capacity.

11. Trustees of a trust.

12. For real estate investment trusts (REITs), the REIT itself, the chief executive officer (or equivalent position) and all company officers (except those officers determined by HUD not to exercise day-to-day control over the REIT, the Specified Capacity or the Covered Project) must file.

13. For insured projects, if applicable, the person (people) and/or entity (entities) to be listed on the Regulatory Agreement Non-Recourse Debt section.

14. Any other person or entity determined by HUD to exercise day-to-day, financial or operational control over a Specified Capacity. While it is unlikely, this may include any officers, directors or members of an executive management team who would otherwise not be required to make a submission (even of shell entities or other entities that may fall into the exclusions below), if such person is exercising control over the Specified Capacity. This listing is meant to capture those rare individuals who structure their participation so as to technically circumvent HUD requirements but who de facto exercise control over the Specified Capacity. HUD believes that the individuals and entities described in the list above accurately account for the Controlling Participants in the vast majority of cases and that invoking an additional submission through this catch-all listing should be rare.

If the applicant or Mortgagee has any reason to believe that any Controlling Participant is not of sound mind or body or is otherwise incapacitated, such information must be disclosed to HUD to review and determine whether another individual is acting as a Controlling Participant.

List of Exclusions: Except that any Specified Capacity is a Controlling Participant, and unless otherwise determined in writing by HUD in a specific transaction to exercise day-to-day control of a Covered Project or Specified Capacity, Controlling Participants do not include the following:

1. *Wholly-owned entities.* Any entity that is 100% owned or controlled by one individual or entity is excluded. Such entities are not exercising control; the individual or entity that wholly owns them is exercising control. An organizational chart may include one or more tiers of wholly-owned entities. All wholly-owned entities in all tiers are excluded.

2. *Shell entities.* Entities that do not take actions themselves but only serve as legal vehicles through which the partners, members or owners of such entity take actions are excluded. These entities are not exercising control; the partners, members or owners of such entities are controlling. The ''middle tiers'' of an organizational chart are often shell entities.

For example, if a Borrower (''Borrower LLC'') has a managing member (''Managing Member'') that is a joint venture partnership of two entities (''Partner 1'' and ''Partner 2'') and day-to-day control of Managing Member is exercised by Partner 1, then Partner 1 is the Controlling Participant of the Borrower. In this example, neither Managing Member nor Partner 2 are actually exercising control and are excluded. If Partner 1 is itself a shell LLC, with three members, then the individual(s) or entity(ies) that exercise day-to-day control of Partner 1 would be the Controlling Participant(s). If day-to-day control of Partner 1 is exercised by Member A, then Partner 1 would be excluded and Member A would be the Controlling Participant. If the organizational chart reflects this arrangement and unless additional information or special circumstances warrant further inquiry, HUD will accept Member A's certification that it is the Controlling Participant and will not require an examination of the various entities' organizational documents to confirm that Managing Member and Partner 1 are excluded shell entities.

3. *Tax credit investors.* Syndicator and direct investor entities in Low-Income Housing Tax Credits, Historic Tax Credits, New Markets Tax Credits or other tax credits (if HUD determines such credits are substantially similar to the listed tax credits) are excluded unless such entities exercise day-to-day control or seek other involvement that would trigger the need for previous participation review. HUD may still require a so-called ''LLCI certification,'' an ''Identification and Certification of Limited Liability Investor Entities,'' ''Passive Investor Certification'' or any other such certification. Acceptable language for such certification is attached as an addendum to this Guide.

4. *Passive participants.* If an entity's organizational documents specify which members, partners or owners are authorized to exercise day-to-day control of that entity, then any other members, partners or owners who are not authorized to exercise day-to-day control of an entity are excluded.

5. *Minor officers.* If HUD determines that an officer of a corporation or other entity does not have significant involvement in a Covered Project, such officers are excluded. Typically, ''significant involvement'' means an ability to prevent or resolve violations or circumstances giving rise to flags related to the Covered Project.

In the event HUD requests an officer who has not provided a Previous Participation Review submission to provide a submission, HUD shall accept certification from the officer that (s)he has limited involvement in the Covered Project, does not exercise operational or financial control over the Covered Project and does not have the ability to prevent or resolve violations or circumstances giving rise to flags related to the Covered Project (as listed below in Section G, ''Flags'').

6. *Members of a Board of Directors.* Members of a non-profit or for-profit corporation's board of directors who do not

exercise control over the corporation in another capacity (for example, as Executive Director or other manager or officer of the non-profit corporation) are excluded. This exclusion does not apply to the members of boards of directors of hospitals, the rule for which is specified in the Regulation and captured in #8 within the Listing of Controlling Participants above.

7. *Less than 25% ownership interest.* Unless exercising control through another capacity, members, partners, stakeholders and owners of entities with less than a 25% interest in an entity are excluded. This exclusion does not apply to any such member, partner, stakeholder or other owner of an entity (''Proposed Excluded Member'') who would have an interest greater than 25% if the combined percentages of all other members, partners, stakeholders or other owners (including beneficial interests in trusts) with whom the Proposed Excluded Member has an ''Identity of Interest,'' or a conflict of interest because of familial relation or common financial interest, exceeds 25%. Whether an Identity of Interest or conflict of interest exists is determined by HUD. If the program requirements of the applicable program in which the Covered Project is participating speak to Identify of Interest or conflict of interest, those program requirements control.

8. *Nursing Homes and Assisted Living Facilities.* With respect to projects under the Section 232 program, the nursing home administrator and equivalent positions in assisted living facilities are excluded.

9. *Publicly Held Companies.* For publicly held companies, the chief executive officer (or equivalent position), the controlling shareholder (if any), and other individual(s), if any, identified as having day-to-day control over a Specified Capacity or Covered Project, including any relevant project manager(s), must file but the publicly held company shall otherwise be treated as an individual without need for other individual shareholders to file certifications in their individual capacity or identify their social security or tax identification numbers.

10. *Mortgagees.* Mortgagees acting in their capacity as such are excluded.

11. *Public housing agencies.* Public housing agencies, whether in their capacity as owning and operating public housing or otherwise, are excluded. Public housing agencies are subject to different oversight and review by HUD's Office of Public and Indian Housing.

12. *No Exercise of Financial or Operational Control.* Any individual or entity determined by HUD not to exercise financial or operational control of a Covered Project or Specified Capacity shall not be considered a Controlling Participant.

B. Organization Charts

An organization chart must be submitted for each Specified Capacity and for any entity within the organization chart if requested by HUD. Organization charts are visual representations of the ownership structure of an organization. Organizational charts are already required for the underwriting purposes as a part of the application or request for most Triggering Events. This Guide clarifies that such organizational charts shall also be submitted with the Previous Participation review submissions for the purposes of Previous Participation review. If the application or request for a Triggering Event does not otherwise require submission of organizational charts, this Guide clarifies that such organizational charts are required for purposes of Previous Participation review. All organization charts submitted in connection with a Triggering Event are considered part of the application for HUD review and subject to the certifications stating that the application is true and complete. The organization chart must be clear enough so that a person unfamiliar with the Covered Project and the entities involved can understand the ownership and control structure. The organization chart must comply with the following guidelines:

1. Clearly show all tiers of the ownership structure, including the members or owners of the entities listed.

2. Show all participants, not just those who the Lender or Applicant considers to be principals or Controlling Participants. HUD may accept an organizational chart without a full listing of all participants if HUD determines that such a listing would be unduly burdensome.

3. Show percentages of ownership and role in the entity (*e.g.* Limited Partner, General Partner, Managing Member, Tax Credit Syndicator/Investor, etc.). The percentages must add to 100%. However, if there are more than 10 holders of an ownership interest in an entity, no one with less than a 10% interest must be individually disclosed. In that case, holders with less than a 10% ownership interest in the entity may be listed as a group by indicating the total percentage of ownership interests held by the group and the total number of members of the group (*e.g.,* ''8 members own portions of the remaining 12%''). For public companies, shareholders holding less than 10% interest can be grouped by indicating the aggregate percentage and identified as ''widely held'' (*e.g.,* ''80% of shares are widely held''). To the extent ownership interests are aggregated, the Applicant must provide any information requested by HUD regarding such interests.

4. List at least one natural person, not just entities; provided, however, tax credit investors and other investors that are not exercising day-to-day control are not required to list a natural person.

5. Provided that nothing in this Guide is meant to alter any underwriting requirements, for purposes of Previous Participation review, with respect to tax credit investors and other investors that are not exercising day-to-day control over a Specified Capacity or Controlling Participant, only the investor entity and its percentage ownership in the Specified Capacity need be shown; it is not necessary to show the members, partners or owners of the investor entity. HUD notes that additional information relating to investors may be required separately through underwriting review.

6. Each Specified Capacity must be shown on a separate organization chart (*e.g.* Borrower, Operator, Management Agent, Master Tenant, etc.).

7. With respect to each entity on the organization chart except wholly owned entities, tax credit investors and other investors that are not exercising day-to-day control, the executive management teams (for example, all senior officers such as CEO, CFO, President, Executive Director, etc., but not department heads or lower level management) and any members of a Board of Directors must be disclosed to HUD even if such individuals are not considered to be Controlling Participants and do not need to file Previous Participation review submissions. Such information must be updated if it changes prior to the Triggering Event. HUD may accept an organizational chart without a full listing of an entity's Board of Directors if HUD determines that such a listing would be unduly burdensome.

C. Filing the Previous Participation Certification

(1) To fulfill the Previous Participation review requirements, applicable controlling participants must file a Previous Participation Certification. The Previous Participation review shall occur concurrently with the review of the application for mortgage insurance or other request for approval of a Triggering Event. Participants may utilize either the electronic Active Partners Performance System (APPS) *or* a paper alternative. Participants should not file both an APPS submission and a paper form. HUD strongly encourages participants to utilize the APPS system.

The following chart indicates which filing options are available for which programs.

Filing method	Multifamily Housing & Grant Administration projects	Office of Residential Care Facilities	Office of Hospital Facilities
Active Partners Performance System (APPS) Submission	X	X	X
OR			
Form HUD–2530 (paper)	X		X

Filing method	Multifamily Housing & Grant Administration projects	Office of Residential Care Facilities	Office of Hospital Facilities
Consolidated Certification[9] Previous Participation Section (paper)		X	

(2) It is the participant's responsibility to ensure that the filing is correct, complete and accurate. The participant should ensure compliance with the certifications is met. In rare instances, if there is a certification that the Controlling Participant cannot certify to, the participant must strikethrough that certification and provide a signed letter of explanation.

(3) As part of the Previous Participation Certification, participants are only required to list all projects which they have participated in over the previous 10-year period. However, to the extent HUD has information that precedes the previous 10 years, HUD reserves the right to review and consider a participant's Previous Participation in federal projects beyond the 10-year period when determining whether to approve participation in a Triggering Event. Controlling Participants must include all previous participation from the past 10 years in: (a) Covered Projects, (b) housing projects with current flags under the U.S. Department of Agriculture's previous participation review system and (c) any other housing project participating in a federal, state or local or government program if during the Controlling Participant's participation in the housing project (i) the housing project was foreclosed upon; (ii) the housing project was transferred by a deed in lieu of foreclosure; or (iii) an event of default, or similarly termed event, was declared and remained after any applicable notice and cure periods against the housing project or the Controlling Participant pursuant to the government program's project documents.

Active Partners Performance System (APPS) Submission Instructions

HUD has made several upgrades to the system to improve the applicant submission process. For example, HUD now allows for electronic signatures of APPS submissions, ability to upload submission packages, and has improved the baseline submission to allow for edits. HUD encourages participants to utilize the APPS system when filing the Previous Participation Certification as it saves a substantial amount of time and allows for faster review of submissions by HUD reviewers.

Here is a link to the APPS resources: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/apps/appsmfhm.*

For questions about the APPS system contact the Multifamily Housing Systems Help Desk by phone at (800) 767–7588 or *Apps-F24p@hud.gov.*

Step 1: System Registration	This step registers Controlling Participants in the APPS system. See the APPS Quick Tips for detailed instructions on the registration process: *http://portal.hud.gov/hudportal/documents/huddoc?id=appsquicktips.pdf.*
Step 2: Create a Baseline	This step establishes the organizational structure and previous participation of Controlling Participants. See Chapter 2 of the APPS Userguide for specific instructions and screen shots: *http://portal.hud.gov/hudportal/documents/huddoc?id=chapter2.pdf.*
Step 3: Create a Property Submission.	This step creates a submission for a Controlling Participant's role in a specific project. See Chapter 3 of the APPS Userguide for specific instructions and screen shots: *http://portal.hud.gov/hudportal/documents/huddoc?id=chapter3.pdf.*
Step 4: Complete the Certification and Submit to HUD.	In this step Controlling Participants electronically certify to previous participation certifications and send the submission to HUD for review. See the discussions above regarding what projects must be included and if there is a certification the Controlling Participant cannot certify to. See also Chapter 7 of the APPS Userguide for specific instructions and screen shots: *http://portal.hud.gov/hudportal/documents/huddoc?id=CHAPTER7.PDF.*
Step 5: Upload the Organization Chart with the Signature Pages.	The user uploads the Organization Chart and Signature Pages into the APPS system. See Section B for a description of what the organization chart must include.

Form HUD–2530 Completion Instructions[10]

[*It is the participant's responsibility to assure that the Form HUD–2530 is correct, complete and accurate*]

Form section	Instructions
Review certification language	The participant should assure that compliance with the certification is met. See the discussion above if there is a certification the Controlling Participant cannot certify to.
Block 2	List Project Name and Number.
Block 7	Controlling Participants on the organization chart must match Block 7.
Blocks 8 and 9	Write "See Organization Chart".
Block 10	Insert Social Security Number or Tax ID Number for each Controlling Participant.
Bottom of Page 1	The Controlling Participants listed in Block 7 must also be listed in the signature block at the bottom of Page 1.
The Controlling Participants must sign and date the submission.	The Controlling Participants must sign and date the submission. Authorized person(s) may sign on behalf of other person(s) or entities. It is the signer's responsibility to assure that they are authorized to sign on behalf of others. Each signature block must include a signature.
Schedule A	All principals listed in Block 7 must be listed in Column 1.
Column 2	Column 2 must include all previous participation from the past 10 years. See discussion above regarding what projects must be included.

[9] Consolidated Certifications are the following forms: HUD 90013–ORCF, Consolidated Certification-Borrower, HUD 90014–ORCF, Consolidated Certification-Principal of the Borrower, HUD 90015–ORCF, Consolidated Certification-Operator, HUD 90017–ORCF, Consolidated Certification-Management Agent, and HUD 90018–ORCF, Consolidated Certification-General Contractor.

FORM HUD–2530 COMPLETION INSTRUCTIONS [10]—Continued

[*It is the participant's responsibility to assure that the Form HUD–2530 is correct, complete and accurate*]

Form section	Instructions
	Controlling Participants with No Previous Participation should write "No Previous Participation, First Experience."
Column 3 Principal Role	Principal roles must be included in Column 3.
Column 4 Loan Status	The Status of the Loan must be listed in Column 4. Note: This section is not applicable for General Contractors that did not have ownership interest in the project.
Column 5	Identify (check box) whether the project was ever in default during the participant's participation in Column 5. If the "yes" box is checked a detailed explanation of the circumstances (including mitigating factors) must be provided. Note: This section is not applicable for General Contractors that did not have ownership interest in the project.
Column 6	List the latest Management Review and Physical Inspection dates and scores in Column 6. If there are no scores, write "None." Note: This section is not applicable for General Contractors that did not have ownership interest in the project.
Business Partner Registration System (BPRS) Registration.	Each Controlling Participant must be registered in the BPRS System. Here is a link: *https://hudapps2.hud.gov/apps/part_reg/apps040.cfm.*
Organization Chart	Attach an organization chart. See Section B for a description of what the organization chart must include.

CONSOLIDATED CERTIFICATION COMPLETION INSTRUCTIONS

[*It is the participant's responsibility to assure that the Consolidated Certification is correct, complete and accurate*]

Form section	Instructions
Review certification language in the Consolidated Certification.	The participant should assure that compliance with the certification is met.
Attachment 1	Participants with Previous Participation must complete Attachment 1 of the Consolidated Certification for projects participated in over the past 10 years. See discussion above regarding what projects must be included.
Business Partner Registration System (BPRS) Registration.	Each Controlling Participant must be registered in the BPRS System. Here is a link: *https://hudapps2.hud.gov/apps/part_reg/apps040.cfm.*
Organization Chart	Attach an organization chart with Social Security Numbers or Tax ID numbers for Controlling Participants. See Section B for a description of additional items the organization chart must include.

D. Approval of Participants

If there are no flags in the system and the applicant is able to make all the certifications or HUD has approved any reason as to why a certification cannot be made, the Previous Participation review is considered complete and the submission will be approved.

If there are current flags in the system, HUD staff will review:

- The comments in the system related to the flag.
- The lender or participant's explanation of the flag and any mitigation of risk associated with the flag.
- Whether flags need to be resolved.
- The flag history in the system to assess patterns of misconduct and risk to the Department.

Based upon this review, including review of the certifications, HUD will determine whether or not the Controlling Participant poses an unacceptable Risk to the Covered Project, in accordance with the definition in 24 CFR 200.212, namely whether the Controlling Participant could be expected to participate in the Covered Project in a manner consistent with furthering the Department's purposes. Based on this determination, HUD may approve, disapprove, limit or otherwise condition the continued participation of the Controlling Participant in the Triggering Event.

Disapproval is only appropriate in the relatively few cases where the risks present cannot be mitigated. HUD will disapprove a Controlling Participant if the Controlling Participant is suspended, debarred or subject to other restriction pursuant to 2 CFR part 180 or 2 CFR part 2424. HUD may disapprove a Controlling Participant if HUD determines: (i) The Controlling Participant is materially restricted, including voluntarily, from doing business with HUD (other than the restrictions listed above) or any other department or agency of the federal government if the Commissioner determines that such restriction demonstrates a significant risk to proceeding with the Triggering Event; or (ii) HUD determines that the Controlling Participant's record of Previous Participation reveals significant risk to proceeding with the Triggering Event that cannot be adequately mitigated.

In lieu of disapproval, HUD may (1) condition or limit the Controlling Participant's participation; (2) temporarily withhold issuing a determination in order to gather more necessary information; or (3) require the Controlling Participant to remedy or mitigate outstanding violations of HUD requirements to the Commissioner's satisfaction in order to participate in the Triggering Event. A remedy or mitigation may include resolving any underlying issues that caused the existing flags or other measures that demonstrate to HUD's satisfaction that that the Controlling Participant could be expected to participate in the Covered Project in a manner consistent with furthering the Department's purpose of supporting and providing decent, safe and affordable housing for the public.

In accordance with these provisions, if a HUD official approves a participant's participation while a flag remains outstanding, the determining HUD official shall annotate the APPS system with a

[10] Until further notice, if using the paper Form HUD–2530, use these instructions.

comment to the outstanding flag keeping a record of why approval is warranted and what, if any, conditions were imposed. The participant shall receive written notification of such determination and such explanatory comments. The purpose of this record is to prevent a repetitive HUD review in the future. If the circumstances and risks related to a flag have been determined by HUD to be mitigated, such risks and circumstances shall also be deemed mitigated and approval shall be approved under similar conditions, if any, for future Triggering Events, unless additional violations are present, circumstances have changed or additional information has come to light.

HUD OFFICES & OFFICIALS RESPONSIBLE FOR APPROVAL OF PARTICIPANTS WITH FLAGS

	Office of Multifamily Housing & Assisted Housing Oversight Division, 220, 221(d)(4), 223(a)(7), 223(f), 231, 241(a) programs		Office of Residential Healthcare Facilities	Office of Hospital Facilities
	Production	Asset management		
Participants with Tier 1 Flags.	Director of Multifamily Housing Production (HQ).	Director, Office of Asset Management and Portfolio Oversight (HQ).	Director, Office of Residential Care Facilities or Delegate.	Director, Office of Hospital Facilities.
Participants with Tier 2 Flags.	Production Division Director.	Asset Management Division Director.	Supervisory Account Executive.	Director, Office of Hospital Facilities.
Participants with Tier 3 Flags.	Branch Chief		Supervisory Account Executive.	Director, Office of Hospital Facilities.

E. Disapproval of Participants

If a recommendation for disapproval is proposed, HUD staff will notify the participant, and, in the case of an FHA-insured loan, the Lender, in advance of the recommendation, which notification shall include the basis for the anticipated disapproval and, if known, what information is needed to resolve HUD's concerns. This notification will allow an opportunity for the participant to provide additional arguments for HUD's consideration to preserve processing efficiency and cut down on requests for reconsideration.

HUD OFFICES & OFFICIALS RESPONSIBLE FOR REJECTION OF PARTICIPANTS WITH FLAGS

	Office of Multifamily Housing & Assisted Housing Oversight Division, 220, 221(d)(4), 223(a)(7), 223(f), 231, 241(a) programs		Office of Residential Healthcare Facilities	Office of Hospital Facilities
	Production	Asset management		
Participants with Tier 1, Tier 2 or Tier 3 Flags.	Regional Director or Delegate.	Division Director, Office of Residential Care Facilities or Delegate.	Division Director, Office of Hospital Facilities.	

F. Reconsideration of a Disapproval

Participants have the right to request a reconsideration of HUD decisions disapproving participants. The Controlling Participant shall submit requests for such reconsideration in writing within 30 days of receipt of HUD's notice of disapproval. The review committee or reviewing officer shall schedule a review of such requests for reconsideration. The Controlling Participant shall be provided written notification of such a review at least 7 business days in advance of the reconsideration. The reconsideration shall not occur prior to the date provided to the Controlling Participant so that the Controlling Participant shall be provided the opportunity to submit such supporting materials as the Controlling Participant desires or as the review committee or reviewing officer requests. However, reconsideration need not be conducted through a formal meeting and the Controlling Participant may not necessarily have an opportunity to appear before the reviewing official in person.

Before making its decision, the review committee or reviewing officer will analyze the reasons for the decision(s) for which reconsideration is being requested, as well as the documents and arguments presented by the Controlling Participant. The review committee or reviewing officer may affirm, modify, or reverse the initial decision. Upon making its decision, the review committee or reviewing officer will provide written notice of its determination to the Controlling Participant setting forth the reasons for the determination(s). Reconsideration decisions shall not be rendered by the same individual who rendered the initial review. Please see the below table for the officials responsible for rendering reconsideration decisions applicable to each program area. The decision rendered by the officials below is final agency action.

HUD OFFICES & OFFICIALS RESPONSIBLE FOR RECONSIDERATION OF A REJECTION

Office of Multifamily Housing & Assisted Housing Oversight Division	Office of Healthcare Programs	
	Office of Residential Healthcare Facilities	Office of Hospital Facilities
Director, Office of Asset Management and Portfolio Oversight or Delegate.	Director, Office of Residential Care Facilities or Delegate.	Director, Office of Hospital Facilities or Delegate.

G. Flags

HUD utilizes flags in the APPS system as a way to assess risk associated with participants in Office of Multifamily Housing and Office of Healthcare Programs projects. A flag does not automatically exclude an applicant from participation in HUD's programs; however, flags are considered risk factors that require appropriate mitigation, where possible. Flags are to be a meaningful representation of risk, and therefore, they should not be placed for minor infractions that do not pose a risk to HUD. HUD will

notify participants in writing when flags are placed.

1. *Placement of Flags.* When there is a violation or other circumstance warranting a flag in connection with a Covered Project, as listed in the charts below, HUD shall place a flag on all Controlling Participants who contributed to the violation or circumstance or failed to intervene appropriately but shall not place a flag on any Controlling Participant determined by HUD not to have contributed to the violation or circumstance (or if it is otherwise determined by HUD that placement of a flag on such Controlling Participant would be inappropriate). HUD shall not place any flags on Controlling Participants in connection with violations that occur prior to the Controlling Participant's involvement in the Covered Project. HUD shall not place flags relating to ongoing violations on Controlling Participants who become involved with a Covered Project with HUD's consent in order to mitigate or remedy the ongoing violation, provided that HUD may place flags on such a Controlling Participant related to new violations occurring after the Controlling Participant has become involved with the Covered Project.

For the Office of Multifamily Housing & Assisted Housing Oversight Division, Tier 1 and 2 manual flags must be reviewed by the Branch Chief prior to placement. For the Office of Healthcare Programs, all manual flags must be reviewed by the Director of Asset Management prior to placement. The Branch Chief and Director of Asset Management, respectively, shall ensure that their office's Account Executive notifies the flagged participant of the flag placement and provides adequate comments in the APPS system detailing the reason for the flag.

For any flag, if the Branch Chief or Director of Asset Management has reason to believe that placement of the flag is inappropriate, the Branch Chief and/or Director of Asset Management may approve removal of the flag or no placement of the flag in the first place. For example, HUD is aware that currently, when an owner purchases a portfolio, HUD's Financial Assessment of Multifamily Housing (FASS) system may have trouble accepting the financial statement submission of the new owner. In this circumstance, the system may perceive the new owner as having multiple failures to file financial statements because each property in the portfolio may be perceived as missing a financial statement. In this circumstance, the system may indicate that a Tier 2 flag would be appropriate, but obviously no flag is warranted. In this circumstance, the Account Executive shall not place a flag on the Controlling Participant's record or shall remove any such unwarranted flag relating to such circumstance. The Branch Chiefs and Directors of Asset Management have authority to make similar determinations in other circumstances.

2. *Tiers of Flags.* HUD has developed three flag tiers, which reflect varying levels of risk to HUD. Tier 1 flags are elevated risk to HUD. HUD considers Tier 1 flags to be a significant long-term risk to HUD and warrant significant mitigation in new transactions. Tier 2 flags are considered an ongoing risk to HUD. For Tier 2 flags that have a resolution date (as listed in the chart below), flags will not be removed until the time period has expired even if the action has been resolved earlier. This is considered a risk factor in production and asset management transactions. Tier 3 flags are considered a single risk to HUD and will be removed when the reason for the flag is corrected.

Tier 1 Flags: Elevated Risk to the Department

Tier 1 flags warrant permanent consideration when reviewing Controlling Participants for their participation in Triggering Events. Except that HUD will disapprove a Controlling Participant if the Controlling Participant is currently suspended, debarred or subject to other restriction pursuant to 2 CFR part 180 or 2 CFR part 2424, participants with Tier 1 flags may still participate in a Triggering Event if the risk posed by the flag has been appropriately mitigated.

Tier 1 Flags:

Flag type	Reason	Duration of flag
Mortgage Assignment/Conveyance of Title	Mortgagee assigned title or conveyed property to HUD	Permanent flag.*
FHA Claim or Partial Payment of Claim	Claim payment by HUD	Permanent flag.*
HUD Property Disposition	Foreclosure, loan sale, or other property disposition effort by HUD.	Permanent flag.*
Mortgagee in Possession (MIP)	HUD becomes the MIP	Permanent flag.*
Deed in Lieu of Foreclosure	HUD receives a deed in lieu of foreclosure	Permanent flag.*
Limited Denial of Participation (LDP)—Current or Past.	Participant is currently or has previously been placed on the LDP list.	Permanent flag.
Suspension or Debarment—Current or Past	Participant is currently or has previously been placed on the Debarment list or the participant is or was temporarily suspended from participation in HUD programs.	Permanent flag.
Voluntary Abstention or Exclusion—Current or Past	Participant is currently or has previously been subject to a voluntary abstention from participation in HUD programs.	Permanent flag.
Conviction for fraud or embezzlement of funds	Participant has been convicted of fraud or embezzlement of funds.	Permanent flag.

Participants with Tier 1 flags may be approved if:

Participants with Tier 1 flags may be approved if:

1. The participant is not currently suspended, debarred or subject to other restriction pursuant to 2 CFR part 180 or 2 CFR part 2424;
2. HUD determines that, because the participant has sufficiently improved operations and oversight to ensure that further violations will not occur or for other compelling reasons, the flag is not indicative of ongoing risk.

Questions that may be relevant to this analysis include:

- What has the participant done to mitigate the risk indicated by the flag?
- Is the flagged condition indicative of a current pattern of behavior? What has the participant done to change the underlying causes of the flagged condition or otherwise prevent the flagged condition from occurring again?
- Is the flagged condition limited in number and/or geography relative to the participant's whole portfolio? Was the flagged condition an isolated event?
- Has significant time passed since the condition was flagged?
- Was the flagged condition caused by market or other forces outside the participant's control?
- How does the participant's role in the flagged condition compare to his/her role in the Triggering Event and Covered Project for which they are currently seeking approval?

* Unless otherwise determined by HUD due to mitigating circumstances.

Tier 2 Flags: Compliance Risk to the Department

Tier 2 flags warrant consideration for an extended period of time when reviewing Controlling Participants for their participation in Triggering Events, even after the underlying reason for the flag is resolved. A ''Repeated'' Offense means that a Controlling Participant has had three or more instances of the violation in a seven-year period.

Flag type	Explanation	Duration of flag
Repeated Failure to File Annual Financial Statements.	Repeated Failure to File Annual Financial Statements (three or more occurrences in a seven-year period).	Retained until there have been five (5) years with no missed filings of Annual Financial Statements.
Default-Financial	60 days or more behind on loan payments	Retained for five (5) years after the placement date of the flag.
Unacceptable Physical Condition of a property	A property received a Real Estate Assessment Center (REAC) score below 30, two consecutive REAC scores below 60, Repeated REAC scores below 60, or other Repeated failures to maintain decent, safe and sanitary conditions.	May be removed upon the completion of a five (5) year period in which the property receives no REAC score below 60.
Unauthorized Distributions	Repeated incidents of Unauthorized Distributions.	Retained for five (5) years after the placement date of the flag.
Repeated Unresolved Audit Findings	Repeated Unresolved Audit Findings	Retained for five (5) years after the placement date of the flag provided that audit findings have been resolved.
Conversion to Unapproved Use	Project was converted to a use that is not permitted under the program obligations.	Retained for five (5) years after the placement date of the flag.
Unauthorized Alteration to Facility	Project or part of the project completed a significant addition/alteration/construction/licensure status without prior approval.	Retained for five (5) years after the placement date of the flag.
Unauthorized Change in Participant	When a Transfer of Physical Assets (TPA), Change of Management Agent, Lessee or other change of Controlling Participant requiring HUD consent is completed without prior HUD approval.	Retained for five (5) years after the placement date of the flag.
Unauthorized Secondary Financing	When Secondary Financing is utilized without prior HUD approval.	Retained for five (5) years after the placement date of the flag.
Miscellaneous Violation of Business Agreements.	Repeated violations of business agreements (e.g., breaking use agreement or affordability restrictions, repeated unacceptable management reviews, repeated failure to comply with an action plan, non-compliance with program requirements, non-responsive to HUD requests).	Retained for five (5) years after the placement date of the flag.
Suspension/Termination of Payments	When HUD suspends subsidy payments due to non-compliance with Program Obligations.	Retained for five (5) years after the placement date of the flag.
General Contractor Performance—Construction Compliance.	Material failure to build project in accordance with approved Plans and Specifications (During Construction Period).	Retained for five (5) years after the placement date of the flag provided that noncompliance has been cured to HUD's satisfaction.
General Contractor Performance—One Year Warranty.	Failure to correct material warranty issues identified in HUD's Nine-Month and 12-Month Warranty Inspections (After Construction Period).	Retained for five (5) years after the placement date of the flag provided that noncompliance has been cured to HUD's satisfaction.

Participants with Tier 2 flags may be approved if:

Participants with Tier 2 flags may be approved if HUD determines that, because the participant has sufficiently improved operations and oversight to ensure that further violations will not occur or for other compelling reasons, the flag is not indicative of ongoing risk.

Questions that may be relevant to this analysis include:

- Are the underlying conditions causing the flag resolved?
- What has the participant done to mitigate the risk indicated by the flag?
- Is the flagged condition indicative of a current pattern of behavior? What has the participant done to change the underlying causes of the flagged condition or otherwise prevent the flagged condition from occurring again?
- Is the flagged condition limited in number and/or geography relative to the participant's whole portfolio? Was the flagged condition an isolated event?
- Has significant time passed since the condition was flagged?
- Was the flagged condition caused by market forces outside the participant's control?
- How does the participant's role in the flagged condition compare to his/her role in the Triggering Event and Covered Project for which they are currently seeking approval?

Tier 3 Flags: Temporary Risk to the Department

Tier 3 flags relate to a single and/or less serious incident of non-compliance and can be resolved and removed. Participants with Tier 3 flags shall be approved, subject to satisfaction of the conditions listed below prior to or at the closing of the Triggering Event transaction. In the case of FHA Insurance, any conditions not met by the issuance of the Firm Commitment shall be special conditions to the Firm Commitment.

Flag type	Reason	Duration of flag	Approval condition(s):
Failure to File Financial Statements.	Automatically Flagged when the Annual Financial Statements are overdue.	Removed when the missing Annual Financial Statements are filed or five (5) years after the placement date of the flag, whichever is sooner.	The Annual Financial Statement must be filed.
Delinquent payments three or more times in the last year.	Flagged when borrower fails to make mortgage payment by the fifteenth of the month, three or more times in a given one-year period.	Removed when there is a one-year period of time in which borrower has made all mortgage payments by the fifteenth of each respective month, or five (5) years after the placement date of the flag, whichever is sooner.	• Delinquencies cured (no longer delinquent). • Explain the cause of the delinquencies. • Efforts and/or a plan acceptable to HUD to avoid future delinquencies must be put in place.
Unacceptable Physical Condition ..	Most recent REAC score is below 60, and additional (does not need to be consecutive) REAC score(s) below 60 over the past seven years.	Removed when the most recent REAC score is above 59.	Certify that 100% of the units in the project with the low REAC score have been inspected and all physical deficiencies have been remedied.
Unsatisfactory Management Review.	Flagged when there is an Unsatisfactory Management Review.	Removed when there is a Satisfactory Management Review, or five (5) years after the placement date of the flag whichever is sooner.	Provide evidence that a satisfactory response to the management review was provided to HUD or the Contract Administrator.
Unauthorized Distributions	One incident of Unauthorized Distributions.	Removed when the unauthorized distribution is repaid or otherwise resolved or five (5) years after the placement date of the flag whichever is sooner.	Unauthorized distributions must be repaid.
Material Unresolved Audit Findings	Material Unresolved Audit Findings.	Removed when the finding is resolved or five (5) years after the placement date of the flag whichever is sooner.	Provide evidence that the audit finding was resolved in manner satisfactory to HUD.
Failure to Provide or Comply with Action Plan.	Failure to provide or comply with a HUD required action plan and/or certification in a timely manner.	Removed when the action plan is received and in good standing or five (5) years after the placement date of the flag whichever is sooner.	Provide evidence that the Action Plan was approved by HUD and implementation has begun.

3. *Flag Resolution and Removal of Flags.* Tier 1 flags are permanent and are not removed from the APPS system, except where indicated in the Tier 1 chart above that HUD determines removal is warranted due to mitigating circumstances. Tier 2 flags will be removed from the APPS system upon the completion of the conditions and time periods listed in the Tier 2 chart above. Tier 3 flags shall be removed from the APPS system upon the resolution of the violation giving rise to the flag. Participants shall be notified in writing when flags are resolved and/or removed and may request confirmation of flag resolution and/or removal if they do not receive such notification.

Notwithstanding anything else in this Guide, for any flag, if the Branch Chief or Director of Asset Management determines in writing that retention of the flag for the time periods listed above is inappropriate and unduly burdensome on the Controlling Participant or HUD, the Branch Chief and/or Director of Asset Management may waive this Guide's requirements with respect to duration of the flag and approve the flag's removal. In providing this determination, the Branch Chief or Director of Asset Management must consider any comments in the APPS system, including any comments indicating why the flag is warranted. If comment in the APPS system clearly describe that the flag is warranted and set out a justification for approval in forthcoming transactions despite the presence of the flag (as discussed in this Guide above), the flag may not be unduly burdensome and retention of the flag may be warranted. If, however, the Branch Chief or Director of Asset Management determines that retention of the flag is unwarranted or otherwise inappropriate and unduly burdensome on the Controlling Participant, the Branch Chief or Director of Asset Management shall indicate the basis for such determination and direct that the flag be removed.

H. Significant Changes to the Guide

HUD will not make any significant changes to the Guide without first offering advance notice and the opportunity for comment for a period of not less than 30 days.

I. Technical Assistance

Technical Assistance can be found on the HUD Web site at: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/prevparticipation.*

Questions can be directed to:

Office of Multifamily Housing & Assisted Housing Oversight Division	*MF_PreviousParticipation@hud.gov.*
Office of Residential Healthcare Facilities	*LeanThinking@hud.gov.* *www.hud.gov/healthcare.*
Office of Hospital Facilities	*Hospitals@hud.gov.* 1–877–HLTH–FHA. *www.hud.gov/healthcare.*

Addendum: Identification and Certification of Limited Liability Investor Entities

The following certification is to be submitted as part of the FHA loan application from each entity which claims to be a limited liability investor.

Project Name:

FHA Project #:

I, [*name of authorized signer*], am authorized to certify on behalf of [*name of investor entity*] to each and every item stated below.

I certify that [*name of investor entity*] is:

a. Investing in [*name of owner/mortgagor entity*], which anticipates receiving [*list applicable tax credits, e.g.:* Low-Income Housing Tax Credits pursuant to Section 42 of the Internal Revenue Code];

b. A limited liability company, an investor corporation, an investor limited partnership, an investor limited liability limited partnership or other similar entity with limited liability; and

c. An investor with limited or no control over routine property operations or HUD regulatory and/or contract compliance, unless it should take control of the ownership entity or assume the operating responsibilities in the event of the default of the operating partner or upon specific events defined in the [*name of owner/mortgagor entity*]'s [*operating agreement/partnership agreement/organizational documents*].

I further certify that should any of the facts or circumstances that support the certifications above change or the entity for which this certification is made withdraws from participation in the owner/mortgagor, I will notify HUD immediately in writing, providing full disclosure and explanation of the change(s).

Signed: ____________________

[*Name of authorized signer*]

[*Title*]

Date: ____________________

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Part IV

Department of Interior

43 CFR Part 50

Procedures for Reestablishing a Formal Government-to-Government Relationship With the Native Hawaiian Community; Final Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 50

[Docket No. DOI–2015–0005; 145D010DMDS6CS00000.000000 DX.6CS252410]

RIN 1090–AB05

Procedures for Reestablishing a Formal Government-to-Government Relationship With the Native Hawaiian Community

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes the Secretary of the Interior's (Secretary) administrative process for reestablishing a formal government-to-government relationship with the Native Hawaiian community to more effectively implement the special political and trust relationship that Congress established between that community and the United States. The rule does not attempt to reorganize a Native Hawaiian government or draft its constitution, nor does it dictate the form or structure of that government. Rather, the rule establishes an administrative procedure and criteria that the Secretary would use if the Native Hawaiian community forms a unified government that then seeks a formal government-to-government relationship with the United States. Consistent with the Federal policy of self-determination and self-governance for indigenous communities, the Native Hawaiian community itself would determine whether and how to reorganize its government.

DATES: This rule is effective November 14, 2016.

FOR FURTHER INFORMATION CONTACT: Jennifer Romero, Senior Advisor for Native Hawaiian Affairs, Office of the Secretary, 202–208–3100.

SUPPLEMENTARY INFORMATION:

(I) Executive Summary
(II) Background
(III) Overview of Final Rule
(A) How the Rule Works
(B) Major Changes
(C) Key Issues
(D) Section-by-Section Analysis
(IV) Public Comments on the Proposed Rule and Responses to Comments
(A) Overview
(B) Responses to Significant Public Comments on the Proposed Rule
(1) Issue-Specific Responses to Comments
(2) Section-by-Section Responses to Comments
(C) Tribal Summary Impact Statement
(V) Public Meetings and Tribal Consultations
(VI) Procedural Matters

(I) Executive Summary

The final rule sets forth an administrative procedure and criteria that the Secretary would use if the Native Hawaiian community forms a unified government that then seeks a formal government-to-government relationship with the United States. The rule does not provide a process for reorganizing a Native Hawaiian government. The decision to reorganize a Native Hawaiian government and to establish a formal government-to-government relationship is for the Native Hawaiian community to make as an exercise of self-determination.

Congress already federally acknowledged or recognized the Native Hawaiian community by establishing a special political and trust relationship through over 150 enactments. This unique special political and trust relationship exists even though Native Hawaiians have not had an organized government since the overthrow of the Kingdom of Hawaii in 1893. Accordingly, this rule provides a process and criteria for reestablishing a formal government-to-government relationship that would enable a reorganized Native Hawaiian government to represent the Native Hawaiian community and conduct government-to-government relations with the United States under the Constitution and applicable Federal law. The term ''formal government-to-government relationship'' in this rule refers to the working relationship with the United States that will occur if the Native Hawaiian community reorganizes and submits a request consistent with the rule's criteria.

Importantly, the process set out in this rule is optional and Federal action will occur only upon an express, formal request from the reorganized Native Hawaiian government. The rule also provides a process for public comment on the request and a process for the Secretary to receive, evaluate, and act on the request.

(II) Background

The Native Hawaiian community has a unique legal relationship with the United States, as well as inherent sovereign authority that has not been abrogated or relinquished, as evidenced by Congress's consistent treatment of this community over an extended period of time. Over many decades, Congress enacted more than 150 statutes recognizing and implementing a special political and trust relationship with the Native Hawaiian community.

''Recognition is a formal political act [that] permanently establishes a government-to-government relationship between the United States and the recognized tribe as a 'domestic dependent nation,' and imposes on the government a fiduciary trust relationship to the tribe and its members. Recognition is also a constitutive act: It institutionalizes the tribe's quasi-sovereign status, along with all the powers accompanying that status such as the power to tax, and to establish a separate judiciary.'' *Cohen's Handbook of Federal Indian Law* sec. 3.02[3], at 134 (2012 ed.) (citing H.R. Rep. No. 103–781, at 2 (1994)) (footnotes and internal quotation marks and brackets omitted).

A government-to-government relationship encompasses the political relationship between sovereigns and a working relationship between the officials of those two sovereigns. Although the Native Hawaiian community has been without a formal government for over a century, Congress recognized the continuity of the Native Hawaiian community through over 150 separate statutes, which ensures it has a special political and trust relationship with the United States. At the same time, a working relationship between government officials is absent. This rulemaking provides the Native Hawaiian community with an opportunity to have a working relationship, referred to as the ''formal government-to-government relationship.'' The Native Hawaiian community's current relationship with the United States has substantively all of the other attributes of a government-to-government relationship, and might be described as a ''sovereign to sovereign'' or ''government to sovereign'' relationship. It is important to note that a special political and trust relationship may continue to exist even without a formal government-to-government relationship.

Among other things, the more than 150 statutes that Congress has enacted over many decades create programs and services for members of the Native Hawaiian community that are in many respects analogous to, but separate from, the programs and services that Congress enacted for federally-recognized Indian tribes in the continental United States. But during this same period, the United States has not had a formal government-to-government relationship with Native Hawaiians because there has been no formal, organized Native Hawaiian government since 1893, when a United States officer, acting without authorization of the U.S. government, conspired with residents of Hawaii to

overthrow the Kingdom of Hawaii. Many Native Hawaiians contend that their community's opportunities to thrive would be significantly bolstered through a sovereign Native Hawaiian government whose leadership could engage the United States in a formal government-togovernment relationship, exercise inherent sovereign powers of self-governance and self-determination on par with those exercised by tribes in the continental United States, and facilitate the implementation of programs and services that Congress created specifically to benefit the Native Hawaiian community.

The United States has a unique political and trust relationship with federally-recognized tribes across the country, as set forth in the Constitution, treaties, statutes, Executive Orders, administrative regulations, and judicial precedent. The Federal Government's relationship with federally-recognized tribes includes a trust responsibility—a longstanding, paramount commitment to protect their unique rights and ensure their well-being, while respecting their inherent sovereignty. In recognition of that special commitment—and in fulfillment of the solemn obligations it entails—the United States, acting through the Department of the Interior, developed processes to help tribes in the continental United States establish mechanisms to conduct formal government-to-government relationships with the United States.

Strong Native governments are critical to tribes' exercising their inherent sovereign powers, preserving their culture, and sustaining prosperous and resilient Native American communities. It is especially true that, in the current era of tribal self-determination, formal government-to-government relationships between tribes and the United States are enormously beneficial not only to Native Americans but to *all* Americans. Yet an administrative process for establishing a formal government-to-government relationship has long been denied to members of one of the Nation's largest indigenous communities: Native Hawaiians. This rule provides a process to reestablish a formal government-to-government relationship with the Native Hawaiian community.

(A) The Relationship Between the United States and the Native Hawaiian Community

Native Hawaiians are the aboriginal, indigenous people who settled the Hawaiian archipelago as early as 300 A.D., exercised sovereignty over their island archipelago and, over time, founded the Kingdom of Hawaii. *See* S. Rep. No. 111–162, at 2–3 (2010). During centuries of self-rule and at the time of Western contact in 1778, ''the Native Hawaiian people lived in a highly organized, self-sufficient subsistence social system based on a communal land tenure system with a sophisticated language, culture, and religion.'' Native Hawaiian Education Act, 20 U.S.C. 7512(2); *accord* Native Hawaiian Health Care Act, 42 U.S.C. 11701(4). Although the indigenous people shared a common language, ancestry, and religion, four independent chiefdoms governed the eight islands until 1810, when King Kamehameha I unified the islands under one Kingdom of Hawaii. *See Rice* v. *Cayetano,* 528 U.S. 495, 500–01 (2000). *See generally* Davianna Pomaikai McGregor & Melody Kapilialoha MacKenzie, *Moolelo Ea O Na Hawaii: History of Native Hawaiian Governance in Hawaii* (2015), *available at http://www.regulations.gov/document?D=DOI-2015-0005-4290* (comment number 4290) (*Moolelo Ea O Na Hawaii*); Ralph S. Kuykendall, *The Hawaiian Kingdom Vol. I: 1778–1854, Foundation and Transformation* (1947). Kamehameha I's reign ended with his death in 1819 but the Kingdom of Hawaii, led by Native Hawaiian monarchs, continued. *Id.*

Throughout the nineteenth century and until 1893, the United States ''recognized the independence of the Hawaiian Nation,'' ''extended full and complete diplomatic recognition to the Hawaiian Government,'' and ''entered into several treaties with Hawaiian monarchs.'' 42 U.S.C. 11701(6); *accord* 20 U.S.C. 7512(4); *see Rice,* 528 U.S. at 504 (citing treaties that the United States and the Kingdom of Hawaii concluded in 1826, 1849, 1875, and 1887); S. Rep. No. 103–126 (1993) (compiling conventions, treaties, and presidential messages extending U.S. diplomatic recognition to the Hawaiian government); *Moolelo Ea O Na Hawaii* at 209–11, 240–47. But during that same period, Westerners became ''increasing[ly] involve[d] . . . in the economic and political affairs of the Kingdom,'' *Rice,* 528 U.S. at 501, 504–05, over vocal protest by Native Hawaiians. *See, e.g.,* Kuykendall at 258–60. An example of such involvement was adoption of the 1887 ''Bayonet Constitution'' that resulted in mass disenfranchisement of Native Hawaiians by imposing wealth and property qualifications on voters, among other changes in Kingdom governance. *See, e.g.,* Noenoe K. Silva, Kanaka Maoli Resistance to Annexation, 1 Oiwi: A Native Hawaiian Journal 43 (1998); Kuykendall, *The Hawaiian Kingdom Vol. III: 1874–1893, The Kalakaua Dynasty* (1967); Neil M. Levy, Native Hawaiian Land Rights, 63 Cal. L. Rev. 848, 861 (1975) (chronicling the displacement of Native Hawaiians from their land). Although Native Hawaiian monarchs continued to rule the Kingdom, the Bayonet Constitution triggered mass meetings and other forms of organized political protest by Native Hawaiians. This led to the establishment of Hui Kalaiaina, a Native Hawaiian political organization that advocated the replacement of that Constitution and protested subsequent annexation efforts. *See* Noenoe K. Silva, *Aloha Betrayed* 127–29 (2004); S. Rep. No. 107–66, at 19 n.29 (2001). It also foreshadowed the overthrow of the Kingdom in 1893 by a small group of non-Native Hawaiians, aided by the United States Minister to Hawaii and the Armed Forces of the United States. *See generally Moolelo Ea O Na Hawaii* at 387–402; S. Rep. No. 111–162, at 3–6 (2010); *Cohen's Handbook of Federal Indian Law* sec. 4.07[4][b], at 360–61 (2012 ed.); Kuykendall, *The Hawaiian Kingdom Vol. III* at 582–605.

The Kingdom was overthrown in January 1893 by a ''Committee of Safety'' comprised of American and European sugar planters, descendants of missionaries, and financiers. S. Rep. No. 103–126, at 21 (1993). The Committee established a provisional government, which later declared itself to be the Republic of Hawaii, and the U.S. Minister to the Kingdom of Hawaii ''immediately extended diplomatic recognition'' to the provisional government ''without the consent of Queen Liliuokalani or the Native Hawaiian people.'' *Id.* at 21. Indeed, in his December 18, 1893 message to Congress concerning the Hawaiian Islands, President Grover Cleveland described the provisional government as an ''oligarchy set up without the assent of the [Hawaiian] people,'' *id.* at 32, and noted, ''there is no pretense of any [ ] consent on the part of the Government of the Queen, which at that time was undisputed and was both the *de facto* and the *de jure* government,'' and that ''it appears that Hawaii was taken possession of by the United State forces without the consent or wish of the government of the islands, or of anybody else so far as shown, except the United States Minister.'' *Id.* at 27–28 (quoting President Cleveland's Message Relating to the Hawaiian Islands—December 18, 1893) (italics in original). Following the overthrow of Hawaii's monarchy, Queen Liliuokalani, while yielding her authority under protest to the United States, called for

reinstatement of Native Hawaiian governance. Joint Resolution of November 23, 1993, 107 Stat. 1511 (Apology Resolution). The Native Hawaiian community answered, alerting existing Native Hawaiian political organizations and groups from throughout the islands to reinstate the Queen and resist the newly formed Provisional Government and any attempt at annexation. *See Moolelo Ea O Na Hawaii* at 45–50. In 1895, Hawaiian nationalists loyal to Queen Liliuokalani attempted to regain control of the Hawaiian government. *Id.* at 49–50. These attempts resulted in hundreds of arrests and convictions, including the arrest of the Queen herself, who was tried and found guilty of misprision or concealment of treason. The Queen was subsequently forced to abdicate. *Id.* These events, however, did little to suppress Native Hawaiian opposition to annexation. During this period, civic organizations convened a series of large public meetings of Native Hawaiians opposing annexation by the United States and led a petition drive that gathered 21,000 signatures, mostly from Native Hawaiians, opposing annexation. *See Moolelo Ea O Na Hawaii* at 424–28. These ''Kue Petitions'' are part of this rule's administrative record.

The United States nevertheless annexed Hawaii ''without the consent of or compensation to the indigenous people of Hawaii or their sovereign government who were thereby denied the mechanism for expression of their inherent sovereignty through self-government and self-determination.'' Native Hawaiian Health Care Act, 42 U.S.C. 11701(11). The Republic of Hawaii ceded 1.8 million acres of land to the United States ''without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government,'' Apology Resolution at 1512, and Congress passed a joint resolution—the Newlands Resolution (also known as the Joint Resolution of Annexation)—annexing the islands in 1898. *See Rice,* 528 U.S. at 505.

Under the Newlands Resolution, the United States accepted the Republic of Hawaii's cession of ''all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies,'' and resolved that the Hawaiian Islands were ''annexed as part of the territory of the United States'' and became subject to the ''sovereign dominion'' of the United States. No consent to these terms was provided by the Kingdom of Hawaii; rather, the joint resolution ''effectuated a transaction between the Republic of Hawaii and the United States'' without direct relinquishment by the Native Hawaiian people of their claims to sovereignty as a people or over their national lands to the United States. *Moolelo Ea O Na Hawaii* at 431 (citing the Apology Resolution). Indeed, at the time of annexation, Native Hawaiians did not have an opportunity to vote on whether they favored annexation by the United States. Jon M. Van Dyke, *The Political Status of the Native Hawaiian People,* 17 Yale L. & Pol'y Rev. 95, 103 (1998).

The Hawaiian Organic Act, enacted in 1900, established the Territory of Hawaii, extended the U.S. Constitution to the territory, placed ceded lands under United States control, and directed the use of proceeds from those lands to benefit the inhabitants of Hawaii. Act of Apr. 30, 1900, 31 Stat. 141 (Organic Act).

Hawaii was a U.S. territory for six decades prior to becoming a State, during which time the Hawaiian government's ''English-mainly'' policy of the late 1850s was replaced by the territorial government's policy of ''English-only'' and outright suppression of the Hawaiian language in public schools. *See* Paul F. Lucas, *E Ola Mau Kakou I Ka Olelo Makuahine: Hawaiian Language Policy and the Courts,* 34 Hawaiian J. Hist. 1 (2000); *see also* Kuykendall, *The Hawaiian Kingdom Vol. I* at 360–62. *See generally* Maenette K.P. Ah Nee Benham & Ronald H. Heck, *Culture and Educational Policy in Hawaii: The Silencing of Native Voices* ch. 3 (1998); *Native Hawaiian Law: A Treatise* at 1259–72 (Melody Kapilialoha MacKenzie ed., 2015). But various entities connected to the Kingdom of Hawaii adopted other methods of continuing their internal governance and social cohesion. Specifically, the Royal Societies, the Bishop Estate (now Kamehameha Schools), the Alii trusts, and civic clubs are organizations, each with direct ties to their royal Native Hawaiian founders, and are prime examples of Native Hawaiians' continuing efforts to keep their culture, language, governance, and community alive. *See Moolelo Ea O Na Hawaii* at 560–63; *id.,* appendix 4. Indeed, post-annexation, Native Hawaiians maintained their separate identity as a single distinct community through a wide range of cultural, social, and political institutions, as well as through efforts to develop programs to provide governmental services to Native Hawaiians. For example, Ahahui Puuhonua O Na Hawaii (the Hawaiian Protective Association) was an organization formed in 1914 under the leadership of Prince Jonah Kuhio Kalanianaole (Prince Kuhio) alongside other Native Hawaiian political leaders. Its principal purposes were to maintain unity among Native Hawaiians, protect Native Hawaiian interests (including by lobbying the territorial legislature), and promote the education, health, and economic development of Native Hawaiians. It was organized ''for the sole purpose of protecting the Hawaiian people and of conserving and promoting the best things of their tradition.'' Hawaiian Homes Commission Act, 1920: Hearing on H.R. 13500 Before the S. Comm. on Territories, 66th Cong., 3d Sess. 44 (1920) (statement of Rev. Akaiko Akana). *See generally Moolelo Ea O Na Hawaii* at 501–07. The Association established twelve standing committees, published a newspaper, undertook dispute resolution, promoted the education and the social welfare of the Native Hawaiian community, and developed the framework that eventually became the Hawaiian Homes Commission Act (HHCA). In 1918, Prince Kuhio, who served as the Territory of Hawaii's Delegate to Congress, and other prominent Hawaiians founded the Hawaiian Civic Clubs, whose goal was ''to perpetuate the language, history, traditions, music, dances and other cultural traditions of Hawaii.'' McGregor, *Aina Hoopulapula: Hawaiian Homesteading,* 24 Hawaiian J. of Hist. 1, 5 (1990). The Clubs' first project was to secure enactment of the HHCA in 1921 to provide for the welfare of the Native Hawaiian people by setting aside and protecting Hawaiian home lands.

(B) Congress's Recognition of Native Hawaiians as a Political Community

In a number of enactments, Congress expressly identified Native Hawaiians as ''a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago,'' Native Hawaiian Health Care Improvement Act, 42 U.S.C. 11701(1); *accord* Native Hawaiian Education Act, 20 U.S.C. 7512(1), with whom the United States has a ''special'' ''trust'' relationship, 42 U.S.C. 11701(15), (16), (18), (20); 20 U.S.C. 7512(8), (10), (11), (12). And when enacting Native Hawaiian statutes, Congress expressly stated in accompanying legislative findings that it was exercising its plenary power over Indian affairs: ''The authority of the Congress under the United States Constitution to legislate in matters affecting the aboriginal or indigenous peoples of the United States includes the authority to legislate in matters affecting the native peoples of Alaska and Hawaii.'' Native Hawaiian Health Care Improvement Act, 42 U.S.C. 11701(17); *see* H.R. Rep. No. 66–839, at

11 (1920) (finding constitutional precedent for the HHCA ''in previous enactments granting Indians . . . special privileges in obtaining and using the public lands''); *see also* Native Hawaiian Education Act, 20 U.S.C. 7512(12)(B). Indeed, since Hawaii's admission to the United States, Congress has enacted dozens of statutes on behalf of Native Hawaiians. For example, Congress:

- Established special Native Hawaiian programs in the areas of health care, education, loans, and employment. *See, e.g.,* Native Hawaiian Health Care Improvement Act of 1988, 42 U.S.C. 11701–11714; Native Hawaiian Education Act, 20 U.S.C. 7511–7517; Workforce Investment Act of 1998, 29 U.S.C. 3221; Native American Programs Act of 1974, 42 U.S.C. 2991–2992.
- Enacted statutes to study and preserve Native Hawaiian culture, language, and historical sites. *See, e.g.,* Kaloko-Honokokau National Park Re-establishment Act, 16 U.S.C. 396d(a); Native American Languages Act, 25 U.S.C. 2901–2906; National Historic Preservation Act of 1966, 54 U.S.C. 302706.
- Extended to the Native Hawaiian people many of ''the same rights and privileges accorded to American Indian, Alaska Native, Eskimo, and Aleut communities'' by classifying Native Hawaiians as ''Native Americans'' under numerous Federal statutes. Native Hawaiian Health Care Improvement Act, 42 U.S.C. 11701(19); *accord* Native Hawaiian Education Act, 20 U.S.C. 7512(13); *see, e.g.,* American Indian Religious Freedom Act, 42 U.S.C. 1996–1996a. *See generally* Native Hawaiian Education Act, 20 U.S.C. 7512(13) (noting that ''[t]he political relationship between the United States and the Native Hawaiian people has been recognized and reaffirmed by the United States, as evidenced by the inclusion of Native Hawaiians'' in many statutes); *accord* Hawaiian Homelands Homeownership Act, 114 Stat. 2874–75, 2968–69 (2000).

These more recent enactments followed Congress's enactment of the HHCA, a Federal law that designated tracts totaling approximately 200,000 acres on the different islands for exclusive homesteading by eligible Native Hawaiians. Act of July 9, 1921, 42 Stat. 108; *see also Rice,* 528 U.S. at 507 (HHCA's stated purpose was ''to rehabilitate the native Hawaiian population'') (citing H.R. Rep. No. 66–839, at 1–2 (1920)); *Moolelo Ea O Na Hawaii* at 507–09, 520–35. The HHCA was enacted in response to the precipitous decline in the Native Hawaiian population since Western contact; by 1919, the Native Hawaiian population declined by some estimates from several hundred thousand in 1778 to only 22,600. 20 U.S.C. 7512(7). Delegate Prince Kuhio, Native Hawaiian politician and Hawaiian Civic Clubs co-founder John Wise, and U.S. Secretary of the Interior Franklin Lane urged Congress to set aside land to ''rehabilitate'' and help Native Hawaiians reestablish their traditional way of life. *See* H.R. Rep. No. 66–839, at 4 (statement of Secretary Lane) (''One thing that impressed me was the fact that the natives of the islands, who are our wards, I should say, and for whom in a sense we are trustees, are falling off rapidly in numbers and many of them are in poverty''). Other HHCA proponents repeatedly referred to Native Hawaiians as a ''people'' (at times, as a ''dying people'' or a ''noble people''). *See, e.g.,* H.R. Rep. No. 66–839, at 2–4 (1920); *see also* 59 Cong. Rec. 7453 (1920) (statement of Delegate Prince Kuhio) (''[I]f conditions continue to exist as they do today . . . , my people . . . will pass from the face of the earth.''). Congress found constitutional precedent for the HHCA in previous enactments addressing Indian rights in using public lands, H.R. Rep. No. 66–839, at 11, and has since acknowledged that the HHCA ''affirm[ed] the trust relationship between the United States and the Native Hawaiians.'' 42 U.S.C. 11701(13); *accord* 20 U.S.C. 7512(8).

In 1938, Congress again exercised its trust responsibility by preserving Native Hawaiians' exclusive fishing rights in the Hawaii National Park. Act of June 20, 1938, ch. 530, sec. 3(a), 52 Stat. 784.

In 1959, as a condition of statehood, the Hawaii Admission Act contained two provisions expressly recognizing Native Hawaiians and requiring the State of Hawaii to manage lands for the benefit of the indigenous Native Hawaiian people. Act of March 18, 1959, 73 Stat. 4 (Admission Act). First, the Federal Government required the State to adopt the HHCA as a provision of its constitution, which effectively ensured continuity of the Hawaiian home lands program. *Id.* sec. 4, 73 Stat. 5. Second, it required the State to manage a Congressionally mandated public land trust for specific purposes, including the betterment of Native Hawaiians. *Id.* sec. 5(f), 73 Stat. 6 (requiring that lands transferred to the State be held by the State ''as a public trust . . . for [among other purposes] the betterment of the conditions of native Hawaiians, as defined in the [HHCA], as amended''). In addition, the Federal Government maintained an oversight role with respect to the home lands. *See* Admission Act sec. 4; Hawaiian Home Lands Recovery Act (HHLRA), Act of November 2, 1995, 109 Stat. 357. Congress again recognized in more recent statutes that ''Native Hawaiians have a cultural, historic, and land-based link to the indigenous people who exercised sovereignty over the Hawaiian Islands, and that group has never relinquished its claims to sovereignty or its sovereign lands.'' Native Hawaiian Education Act, 20 U.S.C. 7512(12)(A); *accord* Hawaiian Homelands Homeownership Act, 114 Stat. 2968 (2000); Native Hawaiian Health Care Improvement Act, 42 U.S.C. 11701(1) (''The Congress finds that: Native Hawaiians comprise a distinct and unique indigenous people with a historical continuity to the original inhabitants of the Hawaiian archipelago whose society was organized as a Nation prior to the arrival of the first nonindigenous people in 1778.''); *see also* Hawaiian Homelands Homeownership Act, 114 Stat. 2966 (2000); 114 Stat. 2872, 2874 (2000); Consolidated Appropriations Act, 118 Stat. 445 (2004) (establishing the U.S. Office of Native Hawaiian Relations). Notably, in 1993, Congress enacted the Apology Resolution to acknowledge the 100th anniversary of the overthrow of the Kingdom of Hawaii and to offer an apology to Native Hawaiians. In that Resolution, Congress acknowledged that the overthrow of the Kingdom of Hawaii resulted in the suppression of Native Hawaiians' ''inherent sovereignty'' and deprived them of their ''rights to self-determination,'' and that ''long-range economic and social changes in Hawaii over the nineteenth and early twentieth centuries have been devastating to the population and to the health and well-being of the Hawaiian people.'' It further recognized that ''the Native Hawaiian people are determined to preserve, develop, and transmit to future generations their ancestral territory and their cultural identity in accordance with their own spiritual and traditional beliefs, customs, practices, language, and social institutions.'' Apology Resolution at 1512–13; *see* Native Hawaiian Education Act, 20 U.S.C. 7512(20); Native Hawaiian Health Care Improvement Act, 42 U.S.C. 11701(2). In light of those findings, Congress ''express[ed] its commitment to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii, in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people.'' Apology Resolution at 1513. Congress also urged the President of the United States to ''support reconciliation efforts

between the United States and the Native Hawaiian people.'' *Id.* at 1511. These Congressional findings and other Congressional actions demonstrate that indigenous Hawaiians, like numerous tribes in the continental United States, have both an historical and existing cohesive political and social existence, derived from their inherent sovereign authority, which has survived despite repeated external pressures to abandon their way of life and assimilate into mainstream American society.

The Executive Branch also made findings and recommendations following a series of hearings and meetings with the Native Hawaiian community in 1999, when the U.S. Departments of the Interior and of Justice issued, ''From Mauka to Makai: The River of Justice Must Flow Freely,'' a report on the reconciliation process between the Federal Government and Native Hawaiians. The report found that ''the injustices of the past have severely damaged the culture and general welfare of Native Hawaiians,'' and that exercising self-determination over their own affairs would enable Native Hawaiians to ''address their most pressing political, health, economic, social, and cultural needs.'' Department of the Interior & Department of Justice, *From Mauka to Makai* at 4, 46–48, 51 (2000) (citing Native Hawaiians' poor health, poverty, homelessness, and high incarceration rates, among other socioeconomic impacts). The report ultimately recommended as its top priority that ''the Native Hawaiian people should have self-determination over their own affairs within the framework of Federal law.'' *Id.* at 3–4.

Congress also found it significant that the State of Hawaii ''recognizes the traditional language of the Native Hawaiian people as an official language of the State of Hawaii, which may be used as the language of instruction for all subjects and grades in the public school system,'' and ''promotes the study of the Hawaiian culture, language, and history by providing a Hawaiian education program and using community expertise as a suitable and essential means to further the program.'' Native Hawaiian Education Act, 20 U.S.C. 7512(21); *see also* Native Hawaiian Health Care Improvement Act, 42 U.S.C. 11701(3) (continued preservation of Native Hawaiian language and culture). Congress's efforts to protect and promote the traditional Hawaiian language and culture demonstrate that it repeatedly recognized a continuing Native Hawaiian community. In addition, at the State level, recently enacted laws mandated that members of certain state councils, boards, and commissions complete a training course on Native Hawaiian rights, and approved traditional Native Hawaiian burial and cremation customs and practices. *See* Act 169, Sess. L. Haw. 2015; Act 171, Sess. L. Haw. 2015. These State actions similarly reflect recognition by the State government of a continuing Native Hawaiian community.

Congress consistently enacted programs and services expressly and specifically for the Native Hawaiian community that are in many respects analogous to, but separate from, the programs and services that Congress enacted for federally-recognized tribes in the continental United States. As Congress explained, it ''does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous peoples of a once sovereign nation as to whom the United States has established a trust relationship.'' Hawaiian Homelands Homeownership Act, 114 Stat. 2968 (2000). Thus, ''the political status of Native Hawaiians is comparable to that of American Indians and Alaska Natives.'' Native Hawaiian Education Act, 20 U.S.C. 7512(12)(B), (D). Congress's treatment of Native Hawaiians flows from that political status of the Native Hawaiian community.

Congress, under its plenary authority over Indian affairs, repeatedly acknowledged its special relationship with the Native Hawaiian community since the overthrow of the Kingdom of Hawaii more than a century ago. Congress concluded that it has a trust obligation to Native Hawaiians in part because it bears responsibility for the overthrow of the Kingdom of Hawaii and suppression of Native Hawaiians' sovereignty over their land. But the Federal Government has not maintained a formal government-togovernment relationship with the Native Hawaiian community as an organized, sovereign entity. Reestablishing a formal government-to-government relationship with a reorganized Native Hawaiian sovereign government would facilitate Federal agencies' ability to implement the established relationship between the United States and the Native Hawaiian community through interaction with a single, representative governing entity. Doing so would strengthen the self-determination and self-governance of Native Hawaiians and facilitate the preservation of their language, customs, heritage, health, and welfare. This interaction is consistent with the United States government's broader policy of advancing Native communities and enhancing the implementation of Federal programs by implementing those programs in the context of a formal government-to-government relationship.

Consistent with the HHCA, which is the first Congressional enactment clearly recognizing the Native Hawaiian community's special relationship with the United States, Congress requires Federal agencies to consult with Native Hawaiians under several Federal statutes. *See, e.g.,* the National Historic Preservation Act of 1966, 54 U.S.C. 302706; the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002(c)(2), 3004(b)(1)(B). And in 2011, the Department of Defense established a consultation process with Native Hawaiian organizations when proposing actions that may affect property or places of traditional religious and cultural importance or subsistence practices. *See* U.S. Department of Defense Instruction Number 4710.03: Consultation Policy with Native Hawaiian Organizations (2011). Other statutes specifically related to implementation of the Native Hawaiian community's special trust relationship with the United States affirmed the continuing Federal role in Native Hawaiian affairs, such as the Hawaiian Home Lands Recovery Act (HHLRA), 109 Stat. 357, 360 (1995). The HHLRA also authorized a position within the Department to discharge the Secretary's responsibilities for matters related to the Native Hawaiian community. And in 2004, Congress provided for the Department's Office of Native Hawaiian Relations to effectuate and implement the special legal relationship between the Native Hawaiian people and the United States; to continue the reconciliation process set out in 2000; and to assure meaningful consultation before Federal actions that could significantly affect Native Hawaiian resources, rights, or lands are taken. *See* Consolidated Appropriations Act, 118 Stat. 445–46 (2004).

(C) Actions by the Continuing Native Hawaiian Community

As discussed above, Native Hawaiians were active participants in the political life of the Kingdom of Hawaii, and this activity continued following the overthrow through coordinated resistance to annexation and a range of other organized forms of political and social organizations. *See generally* Silva, *Aloha Betrayed;* Silva, 1 Oiwi: A Native Hawaiian Journal 40 (examining Hawaiian-language print media and documenting the organized Native Hawaiian resistance to annexation); Silva, *I Ku Mau Mau: How Kanaka*

Maoli Tried to Sustain National Identity Within the United States Political System (documenting mass meetings, petitions, and citizen testimonies by Native Hawaiian political organizations during and after the annexation period). The Native Hawaiian community maintained its cohesion and its distinct political voice through the twentieth century to the present day. Through a diverse group of organizations that includes, for example, the Hawaiian Civic Clubs and the various Hawaiian Homestead Associations, Native Hawaiians deliberate and express their views on issues of importance to their community, some of which are discussed above. *See generally Moolelo Ea O Na Hawaii* at 535–55; *see id.* at 606–30 & appendix 4 (listing organizations, their histories, and their accomplishments). Native Hawaiians' organized action to advance Native Hawaiian self-determination resulted in the passage of a set of amendments to the State Constitution in 1978 to reaffirm the ''solemn trust obligation and responsibility to native Hawaiians'' by providing additional protection and recognition of Native Hawaiian interests—a key example of political action in the community. Haw. Rev. Stat. 10–1(a) (2016). Those amendments established the Office of Hawaiian Affairs (OHA), which administers trust monies to benefit the Native Hawaiian community and generally promotes Native Hawaiian affairs, Hawaii Const. art. XII, secs. 4–6, and provided for recognition of certain traditional and customary legal rights of Native Hawaiians, *id.* art. XII, sec. 7. The amendments reflected input from broad segments of the Native Hawaiian community, as well as others, who participated in statewide discussions of proposed options. *See* Noelani Goodyear-Kaopua, Ikaika Hussey & Erin Kahunawaikaala Wright, *A Nation Rising: Hawaiian Movements for Life, Land, and Sovereignty* (2014).

There are numerous additional examples of active engagement within the community on issues of self-determination and preservation of Native Hawaiian culture and traditions: Ka Lahui Hawaii, a Native Hawaiian self-governance initiative, which organized a constitutional convention resulting in a governing structure with elected officials and governing documents; the Hui Naauao Sovereignty and Self-Determination Community Education Project, a coalition of over 40 Native Hawaiian organizations that worked together to educate Native Hawaiians and the public about Native Hawaiian history and self-governance; the 1988 Native Hawaiian Sovereignty Conference, where a resolution on self-governance was adopted; the Hawaiian Sovereignty Elections Council, a State-funded entity, and its successor, Ha Hawaii, a nonprofit organization, which helped hold an election and convene *Aha Oiwi Hawaii,* a convention of Native Hawaiian delegates to develop a constitution and create a government model for Native Hawaiian self-determination; and efforts resulting in the creation and future transfer of the Kahoolawe Island reserve to ''the sovereign native Hawaiian entity,'' *see* Haw. Rev. Stat. 6K–9 (2016). Moreover, the community's continuing efforts to integrate and develop traditional Native Hawaiian law, which Hawaii state courts recognize and apply in various family-law and property-law disputes, *see Cohen's Handbook of Federal Indian Law* sec. 4.07[4][e], at 375–77 (2012 ed.); *see also Native Hawaiian Law: A Treatise* at 779–1165, encouraged development of traditional justice programs, including a method of alternative dispute resolution, ''hooponopono,'' that the Native Hawaiian Bar Association endorses. *See* Andrew J. Hosmanek, *Cutting the Cord: Hooponopono and Hawaiian Restorative Justice in the Criminal Law Context,* 5 Pepp. Disp. Resol. L.J. 359 (2005); *see also* Hawaii Const. art. XII, sec. 7 (protecting the traditional and customary rights of certain Native Hawaiian tenants).

Against this backdrop of activity, Native Hawaiians and Native Hawaiian organizations asserted self-determination principles in court. Notably, in 2001, they brought suit challenging Native Hawaiians' exclusion from the Department's acknowledgment regulations (25 CFR part 83), which establish a uniform process for Federal acknowledgment of Indian tribes in the continental United States. The United States Court of Appeals for the Ninth Circuit upheld the geographic limitation in the part 83 regulations, concluding that there was a rational basis for the Department to distinguish between Native Hawaiians and tribes in the continental United States, given the unique history of Hawaii and the history of separate Congressional enactments regarding the two groups. *Kahawaiolaa* v. *Norton,* 386 F.3d 1271, 1283 (9th Cir. 2004), *cert. denied,* 545 U.S. 1114 (2005). The Ninth Circuit also noted the question whether Native Hawaiians ''constitute one large tribe . . . or whether there are, in fact, several different tribal groups.'' *Id.* The court believed it appropriate for the Department to apply its expertise to ''determine whether native Hawaiians, or some native Hawaiian groups, could be acknowledged on a government-to-government basis.'' [1] *Id.*

In recent years, Congress considered legislation to reorganize a single Native Hawaiian governing entity and reestablish a formal government-to-government relationship between it and the United States. In 2010, during the Second Session of the 111th Congress, nearly identical Native Hawaiian government reorganization bills were passed by the House of Representatives (H.R. 2314), reported out favorably by the Senate Committee on Indian Affairs (S. 1011), and strongly supported by the Executive Branch (S. 3945). In a letter to the Senate concerning S. 3945, the Secretary and the Attorney General stated: ''Of the Nation's three major indigenous groups, Native Hawaiians—unlike American Indians and Alaska Natives—are the only one that currently lacks a government-to-government relationship with the United States. This bill provides Native Hawaiians a means by which to exercise the inherent rights to local self-government, self-determination, and economic self-sufficiency that other Native Americans enjoy.'' 156 Cong. Rec. S10990, S10992 (Dec. 22, 2010).

The 2010 House and Senate bills provided that the Native Hawaiian government would have ''the inherent powers and privileges of self-government of a native government under existing law,'' including the inherent powers ''to determine its own membership criteria [and] its own membership'' and to negotiate and implement agreements with the United

[1] The Department carefully reviewed the *Kahawaiolaa* briefs, in which the United States suggested that Native Hawaiians have not been recognized by Congress as an Indian tribe. That suggestion, however, must be read in the context of the *Kahawaiolaa* litigation, which challenged the validity of regulations determining which Native groups should be recognized as tribes eligible for Federal Indian programs, services, and benefits and as having a formal government-to-government relationship with the United States. *See* 25 CFR 83.2 (2004). As noted throughout this rule, Congress has not recognized Native Hawaiians as eligible for general Federal Indian programs, services, and benefits; and while Congress has provided separate programs, services, and benefits for Native Hawaiians in the exercise of its constitutional authority with respect to indigenous communities in the United States, Congress has not itself established a formal government-to-government relationship with the Native Hawaiian community. That matter has been left to the Executive or for later action by Congress itself. So, in context, the suggestion in the United States' *Kahawaiolaa* briefs is not inconsistent with the positions taken in this rulemaking. To the extent that other positions taken in this rulemaking may be seen as inconsistent with statements or positions of the United States in the *Kahawaiolaa* litigation, for the reasons stated in the proposed rule, and in this final rule, the views in this rulemaking reflect the Department's policy.

States or with the State of Hawaii. The bills required protection of the civil rights and liberties of Natives and non-Natives alike, as guaranteed in the Indian Civil Rights Act of 1968, 25 U.S.C. 1301 *et seq.,* and provided that the Native Hawaiian government and its members would not be eligible for Federal Indian programs and services unless Congress expressly declared them eligible. And S. 3945 expressly left untouched the privileges, immunities, powers, authorities, and jurisdiction of federally-recognized tribes in the continental United States.

The bills further acknowledged the existing ''special political and legal relationship with the Native Hawaiian people'' and established a process for ''the Native Hawaiian people to exercise their inherent rights as a distinct, indigenous, native community to reorganize a single unified Native Hawaiian governing entity.'' Some in Congress, however, expressed a preference for allowing the Native Hawaiian community to petition through the Department's Federal acknowledgment process. *See, e.g.,* S. Rep. No. 112–251, at 45 (2012); S. Rep. No. 111–162, at 41 (2010).

In 2011, in Act 195, the State of Hawaii expressed its support for reorganizing a Native Hawaiian government that could then be federally recognized, while also providing for State recognition of the Native Hawaiian people as ''the only indigenous, aboriginal, maoli people of Hawaii.'' Haw. Rev. Stat. 10H–1 (2015); *see* Act 195, sec. 1, Sess. L. Haw. 2011. In particular, Act 195 established a process for compiling a roll of qualified Native Hawaiians to facilitate the Native Hawaiian community's development of a reorganized Native Hawaiian governing entity. *See* Haw. Rev. Stat. 10H–3–4 (2015); *id.* 10H–5 (''The publication of the roll of qualified Native Hawaiians . . . is intended to facilitate the process under which qualified Native Hawaiians may independently commence the organization of a convention of qualified Native Hawaiians, established for the purpose of organizing themselves.''); Act 195, secs. 3–5, Sess. L. Haw. 2011.

Act 195 established the Native Hawaiian Roll Commission to oversee the process for compiling the roll of qualified Native Hawaiians. The Commission accepted registrations from individuals subject to verification of their Native Hawaiian ancestry while also ''pre-certifying'' for the roll individuals who were listed on any registry of Native Hawaiians maintained by OHA. Haw. Rev. Stat. 10H–3(a)(2)(A)(iii) (2015). On July 10, 2015, the Commission certified an initial list of more than 95,000 qualified Native Hawaiians, as defined by Haw. Rev. Stat. 10H–3 (2015). In addition to the initial list, the Commission certified supplemental lists of qualified Native Hawaiians and published a compilation of the certified lists online—the Kanaiolowalu. *See Kanaiolowalu, Certified List* (Oct. 19, 2015), *http://www.kanaiolowalu.org/list* (last visited Apr. 19, 2016).

In December 2014, a private nonprofit organization known as Nai Aupuni formed to support efforts to achieve Native Hawaiian self-determination. It originally planned to hold a month-long, vote-by-mail election of delegates to an Aha, a convention to consider paths for Native Hawaiian self-governance. Nai Aupuni limited voters and delegates to Native Hawaiians and it relied on the roll compiled by the Commission to identify Native Hawaiians. Delegate voting was to occur throughout the month of November 2015, but a lawsuit by six individuals seeking to halt the election delayed those efforts. *See Akina* v. *Hawaii,* 141 F. Supp. 3d 1106, 1111 (D. Haw. 2015).

Plaintiffs alleged, among other things, violations of the Fifteenth Amendment to the U.S. Constitution and the Voting Rights Act. The district court ruled that plaintiffs did not demonstrate a likelihood of success on their claims and denied their motion for a preliminary injunction. The district court also found that the scheduled election was a private election ''for delegates to a private convention, among a community of indigenous people for purposes of exploring self-determination, that will not—and cannot—result in any federal, state, or local laws or obligations by itself.'' The court found it was ''not a state election.'' Plaintiffs appealed to the Ninth Circuit.

During the appeal, Nai Aupuni mailed the delegate ballots to certified voters and the voting for delegates began. Plaintiffs filed an urgent motion for an injunction pending appeal in the Ninth Circuit, which was denied. Plaintiffs then filed an emergency application for an injunction pending appellate review in the U.S. Supreme Court on November 23, 2015. Justice Kennedy enjoined the counting of ballots on November 27, 2015. Five days later, the Supreme Court, by a vote of 5 to 4, granted plaintiffs' request and enjoined the counting of ballots and the certifying of winners, pending the final disposition of the appeal in the Ninth Circuit. *See Akina* v. *Hawaii,* 136 S. Ct. 581 (2015). These orders were not accompanied by opinions. On August 29, 2016, the Ninth Circuit dismissed plaintiffs' appeal of the preliminary-injunction order as moot. *Akina* v. *Hawaii,* No. 15–17134, 2016 WL 4501686 (9th Cir. Aug. 29, 2016). The litigation remained pending in Federal district court at the time this final rule was issued.

After the Supreme Court enjoined the counting of the ballots, Nai Aupuni, citing concerns about the potential for years of delay in litigation, terminated the election and chose to never count the votes. Instead, Nai Aupuni invited all registered candidates participating in the election to participate in the Aha. During February 2016, nearly 130 Native Hawaiians took part in the Aha. On February 26, 2016, by a vote of 88-to-30 with one abstention (not all participants were present to vote), the Aha delegates voted to adopt a constitution. *See* Press Release, Native Hawaiian Constitution Adopted (Feb. 26, 2016); Constitution of the Native Hawaiian Nation (2016), *available at http://www.aha2016.com* (last visited Apr. 19, 2016). Aha participants also adopted a declaration that lays out a history of Native Hawaiian self-governance ''so the world may know and come to understand our cause towards self-determination through self-governance.'' Declaration of the Sovereignty of the Native Hawaiian Nation: An Offering of the Aha, *available at http://www.aha2016.com* (last visited Apr. 19, 2016).

The development of the roll of qualified Native Hawaiians, the effort to elect delegates to an Aha, and the adoption of a constitution by the Aha participants are all events independent of this rule. The purpose of the rule is to provide a process and criteria for reestablishing a formal government-to-government relationship that would enable a reorganized Native Hawaiian government to represent the Native Hawaiian community and conduct formal government-to-government relations with the United States under the Constitution and applicable Federal law. These events, however, provide context and significant evidence of the community's interest in reorganizing and reestablishing the formal government-to-government relationship that warrants the Secretary proceeding with this rulemaking process.

(III) Overview of Final Rule

The final rule reflects the totality of the comments from the Advance Notice of Proposed Rulemaking (ANPRM) and the Notice of Proposed Rulemaking (NPRM or proposed rule) stages of the rulemaking process in which commenters urged the Department to promulgate a rule announcing a procedure and criteria by which the

Secretary could reestablish a formal government-to-government relationship with the Native Hawaiian community. The Department will rely on this final rule as the sole administrative avenue for doing so with the Native Hawaiian community.

In accordance with the wishes of the Native Hawaiian community as expressed in the comments on the ANPRM and the NPRM, the final rule does not involve the Federal Government in convening a constitutional convention, in drafting a constitution or other governing document for the Native Hawaiian government, in registering voters for purposes of ratifying that document, or in electing officers for that government. Any government reorganization would instead occur through a fair and inclusive community-driven process. The Federal Government's only role is deciding whether the request satisfies the rule's requirements, enabling the Secretary to reestablish a formal government-to-government relationship with the Native Hawaiian government.

Moreover, if a Native Hawaiian government reorganizes, it will be for that government to decide whether to seek to reestablish a formal government-to-government relationship with the United States. The process established by this rule is optional, and Federal action would occur only upon an express formal request from the reorganized Native Hawaiian government.

Existing Federal Legal Framework. In adopting this rulemaking, the Department must adhere to the legal framework, discussed above, that Congress already established to govern relations with the Native Hawaiian community. The existing body of legislation makes plain that Congress determined repeatedly, over a period of almost a century, that the Native Hawaiian population is an existing Native community within the scope of the Federal Government's powers over Native American affairs and with which the United States has already acknowledged or recognized an ongoing special political and trust relationship. Congress described this trust relationship, for example, in findings enacted as part of the Native Hawaiian Education Act, 20 U.S.C. 7512 *et seq.,* and the Native Hawaiian Health Care Improvement Act, 42 U.S.C. 11701 *et seq.* Those findings observe that ''[t]hrough the enactment of the Hawaiian Homes Commission Act, 1920, Congress affirmed the special relationship between the United States and the Native Hawaiians,'' 20 U.S.C. 7512(8); *see also* 42 U.S.C. 11701(13), (14) (also citing a 1938 statute conferring leasing and fishing rights on Native Hawaiians). Congress then ''reaffirmed the trust relationship between the United States and the Hawaiian people'' in the Hawaii Admission Act, 20 U.S.C. 7512(10); *accord* 42 U.S.C. 11701(16). Since then, ''the political relationship between the United States and the Native Hawaiian people has been recognized and reaffirmed by the United States, as evidenced by the inclusion of Native Hawaiians'' in at least ten statutes directed in whole or in part at American Indians and other native peoples of the United States such as Alaska Natives. 20 U.S.C. 7512(13); *see also* 42 U.S.C. 11701(19), (20), (21) (listing additional statutes). Although a trust relationship exists, today there is no single unified Native Hawaiian government in place, and no procedure for reestablishing a formal government-to-government relationship should such a government reorganize.

Authority.[2] The authority to issue this rule is vested in the Secretary by 25 U.S.C. 2, 9, 479a, 479a–1; 43 U.S.C. 1457; Act of January 23, 2004, sec. 148, 118 Stat. 445; and 5 U.S.C. 301. *See also United States* v. *Holliday,* 70 U.S. 407, 419 (1865) (''In reference to all matters of [tribal status], it is the rule of this court to follow the action of the executive and other political departments of the government, whose more special duty it is to determine such affairs.'').

Congress has plenary power with respect to Indian affairs. *See Michigan* v. *Bay Mills Indian Cmty.,* 134 S. Ct. 2024, 2030 (2014); *United States* v. *Lara,* 541 U.S. 193, 200 (2004); *Morton* v. *Mancari,* 417 U.S. 535, 551–52 (1974). Congress's plenary power over Indian affairs flows in part from the Indian Commerce Clause, which authorizes Congress to ''regulate Commerce with . . . Indian Tribes.''[3] U.S. Const. art. I, sec. 8, cl. 3. ''[N]ot only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but long continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States . . . the power and the duty of exercising a fostering care and protection over all dependent Indian communities.'' *United States* v. *Sandoval,* 231 U.S. 28, 45–46 (1913). Congress's authority to aid Indian communities, moreover, extends to all such communities within the borders of the United States, ''whether within its original territory or territory subsequently acquired.'' *Sandoval,* 231 U.S. at 46. Thus, despite differences in language, culture, religion, race, and community structure, Native people in the East, *Oneida Indian Nation* v. *County of Oneida,* 414 U.S. 661 (1974), the Plains, *Kansas Indians,* 72 U.S. (5 Wall.) 737 (1867), the Southwest, *Sandoval,* 231 U.S. at 46, the Pacific Northwest, *Washington* v. *Yakima Indian Nation,* 439 U.S. 463 (1979), and Alaska, *Organized Village of Kake* v. *Egan,* 369 U.S. 60 (1962), all fall within Congress's Indian affairs power. *See* Solicitor's Opinion, *Status of Alaskan Natives,* 53 I.D. 593, 605 (Decisions of the Department of the Interior, 1932) (It is ''clear that no distinction has been or can be made between the Indians and other natives of Alaska so far as the laws and relations of the United States are concerned whether the Eskimos and other natives are of Indian origin or not as they are all wards of the Nation, and their status is in material respects similar to that of the Indians.''); Felix Cohen's *Handbook of Federal Indian Law,* at 401, 403 (1942 ed.) (Constitution is source of authority over Alaska Natives). So too, Congress's Indian affairs power under the Constitution extends to the Native Hawaiian community. *See* Organic Act (applying Constitution to Territory of Hawaii and declaring all persons who were citizens of the Republic of Hawaii on August 12,

[2] Effective September 1, 2016, the U.S. House of Representatives' Office of the Law Revision Counsel reclassified certain statutory provisions in Title 25 cited in the proposed rule. Because the reclassified version of Title 25 is not widely available in printed form as of the date of this publication, the Department retained the statutory citations referenced in the proposed rule. The new citations and more information about the reclassification of Title 25 can be found at: *http://uscode.house.gov/editorialreclassification/t25/index.html* (last visited Sept. 14, 2016).

[3] ''The term ''Indian'' was first applied by Columbus to the native people of the New World based on the mistaken belief that he had found a sea route to India. The term has been understood ever since to refer to the indigenous people who inhabited the New World before the arrival of the first Europeans. *See Worcester* v. *Georgia,* 31 U.S. (6 Pet.) 515, 544 (1832) (referring to Indians as ''those already in possession [of the land], either as aboriginal occupants, or as occupants by virtue of a discovery made before the memory of man''); *Johnson* v. *M'Intosh,* 21 U.S. (8 Wheat.) 543, 572–74 (1823) (referring to Indians as ''original inhabitants'' or ''natives'' who occupied the New World before discovery by ''the great nations of Europe'').

At the time of the Framers and in the nineteenth century, the terms ''Indian,'' ''Indian affairs,'' and ''Indian tribes'' were used to refer to the indigenous peoples not only of the Americas but also of the Caribbean and areas of the Pacific extending to Australia, New Zealand, and the Philippines. *See, e.g.,* W. Dampier, *A New Voyage Around the World* (1697); Joseph Banks, *The Endeavor Journal of Sir Joseph Banks* (1770); William Bligh, *Narrative of the Mutiny on the Bounty* (1790); A.F. Gardiner, *Friend of Australia* (1830); James Cook, *A Voyage to the Pacific Ocean* (1784) (referring to Native Hawaiians).

1898 citizens of the United States); *see also* Nationality Act of 1940, 54 Stat. 1137, 1138 (making every ''person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe'' a citizen).

Exercising this plenary power over Indian affairs, Congress delegated to the President the authority to ''prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs, and for the settlement of the accounts of Indian affairs.'' 25 U.S.C. 9. Congress charged the Secretary with directing, consistent with ''such regulations as the President may prescribe,'' the ''management of all Indian affairs and of all matters arising out of Indian relations.'' 25 U.S.C. 2. And Congress expressly authorized the Secretary to supervise ''public business relating to . . . Indians,'' 43 U.S.C. 1457(10), and to ''prescribe regulations for the government of [the Department of the Interior] . . . [and for] the distribution and performance of its business,'' 5 U.S.C. 301.

Congress recognized and ratified its delegation of authority to the Secretary to recognize self-governing Native American groups in the Federally Recognized Indian Tribe List Act of 1994, 108 Stat. 4791 (the List Act). *See* 25 U.S.C. 479a & note (recognizing the Secretary's authority to acknowledge that Native American groups ''exist as an Indian tribe''). The Congressional findings included in the List Act confirm the ways in which an Indian tribe gains acknowledgment or recognition from the United States, including that ''Indian tribes presently may be recognized by Act of Congress . . . .'' 25 U.S.C. 479a note. Here, Congress recognized Native Hawaiians through more than 150 separate statutes. At the same time, the language of the List Act's definition of the term ''Indian tribe'' is broad and encompasses the Native Hawaiian community. *See* 25 U.S.C. 479a(2).[4]

Over many decades and more than 150 statutes, Congress exercised its plenary power over Indian affairs to recognize that the Native Hawaiian community exists as an Indian tribe within the meaning of the Constitution. Through these statutes, the United States maintains a special political and trust relationship with the Native Hawaiian community. Congress also charged the Secretary with the duty to ''effectuate and implement the special legal relationship between the Native Hawaiian people and the United States.'' Act of January 23, 2004, sec. 148, 118 Stat. 445. The Secretary's promulgation of a process and criteria by which the United States may reestablish a formal government-to-government relationship with a reorganized Native Hawaiian government whose request satisfies the rule's requirements simply acknowledges and implements what Congress already made clear on more than 150 occasions, stretching back nearly a century. *See, e.g.,* 12 U.S.C. 1715z 13b; 20 U.S.C. 80q *et seq.;* 20 U.S.C. 7511 *et seq.;* 25 U.S.C. 3001 *et seq.;* 25 U.S.C. 4221 *et seq.;* 42 U.S.C. 2991 *et seq.;* 42 U.S.C. 3057g *et seq.;* 42 U.S.C. 11701 *et seq.;* 54 U.S.C. 302706; HHCA, 42 Stat. 108; Admission Act, 73 Stat. 4; Apology Resolution, 107 Stat. 1510; HHLRA, 109 Stat. 357 (1995).

Reestablishment of a formal government-to-government relationship would allow the United States to more effectively implement the special political and trust relationship that Congress established between the United States and the Native Hawaiian community and administer the Federal programs, services, and benefits that Congress created specifically for the Native Hawaiian community. As discussed above, Native Hawaiians are indigenous people of the United States who have retained inherent sovereignty and with whom Congress established a special political and trust relationship through a course of dealings over many decades. Congress repeatedly regulated the affairs of the Native Hawaiian community as it has with other Indian tribes, consistent with its authority under the Constitution. Hence, § 50.44(a) of the final rule states that upon reestablishment of the formal government-to-government relationship, the Native Hawaiian Governing Entity will have the same formal government-to-government relationship under the United States Constitution as the formal government-to-government relationship between the United States and a federally-recognized tribe in the continental United States (subject to the limitation on programs, services, and benefits appearing in § 50.44(d)), will have the same inherent sovereign governmental authorities, and will be subject to the same plenary authority of Congress, *see* § 50.44(b).

Definitions. Congress employs two definitions of ''Native Hawaiians,'' which the rule labels as ''HHCA Native Hawaiians'' and ''Native Hawaiians.'' The former is a subset of the latter, so every HHCA Native Hawaiian is by definition a Native Hawaiian. But the converse is not true: Some Native Hawaiians are not HHCA Native Hawaiians.

As used in the rule, the term ''HHCA Native Hawaiian'' means a Native Hawaiian individual who meets the definition of ''native Hawaiian'' in HHCA sec. 201(a)(7), 42 Stat. 108 (1921), and thus has at least 50 percent Native Hawaiian ancestry, regardless of whether the individual resides on Hawaiian home lands, is an HHCA lessee, is on a wait list for an HHCA lease, or receives any benefits under the HHCA. Satisfying this definition generally requires that documentation demonstrating eligibility under HHCA sec. 201(a)(7) be available, such as official Department of Hawaiian Home Lands (DHHL) records or other State records. *See* response to comment (1)(c)(1) below for further discussion. The availability of such documentation may be attested to by a sworn statement which, if false, is punishable under Federal or state law. *See, e.g.,* Haw. Rev. Stat. 710–1062 (2016). Alternatively, a sworn statement of a close family relative who is an HHCA Native Hawaiian may be used to establish that a person meets the HHCA's definition.

The term ''Native Hawaiian,'' as used in the rule, means an individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii. This definition flows directly from multiple Acts of Congress. *See, e.g.,* 12 U.S.C. 1715z–13b(a)(6); 25 U.S.C. 3001(10); 25 U.S.C. 4221(9); 42 U.S.C. 254s(c); 42 U.S.C. 11711(3). Satisfying this definition generally requires that records documenting generation-by-generation descent be available, such as enumeration on a roll or list of Native Hawaiians certified by a State of Hawaii commission or agency under State law, where the enumeration was based on documentation that verified descent, or through current or prior enrollment as a Native Hawaiian in a Kamehameha Schools program. The availability of such documentation may be attested to by sworn statement which, if false, is punishable under state law. A Native Hawaiian may also sponsor a close family relative through a sworn statement attesting that the relative meets the definition of Native Hawaiian. Enumeration in official DHHL records demonstrating eligibility under the HHCA also would satisfy the definition of ''Native Hawaiian,'' as it would show that a person is an HHCA Native Hawaiian and by definition a ''Native

[4] As discussed more fully in Section (IV)(C), Native Hawaiians would not be added to the list that the Secretary is required to publish under sec. 104 of the List Act, 25 U.S.C. 479a–1(a), because Congress provides a separate suite of programs and services targeted directly to Native Hawaiians and not through programs broadly applicable to Indians in the continental United States.

Hawaiian'' as that term is used in this rule.

In keeping with the framework created by Congress, the rule requires that, to reestablish a formal government-to-government relationship with the United States, a Native Hawaiian government must have a constitution or other governing document ratified both by a majority vote of Native Hawaiians and by a majority vote of those Native Hawaiians who qualify as HHCA Native Hawaiians. Thus, regardless of which Congressional definition is used, a majority of the voting members of the community with which Congress established a trust relationship through existing legislation will confirm their support for the Native Hawaiian government's structure and fundamental organic law.

Ratification Process. The rule sets forth certain requirements for the process of ratifying a constitution or other governing document, including requirements that the ratification referendum be free and fair, that there be public notice before the referendum occurs, and that there be a process for ensuring that all voters are actually eligible to vote. Recognizing that the community may seek further explanation on the technical aspects of the rule, including the ratification process explained below and the use of sworn statements explained in Section (IV)(B), the Department will provide technical assistance at the request of the Native Hawaiian community.

Form of ratification. The rule does not fix the form of the ratification referendum. For example, the ratification could be an integral part of the process by which the Native Hawaiian community adopts its governing document, or the referendum could take the form of a special election held solely for the purpose of measuring Native Hawaiian support for a governing document adopted through other means. The ratification referendum by the Native Hawaiian community need not be the same election in which the Native Hawaiian community initially adopts a governing document. The referendum could be conducted simultaneously or separately for both HHCA Native Hawaiians and Native Hawaiians. The ratification process must, however, provide separate vote tallies for (a) HHCA Native Hawaiian voters and (b) all Native Hawaiian voters.

Thresholds indicating broad-based community support. To ensure that the ratification vote reflects the views of the whole Native Hawaiian community, the turnout in the ratification referendum must be sufficiently large to demonstrate broad-based community support. Accordingly, the rule focuses on the number who vote in favor of the governing document rather than the number of voters who participate in the ratification referendum. Specifically, the rule requires a minimum of 30,000 affirmative votes from Native Hawaiian voters, including a minimum of 9,000 affirmative votes from HHCA Native Hawaiians, as an objective measure to ensure that the vote represents the views of the Native Hawaiian community as a whole. The Secretary will only evaluate a request under this rule that meets this minimum broad-based community participation threshold.

In addition to this minimum affirmative-vote threshold, the rule creates a presumption of broad-based community support if the affirmative votes exceed 50,000, including affirmative votes from at least 15,000 HHCA Native Hawaiians. If a request meets these thresholds (50,000 and 15,000), the Secretary would be well justified in finding broad-based community support among Native Hawaiians.

Explanation of data used to support thresholds. There is no existing applicable numerical standard for measuring broad-based community support. The Department accordingly applied its expertise to develop such a standard based on available data. For reasons explained in the proposed rule (*see* 80 FR at 59124–25) and in this rule's Responses to Comments (Section (IV)(B)), the Department took a range of evidence into account, including actual data on voter turnout in the State of Hawaii, which indicates that the above thresholds are appropriate and achievable in practice. Based on the volume of comments received on the issue during the proposed-rule stage, the Department determined there is a need for further explanation about how it calculated the range of voter turnout. Described below is one of the reasoned methods the Department used to calculate the numerical thresholds for community support as well as the ranges for affirmative votes. The following method illustrates one of the many reasonable methods for calculating the required thresholds.

Summary

The Department first reviewed Native Hawaiian voter turnout numbers in Hawaii for national and State elections and determined those numbers indicate broad-based participation within Hawaii in those elections. Actual voter data from 1998 supports this conclusion. There were just over 100,000 Native Hawaiian registered voters, nearly 65,000 of whom cast ballots in that off-year (*i.e.,* non-presidential) Federal election. That same year, the total number of registered voters in Hawaii (Native Hawaiian and non-Native Hawaiian) was about 601,000, and about 413,000 of those voters cast a ballot. By the 2012 general presidential election, Hawaii's total number of registered voters (Native Hawaiian and non-Native Hawaiian) increased to about 706,000, of whom about 437,000 cast a ballot. And in the 2014 general gubernatorial election, the equivalent figures were about 707,000 and about 370,000, respectively. The Department concludes that such turnouts are a valid measure of broad-based participation in elections.

Second, to determine the turnout numbers today that indicate broad-based participation by the Native Hawaiian community, the Department estimated the percentage of Native Hawaiian voters within that general voter turnout. This estimate is based on actual voter data from 1988 to 1998 (*see* table below). The Department then adjusted that estimate to account for the growth in the number of Native Hawaiians as a percentage of the general population of Hawaii, and projected the percentage of Native Hawaiians within the reported voter turnout in recent elections in Hawaii, discussed below in more detail.

Third, the Department adjusted the estimate upward to account for out-of-State Native Hawaiian voters. These calculations result in a range of the number of anticipated Native Hawaiian voters, between 60,000 and 100,000, which the Department determined indicates broad-based community participation. The minimum required number of affirmative votes by Native Hawaiians is based on the low-end figure of this range, *i.e.,* 30,000.

Finally, the Department estimated the number of affirmative votes required of HHCA Native Hawaiians to demonstrate their broad-based support as 30 percent of the Native Hawaiian threshold, since HHCA Native Hawaiian adults are approximately 30 percent of the Native Hawaiian adult population, as discussed in more detail below.

Supporting Explanation

Different approaches result in different estimates based on the broad range of evidence that the Department examined. The Department is reassured, however, by the fact that different methods produced roughly similar estimates. Weighing the available data, and applying different methods to analyze those data, the Department

concluded that it is reasonable to expect that a Native Hawaiian ratification referendum would have a turnout somewhere in the range between 60,000 and 100,000, although a figure outside that range is possible. The Department concludes that turnout within this range demonstrates broad-based participation.

Of course, turnout in a Native Hawaiian ratification referendum could diverge from Native Hawaiian turnout in a regular general election; but the year-to-year consistency of turnout figures from regular general elections in Hawaii suggests strong patterns that are likely to be replicated in a Native Hawaiian ratification referendum. Generally, more recent data are preferable to older data when projecting future turnout. If Native Hawaiian voter-turnout data for the most recent elections existed, the Department would have considered it. Because such data are not available, however, the Department analyzed the last six elections in which separate voter-turnout figures specifically for Native Hawaiians are available (1988 to 1998), as well as overall (Native Hawaiian and non-Native Hawaiian) voter-turnout figures for 1988 to 2014, the date of the most recent biennial general election. The figures are reproduced in the following table:

Year	Overall voter turnout (native Hawaiian and non-native Hawaiian, combined) *	Native Hawaiian voter turnout **	Native Hawaiian voters as % of voter turnout ***
1988	368,567	48,238	13.09
1990	354,152	49,231	13.90
1992	382,882	51,029	13.33
1994	377,011	55,424	14.70
1996	370,230	52,102	14.07
1998	412,520	64,806	15.71
2000	371,379	Unknown.	
2002	385,462	Unknown.	
2004	431,662	Unknown.	
2006	348,988	Unknown.	
2008	456,064	Unknown.	
2010	385,464	Unknown.	
2012	437,159	Unknown.	
2014	369,642	Unknown.	

* Data from the Hawaii Office of Elections, which recorded on its Web site the actual voter-turnout figures from presidential-year (*e.g.,* 2012, 2008, 2004) and off-year or gubernatorial (*e.g.,* 2014, 2010, 2006) general elections in Hawaii.

** For biennial general elections prior to the Supreme Court's decision in *Rice* v. *Cayetano,* 528 U.S. 495 (2000), the Office of Elections' Web site shows voter-turnout figures for the State as a whole and also specifically for Native Hawaiian voters (because only Native Hawaiian voters were qualified to vote in OHA elections prior to 2000). Starting in 2000, the same source shows voter-turnout figures only for the State as a whole, that is, for the undifferentiated combination of Native Hawaiians and non-Native Hawaiians.

*** Native Hawaiian voters average 14.13 percent of the voter turnout in these six elections.

These figures show that overall turnout generally increased during the 1988-to-2014 period, although not always smoothly, and that Native Hawaiian turnout was doing the same during the 1988-to-1998 period, but at a somewhat faster rate than the overall turnout was increasing. These trends are consistent with census data showing Hawaii's population increasing and showing Hawaii's Native Hawaiian population increasing more rapidly than its non-Native population.

As the table above shows, overall turnout for this entire period (1988 to 2014) ranged from a low of 348,988 to a high of 456,064. The Native Hawaiian percentage of the overall turnout, for the years for which the table contains such data (1988 to 1998), ranged from a low of 13.1 percent in 1988 (48,238 divided by 368,567) to a high of 15.7 percent in 1998 (64,806 divided by 412,520). Since 1998, the fraction of the State's population that is Native Hawaiian grew by about 14.4 percent (this figure is derived by extrapolating from data showing Hawaii's Native Hawaiian population and Hawaii's total population in the 2000 and 2010 Federal decennial censuses).

Applying the population growth percentage of 14.4 to the voter-turnout numbers and then applying the Native Hawaiian voter-turnout percentage figures to those adjusted numbers results in a potential turnout of in-State Native Hawaiians that ranges from a low of about 52,300 ($1.144 \times 348{,}988 \times 0.131 = 52{,}300$) to a high of about 81,913 ($1.144 \times 456{,}064 \times 0.157 = 81{,}913$). The Department concludes that this voter-turnout range would reflect broad-based community participation of in-State Native Hawaiians.

The rule also accounts for Native Hawaiians residing out-of-State who can participate in the ratification referendum. The out-of-State Native Hawaiian population is roughly comparable in size to the in-State Native Hawaiian population. Many Native Hawaiians living outside Hawaii remain strongly engaged with the Native Hawaiian community, as reflected in the substantial number of comments on this rule from Native Hawaiians residing out-of-State and by many Native Hawaiian civic organizations in the continental United States. Notwithstanding the number of comments, the Department concludes that the rate of participation of this population in a nation-building process is likely to be considerably lower than that of in-State Native Hawaiians.

One indicator of lower out-of-State Native Hawaiian voter turnout is the relatively low number of out-of-State Native Hawaiians on the Native Hawaiian Roll Commission's (NHRC's) Kanaiolowalu roll. Although the precise number of out-of-State Native Hawaiians on the roll is not public information, delegates were initially apportioned based on their percentage participation in the roll. Seven of the 40 delegates were apportioned to out-of-State Native Hawaiians, indicating that approximately 17.5 percent of the persons on the roll are from out-of-State, even though approximately half of all Native Hawaiians reside out-of-State. Based on these figures, the Department projected a significantly lower participation rate for out-of-State Native Hawaiians, and adjusted its in-State

voter turnout figures upward by approximately 20-percent to reflect anticipated participation by out-of-State Native Hawaiians. Since the seven out-of-State delegates are equivalent to 21.2 percent of the 33 in-State delegates, the 20-percent adjustment factor is generally consistent with available information about the likely rate of engagement of the out-of-State Native Hawaiian population (33 times 120 percent equals approximately 40 delegates total).

Some data would point to a lower adjustment factor and some would point to a higher factor. For example, in 1996 when the Hawaiian Sovereignty Elections Council (HSEC) conducted its ''Native Hawaiian Vote'' election, which asked Native Hawaiians whether they wished to elect delegates to propose a Native Hawaiian government, only 3.2 percent of the more than 30,000 returned ballots came from out of State. The Department did not use this low percentage, however, as it appears to be attributable, at least in part, to the fact that the HSEC's list of potential voters contained relatively few Native Hawaiians living outside Hawaii. *See* Hawaiian Sovereignty Elections Council, *Final Report* 28 (Dec. 1996).

Census data is another source of information about the potential participation in, or affiliation with, the Native Hawaiian community is the distribution of speakers of the Hawaiian language. Census data from 2009 to 2013 indicate that about 29 percent of U.S. residents who speak the Hawaiian language (7,595 out of 26,205) resided out-of-State. Although use of native language indicates strong ties to the community, the Department gave the language data less weight than information on actual participation in voting or other political or nation-building processes, because official efforts in Hawaii to suppress the Hawaiian language in the early twentieth century artificially alters the significance of this distribution.

In sum, the Department concludes that 20 percent is a reasonable adjustment factor given the limits of available data and the uncertainties with respect to participation of the out-of-State population. Applying that 20-percent adjustment factor for out-of-State voters to the in-State turnout estimate (52,300 to 81,913) results in a total range (in-State plus out-of-State) from about 62,760 to about 98,296. This range is an estimate, based on one specific methodology. This range—like the ranges produced by many other methodologies, employing a broad set of data—comports with the Department's conclusion that it is reasonable to expect that a Native Hawaiian ratification referendum would have a turnout somewhere in the range between 60,000 and 100,000, although a figure outside that range is possible.

A majority vote is necessary to support a governing document. With voter turnout of 60,000, a majority would require over 30,000 affirmative votes; with a voter turnout of 100,000, a majority would require over 50,000 affirmative votes. On this basis, the Department determined that 30,000 affirmative votes (where they represent a majority of those cast) is the rule's minimum threshold for potentially showing broad-based community support, and 50,000 affirmative votes (where they represent a majority of those cast) creates a presumption of such support.

Finally, for the HHCA Native Hawaiians, each figure in the rule is exactly 30-percent of the equivalent figure for Native Hawaiians. As explained in detail below, the Department's best estimate is that adult HHCA Native Hawaiians comprise approximately 30 percent of adult Native Hawaiians. This estimate is based not on DHHL records, but on the Department's best estimate of the respective populations of the two groups.

The derivation of this 30-percent figure requires some background. Justice Breyer's concurring opinion in *Rice* v. *Cayetano,* 528 U.S. 495, 526 (2000), cited the *Native Hawaiian Data Book,* which indicated that about 39 percent of the Native Hawaiian population in Hawaii in 1984 had at least 50 percent Native Hawaiian ancestry and therefore would satisfy the rule's definition of an HHCA Native Hawaiian. *See Native Hawaiian Data Book* (2015), *available at http://www.ohadatabook.com.* The 1984 data included information by age group, which suggested that the fraction of the Native Hawaiian population with at least 50 percent Native Hawaiian ancestry is likely declining over time. Specifically, the 1984 data showed that Native Hawaiians with at least 50 percent Native Hawaiian ancestry constituted about 20.0 percent of Native Hawaiians born between 1980 and 1984, about 29.5 percent of Native Hawaiians born between 1965 and 1979, about 42.4 percent of Native Hawaiians born between 1950 and 1964, and about 56.7-percent of Native Hawaiians born between 1930 and 1949. The median voter in most U.S. elections today (and for the next several years) is likely to fall into the group born between 1965 and 1979. Therefore, the current population of HHCA Native Hawaiian voters is estimated to be about 30 percent as large as the current population of Native Hawaiian voters.

The conclusion that the median voter in an election held in 2016 (and for the next several years) is likely to fall into the 1965-to-1979 group is bolstered by data from the Hawaiian Sovereignty Elections Council's 1996 ''Native Hawaiian Vote.'' In that election, the median voters were in their low- to mid-40s, roughly the equivalent of a voter today who was born in 1971 or 1972. *See* Hawaiian Sovereignty Elections Council, *Final Report* 28 (Dec. 1996).

Although the data from DHHL records are of limited relevance here, the rule's 9,000- and 15,000-affirmative-vote thresholds appear to be in harmony with key DHHL data. According to the 2014 DHHL Annual Report there were 9,838 leases of Hawaiian home lands as of June 30, 2014, of which 8,329 were residential (the remaining leases were for either agricultural or pastoral land). Therefore, it is reasonable to assume there are at least 8,329 families living in homestead communities throughout Hawaii, in addition to the nearly 28,000 individual applicants awaiting a homestead lease award. And a significant number of HHCA Native Hawaiians likely are neither living in homestead communities nor awaiting a homestead lease award. The DHHL data therefore are consistent with the Department's conclusion that it is reasonable to expect that a ratification referendum would have a turnout of HHCA Native Hawaiians somewhere in the range between 18,000 and 30,000, although a figure outside that range is possible. And to win a majority vote in that range would require over 9,000 (for a turnout of 18,000) to over 15,000 (for a turnout of 30,000) affirmative votes from HHCA Native Hawaiians. On this basis, the Department determined that 9,000 affirmative votes from HHCA Native Hawaiians (where they represent a majority of those cast) is the rule's minimum threshold for potentially showing broad-based community support and 15,000 affirmative votes from HHCA Native Hawaiians (where they represent a majority of those cast) creates a presumption of such support.

The Native Hawaiian Government's Constitution or Governing Document. The form or structure of the Native Hawaiian government is left for the community to decide. Section 50.13 of the rule does, however, set forth certain minimum requirements for reestablishing a formal government-to-government relationship with the United States. The constitution or other governing document of the Native Hawaiian government must provide for ''periodic elections for government

offices,'' describe procedures for proposing and ratifying constitutional amendments, and not violate Federal law, among other requirements.

The governing document must also provide for the protection and preservation of the rights of HHCA beneficiaries. In addition, the governing document must protect and preserve the liberties, rights, and privileges of all persons affected by the Native Hawaiian government's exercise of governmental powers in accord with the Indian Civil Rights Act of 1968, as amended (25 U.S.C. 1301 *et seq.*). The Native Hawaiian community would make the decisions as to the institutions of the new government, the form of any legislative body, the means for ensuring independence of the judiciary, whether certain governmental powers would be centralized in a single body or decentralized to local political subdivisions, and other structural questions.

As to concerns that a subsequent amendment to a governing document could impair the safeguards of § 50.13, Federal law provides both defined protections for HHCA beneficiaries and specific guarantees of individual civil rights, and such an amendment could not contravene applicable Federal law. The drafters of the governing document may also choose to include additional provisions constraining the amendment process; the Native Hawaiian community would decide that question in the process of drafting and ratifying that document.

Membership Criteria. As the Supreme Court explained, a Native community's ''right to define its own membership . . . has long been recognized as central to its existence as an independent political community.'' *Santa Clara Pueblo* v. *Martinez,* 436 U.S. 49, 72 n.32 (1978). The rule therefore provides only minimal guidance about what the governing document must say with regard to membership criteria. HHCA Native Hawaiians must be included, non-Natives must be excluded, and membership must be voluntary and relinquishable. But the community itself would otherwise be free to decide its membership criteria.

Single Government. The rule provides for reestablishment of relations with only a single sovereign Native Hawaiian government. This limitation is consistent with Congress's enactments with respect to Native Hawaiians, which treat members of the Native Hawaiian community as a single indigenous people. The Native Hawaiian community will decide what form of government to adopt, and may provide for political subdivisions if it so chooses. Such political subdivisions could be defined by island, by geographic districts, by historic circumstances, or otherwise in a fair and reasonable manner. Allowing for political subdivisions is consistent with principles of self-determination applicable to Native groups, and provides some flexibility should Native Hawaiians wish to provide for subdivisions with whatever degree of autonomy the community determines is appropriate, although only a single formal government-to-government relationship with the United States would be established.

The Formal Government-to-Government Relationship. Statutes such as the National Historic Preservation Act of 1966, the Native American Graves Protection and Repatriation Act, and the HHLRA established specific processes for interaction between the Native Hawaiian community and the U.S. government. The rule provides a process and criteria for reestablishing a ''formal government-to-government relationship,'' which would, among other benefits, enable the Native Hawaiian community to work directly with the Federal Government to implement additional appropriate Native Hawaiian programs. The rule requires that the request to reestablish a formal government-to-government relationship reflect the will of the Native Hawaiian people through broad-based community support.

Submission and Processing of the Request. In addition to establishing a set of criteria for the Secretary to apply in reviewing a request from a Native Hawaiian government, the rule sets out the procedure by which the Department will receive and process a request from the authorized officer of the governing body seeking to reestablish a formal government-to-government relationship. This rule includes processes for submitting a request, for public comment on any request received, and for issuing a final decision on the request. Because Congress has already acknowledged or recognized the Native Hawaiian community, the Secretary's determination in this part is limited to the process for reestablishing a formal government-to-government relationship with the Native Hawaiian Governing Entity. Additional processes are not required.

Other Provisions. The rule also contains provisions governing technical assistance, clarifying the implementation of the formal government-to-government relationship, and addressing related issues. The rule explains that the formal government-to-government relationship with the Native Hawaiian Governing Entity would have virtually the same legal basis and structure as the formal government-to-government relationship between the United States and federally-recognized tribes in the continental United States. Accordingly, the government-to-government relationship with the Native Hawaiian Governing Entity would have very different characteristics from the government-to-government relationship that formerly existed with the Kingdom of Hawaii. The Native Hawaiian Governing Entity would remain subject to the same authority of Congress and the United States to which federally-recognized tribes in the continental United States are subject and would remain ineligible for Federal Indian programs, services, and benefits provided to Indian tribes in the continental United States and their members (including funding from the Bureau of Indian Affairs and the Indian Health Service) unless Congress expressly declared otherwise.

The rule also clarifies that neither this rulemaking nor granting a request submitted under the rule would affect the rights of HHCA beneficiaries or the status of HHCA lands. Section 50.44(f) makes clear that reestablishment of the formal government-to-government relationship does not affect the title, jurisdiction, or status of Federal lands and property in Hawaii. This provision does not affect lands owned by the State or provisions of state law. *Cf.* Haw. Rev. Stat. 6K–9 (2016) (''[T]he resources and waters of Kahoolawe shall be held in trust as part of the public land trust; provided that the State shall transfer management and control of the island and its waters to the sovereign native Hawaiian entity upon its recognition by the United States and the State of Hawaii.''). Section 50.44 also explains that the reestablished government-to-government relationship would more effectively implement statutes that specifically reference Native Hawaiians, but would not extend the programs, services, and benefits available to Indian tribes in the continental United States to the Native Hawaiian Governing Entity or its members, unless a Federal statute expressly authorizes it. These provisions also state that if the Secretary determines to grant the request to reestablish a formal government-to-government relationship, the Department will publish notice in the **Federal Register** and the determination will be effective 30 days after publication, at which time the formal government-to-government relationship will be reestablished. Individuals' eligibility for any program, service, or

benefit under any Federal law that was in effect before the final rule's effective date would be unaffected. Likewise, the rule does not affect Native Hawaiian rights, protections, privileges, immunities, and benefits under Article XII of the Constitution of the State of Hawaii. This rule would not alter the sovereign immunity of the United States or the sovereign immunity of the State of Hawaii.

(A) How the Rule Works

If a reorganized Native Hawaiian government decides to seek a formal government-to-government relationship with the United States, it must submit a written request to the Secretary, as provided in § 50.20. The request must include a written narrative with supporting documentation thoroughly addressing the elements set forth in § 50.10. If the Secretary determines that the request appears to contain these elements and is consistent with the affirmative-vote requirements set out in § 50.16(g)–(h), the Secretary will publish notice of receipt of the request in the **Federal Register** and post the request to the Department's Web site. The public will have the opportunity to comment on the request and submit evidence on whether the request meets the criteria described in § 50.16, and the requester may respond to those comments or evidence. The Secretary will review the request to determine whether it meets the criteria described in § 50.16 and is consistent with this part, along with any public comments and evidence and the requester's responses to those comments and evidence, to make a decision granting or denying the request. If the request is granted, the Secretary's decision will take effect 30 days after publication of a notice in the **Federal Register** and the requester will be identified as the Native Hawaiian Governing Entity (or the official name stated in that entity's governing document), and a formal government-to-government relationship will be reestablished with the Native Hawaiian Governing Entity as the sole representative sovereign government of the Native Hawaiian community.

(B) Major Changes

After the Department reviewed and considered public comments, it made several key clarifications and changes in this final rule (indicated below in italics). The final rule:

• Includes the Native Hawaiian community's ability to *more effectively exercise its inherent sovereignty and self-determination* as an additional purpose of the rule (§ 50.1(a));

• Adds definitions of ''*sponsor,*'' ''*State,*'' and ''*sworn statement*'' (§ 50.4);

• *Eliminates the U.S. citizenship requirement* (§§ 50.4; 50.12);

• Provides that the *Native Hawaiian community itself must prepare a list of eligible voters* to ratify its governing document and clarifies that *reliance on existing rolls prepared by others is optional* (§ 50.12(a));

• Clarifies means for individuals to demonstrate a right to vote in the ratification referendum, *e.g.,* individuals may use *sworn statements* for self-certification or for sponsoring a close family relative to demonstrate ''HHCA Native Hawaiian'' and ''Native Hawaiian'' status for purposes of voting in the ratification referendum (§ 50.12(b), (c));

• Increases the comment period for the public to submit comments and evidence on a request to reestablish a government-to-government relationship to *60 days,* provides the Department *20 days* after the close of that comment period to post comments/evidence to its Web site (§ 50.30), and permits the requester *60 days* to respond to any such comments/evidence (§ 50.31);

• Limits extensions of any deadline under §§ 50.30 and 50.31 to a total of *90 days,* provided that an extension request is *in writing and sets forth good cause* (§ 50.32);

• Clarifies that *if the Secretary is unable to render a decision on a request within 120 days following close of the comment periods, the Secretary will provide notice to the requester, and include an explanation of the need for more time and an estimate of when a decision will be made* (§ 50.40);

• *Delays the effective date of the Secretary's decision until 30 days after publication in the* ***Federal Register*** (§ 50.42); and

• Further clarifies that reestablishment of the formal government-to-government relationship *does not* affect the title, jurisdiction, or status of Federal lands and property in Hawaii (§ 50.44(f)).

(C) Key Issues

The Department reviewed comments on a wide range of issues, but received significant comment on a narrow set of key issues. These issues are more fully addressed in responses to comments in Section (IV)(B) below, but are summarized here:

• *Land into trust.* The Department's ability to take land into trust for the Native Hawaiian Governing Entity is constrained by Federal law. The Indian Reorganization Act does not apply to Hawaii and therefore does not authorize the Department to take land into trust for the Native Hawaiian Governing Entity. And no other current Federal law authorizes such action. *See* Section (IV)(B).

• *Indian Gaming Regulatory Act.* The Native Hawaiian Governing Entity may not conduct gaming activities under the Indian Gaming Regulatory Act (IGRA). *See* Section (IV)(B).

• *Federally Recognized Indian Tribe List Act of 1994 (List Act).* The Native Hawaiian Governing Entity will not appear on the list of federally-recognized Indian tribes required under the List Act. *See* Section (IV)(C).

(D) Section-by-Section Analysis

This portion of the preamble previews the final rule and highlights certain aspects of the rule that may benefit from additional explanation.

Subpart A—General Provisions, Sections 50.1, 50.2, 50.3, and 50.4

These provisions establish the purpose of this rule and explain that if a Native Hawaiian government requests a formal government-to-government relationship with the United States, as described in § 50.10, such a relationship will be reestablished only if the request is granted as described in §§ 50.40 to 50.43. The general provisions also provide that the United States will reestablish a formal government-to-government relationship with only a single Native Hawaiian government.

These provisions also define key terms used throughout the rule. *Native Hawaiian community* and *Native Hawaiian* are defined in terms that encompass all the Native Hawaiians recognized by Congress, while *HHCA Native Hawaiian* is limited to Native Hawaiians as defined in the HHCA. The rule defines *Federal Indian programs, services, and benefits* separately from *Federal Native Hawaiian programs, services, and benefits* to parallel Congress's approach limiting eligibility for specific programs, services, and benefits. *Federal Indian programs, services, and benefits* include, but are not limited to, those provided by the Bureau of Indian Affairs and the Indian Health Service, which do not extend to Native Hawaiians.

Subpart B—Criteria for Reestablishing a Formal Government-to-Government Relationship, Sections 50.10, 50.11, 50.12, 50.13, 50.14, 50.15, and 50.16

These provisions collectively explain what the Native Hawaiian community must include in its request submitted under this part.

Section 50.10 sets out the elements of the request itself. Those elements include specific written narratives for

four elements, a ratified governing document that meets the requirements of § 50.13, a resolution of the Native Hawaiian governing body authorizing its officer to submit a request for a government-to-government relationship, and the officer's certification of that request. The narratives must describe: how the governing document reflects the will of the Native Hawaiian community (§ 50.11); who could participate in ratifying the governing document, and how the community distinguished HHCA Native Hawaiians from other Native Hawaiians (§ 50.12); information about the ratification referendum (§ 50.14); and information about the elections for government offices (§ 50.15). The Department respects the Native Hawaiian community's self-determination, particularly through drafting a governing document. As a result, the rule's provisions relating to the process of drafting the community's governing document provide only minimum criteria that must be satisfied for the Secretary to reestablish a formal government-to-government relationship with the community. And, while the rule text refers to ''periodic elections for government offices identified in the governing document,'' nothing in the rule precludes the establishment of appointed positions as well. Section 50.16 lists the eight criteria that the Secretary will consider when determining whether to reestablish a formal government-to-government relationship. The final rule makes clear that, in determining whether the request meets the criteria described in § 50.16, the Secretary may also consider whether the request is consistent with this part. *See* §§ 50.40, 50.41.

Subpart C—Process for Reestablishing a Formal Government-to-Government Relationship

This subpart addresses the procedural aspects of the rule, from the mechanics of submission to the notice-and-comment process. The final two sections, §§ 50.43 and 50.44, discuss the impact and implementation of reestablishing a formal government-to-government relationship.

The provisions of this rule are generally applicable only in response to a specific request for the reestablishment of a formal government-to-government relationship. Section 50.21 recognizes that the Department is prepared to provide technical assistance if requested. The rule does not, however, create an individual interest or cause of action allowing a challenge to the Native Hawaiian community's drafting, ratification, or implementation of a governing document, separate and apart from any proceedings that would follow the submission of a request under this part. By their terms, §§ 50.43 and 50.44 only apply following reestablishment of a formal government-to-government relationship and define the implementation of that relationship.

(IV) Public Comments on the Proposed Rule and Responses to Comments

(A) Overview

The Department actively sought public input in two stages on the rule's administrative procedure and criteria for reestablishing a formal government-to-government relationship with the Native Hawaiian community.

First, in June 2014, the Department published an ANPRM seeking input from leaders and members of the Native Hawaiian community and federally-recognized tribes in the continental United States. 79 FR 35296–303 (June 20, 2014). The ANPRM asked five threshold questions: (1) Should the Secretary propose an administrative rule that would facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community? (2) Should the Secretary assist the Native Hawaiian community in reorganizing its government, with which the United States could reestablish a government-to-government relationship? (3) If so, what process should be established for drafting and ratifying a reorganized government's constitution or other governing document? (4) Should the Secretary instead rely on the reorganization of a Native Hawaiian government through a process established by the Native Hawaiian community and facilitated by the State of Hawaii, to the extent such a process is consistent with Federal law? (5) If so, what conditions should the Secretary establish as prerequisites to Federal acknowledgment of a government-to-government relationship with the reorganized Native Hawaiian government? The Department posed 19 additional, specific questions concerning the reorganization of a Native Hawaiian government and a Federal process for reestablishing a formal government-to-government relationship. The ANPRM marked the beginning of ongoing discussions with the Native Hawaiian community, consultations with federally-recognized tribes in the continental United States, and input from the public at large.

The Department received extensive public comments on the ANPRM. The Department received general comments, both supporting and opposing the ANPRM, from individual members of the public, Members of Congress, State legislators, and community leaders.

Second, after careful review and analysis of the comments on the ANPRM, in October 2015 the Department issued a Notice of Proposed Rulemaking, *Procedures for Reestablishing a Government-to-Government Relationship with the Native Hawaiian Community,* 80 FR 59113–132 (Oct. 1, 2015), setting forth an administrative procedure and criteria that the Secretary would use if the Native Hawaiian community forms a unified government that then seeks a formal government-to-government relationship with the United States. The proposed rule did not provide a process for reorganizing a Native Hawaiian government, agreeing with many ANPRM commenters that the process of drafting a constitution or other governing document and reorganizing a government should be driven by the Native Hawaiian community, not by the Federal Government. Over the course of a 90-day comment period that ended on December 30, 2015,[5] the Department again received extensive public comments, including unique public submissions and duplicate mass mailings covering a wide range of issues. The issues discussed in Section (IV)(B) encompass the range of significant issues presented in the comments on the proposed rule.

Comments came from Members of Congress, Hawaii State government offices and legislators, academics, members of the public residing in Hawaii and in the continental United States, as well as individuals residing internationally. Specifically, many Native Hawaiian Civic Clubs and Native Hawaiian community, legal, cultural, and business organizations, as well as

[5] The comment period closed on Wednesday, December 30, 2015, at 11:59 p.m. Eastern Time. The time zone of the submissions deadline was not indicated in the **Federal Register** document (80 FR 59113, 59114), though it was indicated on *www.regulations.gov.* Additionally, the deadline occurred during a busy holiday period. The Department received 277 submissions within three business days after the comment period closed, with many of those comments arriving electronically to *part50@doi.gov* (an email address set up specifically to receive comments during the comment period) in the early-morning hours of December 31 (Eastern Time), when it was still December 30 in Hawaii. The Department kept a running tally of all comments submitted to *part50@doi.gov* after the deadline. As of January 8, 2016, the Department received four more comments to *part50@doi.gov* in addition to the 277. Given the Department's interest in considering the full range of public comments, the confusion caused by omitting time zone information in the **Federal Register**, and the volume of comments received after the published deadline, the Department determined to consider all public comments received by January 8, 2016.

the National Congress of American Indians, submitted comments.

Numerous commenters expressed support for the Department's proposal without suggesting any changes and requested that the Department proceed to implement the rule as quickly as possible. Commenters who expressed general support frequently stated that the rule would provide a foundation for achieving parity in Federal policy related to indigenous communities in the United States. These commenters recognized and anticipated that there would be benefits to the Native Hawaiian Governing Entity from working directly with the Federal Government to implement existing Federal programs, and listed several other perceived benefits of a government-to-government relationship, including the Native Hawaiian Governing Entity's ability to (in no particular order): (1) Acquire land and create affordable housing solutions for its members; (2) enable more direct and effective management of assets and resources by Native Hawaiians in accordance with customary and traditional practices; (3) facilitate negotiations regarding the return of land and other assets to the Native Hawaiian people; (4) formalize management agreements with Federal, State, and local governments that enhance the ability of Native Hawaiians to contribute their knowledge and expertise to care for the environment and natural resources; (5) improve Native Hawaiians' ability to strengthen and perpetuate their indigenous culture and languages; (6) access certain veterans' benefits and health services for Native Hawaiian veterans; (7) compete for certain government contracts on a government-wide basis; and (8) more effectively coordinate health services with other human services to improve the overall health and wellness of the Native Hawaiian people. Other supporters noted that a government-to-government relationship could help preserve existing Native Hawaiian Federal benefits, such as culture-based charter and language-immersion schools, scholarships, and training programs, as well as economic, housing, and health services.

Many commenters, however, expressed opposition to the rule, advocating that the Department abandon its efforts entirely. Most of these opponents argued that the United States lacks jurisdiction to promulgate a rule, is illegally occupying the Hawaiian Islands, and violated and continues to violate international law respecting what the commenters argued is Native Hawaiians' right to self-determination under international law. Others objected to any Federal process that pertains to Native Hawaiian self-determination, stating that the rule would violate the U.S. Constitution as impermissibly race-based.

All public comments received on the ANPRM and the NPRM, along with supporting documents, are available in a combined docket at *http://www.regulations.gov/#!docketDetail;D=DOI-2015-0005.*

(B) Responses to Significant Public Comments on the Proposed Rule

The Department decided to proceed to the final-rule stage. As described in Section (III)(B) of this preamble, the Department made specific changes in response to public comments, including clarifications to address specific concerns. The Department appreciates the time commenters took to provide helpful information and valuable suggestions. Responses to significant comments relating to specific issues as well as comments relating to particular sections of the proposed rule follow below.

(1) Issue-Specific Response to Comment

(a) Authority

Issue: Several commenters called into question the Department's authority to promulgate this rule and Congress's plenary authority over Native Hawaiians. The Department made no changes to the proposed rule in response to these comments.

(1) *Comment:* Several commenters questioned the Department's authority to reestablish a formal government-to-government relationship with the Native Hawaiian community, pointing out that former U.S. Senator Daniel Akaka introduced several bills that would have expressly established a government-to-government relationship between the Native Hawaiian community and the United States, but none of those bills became law. Several commenters also questioned Congress's plenary authority over Native Hawaiians.

Response: The authority to issue this rule is vested in the Secretary by 25 U.S.C. 2, 9, 479a, 479a–1; 43 U.S.C. 1457; Act of January 23, 2004, sec. 148, 118 Stat. 445; and 5 U.S.C. 301. *See also Miami Nation of Indians of Indiana, Inc.* v. *U.S. Dep't of the Interior,* 255 F.3d 342, 346 (7th Cir. 2001) (stating that recognition is an executive function requiring no legislative action). The Federal Government has authority to enter into a government-to-government relationship with the Native Hawaiian community. *See* U.S. Const. art. I, sec. 8, cl. 3 (Commerce Clause); U.S. Const. art. II, sec. 2, cl. 2 (Treaty Clause). These constitutional provisions recognize and provide the foundation for longstanding special relationships between indigenous peoples and the Federal Government, relationships that date to the earliest period of our Nation's history. When enacting Native Hawaiian statutes, Congress has expressly stated in accompanying legislative findings that it was exercising its plenary power under the Constitution over Native American affairs: ''The authority of the Congress under the United States Constitution to legislate in matters affecting the aboriginal or indigenous peoples of the United States includes the authority to legislate in matters affecting the native peoples of Alaska and Hawaii.'' Native Hawaiian Health Care Act, 42 U.S.C. 11701(17); *see* H.R. Rep. No. 66–839, at 11 (1920) (finding constitutional precedent for the HHCA ''in previous enactments granting Indians . . . special privileges in obtaining and using the public lands''); *see also* Native Hawaiian Education Act, 20 U.S.C. 7512(12)(B), (D) (extending services to Native Hawaiians ''because of their unique status as the indigenous people of a once sovereign nation'' and explaining that ''the political status of Native Hawaiians is comparable to that of American Indians and Alaska Natives''). Over many decades, Congress enacted more than 150 statutes recognizing and implementing a special political and trust relationship with the Native Hawaiian community. These Congressional actions establish that the community is federally ''acknowledged'' or ''recognized'' by Congress. Thus, the Native Hawaiian community has a special political and trust relationship with the United States. This final rule addresses the further and distinct issue of recognizing a government of the Native Hawaiian community for purposes of entering into a formal government-to-government relationship. The statutes cited above, in combination with the Department's existing authorities related to Indian affairs, establish the Department's authority to promulgate the final rule to confirm that the reorganized Native Hawaiian government, through which the Native Hawaiian community can conduct formal government-to-government relations with the United States, is authorized to represent the community. The Department accordingly concludes, based on these Congressional enactments and on its analysis of the record and of applicable law, that the Secretary may reinstate a formal government-to-government relationship

with a Native Hawaiian government in accordance with this rule.

(2) *Comment:* Some commenters claimed that Congress lacks plenary authority over Native Hawaiians or any Native Hawaiian governing entity, and objected to the provision of the proposed rule that indicated Congress would have such authority.

Response: The United States strongly supports principles of self-determination and self-governance of indigenous peoples; nevertheless, if a Native Hawaiian Governing Entity is formed, that entity would exercise its retained inherent sovereign authority subject to the plenary authority of Congress. *See* Section (III) (Authority), *supra.* Additionally, to the extent these comments assert that Hawaii is not part of the United States, that assertion is incorrect. As discussed in the next response to comment, the Department is bound by Congressional enactments concerning the status of Hawaii.

(3) *Comment:* Many commenters objected to any rulemaking by the Department, indicating their belief that Hawaii was illegally annexed by the United States, that Hawaii is currently being ''occupied'' by the United States, and that the Kingdom of Hawaii continues to exist as a sovereign nation-state independent of the United States. Some commenters questioned whether Hawaii is properly considered to be part of the United States, suggesting the Department lacks jurisdiction to promulgate a rule.

Response: The Department made no changes to the rule in response to these comments, which address the validity of the relationship between the United States and the State of Hawaii. To the extent commenters claim that Hawaii is not a State within United States, the Department rejects that claim. Congress admitted Hawaii to the Union as the 50th State. The Admission Act, which was consented to by the State of Hawaii and its citizens through an election held on June 27, 1959, proclaimed that ''the State of Hawaii is hereby declared to be a State of the United States of America, [and] is declared admitted into the Union on an equal footing with the other States in all respects whatever.'' Act of March 18, 1959, sec. 1, 73 Stat. 4. This express determination by Congress is binding on the Department as an agency of the United States Government that is bound by Congressional enactments concerning the status of Hawaii. Under those enactments and under the United States Constitution, Hawaii is a State of the United States.

Agents of the United States were involved in the overthrow of the Kingdom of Hawaii in 1893; and Congress, through a joint resolution, both acknowledged that the overthrow of Hawaii was ''illegal'' and expressed ''its deep regret to the Native Hawaiian people'' and its support for reconciliation efforts with Native Hawaiians. Apology Resolution at 1513. This Apology Resolution, however, did not effectuate any changes to existing law. *See Hawaii* v. *Office of Hawaiian Affairs,* 556 U.S. 163, 175 (2009). Thus, the Admission Act establishing the current status of the State of Hawaii remains the controlling law.

(4) *Comment:* One commenter was critical of the Department's citation to Federal laws relating to, for example, Hawaiian language, burials, and cultural activities, and appropriations as evidence of Congress's recognition of a special political and trust relationship with the Native Hawaiian community. The commenter argued that these Federal laws do not ''rise to the level of an exercise of plenary power sufficiently analogous to those addressed in the Commerce Clause of the [U.S.] Constitution in dealing with Indian Affairs.'' Other commenters echoed this concern.

Response: The Department interprets Congress's course of dealings treating Native Hawaiians as a distinctly native community of indigenous people as analogous to its treatment of tribes in the continental United States and within the scope of Congress's power to legislate with respect to ''Indian tribes'' under the U.S. Constitution. U.S. Const. art. I, sec. 8, cl. 3. In the Apology Resolution, Congress acknowledged that the illegal overthrow of the Kingdom of Hawaii ''resulted in the suppression of the inherent sovereignty of the Native Hawaiian people'' and apologized for the role its agents and citizens played to ''depriv[e]'' Native Hawaiians of their ''rights of self-determination''. Apology Resolution, Section 1(1); (2). And by expressing its commitment to a process of reconciliation with the Native Hawaiian people, the United States acknowledged the ramifications the Kingdom's overthrow had on Native Hawaiians, including ''long-range economic and social changes'' that devastated the indigenous population and contributed to its decline in health and well-being. *Id.,* Section 1(4). The socioeconomic effects of the overthrow spanned generations and disparities continue today. But lack of a formal, organized government after the overthrow did not extinguish Native Hawaiians' ability to exercise self-determination. As discussed in Section (II), various Native Hawaiian political, community, and social organizations connected to the Kingdom continued to meet and exercise forms of self-governance outside the scope of the State and local governments. The Native Hawaiian community's continuation of internal self-governance post-annexation to the current day demonstrates its resilience and cohesion as a political community. Indeed, Congress specifically recognized Native Hawaiians' unique needs as a distinct indigenous community by enacting legislation creating programs for their exclusive benefit, *e.g.,* the Native Hawaiian Education Act, 20 U.S.C. 7511 *et seq.;* the Native Hawaiian Health Care Act, 42 U.S.C. 11701 *et seq.;* the Native American Housing Assistance and Self-Determination Act (NAHASDA), 42 U.S.C. 4221 *et seq.,* and by specifically including them in other legislation pertaining to Indian tribes, *e.g.,* American Indian Religious Freedom Act, 42 U.S.C. 1996; Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001–3013; Native American Programs Act of 1974, 42 U.S.C. 2991–2992d. These and other Federal acts contribute to the process of rehabilitating the Native Hawaiian community in the areas of health care, education, housing, religious freedom, social welfare, and cultural preservation, a process that lays the groundwork for the Native Hawaiian community to formally reorganize its government and exercise self-determination and self-governance.

Appropriations to fund the programs created by these and other Federal acts are an essential part of Congress's exercise of its plenary authority over indigenous peoples. Accordingly, the Department treats Congressional appropriations laws similar to legislation respecting programs for the Native Hawaiian community.

(b) Constitutionality

Issue: Commenters opposed to the proposed rule alleged that it would violate the U.S. Constitution.

Comment: Commenters expressed concern that any government-to-government relationship is inherently race-based and violates both the Fourteenth Amendment's Equal Protection Clause and the Fifteenth Amendment's guarantee of the right to vote regardless of race. Some commenters expressed the view that it is not appropriate for indigenous groups to have separate governments that are recognized by the United States, or that Native Hawaiians are not appropriately accorded that status.

Response: The U.S. Constitution provides the Federal Government with authority to recognize and enter into

government-to-government relationships with Native communities. *See* U.S. Const. art. I, sec. 8, cl. 3 (Commerce Clause); U.S. Const. art. II, sec. 2 (Treaty Clause); *see also Morton* v. *Mancari,* 417 U.S. 535, 551–52 (1974) (''The plenary power of Congress to deal with the special problems of Indians is drawn both explicitly and implicitly from the Constitution itself.''). These constitutional provisions recognize and provide the foundation for longstanding special relationships between Native peoples and the Federal Government, relationships that date to the early days of our Nation's history. Consistent with the Supreme Court's holding in *Morton* v. *Mancari,* and other cases, the United States' government-to-government relationships with Native peoples do not constitute ''race-based'' discrimination but rather are political classifications.

Moreover, this final rule only creates a pathway through which a formal government-to-government relationship can be reestablished; it does not by itself establish such a relationship. It is clear that Congress recognized the Native Hawaiian community as an indigenous community within the scope of Congress's Indian affairs power under the Constitution, as well as the community's inherent sovereignty and the United States' role in suppressing what the Apology Resolution described as the community's ''rights to self-determination'' through the overthrow of the Kingdom. It accordingly has provided that community with certain programs and benefits. *See Board of County Comm'rs* v. *Seber,* 318 U.S. 705, 715 (1943) (once the United States ''overcame the Indians and took possession of their lands, sometimes by force, leaving them . . . needing protection . . . [it] assumed the duty of furnishing . . . protection and with it the authority to do all that was required to perform that obligation''). As Congress explained, it ''does not extend services to Native Hawaiians because of their race, but because of their unique status as the indigenous peoples of a once sovereign nation as to whom the United States has established a trust relationship.'' Native Hawaiian Homelands Homeownership Act of 2000, 114 Stat. 2968. Thus, ''the political status of Native Hawaiians is comparable to that of American Indians and Alaska Natives.'' Native Hawaiian Education Act, 20 U.S.C. 7512(12)(B), (D); *see Rice,* 528 U.S. at 518–19. Therefore, reestablishing a government-to-government relationship here gives further expression to the special political and trust relationship Congress already established with the Native Hawaiian community, in a manner similar to the United States' relationship with Indian tribes in the continental United States. Such a relationship is constitutional. Congress and the Department both encourage self-government by tribes, and have done so for decades. This policy is beneficial not only to indigenous communities but also to the United States as a whole.

(c) Voter Eligibility

Issue: The Department received numerous comments on the provisions in the proposed rule concerning the Native Hawaiian community's ability to determine and verify voter eligibility based on Native Hawaiian ancestry. The Department made key changes to § 50.12 in response to these comments.

(1) *Comment:* In the preamble to the proposed rule, 80 FR 59124, the Department asked for comment on whether there are circumstances in which the rule should rely on sworn statements punishable under state law to document ''HHCA Native Hawaiian'' status under § 50.4 and corresponding sections of the proposed rule. Citing the lack of official databases that distinguish between ''HHCA Native Hawaiians'' and other ''Native Hawaiians,'' one commenter suggested that sworn statements punishable under state law should be accepted as sufficient evidence of ''HHCA Native Hawaiian'' status for voting purposes only. Other commenters supported the use of sworn statements for ''Native Hawaiians'' as well.

Response: The Department concludes that sworn statements may be used to demonstrate ''HHCA Native Hawaiian'' or ''Native Hawaiian'' status for purposes of voting in the ratification referendum. New language was added to the final rule indicating that reliable self-certifying sworn statements are sufficient for purposes of participation in the ratification referendum.

In light of this change, the Department added a definition of ''sworn statement'' and introductory language in § 50.12 requiring the Native Hawaiian community to explain the procedures it used for verifying the self-certifying ''Native Hawaiians'' and ''HHCA Native Hawaiians.'' Section 50.12(b) sets out five ways in which a potential voter could, through a sworn statement, affirm his or her Native Hawaiian status. *See* § 50.12(b)(i)–(v). For example, the sworn statement could affirm that the potential voter:

- Is enumerated on a roll or list prepared by the State of Hawaii under State law (where enumeration is based on documentation that verifies Native Hawaiian descent);
- is currently or previously enrolled as a Native Hawaiian in a Kamehameha Schools program;
- is identified as ''Native Hawaiian'' (or some equivalent term) on a birth certificate; or
- is identified as ''Native Hawaiian'' (or some equivalent term) in a Federal, state, or territorial court order determining ancestry.

A sworn statement is sufficient evidence of HHCA Native Hawaiian status as long as that statement affirms that there are specific means to establish the potential voter's eligibility as Native Hawaiian under HHCA sec. 201(a)(7), or if the statement affirms that a court order does so. *See* § 50.12(c). Acceptable documentation to support the sworn statements could include, but is not limited to, a Hawaiian home-lands lease as Native Hawaiian under HHCA sec. 201(a)(7) or correspondence from DHHL indicating such Native Hawaiian beneficiary status. Notably, documentation of either status need not actually accompany a sworn statement, unless the community requires it. If the Native Hawaiian community chooses, it may identify HHCA Native Hawaiians on its voter list of Native Hawaiians at the time the votes are cast. Regardless of when the community identifies its HHCA Native Hawaiian voters, however, the community must account for both HHCA Native Hawaiians and Native Hawaiians vote tallies.

The rule provides safeguards against potential voter fraud by requiring specific support for the potential voter's status, § 50.12(b), (c), as well as requiring separate vote tallies for Native Hawaiians and HHCA Native Hawaiians, § 50.14(b)(5)(v). In addition to these foundational provisions, the rule provides the public with an opportunity to present evidence on whether the community's request meets the standards set out in § 50.16 (§ 50.30(a)(2)(iv)), which could include evidence that, for example, the Native Hawaiian community did not meet the requirements of § 50.12 or § 50.14. Finally, the Secretary may request additional documentation and explanation with respect to the request submitted under this part (§ 50.40).

The comments make clear that there is no comprehensive listing of ''Native Hawaiians'' and ''HHCA Native Hawaiians.'' Therefore, it is likely that many may not be enumerated in any roll maintained by the State or other entity. The comments also make clear that many ''Native Hawaiians'' and ''HHCA Native Hawaiians'' objected to being enumerated on any roll, State sponsored

or otherwise, without their consent (even if there is an established process to have their names removed), and that some may not have any ancestral documentation. Accordingly, in addition to sworn statements described above, the Department amended the proposed rule to permit an eligible voter to *sponsor* a closely related blood relative (mother, father, child, brother, sister, grandparent, aunt, uncle, grandchild, niece, nephew, or first cousin) as qualified for participation in a ratification referendum through a sworn statement based on the voter's personal knowledge that the blood relative meets the definition of Native Hawaiian or HHCA Native Hawaiian, with the consent of that relative. The sponsor would not be required to document the blood relative's ancestry because the sponsor's eligibility would already have been addressed.

To be clear, sworn statements to verify a potential voter's own ancestry must reliably establish some degree of Native Hawaiian ancestry. Native Hawaiian ancestry is absolutely required for all Native Hawaiians seeking to participate in the ratification referendum. Accordingly, the sworn statement should describe the evidence relied on to establish eligibility to vote in the ratification referendum. The Native Hawaiian community could do so by requiring the potential voter to affirm that he or she is able to establish his or her Native Hawaiian or HHCA Native Hawaiian status through one of the methods listed in § 50.12(b)(3)(i)–(v) or (c)(2)(i)–(iv), respectively. The methods in § 50.12(b) and (c) are optional.

At the end of the sworn statement, the Native Hawaiian community could require language such as:

''I swear/affirm that the information I have provided is true to the best of my knowledge and understand that a false statement is punishable under state law. If I have provided false information, I may be fined, imprisoned, or both.'' The Native Hawaiian community may verify sworn statements by an appropriate method, such as through review of such documentation where it is readily available, or through maintaining a voter registration list that it makes public to allow for objections, and providing a mechanism to resolve any challenges by registered voters. Such a list must be maintained for a reasonable period after the Secretary has made a determination to accept or reject a request for a government-to-government relationship based on that ratification vote.

(2) *Comment:* One commenter suggested that the final rule should include alternative methods to demonstrate Native Hawaiian ancestry, to accommodate individuals who do not have written documentation.

Response: For purposes of the ratification vote, the proposed rule provided for documentation of ancestry using ''other means to document generation-by-generation descent from a Native Hawaiian,'' and ''other records or documentation demonstrating eligibility under the HHCA'' in § 50.12. But to address more specifically those without any written ancestry documentation, the Department includes new language in the final rule. The rule accordingly permits an eligible voter to sponsor a closely related blood relative, *i.e.,* mother, father, child, brother, sister, grandparent, aunt, uncle, grandchild, niece, nephew, or first cousin, for participation in a ratification referendum as a Native Hawaiian or an HHCA Native Hawaiian. Such sponsorship must be made by sworn statement based on personal knowledge that the relative meets the definition of Native Hawaiian or HHCA Native Hawaiian. *See* § 50.12(b), (c); response to comment (c)(1). For the sponsorship to be valid, the sponsor must be enumerated on a roll certified by the State of Hawaii under State law, be enumerated in official DHHL records demonstrating eligibility under the HHCA, provide proof of current or prior enrollment in Kamehameha Schools as a Native Hawaiian, or provide a birth certificate or court order listing Hawaiian or Native Hawaiian ancestry. *See* § 50.12(a). The rule also permits ''other similarly reliable means of establishing generation-by-generation descent from a Native Hawaiian ancestor'' and ''other similarly reliable means of establishing eligibility under HHCA sec. 201(a)(7)'' in § 50.12.

(3) *Comment:* On 80 FR 59124, the Department asked for comment on whether documenting descent from a person enumerated on the 1890 Census by the Kingdom of Hawaii, the 1900 U.S. Census of the Hawaiian Islands, or the 1910 U.S. Census of Hawaii as ''Native'' or part ''Native'' or ''Hawaiian'' or part ''Hawaiian'' is reliable evidence of lineal descent from the aboriginal, indigenous, native people who exercised sovereignty over the territory that became the State of Hawaii.

Response: Commenters who responded to this question supported ''requiring processes and standards of documentation that are consistent with the processes used by the State of Hawaii Department of Hawaiian Home Lands (DHHL), the Kamehameha Schools, and other existing public and private trusts currently providing services to and verifying the status of individual Native Hawaiians because of their status as members of Hawaii's only indigenous people, the Hawaiian people.'' They specifically did not support documenting descent using the 1890, 1900, or 1910 censuses because DHHL, Kamehameha Schools, and other entities ''have well-established processes that the Native Hawaiian community is most familiar with, and account for any historical events that present challenges for Native Hawaiians seeking to establish a generation-by-generation connection to a census roll that is more than 100 years old.'' The Department determined that there is a lack of support for specifically naming the censuses in a final rule for purposes of documenting generation-by-generation descent and therefore did not include such references. The rule does not prevent the Native Hawaiian community from relying on those censuses if it determines that they are reliable evidence of lineal descent from the native peoples who occupied and exercised sovereignty over the territory that became the State of Hawaii.

In further response, the Department determined that current or prior enrollment as a Native Hawaiian in a Kamehameha Schools program is acceptable verification of ancestry based on the Department's own research and commenters' confidence in that process as legitimate and well-established within the Native Hawaiian community for purposes of documenting Native Hawaiian descent. This change further necessitated a change to the introductory provisions of § 50.12 to require that the Native Hawaiian community explain its requirements for use of any sworn statements and the procedures it used for verifying the self-certifying ''Native Hawaiians'' and ''HHCA Native Hawaiians.'' *See* response to comment (1)(c)(1).

(4) *Comment:* One commenter offered that any deliberations about what constitutes ''sufficient'' proof of descent ''must incorporate Hawaiian language records,'' arguing that ''a broader literature for verification needs to be engaged including name chants, birth chants, and various genres of grief chants which are filled with genealogical and land information.'' Another commenter suggested that, in the absence of birth certificates, other documents to verify descent should be added, such as ''church documents, marriage and death certificates, land ownership, employment records, etc.''

Response: Although some of the enumerated items may provide acceptable genealogical evidence,

particularly in combination with other sources, these items were not expressly added to the final rule because § 50.12 already provides for documentation of ancestry using ''other similarly reliable means of establishing generation-by-generation descent from a Native Hawaiian ancestor'' and ''other similarly reliable means of establishing eligibility under HHCA sec. 201(a)(7)'' in § 50.12. These ''other similarly reliable means'' could include the commenters' proposed alternative sources as long as the Native Hawaiian community explains in its written narrative how and when those sources were acceptable as ''reasonable and reliable'' documentation of descent under § 50.12. In response to these comments, the Department included birth certificates indicating ''Native Hawaiian'' (or an equivalent term) and court orders determining such ancestry as acceptable for establishing Native Hawaiian ancestry.

(d) Membership

(1) *Comment:* One commenter noted that the proposed rule prevents the Native Hawaiian community from excluding ''HHCA Native Hawaiians'' from its membership in § 50.13, which ''cuts against'' *Santa Clara Pueblo* v. *Martinez,* 436 U.S. 49 (1978), and could be ''read to prohibit the Native Hawaiian government from revoking membership, another practice of tribal sovereignty upheld by the [U.S.] Supreme Court.''

Response: While it is true that § 50.13(f)(1) requires that ''HHCA Native Hawaiians'' be permitted to enroll, nothing in § 50.13 addresses whether and on what basis the Native Hawaiian community may disenroll individual members. Membership in a political community is voluntary and not compulsory. Importantly, in the HHCA, Congress recognized ''HHCA Native Hawaiians'' as a vital part of the Native Hawaiian community, so any Native Hawaiian government that seeks to reestablish a formal government-to-government relationship under this rule must permit them to enroll and guarantee their civil rights. Section 50.13, however, does not address disenrollment, but any such action must be done in compliance with due-process principles. *See* response to comment (1)(m)(10). Any existing benefits under Federal law that a member has would be unaffected by the community action. *See* response to comment (1)(f).

(2) *Comment:* One commenter noted that while a Native Hawaiian ancestral connection is a requirement for membership under the proposed rule, ''there is no test specified in the rule that must be used,'' and that ''anyone'' (non-Hawaiians) could be a member if such a test is not adopted. Another commenter suggested that genealogical DNA testing should be listed as a method to determine ancestry.

Response: Neither the proposed nor final rules specify what ''tests'' the Native Hawaiian community must use in order to verify that the individuals who apply for membership meet the community's membership requirements. Such ''tests'' are for the Native Hawaiian community to decide in accord with *Santa Clara Pueblo.* Although the rule specifies criteria for participation in the ratification process, that is a distinct question from the issue of membership in the community's governing entity, which will be determined by the community itself.

(3) *Comment:* Some commenters expressed the view that decisions as to the membership and scope of the community should be left for the community itself to decide. One commenter recommended deleting § 50.13(f), which requires the Native Hawaiian community's governing document to describe its criteria for membership subject to certain conditions.

Response: The Department agrees that the Native Hawaiian community should define its own membership as an exercise of self-determination, but rejects the commenter's suggestion to eliminate § 50.13(f). Section 50.13(f) provides certain minimum criteria that must be met by any governing document, including, among other provisions, safeguards for HHCA Native Hawaiians to ensure that the governing document fairly reflects the composition of the Native Hawaiian community that Congress recognized and to which Congress provided special programs and services. 80 FR at 59125–26. These criteria provide the Native Hawaiian community with firmly established standards consistent with Congressional intent and provide the Department clear criteria to apply when considering a request to reestablish a formal government-to-government relationship. Section 50.13(f) seeks to ensure that the community represented by the Native Hawaiian Governing Entity is the community recognized by Congress, and is a reasonable exercise of Department's authority in determining the community it is responsible to serve.

(e) Terminology

Issue: The Department received extensive comments on the effect and impact of the proposed rule's use and distinction between the terms ''Native Hawaiian'' and ''HHCA Native Hawaiian.'' The Department made no changes to the proposed rule in response to these comments.

(1) *Comment:* Multiple commenters objected to the proposed rule's distinction between ''Native Hawaiians'' and ''HHCA-eligible Native Hawaiians,'' arguing that such a distinction based on blood quantum is a ''foreign concept'' within their community. Others similarly objected to the proposed rule's criteria for membership that excludes non-Hawaiians.

Response: Congress recognizes both HHCA Native Hawaiians and Native Hawaiians as one people, but through statutory definition establishes that the HHCA Native Hawaiians are a subset of the other. Consistent with Congressional policy, the Department accounted for both statutory definitions in the process for reestablishing a formal government-to-government relationship with the recognized Native Hawaiian community . . . The rule uses these Congressional definitions to ensure that the will of the recognized community as a whole is reflected in the ratification process.

The Department is aware of community concerns with respect to distinguishing between Native Hawaiians and HHCA Native Hawaiians. The rule includes relatively few conditions on the Native Hawaiian community's exercise of its inherent sovereignty to determine its own membership in any governing document. It is important to note that the rule sets forth a process to facilitate reestablishing a formal government-to-government relationship between the Native Hawaiian community and the United States, and does not impose a specific, or ''foreign,'' form of government on the community. Congressional dealings with the Native Hawaiian community also require that non-Native Hawaiians be excluded from the ratification vote and membership because the statutory definitions of the recognized community require a demonstration of descent from the population of Hawaii as it existed before Western contact. *See* 80 FR at 59119. The Department must also follow Congress's definition of the nature and scope of the Native Hawaiian community. Therefore, the Department did not make any changes to the rule in response to these comments.

(2) *Comment:* Some commenters stated that the term ''Indian'' is not properly applied to Native Hawaiians, and that the term ''tribe'' is not properly applied to a Native Hawaiian sovereign or its governing body. They noted the distinctive history of Native Hawaiians and of the Kingdom of Hawaii, and asserted that this history renders these

terms inappropriate for Native Hawaiians and for their government.

Response: As discussed above, the drafters of the U.S. Constitution used the terms ''Indians'' and ''Indian tribes'' to define Congress's power and authority with regard to indigenous political sovereigns. These terms encompass Native peoples who have diverse cultures, languages, and ethnological backgrounds throughout the United States. Congress repeatedly exercised its Indian affairs power when legislating for the Native Hawaiian community over the course of the last century. It is on that basis that Congress established a special political and trust relationship with the Native Hawaiian community.

(3) *Comment:* Some commenters stated that Native Hawaiians do not consider themselves to be ''Indians'' or members of a ''tribe.''

Response: Congress recognizes the diversity among the indigenous peoples that fall within the Indian affairs powers. The Department respects that the Native Hawaiian and Native American communities on the mainland have exceptionally diverse histories and cultures, and that many of these communities use their own terminology in referencing their members and their governments. Accordingly, it is up to the Native Hawaiian community to establish what terminology it believes is most appropriate, in accordance with principles of self-determination.

(4) *Comment:* A commenter noted that Native Hawaiians became United States citizens at the time of Hawaii's annexation, and that this distinguished them from Indians elsewhere in the United States, who did not become citizens until enactment of the Indian Citizenship Act of 1924.

Response: Congress accorded U.S. citizenship to many groups of Indians, by treaty and by statute, throughout the course of the nineteenth century and continued to do so until the adoption of the Indian Citizenship Act. *See Cohen's Handbook of Federal Indian Law* sec. 14.01[3], at 926–31 (2012 ed.). The fact that Congress accorded Native Hawaiians U.S. citizenship at the time of Hawaii's annexation, well before passage of the Indian Citizenship Act, is therefore not a meaningful distinction.

(f) HHCA Native Hawaiian rights

Issue: The Department received numerous comments on the proposed rule's express protections for ''HHCA-eligible Native Hawaiians'' and their existing rights under Federal law. No changes to the proposed rule were made in response to these comments.

(1) *Comment:* Many commenters were concerned that the proposed rule would permit the Native Hawaiian Governing Entity to ''take control of the Hawaiian home lands,'' and otherwise ''deprive the [HHCA beneficiaries and] homesteaders of protections they have come to expect.'' In the process, the commenters allege, the Department would ''abdicate'' its fiduciary duties to this new entity that has no enforceable commitment to protect HHCA Native Hawaiians, thus jeopardizing their rights and protections under Federal law.

Response: The Department appreciates the importance of protecting HHCA beneficiaries' unique status under Federal law. The rule protects that status in a number of ways:

- The rule requires that the governing document protect and preserve rights, protections, and benefits under the HHCA.
- The rule leaves intact rights, protections, and benefits under the HHCA.
- The rule does not authorize the Native Hawaiian government to sell, dispose of, lease, tax, or otherwise encumber Hawaiian home lands or interests in those lands.
- The rule does not diminish any Native Hawaiian's rights or immunities, including any immunity from State or local taxation, under the HHCA.
- The rule defines the term ''HHCA Native Hawaiians'' to include any Native Hawaiian individual who meets the definition of ''native Hawaiian'' in the HHCA.
- The rule requires that the Native Hawaiian constitution or other governing document be approved in a ratification referendum not only by a majority of Native Hawaiians who vote, but also by a majority of HHCA Native Hawaiians who vote; and both majorities must include enough voters to demonstrate broad-based community support. This ratification process effectively eliminates any risk that the United States would reestablish a formal relationship with a Native Hawaiian government whose form is broadly objectionable to HHCA Native Hawaiians. The Department expects that the participation of HHCA Native Hawaiians in the referendum process will ensure that the structure of any ratified Native Hawaiian government will include long-term protections for HHCA Native Hawaiians.
- The rule prohibits the Native Hawaiian government's membership criteria from excluding any HHCA Native Hawaiian who wishes to be a member.

See 80 FR at 59120. Moreover, because Federal law provides both defined protections for HHCA beneficiaries and specific guarantees of individual civil rights, HHCA beneficiaries would continue to be protected after a formal government-to-government relationship is established. *See* § 50.13(g)–(j); 80 FR 59125–26.

In short, HHCA beneficiaries' existing rights under Federal law, and the Secretary's and the State's authority and concurrent obligations, are unchanged by promulgation of this rule or the reestablishment of a formal government-to-government relationship with the Native Hawaiian Governing Entity. Ultimately, only Congress can diminish or otherwise modify the existing rights of HHCA beneficiaries, and the Native Hawaiian Governing Entity is bound by Federal law. Similarly, Congressional action would be required before the Native Hawaiian Governing Entity, or any political subdivision within it, would be authorized to manage Hawaiian home lands.

(2) *Comment:* Some HHCA beneficiaries expressed concern that they will be reduced to a political subdivision when they currently have the most rights under Federal law.

Response: The Department takes no position on the internal organization of any Native Hawaiian government, including the existence and nature of any political subdivisions. The Department notes, however, that should such political subdivisions exist, being a political subdivision of a larger political community does not necessarily mean that the members of the subdivision will lose rights or benefits. Questions of what political subdivisions to create, if any, and what authorities those subdivisions should possess, are for the Native Hawaiian community to decide.

(3) *Comment:* Commenters argued that the proposed rule pits non-HHCA Native Hawaiians against HHCA Native Hawaiians by providing express protections for the latter while offering the former only the ability to participate in a government with no guarantee of lands or power over non-Hawaiians.

Response: As explained above, the rule reflects distinctions between HHCA Native Hawaiians and Native Hawaiians made by Congress, and in so doing, protects those existing rights that Congress provided in the HHCA *and* in over 150 other statutes relating to the Native Hawaiian community. If a Native Hawaiian government reorganizes and a formal government-to-government relationship is reestablished pursuant to the rule, all Native Hawaiians would benefit through improved facilitation of

their existing Federal benefits and a government-to-government relationship.

(4) *Comment:* One commenter suggested that the Secretary's role and responsibility to the HHCA beneficiaries should be defined in the rule; as an alternative, this commenter suggested authorizing an Inspector General or Ombudsman specifically for HHCA beneficiaries.

Response: The Secretary's role and responsibilities toward Native Hawaiians are defined by multiple Acts of Congress, *see, e.g.,* the HHCA, the Admission Act, and the HHLRA. Congress specifically authorized the Department's Office of Native Hawaiian Relations within the Office of Policy, Management, and Budget to focus on Native Hawaiian relations, including HHCA beneficiaries' rights and benefits under the HHCA. That office is the primary office to address concerns by these constituents, and can involve other Departmental offices or agencies as necessary. The Department made no changes to the rule in response to this comment.

(5) *Comment:* Commenters stated that the HHCA Native Hawaiians should be permitted to submit a separate request to the Secretary based on broad-based support within that group.

Response: Congress consistently treated the Native Hawaiian community as a single entity through more than 150 Federal laws. Congress's recognition of a single Native Hawaiian community reflects the fact that a single Native Hawaiian government was in place prior to the overthrow of the Kingdom of Hawaii. *See* response to comment (1)(m)(18). Congress established a special political and trust relationship with a single Native Hawaiian community, even as it used different definitions to focus on specific persons within that one community. For example, in 2000, Congress enacted the American Homeownership and Economic Opportunity Act to help satisfy the need for affordable homes in Indian communities. 12 U.S.C. 1701, 25 U.S.C. 4101; Act of December 27, 2000, 114 Stat. 2944. As part of that program, Congress addressed housing assistance for Native Hawaiians and broadly defined the term ''Native Hawaiian'' consistent with the definition of Native Hawaiians in this rule. *See* 25 U.S.C. 4221(9). In the same statute, Congress separately recognized that the ''beneficiaries of the Hawaiian Homes Commission Act'' should be given a unique opportunity to comment on particular aspects of the program. 25 U.S.C. 4239(d). In the Act's findings, Congress specifically stated that, among the Native Hawaiian population, those eligible to reside on the Hawaiian home lands have the most severe housing needs. 25 U.S.C. 4221 Note; Act of December 27, 2000, 114 Stat. 2944. It follows that the Department cannot support an approach that would permit a subset of the Native Hawaiian community to separately request a government-to-government relationship independent of the rest of the community recognized by Congress. Instead, any request must demonstrate broad-based support from the recognized Native Hawaiian community as a whole.

(g) Ratification Referendum

Issue: The Department received numerous comments on the proposed rule's provisions related to the requirements of and the process for voting in the ratification referendum for the Native Hawaiian government's governing document, as well as who may vote and how those votes must be tallied.

(1) *Comment:* Commenters state that the rule should not set numerical thresholds for the ratification referendum. Instead, ratification of the governing document should be demonstrated by a majority (or a plurality) of actual voters, regardless of turnout.

Response: The Department disagrees. The ratification vote must reflect the views of the Native Hawaiian community as demonstrated through broad-based community participation in the ratification referendum and broad-based community support for the governing document. Broad-based community participation and support are essential to ensuring the legitimacy of the Native Hawaiian government and the viability of its formal government-to-government relationship with the United States.

A low vote in favor of the governing document would demonstrate a lack of broad-based community support. Similarly, a high voter turnout that fails to secure a majority of votes in favor of the governing document would also demonstrate a lack of broad-based community support. Accordingly, the rule sets numerical thresholds for community participation in support *and* requires that the number of votes in favor be a majority of all votes cast. These thresholds are based on an objective measure of broad-based community participation and on the requirement that votes in favor constitute a majority of all votes cast. Without them, multiple Native Hawaiian groups could purport to lead the effort to reestablish a government-to-government relationship with the United States, each with its own governing document approved through a ''ratification'' process, each purporting to legitimately represent the entire community. Establishing reasonable numerical thresholds at the outset provides a transparent and sound basis for distinguishing a governing document that has the Native Hawaiian community's broad-based support from a governing document that lacks such support.

(2) *Comment:* Some commenters state that the numerical thresholds in the proposed rule's § 50.16(g)–(h) are too high and could not be met as a practical matter. Other commenters stated that they are too low in light of census data on the size of the Native Hawaiian population.

Response: A number of commenters urged higher numerical thresholds; others urged lower thresholds; and many commenters supported the proposed thresholds. These comments are significant because they indicate that there is no clear consensus on whether the Department's threshold numbers are too high or too low. The Department concludes that the thresholds enumerated in § 50.16 are reasonable and achievable. The methodology for producing these ranges is explained in detail in Section (III).

(3) *Comment:* Commenters questioned the significance of the 50,000 and 15,000 affirmative-vote presumptions of broad-based community support since the proposed rule requires that a minimum of 30,000 affirmative votes, including a minimum of 9,000 affirmative votes from HHCA Native Hawaiians, is sufficiently large to show broad-based community support.

Response: The 30,000 and 9,000 affirmative-vote thresholds are minimum thresholds designed to help the Department determine whether a requester demonstrates that the governing document has broad-based community support. For example, if 29,999 or fewer Native Hawaiians vote in favor of the requester's governing document, it is reasonable to find a lack of broad-based community support among Native Hawaiians, and the Secretary would decline to process the request. In contrast, if 50,000 or more Native Hawaiians vote in favor of the requester's governing document (and they constitute a majority of all Native Hawaiians who vote), the Secretary is justified in applying a presumption that the broad-based community support criterion is satisfied. The proposed rule referred to the presumption as ''strong.'' The Department has only referenced a ''presumption'' in the final rule, to clarify that the Secretary has full

authority to review the request and accompanying materials for consistency with this rule and with Federal law. If the number of affirmative votes constitutes a majority and falls in between those figures—*i.e.,* if the number of affirmative votes is in the range of 30,000 to 49,999—the Secretary will consider the request and will need to determine, unaided by any presumption, whether the requester demonstrated that the governing document has broad-based support from the Native Hawaiian community.

The same approach applies to the tally of affirmative votes cast by the subset of Native Hawaiians who are also ''HHCA Native Hawaiians,'' except the affirmative vote thresholds are 9,000 (rather than 30,000) and 15,000 (rather than 50,000).

(4) *Comment:* Commenters state that the rule's numerical thresholds should not be based solely on census data, which rely entirely on self-reporting rather than on documentary verification of Native Hawaiian descent.

Response: The rule's numerical thresholds are not based solely on census data, as the sample methodology presented above demonstrates. In setting the thresholds, the Department not only considered data from the Federal decennial censuses of 2000 and 2010 (both for Hawaii and for the United States), but also considered: (1) Voter-registration data for all Hawaiians; (2) voter-registration data for Native Hawaiians (when such data were kept); (3) voter-turnout data for all Hawaiians; (4) voter-turnout data for Native Hawaiians (again, when such data were kept); (5) data from the 2014 American Community Survey (ACS) (both for Hawaii and for the United States); (6) data from the Native Hawaiian Roll Commission's Kanaiolowalu roll; (7) data from a 1984 survey summarized in the *Native Hawaiian Data Book;* (8) population projections from the Strategic Planning and Implementation Division of the Kamehameha Schools; and (9) data from the Hawaiian Sovereignty Elections Council's 1996 ''Native Hawaiian Vote.''

The Department finds the actual election data particularly probative. As explained above, in the 1990s, the Hawaii Office of Elections tracked Native Hawaiian status. The Office found that the percentage of Hawaii's registered voters who were Native Hawaiian was rising, from about 14.7 percent in 1992, to 15.5 percent in 1994, to 16.0 percent in 1996, and 16.7 percent in 1998. This trend is generally consistent with census data showing growth in recent decades in the number of persons identifying as Native Hawaiian. Thus, the census data and voter data are consistent and reliance on the voter data is reasonable. *See also* Kamehameha Schools, *Ka Huakai: 2014 Native Hawaiian Education Assessment* 16–22 (2014) (population projections) (citing Justin Hong, *Native Hawaiian Population Projections* (unpublished 2012)).

(5) *Comment:* Commenters state that numerical thresholds in 2016 should not be based on obsolete data from Census 2010.

Response: First, as explained above, the Census Bureau is only one of several sources used in setting the rule's numerical thresholds. Second, 2010 is the year of the most recent Federal decennial census of population, so the Department gave it greater weight than earlier census data. Third, the Department also considered data from the 2000 Federal decennial census to discern population trends that could be projected forward to 2016. Finally, the Department considered more recent census data from the ACS. Figures from the 2014 ACS are based on statistical sampling rather than an enumerated headcount and therefore may have a sizable margin of error, but are broadly consistent with figures from the decennial censuses.

The Department based this analysis on existing, available data. If significant new data become available, the Secretary may elect to issue a supplemental rule revising the rule's thresholds.

(6) *Comment:* The rule provides that those seeking to vote in any ratification referendum must be able to reliably verify their Native Hawaiian ancestry. Some commenters stated that the numerical thresholds should be adjusted downward because some self-reported Native Hawaiians may not be able to verify their Native Hawaiian ancestry, and because the verification process will impose administrative burdens that will reduce participation in the referendum.

Response: The verification process is not likely to be burdensome enough to significantly deter voter participation. In addition, the final rule includes new provisions in § 50.12 to afford the Native Hawaiian community flexibility in compiling a voter list that is based on documenting Native Hawaiian ancestry without significant administrative burdens in verifying ancestry.

(7) *Comment:* Commenters suggest that numerical thresholds should reflect actual ''participation rates for the larger U.S. citizenry'' in actual elections.

Response: As described above, in establishing the rule's numerical thresholds, the Department relied in part on actual turnout figures in Hawaii's presidential and off-year (gubernatorial) elections, both in the 1990s and in recent years, and adjusted them for out-of-state voters. The Department concludes that the adjustments to the voter-turnout data for in-state Native Hawaiians provide a reasonable objective measure on which to base its affirmative vote-thresholds to demonstrate broad-based community support.

(8) *Comment:* Commenters state that the proposed rule's numerical thresholds are inconsistent with requirements established for Indian tribes in the continental United States, including the so-called ''30-percent rule'' in 25 U.S.C. 478a, a 1935 amendment to the Indian Reorganization Act of 1934 (IRA), which provides that certain tribal constitutions may be adopted only by a majority vote in an election where the total votes cast are at least ''30 per centum of those entitled to vote.''

Response: The IRA elections referenced by these commenters do not apply to this rule because the IRA does not encompass Native Hawaiians. The number of persons ''entitled to vote'' is based on Congressional definitions and on projections from necessarily imprecise demographic and voter-turnout data. Some degree of approximation therefore is inevitable.

Although the IRA's 30-percent rule is not applicable, available demographic evidence suggests that the threshold numbers the Department selected are generally consistent with that rule. To take one example: It appears that, at some point between 2015 and 2017, the number of Native Hawaiian adults residing in Hawaii topped or will top 200,000. *See Ka Huakai: 2014 Native Hawaiian Education Assessment, supra,* at 20. Thirty percent of 200,000 is 60,000 Native Hawaiian voters—that is, the number of such adults who would be expected to vote in an election whose turnout barely meets 25 U.S.C. 478a's 30-percent requirement—and a majority vote in a 60,000-voter election would require 30,001 affirmative votes. These figures, among others, support the rule's 30,000-affirmative-vote threshold for Native Hawaiians.

Likewise, it is reasonable to estimate the number of HHCA Native Hawaiian adults residing in Hawaii to now be about 60,000. *See infra* (estimating the fraction of Native Hawaiians who are also HHCA Native Hawaiians). Thirty percent of 60,000 is 18,000 HHCA Native Hawaiian voters—that is, the number of such adults who would be expected to vote in an election whose turnout barely meets 25 U.S.C. 478a's

30-percent requirement—and a majority vote in an 18,000-voter election would require 9,001 affirmative votes. These figures, among others, support the rule's 9,000-affirmative-vote threshold for HHCA Native Hawaiians.

(9) *Comment:* Commenters state that the rule's numerical thresholds should account for out-of-state Native Hawaiians and should not ''disenfranchise'' out-of-state Native Hawaiians or assume that they are not interested in issues involving the Native Hawaiian community. Other commenters state that the thresholds are too low given census data on the size of the Native Hawaiian population nationwide.

Response: Many out-of-State Native Hawaiians show great interest in their community and the Department adjusted the estimated voter turnout upward to include their participation. They are not disenfranchised by this rule. Indeed, § 50.14(b)(5)(iii) expressly accounts for them by requiring that the ratification referendum be ''open to all persons who were verified as satisfying the definition of a Native Hawaiian . . . and were 18 years of age or older [on the last day of the referendum], *regardless of residency*'' (emphasis added). It is likely, however, that out-of-State Native Hawaiians will not participate to the degree that in-state Native Hawaiians will participate in the ratification referendum. Almost half of all self-identified Native Hawaiians in the 2010 Census and the 2014 ACS resided out of state, but fewer than one-fifth of those on the Native Hawaiian Roll Commission's Kanaiolowalu roll reside out of state. Thus, while the rule does not disenfranchise out-of-state Native Hawaiians, it significantly discounts their expected participation rate in calculating numerical thresholds.

(10) *Comment:* Commenters suggest that the threshold for HHCA Native Hawaiians should be based solely on the number of Hawaiian home lands residential leases and the number of individuals on the DHHL waitlist.

Response: The rule is designed to reestablish a formal government-to-government relationship with the entire Native Hawaiian community, not just with the community of Native Hawaiians who reside or wish to reside on Hawaiian home lands. The rule requires separate tallying of the ratification referendum ballots cast by HHCA Native Hawaiians because Congress defined the community using the narrower definition (limiting the population to what this rule refers to as ''HHCA Native Hawaiians,'' rather than ''Native Hawaiians''). Further narrowing the population to exclude HHCA Native Hawaiians who never obtained or even sought a Hawaiian home lands residential lease would be inconsistent with Congress's approach.

(11) *Comment:* Commenters stated that the numerical thresholds for affirmative votes cast by HHCA Native Hawaiians should be more than 30 percent of the equivalent numbers for Native Hawaiians because the former will ''(a) be more aware that they actually are Hawaiian, (b) [be] more aware that there is a nation-building initiative afoot, (c) have a bigger stake in the issue, and (d) be more likely to be currently part of an active Hawaiian sovereignty or cultural group.''

Response: Assuming that the assertions listed in the comment are true, they may render it easier for the community to meet the 9,000-affirmative-vote threshold. But these assertions do not justify raising the threshold, which is tied principally to the size of the community of HHCA Native Hawaiians, just as the 30,000-affirmative-vote threshold is tied principally to the size of the community of Native Hawaiians. As explained in detail above, the Department's best estimate of the size of the HHCA Native Hawaiians is that it is about 30 percent the size of the Native Hawaiian community (including HHCA Native Hawaiians).

(12) *Comment:* Several commenters suggested that the proposed rule be revised to allow the ratification referendum to consider multiple potential governing documents, and permit adoption of the document that secures a plurality of the vote.

Response: After evaluating comments on this issue, the Department determined to leave these provisions of the rule unchanged.

The proposed and final rules leave open the option of structuring a referendum process and balloting in such a way that the voters may cast votes on multiple documents at once—in effect, combining referenda on several documents into the same proceeding. Such an approach would provide the members of the Native Hawaiian community options while still providing clear evidence of which documents have broad-based support from the community through a majority vote.

But a simple plurality vote is not an appropriate way to measure whether a governing document has broad-based community support. Under a ''plurality wins'' rule, the number of votes required to prevail becomes a function of the number of options on the ballot, not how strongly and broadly supported any one option is. A majority vote is essential to show that the number of Native Hawaiians supporting a particular governing document exceeds the number opposing it. If the Native Hawaiian people want to consider more than one governing document in a single ratification referendum, they may do so by putting each document to its own up-or-down vote. Then, if only one governing document garners a majority of the votes cast, it satisfies the rule's majority-vote requirement. If two or more governing documents each garner a majority, then the community must apply a previously announced method for determining which governing document prevails. For example, the community could decide, prior to the referendum, that the ''winner,'' as between two (or more) governing documents that each receive majority support, will be the one that receives the greatest number of affirmative votes. This approach would also satisfy the rule's majority-vote requirement. But a document that is not supported by much more than a third, or a quarter, of Native Hawaiian voters cannot form the proper basis for a formal government-to-government relationship with the United States.

(13) *Comment:* Commenters suggest that the rule should require a supermajority vote, such as a two-thirds majority, because a constitutional ratification typically is held to a higher standard than regular legislation, which may pass with a simple majority vote.

Response: While the Department recognizes that many constitutional processes, in the United States and elsewhere, require supermajority votes, the exact fraction (two-thirds, three-quarters, three-fifths, etc.) is often highly controversial. Furthermore, the broad-based-community support requirement does not rely on just one simple majority, but instead turns on both (1) a required voter turnout of both Native Hawaiians and HHCA Native Hawaiians and (2) a requirement of a minimum number of affirmative votes from both Native Hawaiians and HHCA Native Hawaiians. Indeed, if total turnout in a ratification referendum fell a bit short of 60,000 Native Hawaiians (or 18,000 HHCA Native Hawaiians), the 30,000- and 9,000-affirmative-vote thresholds would effectively serve as supermajority-vote requirements. Also, in calculating a simple majority, the number of votes cast in favor of the governing document must exceed the sum of the number of votes cast against the governing document and the number of spoiled ballots (*i.e.,* ballots that were mismarked, mutilated, rendered impossible to determine the voter's intent, or marked so as to violate

the secrecy of the ballot); this, too, is akin to a slight supermajority-vote requirement.

Moreover, if the Native Hawaiian community wishes to require a supermajority vote to adopt its governing document, it certainly may do so without running afoul of the rule. However, the rule itself does not impose that requirement.

(14) *Comment:* Some commenters objected to defining ''Native Hawaiians'' and ''HHCA Native Hawaiians'' separately for purposes of voting in the ratification referendum and suggested that all Native Hawaiians should have ''equal input'' in establishing a formal relationship with the United States. Some also suggested that the separate voting unnecessarily divides the community.

Response: In the response to comments section in the proposed rule, the Department explained the HHCA beneficiaries' unique status under Federal law and the importance of recognizing and protecting their Federal rights and benefits in the rule. *See* 80 FR 59119–20, 59123–24, 59126. *See also* response to comment (1)(f)(1). The Department further explained that Congressional definitions of the Native Hawaiian community, in the HHCA and other Acts of Congress, require that any reestablishment of a formal government-to-government relationship must take account of both ''HHCA Native Hawaiians'' and ''Native Hawaiians,'' respectively, to keep within this statutory framework. 80 FR 59124. Therefore, the rule requires that a majority of the voting members of both the ''HHCA Native Hawaiians'' and ''Native Hawaiians'' confirm their support for the Native Hawaiian government's structure and fundamental organic law in order to eliminate any risk that the United States would reestablish a formal relationship with a Native Hawaiian government whose form is broadly objectionable to either HHCA Native Hawaiians or Native Hawaiians, and to ensure that the structure of any Native Hawaiian government reflects the views of Native Hawaiians and HHCA Native Hawaiians. 80 FR 59120.

The rule also requires that the Native Hawaiian community demonstrate in its request to reestablish a formal government-to-government relationship that its constitution or other governing document received broad-based community support from both HHCA Native Hawaiians and Native Hawaiians. Thus, regardless of which Congressional definition is used, a majority of each defined group within the voting members of the community must confirm their support for the Native Hawaiian government's structure and fundamental organic law. Although the distinction may be viewed unfavorably by some commenters, the Department chose to defer to the Congressional definition appearing in the HHCA in defining a class of eligible voters. Accordingly, both ''HHCA Native Hawaiians'' and ''Native Hawaiians'' may participate and have an opportunity to influence the content of a constitution or other governing documents and equally decide whether that constitution or other governing document is ratified. *See* § 50.16.

(15) *Comment:* Some commenters supported the proposed rule's approach of providing for distinct votes by HHCA Native Hawaiians and Native Hawaiians to be tallied separately—a ''double vote'' based on the two relevant Congressional definitions. These commenters stated that this approach was an important safeguard to ensure that ''the rights of the HHCA-eligible are not subsumed by the rights of the non HHCA-eligible.'' But others expressed the view that the double-vote structure of the proposed rule is ''undemocratic'' because it gives greater voting and veto power to HHCA Native Hawaiians.

Response: The rule provides that a majority of the voting members of the Native Hawaiian community recognized by Congress must confirm their support for the Native Hawaiian government's structure and fundamental organic law in order to demonstrate ''broad-based community support.'' Congress defines the Native Hawaiian community in two separate ways, and the Department is simply using the definitions adopted by Congress. Moreover, this approach is consistent with many voting systems that reflect existing geographic or legal distinctions, such as the U.S. Constitution's provision that each State has two senators irrespective of population.

(16) *Comment:* Commenters state that distinguishing HHCA Native Hawaiian voters from other Native Hawaiian voters imposes a significant administrative burden of verifying HHCA Native Hawaiian status and cannot be done without substantial monetary and other resources from the Federal Government.

Response: The response to comment (1)(c)(1) above explains how sworn statements may be used to demonstrate ''HHCA Native Hawaiian'' or ''Native Hawaiian'' status for purposes of voting in the ratification referendum. The sworn statement could be an option for the Native Hawaiian community to establish potential voters' eligibility to vote in the ratification referendum. Such sworn statements do not impose a significant administrative burden and do not require financial or other assistance by the Federal Government.

(17) *Comment:* Some commenters expressed the view that non-HHCA Native Hawaiians should not be allowed to ''outvote'' HHCA Native Hawaiians.

Response: Because the rule requires that a majority of HHCA Native Hawaiians who participate in the ratification referendum must vote in favor of the governing document, it is effectively impossible for them to be ''outvoted.'' *See* response to comments on § 50.13(4).

(18) *Comment:* Some commenters stated that participants in the ratification referendum for the governing document, and candidates for election to the government established by that document, should be required to show proof of political loyalty to the Native Hawaiian community and proof of affiliation with Native Hawaiian cultural, social, or civic groups. Commenters similarly suggested that the numerical thresholds should not be based on the total number of Native Hawaiians, but rather on the total number of Native Hawaiians who voluntarily seek to participate in exercising a Native status under the U.S. Constitution. These commenters stated that persons who do not seek to exercise Native status under the U.S. Constitution, or who vehemently oppose their status as U.S. citizens because they consider themselves subjects of their own Kingdom, should not be counted when determining numerical thresholds.

Response: The Department considered these comments and elected not to revise the rule to include such limitations. The rule is intended to promote self-determination and self-governance for the entire Native Hawaiian community, without distinguishing between members of the community on the basis of political beliefs or points of view. All Native Hawaiian adults should have the opportunity to vote in any ratification referendum, and this broad population also provides a metric against which broad-based community support is measured. The goal of the ratification referendum is to measure whether the governing document has broad-based support within the Native Hawaiian community. It is appropriate to allow the broadest possible participation in that referendum. Commenters' suggested requirement of proof of political loyalty or affiliation with Native Hawaiian cultural, social, or civic groups would limit participation in the referendum inconsistent with

Congress's recognition of the entire community and the purposes of this rule.

The Department did not include any requirements relating to qualifications for officers in the Native Hawaiian government because such qualifications are a matter of internal self-government. These issues should be decided by the Native Hawaiian community and reflected in its governing document.

(19) *Comment:* Commenters stated that the Department's voting requirement is contrary to the methodology used for the Native Hawaiian Roll Commission's roll under Act 195.

Response: On July 6, 2011, the Hawaii legislature passed SB1520, which was signed into law as Act 195 by Governor Neil Abercrombie. That act recognized Native Hawaiians as the indigenous people of the Hawaiian Islands and established the Native Hawaiian Roll Commission to certify and publish a roll of ''qualified Native Hawaiians.'' Although the findings in Act 195 reference the lack of a formal government-to-government relationship between a Native Hawaiian government and the United States, the purpose of Act 195 articulates the State's interests in implementing ''the recognition of the Native Hawaiian people by means and methods that will facilitate Native Hawaiian self-governance,'' including the ''use of lands by the Native Hawaiian people, and by further promoting their culture, heritage, entitlements, health, education and welfare.'' In 2013, the Hawaii legislature adopted Act 77, which provided for the inclusion of additional persons on the roll compiled by the Native Hawaiian Roll Commission.

The Act 195 process is a separate and distinct process from that set out in this rule, and has a separate, although similar, purpose. The Department did not conform the requirements in the final rule to the provisions of any roll or process now existing or underway within the State of Hawaii. Nonetheless, as the Native Hawaiian community prepares its list of eligible voters, the rule does not prohibit it, in the exercise of self-determination over its own affairs, from relying on a State roll or State documentation that is based on verified documentation of descent as an alternative to doing its own verification of descent. The rule is intended to provide guidance and a process to a Native Hawaiian government that submits a request and can meet the rule's requirements. Such a request could be submitted at any time in the future, so the rule is not linked to any existing processes or circumstances that could limit its future application. Nor does the Department endorse any particular roll or process over any other.

Commenters refer to the fact that the rule's requirements differ from those applied by the Native Hawaiian Roll Commission. Differing requirements reflect the separate nature of the two processes and their results. Further, the Department notes that the requirements applied by the Commission have changed since the initial enactment of Act 195, and may be subject to subsequent changes. If the Department receives a request seeking to reestablish a government-to-government relationship, the Department will evaluate whether the request meets the rule's criteria and is consistent with this part.

(h) U.S. Citizenship

Issue: The proposed rule required that Native Hawaiians be U.S. citizens. The Department received a significant volume of comments requesting that the Department eliminate this requirement in the final rule, noting that Congress frequently defined ''Native Hawaiian'' without requiring U.S. citizenship.

Comment: One commenter conducted a survey of statutes containing a definition of the term ''Native Hawaiian'' and concluded that of 45 identified Federal statutes containing such a definition, 31 do not limit that definition to U.S. citizens. The commenter also noted that the definition of ''native Hawaiian'' in the HHCA does not incorporate a U.S. citizenship requirement, and that a review of 48 tribal government constitutions revealed that 92 percent do not require U.S. citizenship as an express condition of tribal membership. The commenter stated that, in at least one instance, the Federal Government adjusted Federal law to accommodate a Native government's citizenship definition that allowed for non-citizens to become members (citing the Texas Band of Kickapoo Act, Pub. L. 97–429, 96 Stat. 2269 (1983)). The commenter also stated that ''the practical reality is that the number of Native Hawaiians who are not U.S. citizens represents a de minimis percentage of the overall population of qualified Native Hawaiians.''

Response: After considering these comments, the Department eliminated the U.S. citizenship requirement in the final rule. Section 4 of the Hawaiian Organic Act declared all persons who were citizens of the Republic of Hawaii on August 12, 1898, citizens of the United States. Further, Congress made every ''person born in the United States to a member of an Indian, Eskimo, Aleutian or other aboriginal tribe'' a citizen with the enactment of the Nationality Act of 1940, 54 Stat. 1137, 1138.[6]

Although some statutes require U.S. citizenship as an element of the statutory definition of membership in the Native Hawaiian community, those statutes generally involve eligibility for federally funded programs or benefits. *See, e.g.,* 25 U.S.C. 4221(9) (requiring U.S. citizenship for Native Hawaiians to participate in programs under the Native American Housing Assistance and Self-Determination Act). It is common for Congress to restrict availability of programs or benefits to U.S. citizens; by doing so, however, Congress did not exclude non-citizens from the Native Hawaiian community with which the United States established a special political and trust relationship. Moreover, the Supreme Court has explained that indigenous communities generally may determine their own membership as a matter of internal self-governance. *E.g., Santa Clara Pueblo,* 436 U.S. at 72 n.32. The Department determined that Congressional requirements for federally funded programs or benefits do not override this important principle of self-governance, and eliminated the citizenship requirement in the final rule.

Although the Department considers membership criteria to be matters of internal self-governance, to the extent Federal law incorporates U.S. citizenship as a requirement for participation in a Federal program or for eligibility for Federal benefits, that requirement remains in effect, notwithstanding membership provisions adopted by a Native Hawaiian government.

(i) Roll

Issue: Commenters expressed views on the proposed rule's reliance on a State roll, also called Kanaiolowalu, compiled by the Native Hawaiian Roll Commission (NHRC).

(1) *Comment:* Some commenters stated that they objected to provisions of the proposed rule, including § 50.12(a)(1)(ii) and (b), ''that would allow a roll of Native Hawaiians certified by a State of Hawaii commission like Kanaiolowalu that is being used by Nai Aupuni to determine participation'' and requested that these provisions be removed. The commenters stated that it was not appropriate to accord special status to a roll compiled by a State agency, and also opposed any

[6] Congress made all non-citizen Indians citizens by the Act of June 2, 1924, 43 Stat. 253.

use of the NHRC Roll because of the nature of the process used by the NHRC.

Response: The Department considered these comments and determined it appropriate to revise these provisions of the proposed rule to address this issue.

The Department agrees with this comment in part. The proposed rule incorporated distinct standards for use of a roll compiled by a State agency. In response to these comments, the rule now provides that the Native Hawaiian community will compile its list of eligible voters. The rule provides a uniform standard to govern the list of eligible voters for the ratification referendum, which would apply irrespective of who prepared the list. That approach allows the Native Hawaiian community the freedom to determine how it will develop a list for use in ratification of its governing documents.

The rule does not, however, bar the use of a roll that incorporates work by State agencies, especially if it is efficient to do so. For instance, the Department sees little benefit in the Native Hawaiian community redoing work done by the State that verified Native Hawaiian ancestry, including its determination that an individual qualifies as an HHCA Native Hawaiian. To the extent a State roll is based on documented ancestry, the Native Hawaiian community may rely on it, if it so chooses. Such reliance will facilitate the process of preparing its list of voters, particularly if relevant records are within the exclusive control of State agencies, and will minimize the burdens on individual Native Hawaiians who previously submitted documentary evidence and were determined to be qualified. The Department respects the Native Hawaiian community's ability to reorganize its government for the purposes of reestablishing a formal government-to-government relationship as it sees fit, and therefore defers to the community as to whether and to what extent it wishes to rely on State sources to tailor a list of eligible voters for ratification purposes. The Department revised § 50.12 to address these comments.

(2) *Comment:* Some commenters questioned the methods used to compile the NHRC roll, stating that the names of deceased individuals, minors, and persons who did not consent to be listed appear on the roll. Others stated that ''most Hawaiians have not agreed to'' the NHRC roll process and that the roll will not benefit the Native Hawaiian people generally.

Response: The Department reviewed these comments and made changes in the final rule in § 50.12.

For instance, the Department acknowledged commenters' concerns by providing a uniform standard for preparation of the list of eligible voters by the Native Hawaiian community. The criteria for the list provide that it must not include adults who object to being listed, and revised § 50.12(a) provides that the community must make reasonable and prudent efforts to ensure the integrity of its list. Importantly, the proposed rule did not require use of any State roll; and the final rule permits, *but does not require,* the Native Hawaiian community to use a State roll, with conditions and modifications, for purposes of demonstrating how it determined who could participate in ratifying a governing document. *See* § 50.12(a).

Moreover, the Department defers to the Native Hawaiian community itself to establish the process by which it will compile any list of voters, subject to certain requirements set forth in the final rule. These requirements address some of issues raised by commenters relating to the NHRC. For instance, the proposed and final rules both contain provisions that are intended to provide for the integrity of the process of compiling the list and to protect the integrity of the voting process itself. The rule permits the community to rely on documented sources that it determines are reliable in compiling its list.

If a reorganized government submits a request to the Secretary to reestablish a formal government-to-government relationship, the rule provides that the request must include an explanation of the manner in which the rule's requirements were satisfied. The public will have an opportunity to comment on any request the Secretary receives. Individuals who continue to have concerns about the process used in compiling the voter list may submit comments at that time. In making a decision, the Secretary will review not only the specific request but also the overall integrity of the ratification process to determine if it was free and fair and otherwise complies with the rule's requirements.

(3) *Comment:* A commenter said that it was not appropriate for the roll used in conducting the ratification referendum under § 50.12 to incorporate any considerations of racial ancestry, and that use of the NHRC roll was inappropriate for this reason.

Response: To the extent that these comments suggest that the Department must reestablish a formal government-to-government relationship with a government that includes non-Native Hawaiians as members, that result is precluded by longstanding Congressional definitions of Native Hawaiians, which require a demonstration of descent from the population of Hawaii as it existed before Western contact. The Department adheres to Congress's definition of the nature and extent of the Native Hawaiian community.

(4) *Comment:* A commenter stated that ''the Supreme Court's injunction [in the *Akina* litigation] should caution any prudent public official to question the wisdom of using Hawaii's tainted registration roll for any purpose whatsoever.''

Response: As explained above, the proposed and final rules do not require the use of any particular roll, including the NHRC roll. The final rule requires the Native Hawaiian community to prepare its list of voters and sets out the requirements for that list, but it does not preclude reliance on any pre-existing roll as long as that roll meets the standards in the rule.

The Department need not and will not address the merits of the *Akina* litigation in this rulemaking. The injunction referenced by the commenter preserved the status quo during a pending appeal, and did not resolve the merits of the case. The United States' views on the *Akina* litigation are available for review in briefs submitted to the United States District Court for the District of Hawaii and to the United States Court of Appeals for the Ninth Circuit.

(5) *Comment:* One commenter objected to the use of the Kanaiolowalu because it based eligibility to register in part on a declaration of ''civic, cultural, or social connection as demonstrated in their unrelinquished sovereignty.''

Response: The proposed rule did not require reliance on the Kanaiolowalu or any other state roll as the sole means to determine eligibility to vote in the ratification referendum. Sections 50.12; 50.14(b)(5)(iii). The preamble to the proposed rule at 80 FR 59122 provided expressly that such a declaration as referred to by the commenter was not required for purposes of participation in the ratification referendum. Further, the proposed rule placed express conditions on any use of a State roll, such as the Kanaiolowalu, *see* § 50.12(b)(2). Nevertheless, the comments indicate some confusion on the permissible use of any State roll under the terms of the proposed rule.

Accordingly, the final rule includes a revised § 50.12(a) that provides that the Native Hawaiian community itself prepares the list of eligible voters. It also clarifies alternative means by which an individual Native Hawaiian can demonstrate a right to vote in the

referendum, even if that individual is not on a roll that the community may choose as a foundation from which to build its complete voter list. Finally, the final rule includes, in response to other comments, sworn statements for self-certification or for sponsoring another, and reliance on current or prior enrollment as a Native Hawaiian in a Kamehameha Schools program, certain birth certificates, and court orders. Such changes also address the commenter's concerns. In sum, even if a declaration as described by the commenter were required for purposes of being on a State roll that the community may rely on under § 50.12(a), the Native Hawaiian community must also accept, for purposes of the referendum ratification, other persons who demonstrate eligibility based on HHCA-eligibility or Native Hawaiian ancestry.

(j) Nai Aupuni

Issue: Commenters expressed concern about the nation-building process facilitated by Nai Aupuni, a nonprofit organization that convened a constitutional convention, known as an Aha, of Native Hawaiians to reorganize as a government.

(1) *Comment:* Several commenters indicated their belief that the purpose of the proposed rule was to design, implement, or evaluate the outcome of the Aha coordinated by Nai Aupuni. They suggested that the proposed rule had a predetermined outcome —either that no entity would be able to meet the criteria to reestablish a formal relationship with the United States, particularly because doing so would pose a significant financial impediment, or that only the entity that emerged from the Aha coordinated by Nai Aupuni would qualify.

Response: These commenters misunderstood the proposed rule. The process set forth in the proposed rule is applicable to any entity that results from the current government-reorganization process, or from any other such process in the future. The final rule does not change this broad applicability. It is entirely up to the Native Hawaiian community to determine whether or when it will reorganize a formal government, and it may seek financial assistance from various sources to fund its future governmental activities, including conducting the ratification referendum. Similarly, it is entirely up to the Native Hawaiian community to determine the form and functions of such government and to avail itself of the process established in the final rule. The rule does not infringe on the self-determination of the Native Hawaiian community, and addresses only those matters necessary to reestablishing a formal government-to-government relationship with the United States.

(2) *Comment:* Some commenters stated that Nai Aupuni did not represent their views and could not speak for them without their consent. Others expressed concerns about alleged flaws in the nation-building process conducted by Nai Aupuni.

Response: Section 50.11 provides that the written narrative thoroughly describing the process for drafting the governing document must describe how the process ensured that the document was based on meaningful input from representative segments of the Native Hawaiian community and reflects the will of the Native Hawaiian community. This general requirement helps to ensure that the process for drafting the governing document includes input from representative segments of the community. The regulations do not set specific requirements relating to the process of nation-building. The process of nation-building is one for the Native Hawaiian community to undertake on its own, and the Department will defer to the community to carry out that process. Accordingly, the proposed rule sets forth only general requirements for submitting a request to reestablish a formal government-to-government relationship. The final rule retains these limited general requirements. The Department takes no position in the rule as to whether any ongoing nation-building process might meet those requirements. If Native Hawaiians do not agree with a particular nation-building process or approach, they will have the opportunity to vote in a referendum and express that view.

If a reorganized government submits a request to the Secretary to reestablish a formal government-to-government relationship, the rule provides that the request must include an explanation of the manner in which these requirements were satisfied. The public will have an opportunity to comment on any request the Secretary receives. Individuals who have concerns about the process used by the Native Hawaiian community may submit comments at that time.

(k) Land status

Issue: Commenters objected to § 50.44(f) of the proposed rule, which expressly preserves the title, jurisdiction, and status of Federal lands and property in Hawaii.

(1) *Comment:* Some commenters stated that the proposed rule should provide for certain Federal lands to be transferred to Native Hawaiians or Native Hawaiian entities, and questioned the legal validity of Federal acquisition of lands formerly owned by the Kingdom of Hawaii and its monarchs.

Response: Changes in title to Federal lands require statutory authority. This rule does not alter any existing Federal law that authorizes the transfer of Federal property. It is possible, however, that a future Native Hawaiian Governing Entity may be qualified to receive Federal property under provisions of Federal law.

With respect to comments questioning the legal status of existing Federal property, the Supreme Court recently discussed this issue in *Hawaii* v. *Office of Hawaiian Affairs,* 556 U.S. 163 (2009), and found that title was properly in the Federal government. Therefore, only Congress can resolve the commenters' concerns.

Several commenters expressed the importance of allowing a future Native Hawaiian sovereign to hold property, noting that Native Hawaiians are spiritually connected to the land and that title to land can facilitate self-governance. Although the rule does not affect Federal lands, a future Native Hawaiian government could acquire property by other methods. For example, an existing provision of State law provides for the transfer of one of the Hawaiian Islands, Kahoolawe, to ''the sovereign native Hawaiian entity upon its recognition by the United States and the State of Hawaii.'' Haw. Rev. Stat. 6K–9 (2016). A future Native Hawaiian government could also acquire property by other means, and the rule does not affect its ability to do so.

(2) *Comment:* Commenters requested that the final rule omit § 50.44(f) entirely, while others suggested revising § 50.44(f) in the final rule by changing the word ''will'' to ''does'' and adding the word ''current'' before ''title'' so the paragraph reads: ''Reestablishment of the formal government-to-government relationship *does* not affect the *current* title, jurisdiction, or status of Federal lands and property in Hawaii'' (emphasis added).

Response: Section 50.44(f) expressly preserves the title, jurisdiction, and status of Federal lands and Federal property in Hawaii. Therefore, because reestablishment of the formal government-to-government relationship, by itself, would not affect title, jurisdiction, or status of Federal lands either at the time of reestablishment of the relationship or at any time thereafter, the Department did not revise § 50.44(f) with ''current'' as suggested. The Department did, however, revise this paragraph by changing ''will'' to ''does'' to make express that nothing in

the rule itself would affect the status of Federal lands and property.

As stated above, the Department appreciates that members of the community believe it is important to secure a land base for the future reorganized Native Hawaiian government; however, providing for jurisdiction or changing the status of Federal lands and property may only occur with statutory authorization. Following reestablishment of a government-to-government relationship, the Native Hawaiian Governing Entity may advance any concerns it may have on land-related issues to the executive and legislative branches of the United States Government on a government-to-government basis.

(l) Gaming

Issue: The Department solicited public comments in the proposed rule, 80 FR 59121, about whether the reestablishment of a formal government-to-government relationship would entitle the Native Hawaiian government to conduct gaming under the Indian Gaming Regulatory Act (IGRA).

Comment: Some commenters responded that IGRA should apply, others commented that the Native Hawaiian Governing Entity's inherent sovereign powers would include the power to conduct gaming activities, and that this inherent power could not be limited in any way, or be ''subordinate'' to State law. One commenter suggested that ''[g]aming by the Native Hawaiian government should be left to . . . negotiations with the Federal government.''

Response: The Department concludes that IGRA does not apply. For the reasons set forth below in Section (IV)(C), the Native Hawaiian Governing Entity would not be within the definition of ''Indian tribe'' appearing in IGRA, which is limited to those tribes that are ''recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians.'' 25 U.S.C. 2703(5); 25 CFR 292.2. IGRA was enacted to balance the interest of states and tribes and to provide a framework for regulating gaming on ''Indian lands.'' There are no such lands in Hawaii. Even if it could be argued that certain Hawaiian lands are similar to ''Indian lands'' within the meaning of IGRA, IGRA does not permit gaming in any State that prohibits all forms of gaming. *See* 25 U.S.C. 2710(b)(1)(A) and (d)(1)(B). Hawaii statutes broadly prohibit all forms of gaming. *See State* v. *Prevo,* 361 P.2d 1044, 1048–49 (Haw. 1961).

(m) Reestablishment of a Government-to-Government Relationship

Issue: Commenters asked specific questions related to the reestablishment of a formal government-to-government relationship and its potential impacts.

(1) *Comment:* Commenters asserted that the HHCA authorized land to be taken into trust for the benefit of HHCA beneficiaries, including acquisitions and land exchanges, citing to HHCA Section 206. These commenters suggest that the HHCA is sufficient legal authority for the Department to place lands into trust for the benefit of the Native Hawaiian Governing Entity without further Congressional authorization.

Response: The Department recognizes the vital importance of a land base to the governments of indigenous communities in the United States, including the Native Hawaiian community. There is no present Federal statutory authority, however, for taking land into trust for the Native Hawaiian community, including the HHCA, which applies to the Hawaiian home lands that are under State (not Federal) jurisdiction. A primary source of the Department's authority to take land in trust for tribes in the continental United States is the IRA, and Native Hawaiians are outside its scope. *See Kahawaiolaa* v. *Norton,* 386 F.3d at 1280 (noting that the IRA's geographic-scope provision, 25 U.S.C. 473, expressly excluded territories but included Alaska, and that the definition of ''Indian'' in 25 U.S.C. 479 specifically referenced aboriginal peoples of Alaska, a territory like Hawaii at the time the IRA was enacted, and finding that, by its terms, the IRA ''did not include any native Hawaiian group''). Consequently, the Secretary does not have authority to take land into trust for Native Hawaiians under the IRA.

(2) *Comment:* The Department received a number of comments that indicated a belief that the final rule would alter an existing regulatory structure. The comments did not, however, state specifically which existing regulations would be altered.

Response: The rule does not alter an existing regulatory structure. It creates a new, one-time procedure for reestablishing a formal government-to-government relationship with the Native Hawaiian community. No such rule is currently in place. The Department has regulations in place for facilitating the reorganization of tribal governments, but those regulations by their terms do not apply to the Native Hawaiian community. *See* 25 CFR part 81. In addition, Department regulations under part 83 do not apply to Native Hawaiians, nor do those regulations apply to an Indian tribe that already has been recognized by Congress. 25 CFR part 83. The final rule is not an amendment to those regulations, but a freestanding rule that takes into account the unique status of the Native Hawaiian community.

(3) *Comment:* Some commenters indicate concern that development of a procedure to reestablish a formal government-to-government relationship with the Native Hawaiian community would surrender either Native Hawaiian sovereignty or the future ability of some groups to assert self-governance rights.

Response: The premise of this rulemaking process is that Native Hawaiian people retain their inherent sovereignty, which Congress recognizes and acknowledges through enacting over 150 statutes, thereby creating a special political and trust relationship with the Native Hawaiian community. The rule creates a process to reestablish a formal government-to-government relationship with a future Native Hawaiian reorganized government. The existence of such a process, however, does not change the nature or the inherent sovereignty of the Native Hawaiian community.

(4) *Comment:* Some commenters expressed concern that the future Native Hawaiian government would not have the ability to bring suit to seek redress for past wrongs. They referenced claims relating to ''1.8 million acres of land ceded by the Republic of Hawaii to the United States,'' to ''Hawaiian Homelands used now for airports or harbors,'' to ''people who have died without an award while waiting on the list of Hawaiian Homes,'' and other claims.

Response: Neither the proposed rule nor the final rule presumes to address possible claims by Native Hawaiians for past wrongs. The rule provides, in § 50.44(a), that the Native Hawaiian Governing Entity will have ''the same inherent sovereign governmental authorities'' as do federally-recognized tribes in the continental United States. The Native Hawaiian Governing Entity will have the capacity to sue and be sued (subject to sovereign immunity and other jurisdictional limitations), as do other indigenous sovereigns in the United States. The inherent governmental authorities of tribes in the continental United States include the ability to file suit to seek redress for past wrongs. This rule does not alter the sovereign immunity of the United States or of the State of Hawaii against claims for past wrongs. The Department will not address the validity of particular legal claims identified by commenters

because they are beyond the scope of the proposed rule.

(5) *Comment:* Multiple comments requested that the proposed rule be clarified to indicate that it was not intended to affect any claims that the Native Hawaiian people may have for redress under Federal law.

Response: Any existing claims that the Native Hawaiian people may have for redress under Federal law, either individually or collectively, are not addressed by this rule. The Department makes no comment as to the potential merits of any such claims, which are properly addressed by the legislative or judicial branches of the Federal Government rather than in this rulemaking. The existence and consideration of any claims that may exist are not related to the final rule and are separate and distinct matters. Accordingly, the Department made no changes to the proposed rule in response to this comment.

(6) *Comment:* Some commenters suggested that once a formal relationship is reestablished pursuant to the rule, the Native Hawaiian Governing Entity could rely on the Trade and Intercourse Act, 25 U.S.C. 177, to trigger lawsuits alleging unconstitutional takings of Federal, State, and private lands in Hawaii.

Response: The Trade and Intercourse Act requires Congressional ratification of transfers of real property from Indian tribes. The U.S. Supreme Court recognized in *Hawaii* v. *Office of Hawaiian Affairs,* 556 U.S. 163 (2009), that claims to title of public lands were extinguished when Hawaii was annexed as a United States territory. As a result, subsequent transfers of these lands are not subject to the Act. Moreover, the Act does not apply to lands transferred into private ownership before annexation, as Hawaii was then a separate sovereign that was not subject to the requirements of the Act.

(7) *Comment:* Several commenters requested that the rule address procedures for consultation between Federal agencies and the Native Hawaiian Governing Entity, following reestablishment of a government-to-government relationship.

Response: Procedures for consultation with federally-recognized tribes in the continental United States are set forth generally in Executive Order 13175. In addition, many Federal agencies have their own policies governing tribal consultation. The Department of the Interior and other Federal agencies already consult with Native Hawaiian organizations under these existing policies. Should a government-to-government relationship be reestablished with a Native Hawaiian government pursuant to this Rule, Federal agencies would evaluate whether consultation could occur under existing consultation policies, or whether those policies would need to be modified.

(8) *Comment:* Several commenters expressed the view that Native Hawaiians should be eligible for programs available to Native Americans under Federal law.

Response: Congress provides a distinct set of programs and benefits for Native Hawaiians. In some instances, Congress provides for Native Hawaiians to participate in programs directed to Native Americans generally. In others, Congress provides a parallel set of benefits to Native Hawaiians within the framework of legislation that also provides programs to other Native groups. As explained elsewhere in the Preamble, the Department determined that Congress included Native Hawaiians in a large number of Federal programs in various ways. In some instances, Congress expressly provided for Native Hawaiians to receive benefits as part of a program provided to Native Americans generally; in others, Congress has provided a distinct program or set of programs, parallel to those that exist for other Native American groups. *See* Section (IV)(C).

To the extent that Native Hawaiians are not eligible for certain programs, it follows that this treatment reflects a conscious decision by Congress. Moreover, because of the structure of many Federal programs, to treat a Native Hawaiian government or its members as eligible for programs provided generally to federally-recognized tribes or their members in the continental United States could result in duplicative services or benefits. The Department concludes that it is for Congress to decide to include Native Hawaiians in additional Federal programs directed towards Native Americans.

(9) *Comment:* The List Act states: ''The Congress finds that . . . (3) Indian tribes presently may be recognized by Act of Congress; by the administrative procedures set forth in part 83 of the Code of Federal Regulations denominated 'Procedures for Establishing that an American Indian Group Exists as an Indian Tribe.'' List Act findings, sec. 103. A commenter expressed concern that this language is inconsistent with the Department's proposal in the notice of proposed rulemaking.

Response: The Department notes that the quoted language refers to the Department's existing part 83 procedures, and that Congress's reference to part 83 signals Congressional approval of the Department's authority to adopt such procedures by regulation. The Department adopted part 83, following notice and comment, through the exercise of its delegated authorities. This rule is adopted through the same process and under the same authorities. Nonetheless, the significant difference between part 83 petitioners and the Native Hawaiian community is that Congress itself has already recognized, and established a special political and trust relationship with, the Native Hawaiian community; the finding cited by the commenter also references the power of Congress in this respect. Therefore, this rule addresses a fundamentally different situation than that addressed in part 83.

(10) *Comment:* A commenter states that the Department's proposed approach of including Native Hawaiians within the scope of the Indian Civil Rights Act, but not within the scope of other Federal statutes, did not reflect a consistent approach to the application of existing Federal statutes addressing Native Americans.

Response: To determine which statutes will apply to the Native Hawaiian Governing Entity, the Department considers each statute's language defining its scope of application. The requirements of the Indian Civil Rights Act apply to ''Indian tribes,'' and that act uses broad language to define the term ''Indian tribe'': ''Any tribe, band or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government.'' This language would include the Native Hawaiian Governing Entity. By contrast, many other Federal statutes define the term ''Indian tribe'' by referring to tribes that are ''eligible for the special programs and services provided to Indians because of their status as Indians,'' and as discussed in Section (IV)(C), Congress provided for the Native Hawaiian community under a separate panoply of programs and services.

(11) *Comment:* A commenter expressed concern about the possibility that the Indian Child Welfare Act and the Violence Against Women Act would become applicable in Hawaii by virtue of reestablishment of a government-to-government relationship, stating that the application of these statutes would have disruptive effects in Hawaii.

Response: Neither the Indian Child Welfare Act nor the Violence Against Women Act's tribal-criminal-jurisdiction provision would apply to the Native Hawaiian Governing Entity.

The Indian Child Welfare Act applies only with respect to ''Indian tribes,'' and defines ''Indian tribe'' to mean ''any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 1602(c) of title 43.'' 25 U.S.C. 1903(8). Because the Native Hawaiian Governing Entity would not be an entity ''recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians,'' the statute would not apply. And the Violence Against Women Act's provision recognizing tribal criminal jurisdiction over certain domestic-violence crimes applies only to conduct that ''occurs in the Indian country of the participating tribe.'' 25 U.S.C. 1304(c)(1), 1304(c)(2)(A). As explained in these responses to comments, there will not be Indian country in Hawaii absent some affirmative Congressional action, and these provisions will therefore not apply unless Congress determines otherwise.

(12) *Comment:* Commenters requested that the language of § 50.44(a) be amended to state: ''§ 50.44 (a) Upon reestablishment of the formal government-to-government relationship, the Native Hawaiian Governing Entity will have the same government-to-government relationship under the United States Constitution and Federal law as the government-to-government relationship between the United States and a federally-recognized tribe, with the same privileges, immunities and inherent sovereign governmental authorities.'' Commenters stated that this language will clarify that the Native Hawaiian government will have both the same privileges and immunities as other federally-recognized tribes in the continental United States, and possess the same inherent sovereign governmental authorities.

Response: The Department agrees that, following the reestablishment of a formal government-to-government relationship pursuant to this Part, the Native Hawaiian government will have the same inherent sovereign governmental authorities as federally-recognized tribes in the continental United States, as set forth in § 50.44(a). Those authorities include certain inherent attributes of sovereignty, such as sovereign immunity. Likewise, Native Hawaiian rights, protections, privileges, immunities, and benefits under Article XII of the Constitution of the State of Hawaii would not be affected by reestablishment of a government-to-government relationship. The Department determined that the existing language of § 50.44(a) adequately describes the inherent authorities of the Native Hawaiian Governing Entity, and therefore made no changes in the rule.

(13) *Comment:* A few commenters expressed concern that existing Federal and State laws would no longer apply to members of the Native Hawaiian Governing Entity.

Response: Members of the Native Hawaiian Governing Entity would remain subject to applicable Federal and State law, as well as laws enacted by the Native Hawaiian Governing Entity.

For example, the Native Hawaiian Governing Entity would have authority to exercise jurisdiction over relationships between its members by enacting family laws, contract laws, or other laws that would govern those relationships. To the extent that the Native Hawaiian Governing Entity adopts such laws, they generally would apply as between its members notwithstanding contrary State law. *See Kelsey* v. *Pope,* 809 F.3d 849 (6th Cir. 2016); *John* v. *Baker,* 982 P.2d 738, 749 (Alaska 1999).

Because there is no Indian country in Hawaii, upon reestablishing a government-to-government relationship with the United States, the Native Hawaiian Governing Entity would not have territorial jurisdiction. While Congress imposed certain restrictions on alienation of Hawaiian home lands, title to those lands is held by the State, not the Federal Government. Therefore, the State retains jurisdiction over Hawaiian home lands unless Congress provides otherwise in the future. *See* response to comment (l)(2).

(14) *Comment:* One commenter stated that the rule would ''open a Pandora's box'' for other groups, such as the Amish and Cajuns, to seek tribal status. Others expressed similar concerns.

Response: These commenters do not appear to appreciate the important distinction between communities based on shared history and culture and a political community that represents the continuous existence of an inherent indigenous sovereign, such as the Native Hawaiian community. The U.S. Constitution expressly references Indian tribes and provides for relationships with them; the Amish, Cajuns, and similar groups do not have native or indigenous status under Federal law. *See* further discussion of the continuing Native Hawaiian political community in Section (II).

(15) *Comment:* Some commenters expressed concern that the rule would divide Hawaii's integrated, multicultural Hawaiian society and create unnecessary social divisions between Native Hawaiians and non-Native Hawaiians.

Response: The rule is based on the pre-existing sovereign authority of the Kingdom of Hawaii that was evidenced by treaties with the United States and later suppressed as part of the annexation process; it is not creating any ''social divisions'' as the commenter suggests. The rule provides a process for reestablishing a formal government-to-government relationship between two sovereigns and will assist the Native Hawaiian community in preserving their unique culture, language, and traditions. Congress found that the constitution and statutes of the State of Hawaii similarly ''protect the unique right of the Native Hawaiian people to practice and perpetuate their cultural and religious customs, beliefs, practices, and language.'' Native Hawaiian Health Care Act, 42 U.S.C. 11701(3); *see* Native Hawaiian Education Act, 20 U.S.C. 7512(21). Consistent with these findings, the Department agrees with the commenter who observed that ''[t]he Native Hawaiian people and their culture are the foundation of the culture of the State of Hawaii, and an integral part of what makes Hawaii work as a multicultural society . . . . A federally-recognized Native Hawaiian government will help to improve the Native Hawaiian people's ability to strengthen and perpetuate the indigenous culture and language of these islands, thereby strengthening Hawaii for all.''

(16) *Comment:* Commenters questioned the use of the term ''reestablish'' in referring to a future government-to-government relationship between the United States government and a Native Hawaiian government. They noted that the relationship between the United States government and the Hawaiian Kingdom was a treaty relationship between nation-states, and that a future relationship with a Native Hawaiian government would have a different character.

Response: The Department agrees that the formal government-to-government relationship with a Native Hawaiian government would have very different characteristics from the government-to-government relationship that formerly existed with the Kingdom of Hawaii, and would much more closely resemble the relationship with federally-recognized tribes in the continental United States. The Department's use of the term ''reestablish'' is intended to be understood in this broader context.

The Department notes that, due to the unique history of Hawaii, either the term ''reestablish'' or the term ''establish'' could be used to describe the formalization of the relationship

between the United States Government and a Native Hawaiian Governing Entity, and believes that either term is appropriate. The relationship between the United States and the Native Hawaiian community is reflected in a significant number of Congressional actions recognizing and providing benefits to Native Hawaiians, though the Native Hawaiian community has lacked a unified formal government since the nineteenth century. The Native Hawaiian community historically had a unified formal government that was recognized through formal treaties with the United States. Due, in part, to actions taken by representatives of the United States, the Kingdom of Hawaii was overthrown, and the Native Hawaiian community has not maintained a unified formal government over the past several generations. The United States relationship with a Native Hawaiian Governing Entity would be ''reestablished'' in the sense that the United States previously maintained a formal relationship with a Native Hawaiian government, not that the former relationship between the United States and the Kingdom of Hawaii would resume or be resurrected.

(17) *Comment:* One commenter stated that because the Kingdom of Hawaii included native-born and naturalized non-Hawaiian citizens, many of whom served in high-ranking positions in the Kingdom government, no ''Native Hawaiian'' government consisting solely of Native Hawaiians could now ''reorganize'' itself and ''reestablish'' a formal government-to-government relationship with the United States. Other commenters similarly asserted that the ''multiethnic'' nature of the Kingdom at the time of its overthrow disqualifies any future Native Hawaiian government from exercising self-determination and self-governance pursuant to Federal law, and that consequently the Department lacks the authority to promulgate this rule.

Response: The Department does not agree that the presence of non-Native Hawaiians in the Hawaiian Kingdom indicates that the Native Hawaiian community lost its character as a self-governing indigenous community. For example, many Indian tribes in the continental United States welcomed outsiders and intermarried with non-Indians, and others found themselves living in close association with non-Indians as a result of patterns of migration and settlement. Those circumstances did not preclude those Indian tribes from continuing to exist as self-governing and sovereign nations. Moreover, Congress established a special political and trust relationship with the Native Hawaiian community, and thus determined that the community's political existence was not negated by the historical events identified by these commenters. It follows that the Department has authority to reestablish a formal government-to-government relationship with a future reorganized Native Hawaiian government.

That the Kingdom of Hawaii included non-Hawaiian citizens among its citizenry does not establish that the Native Hawaiian community ceased to exist or exercise political authority. As set forth in the background discussion of this rule, the Native Hawaiian community continued to demonstrate its existence as a distinct political community separate and apart from non-Native Hawaiians before, during, and after the Kingdom's overthrow. Moreover, though non-Native Hawaiians participated in governance of the Kingdom, they were considered ''foreigners'' and their rights were limited. *See* I Ralph S. Kuykendall, *The Hawaiian Kingdom* 227–41 (1947) (citing Constitution and Laws of the Hawaiian Islands, Established in the Reign of Kamehameha III (1842)). The rights of such ''foreigners'' evolved over time, but the Kingdom was a monarchy, and only Native Hawaiians served as monarchs. The United States had a treaty relationship with the Kingdom of Hawaii that persisted through active involvement by Native Hawaiians in the Kingdom's government. The fact that ''foreigners'' lived and participated in the political process in Hawaii at the time does not alter the fundamental fact that the United States had a prior political relationship with the Native Hawaiian community's government in the 1800s.

(18) *Comment:* Some commenters objected to the proposed rule's limitation on reestablishing a government-to-government relationship with a single Native Hawaiian government. Among these commenters, some proposed that the Secretary allow separate government-to-government relationships with HHCA Native Hawaiians and with other, non-HHCA Native Hawaiians based on Congress's separate treatment of these groups. Other commenters stated that Native Hawaiians did not have a single unified government until after contact with Western societies, so that there is no historical basis for treating them as a single community in the proposed rule.

Response: Many other commenters, however, supported the Department's approach to provide for a single government-to-government relationship. History shows that many Native groups changed their form of government over time, including in response to Western contact. The single, centralized government of the Kingdom of Hawaii, which was in place for almost a century before its overthrow in 1893, provides a strong basis on which to proceed here with a single Native Hawaiian government to conduct relations with the United States on a formal government-to-government basis. Moreover, doing so is consistent with how Congress treated the Native Hawaiian community as a single entity through more than 150 laws that established programs and services for its benefit.

As correctly noted by commenters, Congress used two definitions of Native Hawaiian to establish eligibility for Native Hawaiian programs and services. *See* response to comment (e)(1). In the rule, the Department reconciled Congress's use of these two definitions with its treatment of Native Hawaiians as a single community by providing for a government-to-government relationship with one Native Hawaiian government that has broad-based community support among both HHCA Native Hawaiians and the broader group of Native Hawaiians. Moreover, the Department is aware of no Federal statutes directed specifically to individuals who are Native Hawaiians but who are not HHCA Native Hawaiians. This lack of statutory separation of the two demonstrates that Congress views HHCA Native Hawaiians as included within the broader group of Native Hawaiians, rather than treating the two as distinct and separate for Federal programs and services. Finally, as noted above in response to comments about political subdivisions, it is not uncommon for the United States to have a government-to-government relationship with a single indigenous government that represents multiple communities with distinct historical and cultural roots and property rights.

The final rule also envisions that the Native Hawaiian government may adopt either a centralized structure or a decentralized structure with political subdivisions defined by island, by geographic districts, historic circumstances, or otherwise in a fair and reasonable manner. Allowing for political subdivisions is consistent with principles of self-determination applicable to Native groups, and provides some flexibility should Native Hawaiians wish to provide for subdivisions with whatever degree of autonomy the community determines is appropriate, although only a single formal government-to-government

relationship with the United States would be established.

(n) Other

(1) *Comment:* Some commenters opposed the proposed rule because a group of Native Hawaiians or, as they assert, the majority of Native Hawaiians, do not support such an action.

Response: The Department is aware that some in the Native Hawaiian community do not support reestablishment of a formal government-to-government relationship. Others in the Native Hawaiian community, however, urge the Department to create the administrative procedure and criteria proposed in the NPRM and support such action. While there may be differences of opinion on the issue, the community's views may change over time, and most importantly, the rule would apply only if the Native Hawaiian community reorganizes their government and formally submits a request to reestablish a formal government-to-government relationship with the United States. Therefore, the Department determined that it would be appropriate to finalize the rule in order to give the community notice of what the Secretary would require if at some point in the future there is broad-based community support for a reorganized Native Hawaiian government that seeks to reestablish a formal government-to-government relationship.

(2) *Comment:* One commenter expressed concern that the proposed rule was drafted without input from the Native Hawaiian community and that no ''meaningful consultation'' occurred during the comment period.

Response: The proposed rule was the product of extensive consultations with the Native Hawaiian community, beginning with the ANPRM issued in June 2014.

As discussed in Section (V), the ANPRM specifically solicited comments through a series of questions relating to whether the Department should assist the Native Hawaiian community in reorganizing its government and whether the Department should take administrative action to facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community. The issuance of an ANPRM is not required by statute, and it is an option that Federal agencies often determine is not necessary to pursue. The Department determined, however, that issuing an ANPRM would be a vital first step in gathering diverse and informed input from the Native Hawaiian community itself. To that end, the Department held 15 public meetings in Hawaii, divided among the major islands, over a three-week period. These public meetings provided opportunities for extensive comment from the community, resulting in over 40 hours of testimony. The Department met with a range of Native Hawaiian community organizations in Hawaii for educational outreach during the same period. The Department also conducted five consultations on the U.S. mainland where many Native Hawaiians offered comment on the ANPRM, and accepted invitations from mainland-based Native Hawaiian organizations to participate in forums regarding the ANPRM.

Based on the comprehensive input received on the ANPRM, the Department drafted the proposed rule that was published in October 2015. Following publication of the proposed rule, the Department further consulted with the public and the Native Hawaiian community through four teleconferences and produced a video that explained its provisions, *available at https://www.doi.gov/hawaiian/procedures.* The Department received thousands of written comments, which it considered closely in preparing the final rule as noted in Section (IV)(A).

(3) *Comment:* A commenter stated that the rule relies on the erroneous assertion that the population of HHCA Native Hawaiians is declining.

Response: Nothing in the proposed or final rule rests on any assumption about whether the total number of HHCA Native Hawaiians is decreasing or increasing. The preamble to the proposed rule noted that the ratio of HHCA Native Hawaiians to all Native Hawaiians likely is declining over time, as the general Native Hawaiian population is increasing. Any fluctuation in population, however, is not a valid basis to abandon this rulemaking, as there remains a sizable Native Hawaiian community that may ultimately choose to reorganize its government. Furthermore, there is great variety in the population levels of federally-recognized tribes in the continental United States.

(4) *Comment:* Some commenters criticized the proposed rule's reliance on certain sources documenting the history of relations between the United States and Native Hawaiians. One commenter suggested that these sources are insufficient historical evidence compared to what must be produced under 25 CFR part 83, the procedures for Federal acknowledgment of Indian tribes.

Response: The Department relies on Federal statutes, Congressional preambles to the findings, case law and independent research in setting out relevant historical events in the proposed and final rules. As the Federal agency with primary jurisdiction over and subject-matter expertise on Native Hawaiian affairs, the Department reviewed the sources cited in the proposed rule and determined that they were sufficiently reliable before citing them. In response to this comment, however, the Department welcomed additional information from commenters, reviewed commenters' suggested sources, and included new citations to supplement the final rule.

With regard to 25 CFR part 83, the Ninth Circuit concluded that the regulations for Federal acknowledgment of tribes in the continental United States do not apply to Native Hawaiians. *Kahawaiolaa* v. *Norton,* 386 F.3d at 1274 (citing 25 CFR 83.3 (2004), restricting application of part 83 to ''those indigenous groups indigenous to the continental United States''). In upholding part 83's express geographic limitation, the Ninth Circuit concluded that there was a rational basis for the Department to distinguish between Native Hawaiians and tribes in the continental United States, given the history of separate Congressional enactments regarding the two groups and the unique history of Hawaii. *Id.* at 1283. The court expressed a preference for the Department to apply its expertise to determine whether the United States should relate to the Native Hawaiian community ''on a government-to-government basis.'' *Id.* But unlike a part 83 petitioner, the Native Hawaiian community has already been ''acknowledged'' or ''recognized'' by Congress in over 150 enactments. Accordingly, this rule establishes a process for determining *how* (not whether) a representative sovereign government of the Native Hawaiian community can relate to the United States on a formal government-to-government basis, in addition to the existing special political and trust relationship. *See* 80 FR at 59122.

(2) Section-by-Section Response to Comment

(a) Section 50.1—Purpose

(1) *Comment:* A commenter suggested adding an additional purpose for the rule: ''To more effectively implement and administer—'(c) Native Hawaiians' exercise of their inherent sovereignty and right to self-determination.' ''

Response: The Department agrees with the substance of this comment and revised the purpose section of the rule. The rule identifies that one of its purposes is to provide the Native Hawaiian community the opportunity to more effectively exercise its inherent

sovereignty and exercise self-determination.

(2) *Comment:* One commenter noted that the listed purposes of the rule (§ 50.1(a), (b)) are inadequate and that the Department should indicate how the rule will improve Federal implementation of existing Native Hawaiian benefits.

Response: The Department made no changes to the rule in response to this comment. As stated in the preamble, strong Native governments are critical to exercising inherent sovereign powers, preserving Native culture, and sustaining Native communities. A unified, reorganized Native Hawaiian government could provide a formal, direct link on a government-to-government basis between the Native Hawaiian community as a whole and the United States.

(3) *Comment:* A commenter suggested adding an additional purpose for the rule that describes the HHCA Native Hawaiian community as having its own right to self-determination and land use.

Response: The Department made no changes to the rule in response to this comment because the Department will only reestablish a formal government-to-government relationship with a single Native Hawaiian government in order to be consistent with Congress's statutory treatment of Native Hawaiians. *See* response to comment (m)(18).

(b) Section 50.3—Political Subdivisions

(1) *Comment:* Commenters suggested amending the rule to provide for more than one Native Hawaiian government that could seek a government-to-government relationship with the United States. They assert that allowing multiple Native Hawaiian governments would more accurately reflect the composition of the Native Hawaiian community, particularly HHCA Native Hawaiians who already have a special relationship with the United States under the HHCA. Similarly, commenters suggested amending the rule to allow homestead associations or mokupuni (island-wide councils) to seek formal relationships with the United States.

Response: The Department made no changes to the rule in response to this comment. The Department appreciates that the Native Hawaiian community has a rich history of self-governance both as geographically defined chiefdoms and as a unified government under one Native Hawaiian monarch. Congress, however, has dealt with Native Hawaiians as a single community. As a result, the Department will reestablish a government-to-government relationship with a single Native Hawaiian government although that government may recognize political subdivisions based on this history or other distinctions within the community consistent with Federal law. *See* response to comment (f)(2).

(2) *Comment:* One commenter suggested that the final rule should define the scope of or clarify a political subdivision's ''limited powers'' in § 50.3.

Response: The Department made no changes to the rule in response to this comment. By definition, any political subdivision provided for in the governing document would not be independent of the Native Hawaiian Governing Entity and thus would have only governmental authorities derived from the larger entity, *i.e.,* ''limited powers.'' The scope of those ''limited powers'' would be determined by the Native Hawaiian community and defined in the governing document.

(3) *Comment:* One commenter suggested revising the proposed rule to require that the Native Hawaiian governing document include a provision establishing a political subdivision limited to HHCA Native Hawaiians ''with the express purpose of managing the federal and state relationships involved in the implementation of the HHCA and the HHLRA.''

Response: The Department made no changes to the proposed rule in response to this comment. The Department respects a Native Hawaiian government's inherent authority to exercise self-determination and self-governance by developing a governing document that best suits its needs and those of its citizenry. The proposed rule accordingly permitted the Secretary to reestablish a government-to-government relationship with a single Native Hawaiian government that may include political subdivisions based on island or other geographic, historical, or cultural ties out of respect for the Native Hawaiian community's unique history of self-governance prior to and during the Kingdom of Hawaii. If HHCA Native Hawaiians determine that their interests are best served by participating in a Native Hawaiian government through a political subdivision with specific authorities, they may advocate for such a requirement during development of the community's governing document. If the governing document adopted by the community as a whole provides specific authorities to political subdivisions defined in a fair and reasonable manner, the Department will respect that grant of authorities. The Department expects that HHCA Native Hawaiians will play a key role in developing the governing document, which must be ratified to reflect the will of the Native Hawaiian community as a whole through a process that is free and fair.

(c) Section 50. 4—Definitions

(1) *Comment:* A number of commenters claimed that by defining the term ''Native Hawaiian'' consistent with past Congressional usage of the term, the Department potentially undermines attempts by the Native Hawaiian community to identify their own membership.

Response: Congress has already established a special political and trust relationship with the Native Hawaiian community. Accordingly, in this rulemaking the Department applies existing definitions Congress has adopted in establishing this relationship. The Department recognizes and supports the community's interest in self-governance, and notes that any governing document that the community adopts will appropriately include membership criteria that reflect the community's own definition of its membership consistent with § 50.13(f).

(2) *Comment:* A commenter suggested revising the definition of ''HHCA-eligible Native Hawaiian'' to parallel the definition of ''native Hawaiian'' under HHCA sec. 201(a)(7), reasoning that ''HHCA-eligible Native Hawaiian'' is ''overly complicated'' and could cause confusion in the community, among other reasons.

Response: The Department amended the definition of ''HHCA-eligible Native Hawaiian'' in the final rule to more clearly reflect the definition of ''native Hawaiian'' under the HHCA, as suggested. And for simplicity, the Department changed the term to ''HHCA Native Hawaiian.''

(3) *Comment:* A commenter notes that the definition of HHCA Native Hawaiian ''seems to disallow descent by out-of-wedlock birth or claiming a different father than your mother's husband,'' as well as descent by adoption or from outside the Native Hawaiian community.

Response: The Department made no changes to the rule in response to this comment. Nothing in the definition of ''HHCA Native Hawaiian'' requires a marriage certificate or would preclude an out-of-wedlock child from qualifying under the definition. In contrast, a non-Native Hawaiian child adopted within the community would not be eligible to participate in the ratification referendum. *See* § 50.13; response to comment (c)(1); (i)(3).

(4) *Comment:* A commenter requested that the Department add ''which was not repealed and remains in effect with the elements of both Federal and State

law'' to the definition of ''HHCA'' in the definitions section of subpart C in order to clarify that this law was not repealed two years after Hawaii became a state.

Response: The Department agrees that the HHCA remains in effect and has elements of both Federal and State law. It is unnecessary to include clarifying language to that effect in the final rule.

(5) *Comment:* A commenter requested that the Department add definitions for the terms ''Secretary,'' ''Rehabilitation of native Hawaiians'' and ''State.''

Response: The Department made no changes to the definition of Secretary. The Department chose not to define ''rehabilitation of Native Hawaiians'' because the term is not used in the rule and is outside of the scope of the rulemaking. The Department added a definition of ''State.''

(6) *Comment:* A commenter asked whether the term ''Native Hawaiian community'' refers to ''the Hawaiian Nation'' as defined to mean ''a large aggregate of people united by common descent, history, culture, or language inhabiting a particular country or territory.''

Response: The term ''Hawaiian Nation'' has a variety of different meanings and the Department is not aware of any single, authoritative definition of that term. The term ''Native Hawaiian community'' is defined in the final rule as ''the distinct Native Hawaiian indigenous political community that Congress, exercising its plenary power over Native American affairs, has recognized and with which Congress has implemented a special political and trust relationship.'' The term ''Native Hawaiian community'' includes the entire community recognized by Congress and excludes all individuals outside of that community.

(7) *Comment:* One commenter was concerned that the proposed rule indicated that individuals with leaseholds on Hawaiian home lands were, by definition, considered ''Native Hawaiian,'' and that such a definition was problematic because some individuals have Hawaiian home land leaseholds because they lived on lands that were subject to the Hawaiian Homes Commission Act. In short, these individuals became lessees simply because of the location of their ancestral homestead, not due to their ancestry. Examples included lands that currently make up the Papakolea community (including Papakolea, Kewalo, and Auwailimu).

Response: Ancestry is a crucial component to the definitions of ''Native Hawaiian'' and ''HHCA Native Hawaiian'' in the rule, and a non-Native Hawaiian lessee would not meet these definitions.

(8) *Comment:* One commenter expressed concern that the proposed rule defines ''Native Hawaiian'' in the same terms the Supreme Court found to be racial in *Rice* v. *Cayetano,* 528 U.S. 495 (2000). Numerous commenters stated, more generally, that the Department's proposed action was unconstitutional and violated the Equal Protection Clause of the U.S. Constitution.

Response: The Department disagrees that it defines ''Native Hawaiian'' in racial terms. Rather, it defines ''Native Hawaiian'' consistent with the special political and trust relationship Congress acknowledged and recognized in over 150 statutes. The final rule sets out procedures to reestablish a formal government-to-government relationship with a distinct indigenous political community recognized by Congress, and therefore does not violate the Equal Protection Clause of the U.S. Constitution for the same reasons that the Supreme Court found provisions of Title 25 of the United States Code relating to Indians and Indian tribes constitutional in *Morton* v. *Mancari,* 417 U.S. at 554 (''The preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion.''). The rule is distinguishable from the provisions found unconstitutional in *Rice* v. *Cayetano.* In *Rice,* the Court expressly recognized that *Mancari* and its progeny authorize distinct treatment of tribes and their members. 528 U.S. at 518–19.

(9) *Comment:* Several commenters noted that the proposed definition of ''HHCA-eligible Native Hawaiian'' does not include individuals who obtained their homestead leases through either Section 208 or 209 of the HHCA, that is, through valid successorship or transfer pursuant to federally approved amendments to the HHCA.

Response: The Department made no changes to the rule in response to these comments. The State proposed an amendment to the HHCA to allow certain relatives of HHCA lessees to receive a lease through successorship or transfer; and Congress approved that amendment, making it law. In general, the amendment permits a homestead lessee to designate a husband, wife, child, or grandchild who is at least one-quarter Native Hawaiian ancestry to receive a lease through succession or transfer. Congress also approved amendments to permit succession to certain others who meet the definition of ''native Hawaiian'' in HHCA sec. 201(a)(7). Notably, these amendments do not expand the definition of ''native Hawaiian'' in HHCA sec. 201(a)(7), and only permit certain individuals to receive leases through successorship or transfer. Further, Congress in enacting the HHLRA, defined ''beneficiary'' in terms of the HHCA definition of ''native Hawaiian'' without reference to these transfer and successorship amendments. Congress also provided that the Department ''advance the interest of the beneficiaries'' in administering the HHLRA and HHCA. The Department therefore concludes that the HHCA definition in sec. 201(a)(7), as originally enacted, remains the controlling Congressional definition for purposes of this rulemaking.

(10) *Comment:* A commenter suggested that in lieu of eliminating the U.S. citizenship requirement, the Department could consider amending the definition in § 50.4 to read that Native Hawaiians must be ''eligible to be considered within the Citizenship clause of the U.S. Constitution.'' The commenter stated that this amendment would allow the Native Hawaiian government to include individuals who may have reasonable concern about being classified as a U.S. citizen, given the history of the overthrow, but who would otherwise be eligible for such status under the Constitution.

Response: The Department eliminated the U.S. citizenship requirement from the rule as unnecessary and inconsistent with many Federal statutes concerning Native Hawaiians.

(d) Section 50.10—Elements of a Request

(1) *Comment:* A commenter suggested that the final rule permit an appointed interim Native Hawaiian governing body to submit a request for reestablishment of a formal government-to-government relationship, noting that ''Federal law and policy respects the rights of Native people in determining their own political priorities.'' Others agreed and suggested such a governing body could additionally assist in organizing the organic activities of the reorganized government.

Response: The Department made no changes to the rule in response to this comment. Section 50.10(f)–(g) requires that an officer of the Native Hawaiian government submit and certify a duly enacted resolution of the governing body requesting a formal government-to-government relationship. This provision presupposes that government officers would be elected and seated before a request to reestablish a formal government-to-government relationship could be ''duly'' enacted and submitted

under the rule. To ensure that it is the will of the Native Hawaiian community to present a request to reestablish a formal government-to-government relationship, the requester must be an elected governing body, not an appointed one.

(2) *Comment:* A commenter noted that because elections for government offices would occur prior to submission of a request to the Department, those elections seemed ''premature'' since the Department could reject the governing document that sets out the elections process and procedures.

Response: The Department made no changes to the proposed rule in response to this comment. As stated below, the Department is committed to providing technical assistance at the request of the Native Hawaiian community. In the event the Department does not accept a governing document as a basis for a formal government-to-government relationship, the elected officials' status as officers would presumptively be unaffected, however, the text of the governing document would ultimately determine if the election of officers was premature. Similarly, if the Secretary denies a request to reestablish a formal government-to-government relationship, that decision would not affect the authority of the governing document within the community.

(e) Section 50.11—Process for Drafting Governing Document

(1) *Comment:* Commenters suggested amending the rule to provide the criteria or types of evidence that the Secretary will consider in a finding that the minimum standards for demonstrating ''meaningful input'' from ''representative segments of the Native Hawaiian community'' were met.

Response: The Department made no changes to the rule in response to this comment. The Native Hawaiian community itself is in the best position to determine how to obtain and implement ''meaningful input'' from its diverse membership. The Department anticipates deferring to reasonable approaches adopted by the community to implement this standard.

(2) *Comment:* A commenter asked whether the Department would consult with the Native Hawaiian government on laws or policies it proposed for enactment in order to determine whether they could conflict with State or Federal law.

Response: The Department is willing to provide technical assistance to facilitate compliance with the final rule and with other Federal law, upon request for assistance, but encourages the Native Hawaiian community to seek guidance as to State law from appropriate State officials and other non-Federal sources.

(f) Section 50.12—Documents That Demonstrate who Participates in Ratification Referendum

(1) *Comment:* One commenter suggested removing proposed § 50.12(b) to accommodate Native Hawaiians who object to State-led efforts to compile a roll of Native Hawaiians, such as the Kanaiolowalu, to ''encourage a more fair and inclusive referendum for Native Hawaiians of all political views.'' By contrast, another commenter suggested amending this provision of the proposed rule to specify the NHRC as responsible for compiling and certifying the roll.

Response: The Department revised § 50.12 to make clear that the Native Hawaiian community must develop its own voter list but may rely on a roll of Native Hawaiians prepared by others, provided certain conditions are met. Since it is the Native Hawaiian community's voter list, the Department rejected the suggestion that the final rule place responsibility for carrying out the conditions set forth in § 50.12 on the NHRC.

(3) *Comment:* To accommodate Native Hawaiians who lack traditional ''paper'' documentation of their status, one commenter recommended enhancing the rule's criteria for demonstrating Native Hawaiian and HHCA Native Hawaiian status for ratification purposes to include ''verification by kupuna (elders) or kamaaina (long term community residents)'' which some Federal laws currently provide.

Response: The Department made changes to § 50.12 to enhance the ability of individuals who may not have traditional documentation to document descent. It is for the Native Hawaiian community to determine in the first instance whether this commenter's suggestions should be adopted as ''[o]ther similarly reliable means'' under § 50.12(b)(5) and (c)(4), and the Department would expect to give deference to the community's judgment.

(4) *Comment:* The DHHL expressed concern that the integrity of its processes for certifying eligibility for HHCA programs and benefits could be negatively impacted if alternative methods for certification of ''HHCA-eligible Native Hawaiian'' status are accepted as proposed in § 50.12(a)(2)(ii). Moreover, citing ''significant administrative burden'' and its ''responsibility and . . . obligation to lessees, wait-listers, and applicants to maintain the confidentiality and security of their personally identifiable information,'' among other concerns, DHHL objected to being identified as a source to demonstrate ''HHCA Native Hawaiian'' status in the proposed rule at § 50.12(a)(1)(i) and (a)(2)(i).

Response: The proposed rule did not intend to burden or assign a role for DHHL in the verification process, and nothing in the rule mandates such involvement. For instance, DHHL may be willing to certify to an individual that he or she is a Native Hawaiian lessee under HHCA sec. 201(a)(7), but the rule does not require DHHL to do so. Individuals who are enumerated on a DHHL roll or list as HHCA-eligible should have some kind of documentation from DHHL indicating their status under HHCA sec. 201(a)(7) and such documents are sufficient proof of their status as ''HHCA Native Hawaiians'' without further involvement by DHHL. Further, the Department sees no reason to require such individuals to resubmit ancestry documentation that DHHL previously found acceptable to those compiling the list of eligible voters. The Department also finds that persons who meet the definition of ''native Hawaiian'' in HHCA sec. 201(a)(7) should be permitted to document such status by using other records or documentation demonstrating such eligibility, *see* final rule § 50.12(c), even if they have not applied to DHHL or their application has not been acted upon by DHHL.

Finally, as to DHHL's concern about collateral effects on its certification processes, a determination by the Native Hawaiian community that an individual is an ''HHCA Native Hawaiian'' for purposes of compliance with this rule would not have any collateral effect on eligibility determinations made by DHHL for its own purposes under its own processes, which may rely on a distinct methodology or distinct documentation standards.

(g) Section 50.13—Contents of Governing Documents

(1) *Comment:* Commenters objected to the proposed rule's requirement excluding non-Native Hawaiians from membership. They expressed their belief that the Native Hawaiian government should have the opportunity to decide whether to include non-Native Hawaiians in the formulation of its governing documents.

Response: The Department made no changes to the rule in response to this comment. Federal law requires a demonstration of Native ancestry to be eligible for membership. See response to comment (i)(3).

(2) *Comment:* A commenter suggested either eliminating § 50.13(j)'s

requirement that the Native Hawaiian governing document ''[n]ot contain provisions contrary to Federal law'' or amending it to read: ''Not contain provisions contrary to *current* Federal law'' (emphasis added).

Response: The Department made no changes to the rule in response to this comment. The ordinary reading of § 50.13(j) is that the governing document must comply with then-applicable Federal law. The comment is correct, however, in noting that Federal law can change over time, and the result may be to broaden or narrow the scope of Native governments' ability to exercise their inherent sovereign authorities, including authorities identified in their governing documents. *See United States* v. *Lara,* 541 U.S. 193 (2004). Thus, if a governing document contains a provision that may not be exercised because it is inconsistent with Federal law, that provision will not necessarily render that document ''contrary to Federal law'' for purposes of this section. The result instead would be that the provision will not be enforceable.

(3) *Comment:* One commenter asked for guidance on the meaning of § 50.13(b), which requires the Native Hawaiian governing document to ''prescribe the manner in which the government exercises its sovereign powers.''

Response: This language is intended to refer to a governing document's enumeration of powers of the respective branches of government and of officials, and establishment of the processes by which governmental power is exercised. It is intended to be read together with § 50.13(c), which references establishment of ''the institutions and structure of the government, and of its political subdivisions (if any).''

(4) *Comment:* One commenter expressed the opinion that the Department would be unable to ''enforce'' the terms of the Native Hawaiian Governing Entity's initial governing document because the entity, like an Indian tribe, would be able to amend this document without Secretarial approval.

Response: The Department made no changes to the rule in response to this comment. § 50.13 provides minimum requirements for a governing document, including that it must ''[d]escribe the procedures for proposing and ratifying amendments to the governing document.'' Section 50.13(i). Under this rule, the Department does not have a responsibility to approve or disapprove amendments to the governing document that are ratified after the formal government-to-government relationship has been reestablished.

(h) Section 50.14—Ratification Referendum

(1) *Comment:* One commenter suggested adding a provision requiring verified Native Hawaiians and HHCA Native Hawaiians to ''indicate[] a willingness to participate in the referendum by enrolling on the referendum voter list acknowledging U.S. citizenship and the Native status recognized by Congress. A willingness to participate, regardless of a vote for or against ratification, is a key baseline criteria that should be included'' in the final rule. Others echoed the substance of this comment requiring that the voter list be created through an ''opt-in'' process.

Response: The Department made no changes to the rule in response to these comments. The proposed and final rules provide that the voter list exclude any individual who requests to be removed, which can be characterized as the ability to ''opt-out.'' Whether ''opt-in'' or ''opt-out,'' each process ensures that individuals are empowered to exclude themselves from the list. The Native Hawaiian community, however, may not impose additional criteria, as suggested by the commenter, which could result in excluding individuals recognized by Congress as part of the Native Hawaiian community.

(2) *Comment:* One commenter observed that while the proposed rule requires a written narrative of the Native Hawaiian government's ratification process and procedures, there is no ''real review'' by the Department until after the ratification concludes. This commenter suggested the final rule include authority for the Native Hawaiian government to submit its proposed ratification procedures for the Department's review prior to implementation as an ''intermediate step'' that could potentially prevent avoidable delay or disapproval of the request on procedural grounds.

Response: The Department made no changes to the rule in response to this comment. Section 50.21 of the rule authorizes technical assistance to facilitate compliance with the final rule and other Federal law upon request by the Native Hawaiian community. Technical assistance could, for instance, include providing Departmental expertise related to the community's ratification process and other technical matters.

(i) Section 50.16—Secretarial Criteria

Comment: One commenter requested that the requirement that the ratification referendum and elections for public office were ''conducted in a manner not contrary to Federal law'' be revised to refer to ''then established Federal law'' because of the possibility that Federal law would change at some point following the ratification referendum.

Response: The Department notes that Federal law imposes fairly few limitations on a referendum or election conducted by a Native sovereign. The Voting Rights Act does not apply to such elections, for example. *See Akina* v. *Hawaii,* 141 F. Supp. 3d 1106, 1125–26 (D. Haw. 2015); *Gardner* v. *Ute Tribal Court Chief Judge,* 36 Fed. App'x 927, 928 (10th Cir. 2002); *Cruz* v. *Ysleta Del Sur Tribal Council,* 842 F. Supp. 934, 935 (W.D. Tex. 1993). The reference to Federal law may therefore have a fairly limited application. Moreover, the Department believes that the ordinary reading of this provision is that the referendum and election must comply with then-applicable Federal law. The Department accordingly believes that no revision to this provision of the rule text is necessary, as this is the most natural interpretation of the existing language.

(j) Section 50.21—Technical Assistance

Comment: Commenters requested that the Department be required to provide technical assistance on all aspects of the rule, from drafting of organic documents to compliance with various standards articulated in the proposed rule, and that such technical assistance include Federal grants.

Response: The Department made no changes to the rule in response to this comment. The Department is committed to assisting the Native Hawaiian community's efforts to exercise self-determination and reorganize its government, and therefore will provide technical assistance upon request of the Native Hawaiian community. Regulations, however, cannot independently authorize Federal grants; statutory authority is required. The Native Hawaiian community may seek financial assistance from various funding sources.

(k) Section 50.30 to 50.32—Public Comment/Deadline Extension

(1) *Comment:* A few commenters stated that the 30-day public comment period on a request submitted under the proposed rule was insufficient for substantive review of any request. These commenters urged the Department to increase the public comment period to 90 days. Others urged the Department to limit the number of days by which a deadline may be extended and the number of times those deadline extensions may be granted. These

commenters specifically urged that deadlines should only be extended by 30 or 60 days, and that deadlines should only be extended once or twice.

Response: The Department agrees that more time for substantive review of any request submitted under this Part is warranted. The final rule allows 60 days for the public to submit any comments on the request and permits a single extension by a maximum of 90 days for good cause. Similarly, the requester will have 60 days to respond to any comment or evidence, which may be extended by up to 90 days for good cause. Accordingly, the amount of time the Department has for posting any comments received during this period is extended to a total of 20 days in § 50.30(b).

(2) *Comment:* A commenter urged limiting the Secretary to a maximum of 210 days to review any request, including any extensions granted. Others added that the Department should not be given complete discretion to extend its own deadlines and that it should be required to seek the requester's consent prior to issuing an extension to itself. Finally, commenters urged amendment of the proposed rule to mandate action within the allowable timeframes so that the Secretarial review process is not ''unduly delayed.''

Response: The Department appreciates the importance of timely review of and action on a request. In response to the comments, the final rule requires notice to the requester, including an estimate of when the decision will issue, if the Secretary is unable to act within 120 days. The Department made no further changes to the rule in response to this comment.

(l) Section 50.40—Secretary's Decision

Comment: Commenters urged that the final rule impose a limit to the Secretary's decision-making time frame, and if the Secretary fails to act within that time frame, the request should be deemed approved.

Response: The Department clarified that the Secretary may request additional documentation and explanation from the requester and the public with respect to the material submitted, including whether the request is consistent with this part. The Department made no further changes to the rule in response to this comment. The significance of reestablishing a formal government-to-government relationship requires an affirmative act by the Secretary, so that there can be no question about the status of that formal relationship.

(m) Section 50.44—Implementation of Government-to-Government Relationship

(1) *Comment:* Commenters requested that the final rule be amended by adding: ''Nothing in this part explicitly or implicitly abrogates, affects, or impairs any claim or claims of the Native Hawaiian people under Federal law or International law or affects the ability of the Native Hawaiian people or their representatives to pursue such claim or claims in Federal or International forums.'' Similarly, other commenters requested that the final rule include a provision stating that the rule itself shall not serve as a settlement of any such claims.

Response: The Department made no changes to the final rule in response to these comments. As stated above, this rule does not address any existing claims that the Native Hawaiian people, either individually or collectively, may assert for redress under Federal or international law. All such claims are outside the scope of this rulemaking, as also discussed above.

(2) *Comment:* Commenters suggest amending § 50.44(a) to make express that the Native Hawaiian Governing Entity will have the same privileges and immunities as federally-recognized Indian tribes in the continental United States. Another commenter suggested amendments to the contrary, urging the Department to eliminate language in the rule that ''may unduly imply that the Native Hawaiian Governing Entity must be exactly the same as an Indian tribe in all respects.''

Response: Section 50.44(a) states that the Native Hawaiian Governing Entity would have the same inherent sovereign governmental authorities as do federally-recognized tribes in the continental United States and the same government-to-government relationship under the U.S. Constitution and Federal law. Accordingly, the Native Hawaiian Governing Entity would have the same inherent privileges and immunities as do federally-recognized tribes in the continental United States. *See* response to comment (1)(m)(12). As to the question whether the Native Hawaiian Governing Entity is ''exactly the same as an Indian tribe in all respects,'' the Department responds that Congress systematically treats the Native Hawaiian community separately from tribes in the continental United States. The Native Hawaiian Governing Entity will have the inherent sovereign governmental authorities of a tribe, except to the extent that Federal law constrains those authorities. For example, because there is no land in Hawaii meeting the definition of ''Indian country'' and no authority to take land into trust, the Native Hawaiian Governing Entity will necessarily have limited territorial authority in the absence of Congressional action to establish such authority.

(3) *Comment:* A commenter expressed concern that the rule did not provide a ''list of permitted powers'' that the Native Hawaiian Governing Entity could exercise, such as powers that federally-recognized Indian tribes in the continental United States exercise.

Response: The Native Hawaiian Governing Entity may exercise all its inherent sovereign powers, and all powers vested in it by Congress, subject to the limitations in its governing document or established by Federal law.

(4) *Comment:* One commenter stated that the proposed rule's restriction on Native Hawaiians' eligibility for Federal Indian programs, services, and benefits would be unenforceable because the Native Hawaiian Governing Entity would be able to amend its initial governing document without Federal approval just as federally-recognized Indian tribes in the continental United States are able to do under 25 CFR part 81.

Response: The Native Hawaiian Governing Entity may not alter Congress's approach that distinguishes between programs, services, and benefits provided to federally-recognized tribes in the continental United States and programs, services, and benefits provided to Native Hawaiians by amending its governing document after a government-to-government relationship is reestablished. This rulemaking carefully adheres to Congress's separate treatment of federally-recognized tribes in the continental United States and the Native Hawaiian community for purposes of funding programs, services, and benefits. Congress's approach binds the Department and the community. *See* response to comment (1)(g)(4).

(C) Tribal Summary Impact Statement

Consistent with sections 5(b)(2)(B) and 5(c)(2) of Executive Order 13175, and because the Department consulted with tribal officials in the continental United States prior to publishing this rule, the Department seeks to assist tribal officials, and the public as a whole, by including in this preamble the three key elements of a tribal summary impact statement. Specifically, the preamble to this rule (1) describes the extent of the Department's prior consultation with tribal officials; (2) summarizes the nature of their concerns and the

Department's position supporting the need to issue the rule; and (3) states the extent to which tribal officials' concerns have been met. The ''Public Meetings and Tribal Consultations'' section below describes the Department's prior consultations.

Comments regarding access to Federal programs, services, and benefits available to federally-recognized Indian tribes: The Department received comments strongly supporting Federal rulemaking to reestablish a formal government-to-government relationship between the United States and the Native Hawaiian community. Comments expressed concern about the rule's potential impact, if any, on Federal Indian programs, services, and benefits—that is, federally funded or authorized special programs, services, and benefits provided by Federal agencies (such as the Bureau of Indian Affairs and the Indian Health Service) to federally-recognized Indian tribes in the continental United States. Comments expressed an understanding that Native Hawaiians are ineligible for Federal Indian programs and services absent express Congressional declarations to the contrary, and recommended that existing and future programs, services, and benefits for a reorganized Native Hawaiian government remain separate from programs and services dedicated to tribes in the continental United States.

Response: The Department agrees with these comments. Native Hawaiians are ineligible for Federal Indian programs and services absent express Congressional declarations to the contrary.

When creating programs, services, and benefits, Congress systematically distinguishes between programs, services, and benefits to Indian tribes in the continental United States and those provided to the Native Hawaiian community. Congress enacted programs and services expressly and specifically for the Native Hawaiian community that are in many respects parallel and analogous to—but distinct from—the programs and services enacted for federally-recognized tribes in the continental United States. Federal Native Hawaiian programs and services are provided to Native Hawaiians as an indigenous Native Hawaiian community under the Indian affairs power, just as Federal Indian programs and services are provided to Indian tribes in the continental United States under the Indian affairs power.

In some instances, Congress expressly provided for Native Hawaiians to receive benefits as part of a program provided to Native Americans generally; in others, Congress has provided a distinct program or set of programs, parallel to those that exist for other Native American communities. To the extent that Native Hawaiians are not eligible for certain programs under current law, it follows that this treatment reflects a conscious decision by Congress. Moreover, because of the structure of many Federal programs, treating a Native Hawaiian Governing Entity or its members as eligible for programs provided generally to federally-recognized Indian tribes in the continental United States or their members could result in duplicative services or benefits.

Congress's systematic provision of separate benefits for Native Hawaiians gives rise to a presumption that Congress did not intend that Native Hawaiians would also receive essentially duplicative programs, services, and benefits through programs available to tribes in the continental United States.[7] The Department accordingly concludes that, absent Congressional action that provides Federal programs directed towards Indians to include Native Hawaiians, the Native Hawaiian community cannot be treated as ''eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' 25 U.S.C. 479a–1(a).

The distinction between Federal Native Hawaiian programs and services and Federal Indian programs and services is apparent in the List Act, which requires the Secretary to publish in the **Federal Register** a list of those Indian tribes that ''the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' 25 U.S.C. 479a–1(a). A comparison of the definition of ''Indian tribe'' in 25 U.S.C. 479a(2), with the narrower specification of which tribes may appear on the list itself, *see* 25 U.S.C. 479a–1(a), indicates that the reference to ''programs and services'' in section 479a–1(a) is limited to those Federal programs and services available to tribes *generally, i.e.,* those in the continental United States, as opposed to Federal programs and services identified for specific tribes or communities, such as the Native Hawaiian community.[8] As explained above, Congress provides a separate suite of programs and services targeted directly to Native Hawaiians, and not through programs broadly applicable to Indians. Congress thus makes plain that Native Hawaiians receive a distinct set of Federal programs and services so that they are not eligible for general Indian programs and services.[9]

This unique provision of separate programs and services removes Native Hawaiians from the scope of the **Federal Register** list published under the List Act. Therefore, following any reestablishment of a formal government-to-government relationship with the United States, the Native Hawaiian community would not be recognized by the Secretary ''to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians,'' 25 U.S.C. 479a–1(a), and the Native Hawaiian Governing Entity would not appear on the list compiled under the List Act.

Section 50.44(c)–(d) of the final rule similarly implements Congress's longstanding distinction between Native Hawaiian programs and services and

[7] *Cf. Kahawaiolaa,* 386 F.3d at 1283 (noting Congress's intent to treat Native Hawaiians and members of Indian tribes ''differently'' and reasoning that allowing Native Hawaiians to apply for Federal recognition under part 83 could ''allow native Hawaiians to obtain greater benefits than the members of all American Indian tribes'').

[8] The definition in 25 U.S.C. 479a(2) specifies that the term ''Indian tribe'' includes an ''Indian or Alaska Native tribe'' because Congress wished to remove any doubt that Alaska Natives were included within the scope of that term. Indeed, the definition makes clear that an Alaska Native tribe could be acknowledged by the Secretary ''to exist as an Indian tribe.'' And the use of the term ''Indian'' in section 479a–1(a) confirms that the term was being used broadly and must necessarily include Alaska Natives. 25 U.S.C. 479a–1(a) (instructing the Secretary to publish a list of ''all Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States *to Indians* because of *their status as Indians''* (emphasis added)); *see also* 25 U.S.C. 1212–1215 (provisions enacted together with the List Act that reaffirmed the eligibility of an Alaska Native tribe, and which refer to a ''federally recognized Indian tribe'' and an ''Alaska Native tribe'' interchangeably); H.R. Rep. No. 103–781 at 5 (noting that the List Act ''requires that the Secretary continue the current policy of including Alaska Native entities on the list of federally-recognized Indian tribes which are eligible to receive services'').

[9] Even before adoption of the List Act, the Department maintained a list of tribes that were generally eligible for BIA programs and services. *See* Indian Tribal Entities That Have a Government-to-Government Relationship with the United States, 44 FR 7235 (1979). The List Act ratified and codified the process for preparing that list. Notably, 25 CFR part 83, ''Procedures for Federal Acknowledgment of Indian Tribes,'' contains a provision stating that its purpose is to ''determine whether a petitioner is an Indian tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' 25 CFR 83.2. Hawaii is outside the scope of part 83, which further demonstrates the Department's longstanding conclusion that Native Hawaiians fall outside the scope of these general programs and services. *See* 25 CFR 83.3 (stating that ''this part applies only to indigenous entities that are not federally recognized Indian tribes''); 25 CFR 83.1 (defining ''indigenous'' to mean ''native to the continental United States in that at least part of the petitioner's territory at the time of first sustained contact extended into what is now the continental United States'').

general Indian programs and services for tribes in the continental United States.[10] The List Act's central purpose is to provide ''various departments and agencies of the United States'' with an ''accurate, regularly updated, and regularly published'' list that they could use ''to determine the eligibility of certain groups [in the continental United States] to receive services from the United States.'' List Act findings, sec. 103(7) (codified at 25 U.S.C. 479a note). The List Act is mandatory and prescriptive, stating that the Secretary ''*shall* publish'' a list of ''*all* Indian tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' 25 U.S.C. 479a–1(a) (emphasis added); *see also* List Act findings, sec. 103(8). In enacting the List Act, Congress specifically sought to eliminate inconsistencies, to ensure uniformity in the treatment of federally-recognized tribes in the continental United States, and to accord those tribes and their membership access to the same Federal programs and services. *See* H.R. Rep. No. 103–781. It follows that federally-recognized tribes in the continental United States are all ''eligible for the special programs and services provided by the United States to Indians because of their status as Indians,'' and that the Secretary has no authority to exclude a federally-recognized tribe in the continental United States from the list compiled under the List Act.

The vast bulk of Federal Indian statutes providing programs and services expressly state that they cover only those Indian tribes that the Secretary deems eligible for the special programs and services that the United States provides to Indians because of their status as Indians. Such statutes include the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 450b(e). These Federal Indian statutes do not currently cover the Native Hawaiian community, nor would they cover that governing entity with which the United States reestablishes the formal government-to-government relationship.

Some Federal statutes, however, extend to all Indian tribes without expressly stating that they cover only those Indian tribes that the Secretary deems eligible for the special programs and services that the United States provides to Indians in the continental United States. Unless the statute's text, structure, purpose, or legislative history is to the contrary, these statutes would cover the Native Hawaiian Governing Entity. *See, e.g.,* 25 U.S.C. 1301(1)–(2) (Indian Civil Rights Act definitions) (covering ''any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government,'' which include ''all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed''); 25 U.S.C. 2801(6) (using the same definition, in the law-enforcement context); 28 U.S.C. 1362 (providing Federal-court jurisdiction over Federal claims ''brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior'').

For certain Federal statutes there may be additional indicators that particular provisions should or should not be available to the Native Hawaiian Governing Entity or its members. The Department's interpretation of a Federal statute providing programs and services to tribes and their members typically will turn on the statute's definition of the term ''Indian tribe,'' but a clear expression of Congressional intent will control. Also, a Federal agency administering a statute will have authority to resolve any question that may arise as to the meaning of that statute and the scope of available programs, services, and benefits.

This determination that the Native Hawaiian Governing Entity is not eligible for general Federal Indian programs, services, and benefits also comports with Congress's express intent that the Department's Assistant Secretary for Policy, Management and Budget (PMB), not the Assistant Secretary for Indian Affairs, oversee Native Hawaiian matters, as stated in the HHLRA, sec. 206, 109 Stat. 363.

(V) Public Meetings and Tribal Consultations

The Department held public meetings to gather testimony at both the ANPRM and proposed rule stages of this rulemaking. In June and July 2014, staff from the Departments of the Interior and Justice traveled to Hawaii to conduct 15 public meetings on the ANPRM across the State. Hundreds of stakeholders and interested parties attended sessions on the islands of Hawaii, Kauai, Lanai, Maui, Molokai, and Oahu. Also during that time, staff conducted extensive, informal outreach with Native Hawaiian organizations, groups, and community leaders. Following the public meetings in Hawaii, the Department held five U.S. mainland regional consultations in Indian country, supplemented with targeted community outreach in locations with significant Native Hawaiian populations. To build on the extensive record gathered during the ANPRM, in October and November 2015, the Department held four three-hour teleconferences on the NPRM: two teleconferences that were open to the public, one specifically targeted to Native Hawaiian organizations, and one specifically targeted to tribal leaders. Transcripts from all public meetings held during the ANPRM and NPRM stages are available in the online docket as well as on the Department's Web site (*www.doi.gov/hawaiian*).

(VI) Procedural Matters

A. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA determined that this final rule is significant because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The Department developed this final rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Department certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for

[10] *See* § 50.4 of the final rule defining the terms ''Federal Indian programs, services, and benefits'' separately from ''Federal Native Hawaiian programs, services, and benefits.''

any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency, or his designee, certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The Department certified that the proposed rule to implement these changes to 43 CFR part 50 regulations would not have a significant economic impact on a substantial number of small entities (80 FR 59113). The Department did not receive any information during the public comment period that changes this certification.

The Regulatory Flexibility Act, as amended, requires that Federal agencies evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself and, therefore, not on indirectly regulated entities. If a reorganized Native Hawaiian government decides to seek a formal government-to-government relationship with the United States, the rule provides the requirements for submitting a written request to the Secretary of the Interior. The rule would directly affect any such Native Hawaiian government. A small governmental jurisdiction is the government of a city, town, township, village, school district, or special district, with a population of less than fifty thousand, unless the agency establishes a different definition that is appropriate to the activities of the agency by notice and comment. *See* 5 U.S.C. 601(5). The Department has not established a different definition by notice and comment. Therefore, a Native Hawaiian government would not be considered a small entity under the Regulatory Flexibility Act. *See* 5 U.S.C. 601(6). No other small entities would be directly affected by the rule, thus no small entities will be affected by this rule.

C. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by state, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. The rule's requirements will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This final rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this final rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' A takings implications assessment therefore is not required.

F. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this final rule has no substantial and 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. A federalism implications assessment therefore is not required.

G. Civil Justice Reform (E.O. 12988)

This final rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

Under Executive Order 13175, the Department held several consultation sessions with federally-recognized tribes in the continental United States. Details on these consultation sessions and on comments the Department received from tribes and intertribal organizations are described above. The Department considered each of those comments and addressed them, where possible, in the final rule.

I. Paperwork Reduction Act

This final rule does not require an information collection from ten or more parties, and a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* is not required. An OMB form 83–I is not required.

J. National Environmental Policy Act

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment because it is of an administrative, technical, or procedural nature. *See* 43 CFR 46.210(i). No extraordinary circumstances exist that would require greater review under the National Environmental Policy Act of 1969.

K. Information Quality Act

In developing this final rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

L. Effects on the Energy Supply (E.O. 13211)

This final rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. This rule will not have a significant effect on the nation's energy supply, distribution, or use.

List of Subjects in 43 CFR Part 50

Administrative practice and procedure, Indians—tribal government.

For the reasons stated in the preamble, the Department of the Interior amends title 43 of the Code of Federal Regulations by adding part 50 as set forth below:

PART 50—PROCEDURES FOR REESTABLISHING A FORMAL GOVERNMENT-TO-GOVERNMENT RELATIONSHIP WITH THE NATIVE HAWAIIAN COMMUNITY

Sec.

Subpart A—General Provisions

50.1 What is the purpose of this part?
50.2 How will reestablishment of this formal government-to-government relationship occur?
50.3 May the Native Hawaiian community reorganize itself based on island or other geographic, historical, or cultural ties?
50.4 What definitions apply to terms used in this part?

Subpart B—Criteria for Reestablishing a Formal Government-to-Government Relationship

50.10 What are the required elements of a request to reestablish a formal government-to-government relationship with the United States?
50.11 What process is required in drafting the governing document?
50.12 What documentation is required to demonstrate how the Native Hawaiian community determined who could participate in ratifying the governing document?
50.13 What must be included in the governing document?
50.14 What information about the ratification referendum must be included in the request?
50.15 What information about the elections for government offices must be included in the request?
50.16 What criteria will the Secretary apply when deciding whether to reestablish the formal government-to-government relationship?

Subpart C—Process for Reestablishing a Formal Government-to-Government Relationship

Submitting a Request

50.20 How may a request be submitted?
50.21 Is the Department available to provide technical assistance?

Public Comments and Responses to Public Comments

50.30 What opportunity will the public have to comment on a request?
50.31 What opportunity will the requester have to respond to comments?
50.32 May the deadlines in this part be extended?

The Secretary's Decision

50.40 When will the Secretary issue a decision?
50.41 What will the Secretary's decision include?
50.42 When will the Secretary's decision take effect?
50.43 What does it mean for the Secretary to grant a request?
50.44 How will the formal government-to-government relationship between the United States Government and the Native Hawaiian Governing Entity be implemented?

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9; 25 U.S.C. 479a, 479a–1 (2015) (reclassified to 25 U.S.C. 5130, 5131 (2016)); 43 U.S.C. 1457; Pub. L. 67–34, 42 Stat. 108, as amended; Pub. L. 86–3, 73 Stat. 4; Pub. L. 103–150, 107 Stat. 1510; sec. 148, Pub. L. 108–199, 118 Stat. 445; 112 Departmental Manual 28.

Subpart A—General Provisions

§ 50.1 What is the purpose of this part?

This part sets forth the Department's administrative procedure and criteria for reestablishing a formal government-to-government relationship between the United States and the Native Hawaiian community that will allow:

(a) The Native Hawaiian community to more effectively exercise its inherent sovereignty and self-determination; and

(b) The United States to more effectively implement and administer:

(1) The special political and trust relationship that exists between the United States and the Native Hawaiian community, as recognized by Congress; and

(2) The Federal programs, services, and benefits that Congress created specifically for the Native Hawaiian community (*see, e.g.,* 12 U.S.C. 1715z–13b; 20 U.S.C. 80q *et seq.;* 20 U.S.C. 7511 *et seq.;* 25 U.S.C. 3001 *et seq.;* 25 U.S.C. 4221 *et seq.;* 42 U.S.C. 2991 *et seq.;* 42 U.S.C. 3057g *et seq.;* 42 U.S.C. 11701 *et seq.;* 54 U.S.C. 302706).

§ 50.2 How will reestablishment of this formal government-to-government relationship occur?

A Native Hawaiian government seeking to reestablish a formal government-to-government relationship with the United States under this part must submit to the Secretary a request as described in § 50.10. Reestablishment of a formal government-to-government relationship will occur if the Secretary grants the request as described in §§ 50.40 through 50.43.

§ 50.3 May the Native Hawaiian community reorganize itself based on island or other geographic, historical, or cultural ties?

The Secretary will reestablish a formal government-to-government relationship with only one sovereign Native Hawaiian government, which may include political subdivisions with limited powers of self-governance defined in the Native Hawaiian government's governing document.

§ 50.4 What definitions apply to terms used in this part?

As used in this part, the following terms have the meanings given in this section:

Continental United States means the contiguous 48 states and Alaska.

Department means the Department of the Interior.

DHHL means the Department of Hawaiian Home Lands, or the agency or department of the State of Hawaii that is responsible for administering the HHCA.

Federal Indian programs, services, and benefits means any federally funded or authorized special program, service, or benefit provided by the United States to any Indian or Alaska Native tribe, band, nation, pueblo, village, or community in the continental United States that the Secretary of the Interior acknowledges to exist as an Indian tribe, or to its members, because of their status as Indians.

Federal Native Hawaiian programs, services, and benefits means any federally funded or authorized special program, service, or benefit provided by the United States to a Native Hawaiian government, its political subdivisions (if any), its members, the Native Hawaiian community, Native Hawaiians, or HHCA Native Hawaiians, because of their status as Native Hawaiians.

Governing document means a written document (*e.g.,* constitution) embodying a government's fundamental and organic law.

Hawaiian home lands means all lands given the status of Hawaiian home lands under the HHCA (or corresponding provisions of the Constitution of the State of Hawaii), the HHLRA, or any other Act of Congress, and all lands acquired pursuant to the HHCA.

HHCA means the Hawaiian Homes Commission Act, 1920 (Act of July 9, 1921, 42 Stat. 108), as amended.

HHCA Native Hawaiian means a Native Hawaiian individual who meets the definition of ''native Hawaiian'' in HHCA sec. 201(a)(7).

HHLRA means the Hawaiian Home Lands Recovery Act (Act of November 2, 1995, 109 Stat. 357), as amended.

Native Hawaiian means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

Native Hawaiian community means the distinct Native Hawaiian indigenous political community that Congress, exercising its plenary power over Native American affairs, has recognized and with which Congress has implemented a special political and trust relationship.

Native Hawaiian Governing Entity means the Native Hawaiian community's representative sovereign government with which the Secretary reestablishes a formal government-to-government relationship.

Request means an express written submission to the Secretary asking for recognition as the Native Hawaiian Governing Entity.

Requester means the government that submits to the Secretary a request seeking to be recognized as the Native Hawaiian Governing Entity.

Secretary means the Secretary of the Interior or that officer's authorized representative.

Sponsor means an individual who makes a sworn statement that another individual is:

(1) A Native Hawaiian or an HHCA Native Hawaiian; and

(2) The sponsor's parent, child, sibling, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

State means the State of Hawaii, including its departments and agencies.

Sworn statement means a statement based on personal knowledge and made under oath or affirmation which, if false, is punishable under Federal or state law.

Subpart B—Criteria for Reestablishing a Formal Government-to-Government Relationship

§ 50.10 What are the required elements of a request to reestablish a formal government-to-government relationship with the United States?

A request must include the following seven elements:

(a) A written narrative with supporting documentation thoroughly describing how the Native Hawaiian community drafted the governing document, as described in § 50.11;

(b) A written narrative with supporting documentation thoroughly describing how the Native Hawaiian community determined who could participate in ratifying the governing document, consistent with § 50.12;

(c) The duly ratified governing document, as described in § 50.13;

(d) A written narrative with supporting documentation thoroughly describing how the Native Hawaiian community adopted or approved the governing document in a ratification referendum, as described in § 50.14;

(e) A written narrative with supporting documentation thoroughly describing how and when elections were conducted for government offices identified in the governing document, as described in § 50.15;

(f) A duly enacted resolution of the governing body authorizing an officer to certify and submit to the Secretary a request seeking the reestablishment of a formal government-to-government relationship with the United States; and

(g) A certification, signed and dated by the authorized officer, stating that the submission is the request of the governing body.

§ 50.11 What process is required in drafting the governing document?

The written narrative thoroughly describing the process for drafting the governing document must describe how the process ensured that the document was based on meaningful input from representative segments of the Native Hawaiian community and reflects the will of the Native Hawaiian community.

§ 50.12 What documentation is required to demonstrate how the Native Hawaiian community determined who could participate in ratifying the governing document?

The written narrative thoroughly describing how the Native Hawaiian community determined who could participate in ratifying the governing document must explain how the Native Hawaiian community prepared its list of eligible voters consistent with paragraph (a) of this section. The narrative must explain the processes the Native Hawaiian community used to verify that the potential voters were Native Hawaiians consistent with paragraph (b) of this section, and to verify which of those potential voters were also HHCA Native Hawaiians, consistent with paragraph (c) of this section, and were therefore eligible to vote. The narrative must explain the processes, requirements, and conditions for use of any sworn statements and explain how those processes, requirements, and conditions were reasonable and reliable for verifying Native Hawaiian descent.

(a) *Preparing the voter list for the Ratification Referendum.* The Native Hawaiian community must prepare a list of Native Hawaiians eligible to vote in the ratification referendum.

(1) The list of Native Hawaiians eligible to vote in the ratification referendum must:

(i) Be based on reliable proof of Native Hawaiian descent;

(ii) Be made available for public inspection;

(iii) Be compiled in a manner that allows individuals to contest their exclusion from or inclusion on the list;

(iv) Include adults who demonstrated that they are Native Hawaiians in accordance with paragraph (b) of this section;

(v) Include adults who demonstrated that they are HHCA Native Hawaiians in accordance with paragraph (c) of this section;

(vi) Identify voters who are HHCA Native Hawaiians;

(vii) Not include persons who will be younger than 18 years of age on the last day of the ratification referendum; and

(viii) Not include persons who requested to be removed from the list.

(2) The community must make reasonable and prudent efforts to ensure the integrity of its list.

(3) Subject to paragraphs (a)(1) and (2) of this section, the community may rely on a roll of Native Hawaiians prepared by the State under State law.

(b) *Verifying that a potential voter is a Native Hawaiian.* A potential voter may meet the definition of a Native Hawaiian by:

(1) Enumeration on a roll or other list prepared by the State under State law, where enumeration is based on documentation that verifies Native Hawaiian descent;

(2) Meeting the requirements of paragraph (c) of this section;

(3) A sworn statement by the potential voter that he or she:

(i) Is enumerated on a roll or other list prepared by the State under State law, where enumeration is based on documentation that verifies Native Hawaiian descent;

(ii) Is identified as Native Hawaiian (or some equivalent term) on a birth certificate issued by a state or territory;

(iii) Is identified as Native Hawaiian (or some equivalent term) in a Federal, state, or territorial court order determining ancestry;

(iv) Can provide records documenting current or prior enrollment as a Native Hawaiian in a Kamehameha Schools program; or

(v) Can provide records documenting generation-by-generation descent from a Native Hawaiian ancestor;

(4) A sworn statement from a sponsor who meets the requirements of paragraph (b)(1), (2), or (3) of this section that the potential voter is Native Hawaiian; or

(5) Other similarly reliable means of establishing generation-by-generation descent from a Native Hawaiian ancestor.

(c) *Verifying that a potential voter is an HHCA Native Hawaiian.* A potential voter may meet the definition of an HHCA Native Hawaiian by:

(1) Records of DHHL, including enumeration on a roll or other list prepared by DHHL, documenting eligibility under HHCA sec. 201(a)(7);

(2) A sworn statement by the potential voter that he or she:

(i) Is enumerated on a roll or other list prepared by DHHL, documenting eligibility under HHCA sec. 201(a)(7);

(ii) Is identified as eligible under HHCA sec. 201(a)(7) in specified State or territorial records;

(iii) Is identified as eligible under HHCA sec. 201(a)(7) in a Federal, state, or territorial court order; or

(iv) Can provide records documenting eligibility under HHCA sec. 201(a)(7) through generation-by-generation descent from a Native Hawaiian ancestor or ancestors;

(3) A sworn statement from a sponsor who meets the requirements of paragraph (c)(1) or (2) of this section that the potential voter is an HHCA Native Hawaiian; or

(4) Other similarly reliable means of establishing eligibility under HHCA sec. 201(a)(7).

§ 50.13 What must be included in the governing document?

The governing document must:

(a) State the government's official name;

(b) Prescribe the manner in which the government exercises its sovereign powers;

(c) Establish the institutions and structure of the government, and of its political subdivisions (if any) that are defined in a fair and reasonable manner;

(d) Authorize the government to negotiate with governments of the United States, the State, and political subdivisions of the State, and with non-governmental entities;

(e) Provide for periodic elections for government offices identified in the governing document;

(f) Describe the criteria for membership, which:

(1) Must permit HHCA Native Hawaiians to enroll;

(2) May permit Native Hawaiians who are not HHCA Native Hawaiians, or some defined subset of that group that is not contrary to Federal law, to enroll;

(3) Must exclude persons who are not Native Hawaiians;

(4) Must establish that membership is voluntary and may be relinquished voluntarily; and

(5) Must exclude persons who voluntarily relinquished membership;

(g) Protect and preserve Native Hawaiians' rights, protections, and benefits under the HHCA and the HHLRA;

(h) Protect and preserve the liberties, rights, and privileges of all persons affected by the government's exercise of its powers, *see* 25 U.S.C. 1301 *et seq.;*

(i) Describe the procedures for proposing and ratifying amendments to the governing document; and

(j) Not contain provisions contrary to Federal law.

§ 50.14 What information about the ratification referendum must be included in the request?

The written narrative thoroughly describing the ratification referendum must include the following information:

(a) A certification of the results of the ratification referendum including:

(1) The date or dates of the ratification referendum;

(2) The number of Native Hawaiians, regardless of whether they were HHCA Native Hawaiians, who cast a vote in favor of the governing document;

(3) The total number of Native Hawaiians, regardless of whether they were HHCA Native Hawaiians, who cast a ballot in the ratification referendum;

(4) The number of HHCA Native Hawaiians who cast a vote in favor of the governing document; and

(5) The total number of HHCA Native Hawaiians who cast a ballot in the ratification referendum.

(b) A description of how the Native Hawaiian community conducted the ratification referendum that demonstrates:

(1) How and when the Native Hawaiian community made the full text of the proposed governing document (and a brief impartial description of that document) available to Native Hawaiians prior to the ratification referendum, through the Internet, the news media, and other means of communication;

(2) How and when the Native Hawaiian community notified Native Hawaiians about how and when it would conduct the ratification referendum;

(3) How the Native Hawaiian community accorded Native Hawaiians a reasonable opportunity to vote in the ratification referendum;

(4) How the Native Hawaiian community prevented voters from casting more than one ballot in the ratification referendum; and

(5) How the Native Hawaiian community ensured that the ratification referendum:

(i) Was free and fair;

(ii) Was held by secret ballot or equivalent voting procedures;

(iii) Was open to all persons who were verified as satisfying the definition of a Native Hawaiian (consistent with § 50.12) and were 18 years of age or older, regardless of residency;

(iv) Did not include in the vote tallies votes cast by persons who were not Native Hawaiians; and

(v) Did not include in the vote tallies for HHCA Native Hawaiians votes cast by persons who were not HHCA Native Hawaiians.

(c) A description of how the Native Hawaiian community verified whether a potential voter in the ratification referendum was a Native Hawaiian and whether that potential voter was also an HHCA Native Hawaiian, consistent with § 50.12.

§ 50.15 What information about the elections for government offices must be included in the request?

The written narrative thoroughly describing how and when elections were conducted for government offices identified in the governing document, including members of the governing body, must show that the elections were:

(a) Free and fair;

(b) Held by secret ballot or equivalent voting procedures; and

(c) Open to all eligible Native Hawaiian members as defined in the governing document.

§ 50.16 What criteria will the Secretary apply when deciding whether to reestablish the formal government-to-government relationship?

The Secretary will grant a request if the Secretary determines that each criterion on the following list of eight criteria has been met:

(a) The request includes the seven required elements described in § 50.10;

(b) The process by which the Native Hawaiian community drafted the governing document met the requirements of § 50.11;

(c) The process by which the Native Hawaiian community determined who could participate in ratifying the governing document met the requirements of § 50.12;

(d) The duly ratified governing document, submitted as part of the request, meets the requirements of § 50.13;

(e) The ratification referendum for the governing document met the requirements of § 50.14(b) and (c) and was conducted in a manner not contrary to Federal law;

(f) The elections for the government offices identified in the governing document, including members of the governing body, were consistent with § 50.15 and were conducted in a manner not contrary to Federal law;

(g) The number of votes that Native Hawaiians, regardless of whether they were HHCA Native Hawaiians, cast in favor of the governing document exceeded half of the total number of ballots that Native Hawaiians cast in the ratification referendum: *Provided,* that the number of votes cast in favor of the governing document in the ratification referendum was sufficiently large to demonstrate broad-based community support among Native Hawaiians; *and Provided Further,* that, if fewer than 30,000 Native Hawaiians cast votes in favor of the governing document, this criterion is not satisfied; *and Provided Further,* that, if more than 50,000 Native Hawaiians cast votes in favor of the governing document, the Secretary shall apply a presumption that this criterion is satisfied; and

(h) The number of votes that HHCA Native Hawaiians cast in favor of the governing document exceeded half of the total number of ballots that HHCA Native Hawaiians cast in the ratification referendum: *Provided,* that the number of votes cast in favor of the governing document in the ratification referendum was sufficiently large to demonstrate broad-based community support among

HHCA Native Hawaiians; *and Provided Further,* that, if fewer than 9,000 HHCA Native Hawaiians cast votes in favor of the governing document, this criterion is not satisfied; *and Provided Further,* that, if more than 15,000 HHCA Native Hawaiians cast votes in favor of the governing document, the Secretary shall apply a presumption that this criterion is satisfied.

Subpart C—Process for Reestablishing a Formal Government-to-Government Relationship

Submitting a Request

§ 50.20 How may a request be submitted?

If the Native Hawaiian community seeks to reestablish a formal government-to-government relationship with the United States, the request under this part must be submitted to the Secretary, Department of the Interior, 1849 C Street NW., Washington, DC 20240.

§ 50.21 Is the Department available to provide technical assistance?

Yes. The Department may provide technical assistance to facilitate compliance with this part and with other Federal law, upon request for assistance.

Public Comments and Responses to Public Comments

§ 50.30 What opportunity will the public have to comment on a request?

(a) Within 20 days after receiving a request that appears to the Department to be consistent with §§ 50.10 and 50.16(g) and (h), the Department will:

(1) Publish in the **Federal Register** notice of receipt of the request and notice of the opportunity for the public, within 60 days following publication of the **Federal Register** notice, to submit comment and evidence on whether the request meets the criteria described in § 50.16; and

(2) Post on the Department Web site:

(i) The request, including the governing document;

(ii) The name and mailing address of the requester;

(iii) The date of receipt; and

(iv) Notice of the opportunity for the public, within 60 days following publication of the **Federal Register** notice, to submit comment and evidence on whether the request meets the criteria described in § 50.16.

(b) Within 20 days after the close of the comment period, the Department will post on its Web site any comment or notice of evidence relating to the request that was timely submitted to the Department in accordance with paragraphs (a)(1) and (a)(2)(iv) of this section.

§ 50.31 What opportunity will the requester have to respond to comments?

Following the Web site posting described in § 50.30(b), the requester will have 60 days to respond to any comment or evidence that was timely submitted to the Department in accordance with § 50.30(a)(1) and (a)(2)(iv).

§ 50.32 May the deadlines in this part be extended?

Yes. Upon a finding of good cause, the Secretary may extend any deadline in § 50.30 or § 50.31 by a maximum of 90 days and post on the Department Web site the length of and the reasons for the extension: *Provided,* that any request for an extension of time is in writing and sets forth good cause.

The Secretary's Decision

§ 50.40 When will the Secretary issue a decision?

The Secretary will apply the criteria described in § 50.16 and endeavor to either grant or deny a request within 120 days of determining that the requester's submission is complete and after receiving all the information described in §§ 50.30 and 50.31. The Secretary may request additional documentation and explanation from the requester or the public with respect to the material submitted, including whether the request is consistent with this part. If the Secretary is unable to act within 120 days, the Secretary will provide notice to the requester, and include an explanation of the need for more time and an estimate of when the decision will issue.

§ 50.41 What will the Secretary's decision include?

The decision will respond to significant public comments and summarize the evidence, reasoning, and analyses that are the basis for the Secretary's determination regarding whether the request meets the criteria described in § 50.16 and is consistent with this part.

§ 50.42 When will the Secretary's decision take effect?

The Secretary's decision will take effect 30 days after the publication of notice in the **Federal Register**.

§ 50.43 What does it mean for the Secretary to grant a request?

When a decision granting a request takes effect, the requester will immediately be identified as the Native Hawaiian Governing Entity (or the official name stated in that entity's governing document), the special political and trust relationship between the United States and the Native Hawaiian community will be reaffirmed, and a formal government-to-government relationship will be reestablished with the Native Hawaiian Governing Entity as the sole representative sovereign government of the Native Hawaiian community.

§ 50.44 How will the formal government-to-government relationship between the United States Government and the Native Hawaiian Governing Entity be implemented?

(a) Upon reestablishment of the formal government-to-government relationship, the Native Hawaiian Governing Entity will have the same formal government-to-government relationship under the United States Constitution and Federal law as the formal government-to-government relationship between the United States and a federally-recognized tribe in the continental United States, in recognition of the existence of the same inherent sovereign governmental authorities, subject to the limitation set forth in paragraph (d) of this section.

(b) The Native Hawaiian Governing Entity will be subject to the plenary authority of Congress to the same extent as are federally-recognized tribes in the continental United States.

(c) Absent Federal law to the contrary, any member of the Native Hawaiian Governing Entity presumptively will be eligible for current Federal Native Hawaiian programs, services, and benefits.

(d) The Native Hawaiian Governing Entity, its political subdivisions (if any), and its members will not be eligible for Federal Indian programs, services, and benefits unless Congress expressly and specifically has declared the Native Hawaiian community, the Native Hawaiian Governing Entity (or the official name stated in that entity's governing document), its political subdivisions (if any), its members, Native Hawaiians, or HHCA Native Hawaiians to be eligible.

(e) Reestablishment of the formal government-to-government relationship will not authorize the Native Hawaiian Governing Entity to sell, dispose of, lease, tax, or otherwise encumber Hawaiian home lands or interests in those lands, or to diminish any Native Hawaiian's rights, protections, or benefits, including any immunity from State or local taxation, granted by:

(1) The HHCA;

(2) The HHLRA;

(3) The Act of March 18, 1959, 73 Stat. 4; or

(4) The Act of November 11, 1993, secs. 10001–10004, 107 Stat. 1418, 1480–84.

(f) Reestablishment of the formal government-to-government relationship does not affect the title, jurisdiction, or status of Federal lands and property in Hawaii.

(g) Nothing in this part impliedly amends, repeals, supersedes, abrogates, or overrules any applicable Federal law, including case law, affecting the privileges, immunities, rights, protections, responsibilities, powers, limitations, obligations, authorities, or jurisdiction of any federally-recognized tribe in the continental United States.

Michael L. Connor,

Deputy Secretary.

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