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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 51 and 52

[Doc. No. AMS–SC–16–0063]

Revisions to Inspection Application Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the inspection, certification and standards requirements for fresh fruits, vegetables and other products and processed fruits and vegetables, processed products and certain other processed food products (7 CFR parts 51 and 52) by adding an option to allow for electronic submissions of inspection applications. This rule also eliminates outdated terminology referencing submission of inspection applications by telegraph.

DATES: Effective December 22, 2016; comments received by February 21, 2017 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit comments via the Internet at *http://www.regulations.gov.* Comments submitted by mail or courier must be sent in duplicate to Francisco Grazette, United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), Specialty Crops Program (SCP), Specialty Crops Inspection (SCI) Division, 1400 Independence Avenue SW., Room 1536, Stop 0240, Washington, DC 20250, FAX (202) 720–0393. All comments should reference the document number, and the date and page number of this issue of the **Federal Register**. All comments received will be posted without change, including any personal information provided, online at *http://www.regulations.gov* and will be made available for public inspection at the above physical address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Francisco Grazette, USDA, AMS, SCP, SCI Division, 1400 Independence Avenue SW., Room 1536, Stop 0240, Washington, DC 20250–0250; telephone: (202) 720–5870; fax: (202) 720–0393; email: *Francisco.Grazette@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) (7 U.S.C. 1622(c)) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) (Act of 1946), as amended, directs and authorizes the Secretary of Agriculture to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.

Parts 51 and 52 of title 7 of the Code of Federal Regulations specify the inspection, certification and standard requirements for fresh and processed fruit, vegetable and specialty crops to ensure uniformity and consistency.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect and does not preempt any state or local law, regulation, or policy unless it presents an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

This rule amends the inspection, certification and standards requirements for fresh fruits, vegetables and other products and processed fruits and vegetables, processed products and certain other processed food products (7 CFR parts 51 and 52) by adding an option to allow for electronic submissions of inspection applications. This rule also eliminates outdated terminology referencing the telegraph. These changes are administrative in nature and do not impose any new requirements on applicants.

Pursuant to Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (Act of 1937), whenever certain commodities are regulated under Federal marketing orders, imports of those commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality or maturity requirements as those in effect for domestically-produced commodities. The Act of 1937 also authorizes USDA to perform inspections and other related functions (such as commodity sampling) on those commodities and to certify whether these requirements have been met.

AMS's Specialty Crops Inspection (SCI) Division performs the inspections and other related functions on Section 8e imports in accordance with its authority under the Agricultural Marketing Act of 1946.

SCI Division is amending 7 CFR parts 51 and 52 to add the ability to submit initial inspection requests electronically and eliminate terminology referencing the telegraph. Individuals desiring to apply for an inspection for applicable fruit, vegetable, and specialty crop imports must complete and file AMS's form SC–357, *Initial Inspection Request for Regulated Imported Commodities,* in writing or electronically, to notify AMS of the need for an inspection.

Specifically, sections 51.6 and 52.7, ''How to make an application'' and ''Information required in connection with application'', respectively, are being modified by this action.

Amending parts 51 and 52 of title 7 to provide for the electronic filing of the application for inspection supports the International Trade Data System (ITDS), a key White House Initiative that has been under development for over ten years and is mandated for completion by December 31, 2016 (pursuant to Executive Order 13659, *Streamlining the Export/Import Process for American's Businesses,* signed on February 19, 2014, by President Obama (79 FR 10657)). ITDS streamlines the export and import process for America's businesses. Upon full implementation, ITDS, through the Automated Commercial Environment (ACE), will allow businesses to electronically submit the data required by U.S. Customs and Border Protection (CBP) and its Partner Government Agencies (PGAs) to import or export cargo through a ''single window'' concept.

The update to the inspection, certification and standards requirements to allow for electronic submission of

inspection applications will meet CBP's requirement for ITDS.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of no more than $750,000 and small agricultural service firms are defined as those having annual receipts of no more than $7.5 million. Under these definitions, AMS estimates the number of companies affected is approximately 60,000, with 24,000, or 40%, of the companies considered small businesses. AMS does not foresee any negative impact on members of the industry, regardless of size, as a result of this interim rule.

AMS is making these administrative changes to allow for the use of current technology by allowing the application for inspection to be submitted electronically and eliminating references to filing applications for service by telegraph.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements for form SC–357, *Initial Inspection Request for Regulated Imported Commodities,* was previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0125, effective August 1, 2016. AMS has determined that no changes are required to the information collection requirements as a result of the changes in this action. Should additional changes become necessary, they would be submitted to OMB for approval. AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

This rule invites comments on updates to application requirements and the administrative change to the inspection, certification and standards requirements for fresh and processed fruit, vegetable, and specialty crops. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act of 1946. Pursuant to 5 U.S.C. 553, AMS has found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) The changes in this rule reflect current practices; (2) the import industry is aware of the ITDS initiative and its goal to automate paper-based processes; (3) CBP is requiring the timely update of import regulations to meet the ITDS electronic data submission requirement; and (4) this rule provides a 60-day comment period, and all comments received will be considered prior to the finalization of this rule.

List of Subjects

7 CFR Part 51

Food grades and standards, Fruits, Nuts, Reporting and recordkeeping, Vegetables.

7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruits, Reporting and recordkeeping requirements, Vegetables.

■ For the reasons set forth in the preamble, 7 CFR parts 51 and 52 are amended as follows:

■ 1. The authority citation for parts 51 and 52 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

■ 2. Revise § 51.6 to read as follows:

§ 51.6 How to make application.

An application for inspection service may be filed in an office of inspection at any market referred to in § 51.4 (b), (c), or (d) or with any inspector. It may be made in writing, orally, electronically, or by telephone. If made orally or by telephone, the inspector may require that it be confirmed by the applicant in writing or electronically. An application may be made for one or more lots, or it may be in the nature of a blanket application for inspection of all designated lots of a given commodity within a particular period, or for all designated lots loaded or received at a specified point.

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

■ 3. Revise § 52.7 paragraph (a) to read as follows:

§ 52.7 Information required in connection with application.

(a) Application for inspection service shall be made in the English language and may be made orally (in person or by telephone), in writing, or electronically. If an application for inspection is made orally, written confirmation may be required by the inspection service involved.

* * * * *

Dated: December 14, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–30570 Filed 12–20–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[Document Number AMS–FV–15–0049, FV–16–332]

United States Standards for Grades of Canned Vegetables

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final notice of U.S. grade standards.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is revising 18 U.S. grade standards for canned vegetables issued on or before August 3, 1998. AMS is replacing the two-term grading system (dual nomenclature) with a single term to describe each quality level for the grade standards identified in this document. Terms using the letter grade will be retained and the descriptive term will be eliminated. For example, grade standards using the term ''U.S. Grade A'' or ''U.S. Fancy'' will be revised to use only the term ''U.S. Grade

A.'' Likewise, grade standards using the term ''U.S. Grade B'' or ''U.S. Extra Standard'' will be revised to use the single term ''U.S. Grade B.'' These changes will bring the grade standards in line with the present quality levels being marketed today and provide guidance in the effective use of these products. Editorial changes will also be made to the grade standards that conform to recent changes made in other grade standards.

DATES: These grade standards go into effect January 20, 2017.

ADDRESSES: Standardization Branch, Specialty Crops Inspection Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 0709-South Building; STOP 0247, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dana N. White, at the address above, by phone (202) 720–5870; fax (202) 690–1527; or email: *Dana.White@ams.usda.gov.* Copies of the revised U.S. standards for grades for the 18 canned vegetables covered by this document will be available on the Internet at *http://www.ams.usda.gov/grades-standards/vegetables.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.''

AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The U.S. standards for grades of fruits and vegetables not connected with Federal Marketing Orders or U.S. import requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Specialty Crops Program and are available on the internet at: *http://www.ams.usda.gov/grades-standards/vegetables.* AMS revised these U.S. Standards for Grades using the procedures that appear in part 36 of title 7 of the Code of Federal Regulations (7 CFR part 36).

BACKGROUND: AMS periodically reviews the grade standards for usefulness in serving the industry. AMS has determined that changes to 18 grade standards covering various canned vegetables are required. More recently developed grade standards use a single term, such as ''U.S. Grade A'' or ''U.S. Grade B,'' to describe each level of quality within a grade standard. Older grade standards used dual nomenclature, such as ''U.S. Grade A'' and ''U.S. Fancy,'' ''U.S. Grade B'' and ''U.S. Extra Standard,'' and ''U.S. Grade C'' and ''U.S. Standard,'' to describe the same level of quality. The terms ''U.S. Fancy,'' ''U.S. Extra Standard,'' and ''U.S. Standard'' will be removed and the terms ''U.S. Grade A,'' ''U.S. Grade B,'' and ''U.S. Grade C'' will be used exclusively. AMS proposed editorial changes to these grade standards, *i.e.,* updating addresses to obtain copies of the grade standards, removing specific addresses for licensed suppliers of color standards and inspection aids, and updating Code of Federal Regulations references where applicable. Contact information for current licensed suppliers is available in the Fresh and Processed Equipment Catalog on the AMS Web site at: *http://www.ams.usda.gov/grades-standards/how-purchase-equipment-and-visual-aids.*

SUPPLEMENTARY INFORMATION: These revisions will provide a format that is consistent with those of other grade standards (75 FR 43141). The following table summarizes the changes made by AMS.

U.S. Standards for grades of canned	Effective date	Change level of quality designation to single term	Other revisions proposed
Asparagus	06/20/73	Yes	Update address for standards. Correct Standard of Identity citation.
Beets	08/03/98	Yes	Update address for standards.
Carrots	08/03/98	Yes	Update address for standards.
Chili Sauce	10/20/53	Yes	Update address for standards.
Corn, Cream Style	07/01/57	Yes	Update address for standards. Add Standard of Identity citation. Add Latin name.
Hominy	03/10/58	Yes	Update address for standards.
Leafy Greens	09/01/73	Yes	Update address for standards. Add titles to Tables IV and V. Correct Standard of Identity citation.
Okra	07/08/57	Yes	Update address for standards.
Okra and Tomatoes or Tomatoes and Okra.	12/24/57	Yes	Update address for standards.
Onions	11/02/57	Yes	Update address for standards. Add titles for Tables II and III. Add Standard of Identity citation.
Peas and Carrots	07/20/70	Yes	Update address for standards.
Peas, Field and Black-eye Peas	07/01/57	Yes	Update address for standards. Replace ''U.S. Grade D'' with ''Substandard.''
Pimientos	10/23/67	Yes	Update address for standards.
Pumpkin (Squash)	07/01/57	Yes	Update address for standards.
Sauerkraut	05/13/63	Yes	Update address for standards.
Spinach	05/08/71	Yes	Update address for standards. Correct Standard of Identity citation.
Squash (Summer Type)	05/25/59	Yes	Update address for standards.
Succotash	05/24/67	Yes	Update address for standards. Replace ''U.S. Grade D'' with ''Substandard.'' Put ''proportion of ingredients'' in outline form.

These revisions provide a common language for trade and better reflect the current marketing of fruits and vegetables.

On June 17, 2016, AMS published a Proposed Notice in the **Federal Register** (81 FR 39596) soliciting comments on replacing the two-term grading system with a single term to describe each quality level for the grade standards identified in this document. Two comments were received by August 16, 2016, the closing date of the public comment period, from one private citizen and one individual associated with a tribal government agency.

The two comments supported the replacement of the two-term grading system with a single term as a positive step forward. USDA stands by its decision to replace the two-term grading system (dual nomenclature) with a single term.

Based on the information gathered, AMS is removing the two-term grading system (dual nomenclature) and making editorial changes to the aforementioned U.S. Standards for Grade. The revision brings these grade standards in line with other recently amended standards and current terminology, and updates the standards to more accurately represent today's marketing practices.

Authority: 7 U.S.C. 1621–1627.

Dated: December 15, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–30619 Filed 12–20–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Office of Inspector General

7 CFR Part 2610

Organization, Functions, and Delegations of Authority

AGENCY: Office of Inspector General, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA), Office of Inspector General (OIG) amends its regulation relating to organization, functions, and delegations of authority. The amendments are necessary to reflect reorganizations within OIG.

DATES: Effective December 21, 2016.

FOR FURTHER INFORMATION CONTACT: Christy Slamowitz, Counsel to the Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 441–E, Washington, DC 20250–2308, Telephone: (202) 720–9110.

SUPPLEMENTARY INFORMATION: The regulation on USDA–OIG's organization, functions, and delegations of authority was last published in 1995 (60 FR 52840). Since that time, OIG has had several internal reorganizations. In order to provide the public with current information regarding OIG's organization, functions, and delegations of authority, OIG is amending its regulations.

Administrative Procedure Act

This rule relates to agency organization and internal agency management. Pursuant to 5 U.S.C. 553(A), such rules are not subject to the requirement to provide public notice of proposed rulemaking and opportunity for public comment. Therefore, notice and comment before the effective date are being waived.

Executive Orders 12866 and 13563

OIG has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Orders 12866 and 13563. OIG has determined that this rule is non-significant within the meaning of Executive Order 12866. Therefore, this rule is not required to be and has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

These regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided by the Regulatory Flexibility Act, as amended, is not required.

Executive Order 12291

This rule relates to internal agency organization and management. Therefore, it is exempt from the provisions of Executive Order 12291.

Paperwork Reduction Act

These regulations impose no additional reporting and recordkeeping requirements. Therefore, clearance by OMB is not required.

Federalism (Executive Order 13132)

This rule does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Congressional Review Act

OIG has determined that this rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

List of Subjects in 7 CFR Part 2610

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ For the reasons set forth in the preamble, the Office of Inspector General revises 7 CFR part 2610 to read as follows:

PART 2610—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

Sec.

Authority: 5 U.S.C. 301, 552; Inspector General Act of 1978, as amended, 5 U.S.C. app.; 7 U.S.C. 2270.

§ 2610.1 General statement.

(a) The Inspector General Act of 1978, as amended, 5 U.S.C. app. (IG Act), established an Office of Inspector General (OIG) in the U.S. Department of Agriculture (USDA) and transferred to it the functions, powers, and duties of offices referred to in the Department as the ''Office of Investigation'' and the ''Office of Audit,'' previously assigned to the OIG created by the Secretary's Memoranda 1915 and 1727, dated March 23, 1977, and October 5, 1977, respectively. Under the IG Act, OIG was established as an independent and objective unit, headed by the Inspector General (IG), who is appointed by the President and reports to and is under the general supervision of the Secretary.

(b) OIG conducts and supervises audits and investigations relating to Department programs and operations; provides leadership and coordination and recommends policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect fraud and abuse in, such programs and operations; and provides a means for keeping the Secretary of Agriculture and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action.

(c) The IG has specific duties, responsibilities, and authorities pursuant to the IG Act, including to:

(1) Provide policy direction for, and conduct, supervise, and coordinate

audits and investigations relating to USDA programs and operations.

(2) Review existing and proposed legislation and regulations related to USDA programs and operations and make recommendations to the Secretary and the Congress on the impact such laws or regulations will have on the economy and efficiency of program administration or in the prevention and detection of fraud and abuse in USDA programs and operations.

(3) Recommend policies for, and conduct, supervise, or coordinate other activities carried out or financed by USDA for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse, in USDA programs and operations.

(4) Recommend policies for, and conduct, supervise, or coordinate relationships between, USDA and other Federal, State, and local governmental agencies and nongovernmental entities regarding the promotion of economy and efficiency, prevention of fraud and abuse, or the identification and prosecution of participants in fraud and abuse.

(5) Keep the Secretary and the Congress fully and currently informed about problems, abuses, and deficiencies, and the necessity for and progress of corrective actions in the administration of USDA programs and operations.

(6) Report expeditiously to the Attorney General any matter where there are reasonable grounds to believe there has been a violation of Federal criminal law.

(7) Have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the Department which relate to programs and operations for which the IG has responsibility.

(8) Make such investigations and reports relating to the administration of USDA programs and operations as are, in the judgment of the IG, necessary or desirable.

(9) Request such information or assistance as may be necessary for carrying out the duties and responsibilities of the IG Act from any Federal, State, or local governmental agency or unit thereof.

(10) Issue subpoenas for the production of information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information, as well as any tangible thing) and documentary evidence necessary in the performance of functions assigned by the IG Act, except that procedures other than subpoenas shall be used to obtain documents and information from Federal agencies.

(11) Whenever necessary in the performance of functions assigned by the IG Act, administer to or take from any person an oath, affirmation, or affidavit, which shall have the same force and effect as if administered or taken by or before an officer having a seal.

(12) Have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions and responsibilities under the IG Act.

(13) Select, appoint, and employ necessary officers and employees in OIG in accordance with laws and regulations governing the civil service, including an Assistant Inspector General for Audit (AIG/A) and an Assistant Inspector General for Investigations (AIG/I).

(14) Obtain services as authorized by 5 U.S.C. 3109.

(15) Enter into contracts and other arrangements for audits, inspections, studies, analyses, and other services with public agencies and private persons, and make such payments as may be necessary to carry out the provisions of the IG Act, to the extent and in such amounts as may be provided in advance by an appropriation act.

(16) Receive and investigate complaints or information from any Department employee concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety.

(17) Designate a Whistleblower Protection Ombudsman, who will educate Department employees about prohibitions on retaliation for protected disclosures; and who have made or are contemplating making a protected disclosure about the rights and remedies against retaliation for protected disclosures.

(d) Pursuant to § 2.33 of this title, the Secretary has made the following delegations of authority to the IG:

(1) Advise the Secretary and General officers in the planning, development, and execution of Department policies and programs.

(2) At the request of the Secretary's security office, determine the availability of OIG law enforcement personnel to assist the security office in providing for the personal security of the Secretary and Deputy Secretary.

(3) Serve as liaison official for the Department for all audits of USDA performed by the Government Accountability Office.

(e) The IG, under section 1337 of the Agriculture and Food Act of 1981, Public Law 97–98, 7 U.S.C. 2270, and pursuant to rules issued by the Secretary in part 1a of this title, has the authority to:

(1) Designate OIG employees who investigate alleged or suspected felony criminal violations of statutes administered by the Secretary of Agriculture or any agency of USDA, when engaged in the performance of official duties to:

(i) Make an arrest without a warrant for any such criminal felony violation if such violation is committed, or if the employee has probable cause to believe that such violation is being committed, in his/her presence;

(ii) Execute and serve a warrant for an arrest, for the search of premises, or the seizure of evidence when issued under authority of the United States upon probable cause to believe that such a violation has been committed; and

(iii) Carry a firearm.

(2) Issue directives and take the actions prescribed by the Secretary's rules.

§ 2610.2 Headquarters organization.

(a) OIG has a headquarters office in Washington, DC, and regional offices throughout the United States. The headquarters office consists of the immediate office of the IG, which includes three component offices, and four operational units.

(b) *Immediate Office Components.* (1) The Director of the Office of Compliance and Integrity (OCI) performs independent quality assurance and internal control reviews of OIG operations. OCI also investigates allegations of criminal and/or serious administrative misconduct by OIG employees.

(2) Section 3(g) of the IG Act mandates that each IG shall obtain legal advice from a counsel either reporting directly to the IG or to another IG. Within USDA–OIG, such legal advice is provided by the Counsel to the Inspector General. The Office of Counsel (OC) provides legal advice and representation on issues arising during the course of audit, investigative, and Office of Data Sciences (ODS) activities or on internal administrative and management issues. OC also manages OIG's congressional, media relations, ethics, Freedom of Information Act, and Privacy Act programs; and reviews proposed legislation, regulations, and procedures.

(3) The Director of the Office of Diversity and Conflict Resolution advises OIG leadership on applying the principles of civil rights, equal

employment opportunity, dispute resolution, diversity, and inclusion, on matters affecting the OIG workforce, program activities, and development of policy. This office also guides all OIG personnel through the use of the Federal sector employment discrimination complaints and dispute resolution processes, as needed.

(c) *Operational units.* (1) The AIG/A carries out the OIG's domestic and foreign audit operations through a headquarters office and three regional offices shown in § 2610.3(a). The staff provides for audit review of information technology (IT) security throughout USDA. Auditing officials conduct operational liaison on audit matters; schedule and conduct audits; release audit reports to management; monitor agency action to assure that audit reports have been properly acted upon through review of Department management follow up systems; monitor the quality of OIG audit reports; and coordinate activities with the AIG/I. The staff also provides an integrated approach to fraud prevention and detection and management improvement in USDA programs and operations; coordinates analyses and reports on vulnerability assessments; and recommends policies and provides technical assistance for audit operations. The Auditing headquarters office consists of the immediate office of the AIG/A and five staff divisions.

(2) The Assistant Inspector General for Data Sciences carries out OIG's data sciences operations through a headquarters office. OIG officials within ODS perform predictive data analysis, statistical sampling, modeling, computer matching, data mining, and data warehousing of USDA programs and operations in support of OIG audits, investigations, and other activities.

(3) The AIG/I carries out OIG's domestic and foreign investigative operations through a headquarters office and the five regional offices shown in § 2610.3(b). Investigations officials conduct operational and intelligence liaison on investigative matters with the Federal Bureau of Investigation, Secret Service, Internal Revenue Service, Interpol, and other Federal, State, and local law enforcement organizations; determine the need for investigative action; conduct investigations; prepare factual reports of investigative findings; refer reports for appropriate administrative or legal action; follow up on agency actions to assure that OIG investigative reports have been properly acted upon; monitor the quality of investigative reports; and coordinate activities with the AIG/A. The staff also conducts special investigations of major programs, operations, and high level officials; can assist the Secretary's security office in providing for the protection of the Secretary and Deputy Secretary; and receives and processes employee complaints concerning possible violations of laws, rules, regulations or mismanagement. The OIG Whistleblower Protection Ombudsman described in § 2610.1(c)(17) is located within the Office of Investigations.

(4) The Assistant Inspector General for Management (AIG/M) manages formulation of OIG policies and procedures; develops, administers and directs comprehensive programs for the management, budget, financial, personnel, systems improvement, and information activities and operations of OIG; and is responsible for OIG IT and information management systems. The staff maintains OIG's directives system, and Departmental Regulations and **Federal Register** issuances. The immediate office of the AIG/M and four divisions carry out these functions.

§ 2610.3 Regional organization.

(a) Each regional Audit Director is responsible to the IG and to the AIG/A for supervising the performance of all OIG auditing activities relating to the Department's domestic and foreign programs and operations within an assigned geographic area. The addresses and telephone numbers of the three Audit regional offices and the territories served are as follows:

Audit Region, Address, Telephone Number, and Territory

Eastern Region, 5601 Sunnyside Avenue, Suite 2–2230 (Mail Stop 5300), Beltsville, Maryland 20705–5300, (301) 504–2100; Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virgin Islands, Virginia, West Virginia, and Wisconsin.

Midwestern Region, 8930 Ward Parkway, Suite 3016, Kansas City, Missouri 64114, (816) 926–7667; Colorado, Iowa, Kansas, Missouri, Montana, Minnesota, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Western Region, 1333 Broadway, Suite 400, Oakland, California 94612, (510) 208–6800; Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Territory of Guam, Trust Territories of the Pacific, and Washington.

(b) Each regional Special Agent-in-Charge (SAC) is responsible to the IG and to the AIG/I for supervising the performance of all OIG investigative activities relating to the Department's domestic and foreign programs and operations within an assigned geographic area. The addresses and telephone numbers of the five Investigations regional offices and the territories served are as follows:

Investigations Region, Address, Telephone Number, and Territory

Midwest Region, 111 N. Canal Street, Suite 325, Chicago, Illinois 60606–7296, (312) 353–1358; Illinois, Indiana, Iowa, Michigan, Minnesota, North Dakota, Ohio, South Dakota, and Wisconsin.

Northeast Region, 26 Federal Plaza, Room 1409, New York, New York 10278–0004, (212) 264–8400; Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Southeast Region, 401 W. Peachtree Street NW., Room 2329, Atlanta, Georgia 30308, (404) 730–3274; Alabama, Florida, Georgia, Kentucky, North Carolina, Puerto Rico, South Carolina, Tennessee, and the Virgin Islands.

Southwest Region, 101 South Main, Room 311, Temple, Texas 76501, (254) 743–6535; Arkansas, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, and Texas.

Western Region, 1333 Broadway, Suite 400, Oakland, California 94612, (510) 208–6860; Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Territory of Guam, Trust Territories of the Pacific, Utah, Washington, and Wyoming.

§ 2610.4 Requests for service.

(a) Heads of USDA agencies will direct requests for audit or investigative service to the AIG/A, AIG/I, Audit Director, SAC, or to other OIG audit or investigation officials responsible for providing service of the type desired in the geographical area where service is desired.

(b) Agency officials or other employees may, at any time, direct to the personal attention of the IG any audit or investigation matter that warrants such attention.

(c) Other persons (*i.e.,* non-USDA personnel) may address their communications regarding audit or investigative matters to: The Inspector General, U.S. Department of Agriculture, USDA Stop 2301, Washington, DC 20250.

(d) OIG has established several channels for USDA employees and the general public to report fraud, waste, abuse, and mismanagement in USDA programs, or misconduct by a USDA employee. These include a general OIG Hotline, a Bribery/Assault Line, and (for USDA employees) a Whistleblower Ombudsman.

(1) General fraud, waste, and abuse hotline:

(i) File complaint online: *http://www.usda.gov/oig/hotline.htm* (click on ''Submit a Complaint'' button);

(ii) Telephone: (800) 424–9121, (202) 690–1622, or (202) 690–1202 (Telecommunication Device for the Deaf);

(iii) Facsimile: (202) 690–2474; or

(iv) Write a letter to United States Department of Agriculture, Office of Inspector General, P.O. Box 23399, Washington, DC 20026.

(2) Bribery/Assault Line: (202) 720–7257 (24 hours a day).

(3) Whistleblower Protection Ombudsman. USDA employees may contact the Ombudsman via email at: *OIGombudsman@oig.usda.gov*. Additional information about the Ombudsman is available online at *https://www.usda.gov/oig/ombudsman.htm*.

§ 2610.5 Delegations of authority.

(a) AIGs, Directors, and Counsel listed in § 2610.2, and Audit Directors and SACs listed in § 2610.3, are authorized to take whatever actions are necessary to carry out their assigned functions. This authority may be re-delegated.

(b) The IG reserves the right to establish audit and investigation policies, program, procedures, and standards; to allocate appropriated funds; to determine audit and investigative jurisdiction; and to exercise any of the powers or functions or perform any of the duties referenced in the above delegation.

Dated: December 8, 2016.

Phyllis K. Fong,

Inspector General.

[FR Doc. 2016–29976 Filed 12–20–16; 8:45 am]

BILLING CODE 3410–23–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 721

RIN 3133–AE54

Federal Credit Union Occupancy, Planning, and Disposal of Acquired and Abandoned Premises; Incidental Powers

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: As part of NCUA's Regulatory Modernization Initiative, the NCUA Board (Board) is finalizing amendments to its regulation governing federal credit union (FCU) occupancy, planning, and disposal of acquired and abandoned premises, and its regulation regarding incidental powers. To provide regulatory relief to FCUs, this final rule eliminates a requirement in the current occupancy rule (formerly known as the fixed assets rule) that an FCU must plan for, and eventually achieve, *full* occupancy of acquired premises.

The final rule generally retains the current regulatory timeframes for *partial* occupancy. However, it modifies the definition of ''partially occupy'' to mean occupation and use, on a full-time basis, of at least fifty percent of the premises by the FCU, or by a combination of the FCU and a credit union service organization (CUSO) in which the FCU has a controlling interest in accordance with Generally Accepted Accounting Principles (GAAP).

The final rule also amends the excess capacity provision in NCUA's incidental powers rule to clarify that an FCU may lease or sell excess capacity in its *facilities,* but it need not anticipate that such excess capacity will be fully occupied by the FCU in the future. However, the sale or lease of excess capacity in *equipment or services,* including employee-sharing and data processing for third parties, continues to be limited to circumstances where an FCU reasonably anticipates that such excess capacity will be taken up by the future expansion of services to members.

DATES: This rule is effective January 20, 2017.

FOR FURTHER INFORMATION CONTACT: Justin M. Anderson, Senior Staff Attorney, Office of General Counsel, at (703) 518–6540, or Jacob McCall, Program Officer, Office of Examination and Insurance, at (703) 518–6360.

SUPPLEMENTARY INFORMATION:

I. Background

In April 2016, the Board issued a proposed rule [1] to amend its regulation governing FCU occupancy, planning, and disposal of acquired and abandoned premises, and its regulation regarding incidental powers. The regulatory changes in the 2016 proposed rule are identical to the regulatory changes adopted in this final rule as summarized above. The Board received 27 comment letters in response to the proposed rule. Twenty-six of the commenters generally supported the proposal and one commenter opposed the rule. Of the 26 supportive comments, approximately half recommended additional changes or more regulatory relief.

II. Summary of Comments.

As noted above, one commenter opposed the proposed rule in its entirety. This commenter asserted that the proposed rule was a significant departure from the Board's previous interpretation of the Federal Credit Union Act (the Act) and could lead to FCUs exceeding their authority.

As stated in the proposed rule, the Board believes the language in Section 107(4) of the Act supports an interpretation that provides FCUs with more flexibility than permitted by the current rule to acquire and hold real property.[2] Accordingly, the Board has reconsidered its current approach of requiring FCUs to fully occupy premises. The Board notes that section 107(4) of the Act neither explicitly mentions nor requires full occupancy of FCU property.

While this final rule represents a departure from the Board's previous interpretation of section 107(4) of the Act, the Board believes the rule is both reasonable and consistent with the requirements of the Act and is within the Board's authority. The Board notes that the United States Supreme Court has emphasized that an ''initial agency interpretation is not instantly carved in stone,'' and ''to engage in informed rulemaking, [an agency] must consider varying interpretations and the wisdom of its policy on a continuing basis,'' indicating that an agency may change its interpretive position on the statutes it administers.[3] The final rule is reasonable and eliminates the imposition of unnecessary hardship on FCUs whose growth potential and member service strategies may be hampered by the current rule.

The Board reiterates, however, its current view that there is no authority in the Act for an FCU to invest in real estate for speculative purposes or to otherwise engage in real estate activities that do not generally support its purpose of providing financial services to its members. The Act is clear that any property acquired or held by an FCU must be ''necessary or incidental to its operations.'' [4] NCUA has stated consistently that an FCU may only invest in property it intends to use to

[1] 81 FR 24738 (Apr. 27, 2016).

[2] 12 U.S.C. 1757(4).

[3] *Chevron* v. *Natural Res. Def. Council,* 467 U.S. 837, 863–864 (1984). The Supreme Court has also found that an agency is entitled to *Chevron* deference if it reverses an earlier interpretation. *See, e.g., Rust* v. *Sullivan,* 500 U.S. 173 (1991); *National Cable & Telecomms. Ass'n* v. *Brand X Internet Servs.,* 545 U.S. 967 (2005).

[4] 12 U.S.C. 1757(4).

transact credit union business or in property that supports its internal operations or member services.

A. Elimination of Requirement That an FCU Must Plan for, and Eventually Achieve, Full Occupancy of Acquired Premises

The large majority of commenters strongly supported removing the full occupancy requirement. However, two commenters opposed this particular aspect of the proposed rule. Commenters that disagreed with the elimination of the full occupancy requirement expressed concern that FCUs will be more likely to venture into real estate activities that are beyond the scope of credit union operations envisioned by Congress.

In the proposed rule, the Board emphasized that maintaining the requirement that an FCU must partially occupy real property it obtains will reduce the likelihood and opportunity for speculative investments. The Board reaffirms this position and also notes that NCUA will diligently oversee FCUs' activities in this area to ensure that FCUs are not engaging in speculative investments or other real estate activities that are not permitted under the Act. Any FCU in violation of these requirements could be subject to all administrative remedies available to the agency. Therefore, the Board does not believe this final rule will result in FCUs operating beyond the scope of their authority as Congress provided for in the Act.

B. Partial Occupancy

1. Definition

Under the current rule, an FCU must partially occupy premises acquired for future expansion, within a reasonable period, but no later than six years after the date of acquisition. The proposed rule did not change this requirement, but did modify the definition of ''partially occupy'' to mean occupation and use, on a full-time basis, of at least fifty percent of the premises by the FCU, or by a combination of the FCU and a CUSO in which the FCU has a controlling interest in accordance with GAAP.

Nearly half of the commenters supported the proposed definition of ''partially occupy.'' Several of these commenters, however, asked how they are to measure different areas of a building (*e.g.,* common, service and mechanical areas) for determining the FCU's percentage of occupancy. The Board notes that NCUA will consider all shared facilities owned by the FCU as occupied by the FCU, unless the area is specifically leased to an outside entity for their exclusive use. This will include common, service, and mechanical areas, and other shared spaces.

In addition, a few commenters supported the proposed definition, but suggested the rule should allow for exceptions to the fifty percent requirement or permit waivers from the partial occupancy requirement. Some of these commenters noted that an FCU meeting the fifty percent occupancy requirement may, at a later time, occupy less than fifty percent for economic or strategic reasons. One commenter stated that waivers should be allowed in such circumstances. Another commenter suggested that satisfaction of the fifty percent occupancy requirement should be ''grandfathered'' once initially achieved by the FCU. Finally, one commenter said mixed-use developments in urban areas sometimes require shared space and that common areas and other shared fixtures and utilities should count toward the fifty percent partial occupancy requirement.

The final rule retains the waiver provisions for the partial occupancy requirement. FCUs can request a waiver of either the fifty percent requirement or the six-year requirement. The waiver process is designed to allow NCUA to evaluate unique circumstances. For example, certain zoning laws affecting a particular property may support NCUA accepting less than fifty percent occupancy or extending the time period for compliance. The Board believes the waiver process balances providing flexibility to FCUs while maintaining safety and soundness.

A few commenters disagreed with the proposed definition in its entirety. One commenter argued against the fifty percent threshold and stated the rule should allow FCUs broader flexibility to occupy a lesser percentage of their premises. As discussed in more detail above, the Board purposefully included the proposed partial occupancy requirement, among other reasons, as a protection against FCUs potentially engaging in impermissible and speculative real estate investment transactions. Further, the ability to request a waiver from the partial occupancy requirement is, in part, an acknowledgement that there may be circumstances where an FCU could prudently occupy a lesser percentage of the premises and still comply with the Act.

One commenter argued that there is no need for a prescriptive fifty percent occupancy requirement. Another commenter urged that the fifty percent occupancy threshold be removed or, alternatively, that the threshold be reduced to no more than twenty-five percent. A different commenter suggested ''partially occupy'' should be defined as ''less-than-full occupancy that is material and visible actual usage.'' The same commenter also suggested that the addition of an absolute prohibition on real estate speculation, analogous to NCUA's regulatory ban on credit union speculation on derivatives, could be adopted as an added safeguard against speculative real estate investing. One commenter noted the fifty percent threshold is somewhat ambiguous with respect to mixed-use properties and larger tracts of land. The same commenter recommended that the final rule revert to an earlier iteration of the regulatory definition, which at one point required only full occupancy of FCU property on a part-time basis.

The Board believes that removing the full occupancy requirement provides FCUs with greater flexibility in managing their real estate, and that it is important to maintain the partial occupancy requirement to ensure safety and soundness. The fifty percent standard provides FCUs with a clear guideline for achieving compliance, and the waiver provisions ensure further flexibility when warranted.

2. CUSOs

Several commenters asked what is meant by ''a controlling interest in a CUSO.'' As stated in the proposed rule, NCUA defines controlling interest in a CUSO under GAAP using FASB Accounting Standards Update (ASU) 805. This standard defines controlling interest as ''the ability of an entity to direct the policies and management that guide the ongoing activities of another entity so as to increase its benefits and limit its losses from that other entity's activities.'' [5]

In addition, two commenters disagreed with the controlling interest requirement for CUSOs entirely. These commenters suggested that an FCU and its CUSO should be able to meet the partial occupancy threshold regardless of the amount of ownership interest the FCU has in the CUSO. One of the commenters further suggested that the types of entities with which an FCU may meet the fifty percent occupancy requirement should be expanded to include credit union industry ''partners'' or other credit union service providers.

The Board stated in the proposed rule that:

[5] FASB Exposure Draft, *Consolidated Financial Statements: Purpose and Policy,* Paragraph 6 (1999).

Occupancy of FCU premises with third-party vendors or CUSOs in which the FCU does not maintain a controlling interest will not count towards the fifty percent partial occupancy requirement because these entities operate at the direction of other owners and may not be obligated to primarily support the FCU that acquired the premises or to primarily serve that FCU's members.[6]

Further, the Board notes that this definition will ensure that any property acquired or held by an FCU is primarily utilized for a purpose that is necessary or incidental to its operations, as required by the Act.

3. Timeframe for Partial Occupancy

Nearly half of the commenters offered input on the current rule's six-year regulatory timeframe for partial occupancy of improved and unimproved property. Of these, several urged that the regulatory timeframe for partial occupancy be eliminated entirely or, alternatively, be extended to ten years.

Three commenters recommended the rule be modified to allow ten years for partial occupancy of unimproved property or raw land. One commenter suggested that the occupancy requirement for unimproved property should be removed entirely. In addition, two commenters suggested that the occupancy waiver provision should be amended to require NCUA to grant waivers upon request unless there are specific safety and soundness concerns.

The Board notes that the final rule will retain the waiver provisions for the partial occupancy requirement, which allows an FCU to request a waiver of the six-year requirement. The Board believes the waiver process, as currently written, provides sufficient flexibility while protecting safety and soundness.

C. Incidental Powers

As discussed above, the proposed rule amends the excess capacity provision in NCUA's incidental powers rule to clarify that an FCU may lease or sell excess capacity in its facilities, but it need not anticipate that such excess capacity will be fully occupied by the FCU in the future. However, the sale or lease of excess capacity in equipment or services, including employee-sharing and data processing for third parties, would continue to be limited to circumstances where an FCU reasonably anticipates that such excess capacity will be taken up by the future expansion of services to members.

Four commenters expressed support for this aspect of the proposed rule and one commenter disagreed with it, stating that it would allow credit unions to exceed their authority under the Act. The Board does not believe that anything in this final rule will allow FCUs to exceed their authority under the Act.

D. Additional Comments

Two commenters advocated the creation of an independent appeals process for adjudicating disagreements between NCUA and an FCU concerning the acquisition and use of FCU premises. The creation of such a process was not part of the proposed rule and is, therefore, outside the scope of this final rulemaking. The Board will, however, consider amending NCUA's appeals process in the coming year.

Finally, one commenter suggested that there should be a de minimis exception for fixed assets that are financially immaterial to the FCU's operations. This commenter asserted that such de minimis fixed assets should not be subject to any regulatory occupancy requirements, including the fifty percent rule and the six-year occupancy timeframe. The Board notes that the occupancy rule implements provisions of the Act. The Act does not distinguish certain fixed assets from other fixed assets based on financial materiality. The Board believes this final rule provides significant flexibility and regulatory relief to FCUs and does not include a de minimis exception.

III. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include credit unions with assets less than $100 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule. The final rule would provide regulatory relief by eliminating the need to develop a plan for full occupancy. Also, FCUs currently have limited flexibility to purchase real estate with excess capacity. NCUA certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[7] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. The final rule provides regulatory relief to FCUs by eliminating the requirement that, if an FCU does not fully occupy premises acquired for future expansion within one year, it must have a board resolution in place by the end of that year with definitive plans for full occupation. The final rule does not impose new paperwork burdens. Rather, the final rule would relieve FCUs from the current requirement to have a board-approved plan for full occupation of its premises.

According to NCUA estimates, approximately 15 FCUs are required to develop a plan for full occupation of premises each year. Accordingly, the reduction to existing paperwork burdens that would result from the final is analyzed below:

Estimate of the reduced burden by eliminating the full occupancy planning requirement.

Estimated FCUs: 15.

Frequency of waiver request: Annual.

Reduced hour burden: 15 hours.

15 FCUs × 15 hours = 225 hours reduced burden.

In accordance with the requirements of the PRA, NCUA intends to obtain a modification of its OMB Control Number to reflect these changes. NCUA is submitting a copy of this rule to OMB, along with an application for a modification of the OMB Control Number.

The PRA and OMB regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The Board did not receive any comments on the PRA aspects of the rule.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency, as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. Because the occupancy and

[6] 81 FR 24738 (Apr. 27, 2016).

[7] 44 U.S.C. 3507(d); 5 CFR part 1320.

incidental powers regulations apply only to FCUs, the final rule does 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. As such, NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act of 1999.[8]

List of Subjects

12 CFR Part 701

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 721

Credit unions, Functions, Implied powers.

By the National Credit Union Administration Board, on December 15, 2016.

Gerard Poliquin,

Secretary of the Board.

For the reasons stated above, NCUA amends 12 CFR parts 701 and 721 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 is revised to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; Title V, Pub. L. 109–351, 120 Stat. 1966.

■ 2. Amend § 701.36 as follows:
■ a. Revise the section heading.
■ b. Revise paragraph (a).
■ c. Amend paragraph (b) by revising the definitions of *Abandoned premises* and *Partially occupy.*
■ d. Remove paragraph (c)(1).
■ e. Redesignate paragraphs (c)(2) and (3) as (c)(1) and (2), respectively.
■ f. Revise newly redesignated paragraph (c)(1).

The revisions read as follows:

§ 701.36 Federal credit union occupancy and disposal of acquired and abandoned premises.

(a) *Scope.* Section 107(4) of the Federal Credit Union Act (12 U.S.C. 1757(4)) authorizes a federal credit union to purchase, hold, and dispose of property necessary or incidental to its operations. This section interprets and implements that provision by establishing occupancy and disposal requirements for acquired and abandoned premises, and by prohibiting certain transactions. This section applies only to federal credit unions.

(b) * * *

Abandoned premises means premises previously used to transact credit union business but no longer used for that purpose. It also means premises originally acquired to transact future credit union business but no longer intended for that purpose.

* * * * *

Partially occupy means occupation and use, on a full-time basis, of at least fifty percent of each of the premises by the federal credit union, or the federal credit union and a credit union service organization in which the federal credit union has a controlling interest in accordance with Generally Accepted Accounting Principles (GAAP).

* * * * *

(c) *Premises not currently used to transact credit union business.* (1) If a federal credit union acquires premises, including unimproved land or unimproved real property, it must partially occupy each of them within a reasonable period, but no later than six years after the date of acquisition. NCUA may waive the partial occupation requirements. To seek a waiver, a federal credit union must submit a written request to its Regional Office and fully explain why it needs the waiver. The Regional Director will provide the federal credit union a written response, either approving or disapproving the request. The Regional Director's decision will be based on safety and soundness considerations.

* * * * *

PART 721—INCIDENTAL POWERS

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 12 U.S.C. 1757(17), 1766 and 1789.

■ 4. Amend § 721.3 by revising paragraph (e) to read as follows:

§ 721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union's business?

* * * * *

(e) *Excess capacity.* Excess capacity is the excess use or capacity remaining in facilities, equipment, or services that you properly invested in or established, in good faith, with the intent of serving your members or supporting your business operations. You may sell or lease the excess capacity in facilities, such as office space and other premises. You may sell or lease the excess capacity in equipment or services, such as employees and data processing, if you reasonably anticipate that the excess capacity will be taken up by the future expansion of services to your members.

* * * * *

[FR Doc. 2016–30657 Filed 12–20–16; 8:45 am]

BILLING CODE 7535–01–P

[8] Public Law 105–277, 112 Stat. 2681 (1998).

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

Home Mortgage Disclosure (Regulation C) Adjustment to Asset-Size Exemption Threshold

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official commentary.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing a final rule amending the official commentary that interprets the requirements of the Bureau's Regulation C (Home Mortgage Disclosure) to reflect the asset-size exemption threshold for banks, savings associations, and credit unions based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Based on the 0.8 percent increase in the average of the CPI–W for the 12-month period ending in November 2016, the exemption threshold will remain at $44 million. Therefore, banks, savings associations, and credit unions with assets of $44 million or less as of December 31, 2016, are exempt from collecting data in 2017.

DATES: This final rule is effective January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Jaclyn Maier, Counsel, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801–2810) requires most mortgage lenders located in metropolitan areas to collect data about their housing related lending activity. Annually, lenders must report their data to the appropriate Federal agencies and make the data available to

the public. The Bureau's Regulation C (12 CFR part 1003) implements HMDA.

Prior to 1997, HMDA exempted certain depository institutions as defined in HMDA (*i.e.,* banks, savings associations, and credit unions) with assets totaling $10 million or less as of the preceding year-end. In 1996, HMDA was amended to expand the asset-size exemption for these depository institutions. 12 U.S.C. 2808(b). The amendment increased the dollar amount of the asset-size exemption threshold by requiring a one-time adjustment of the $10 million figure based on the percentage by which the CPI–W for 1996 exceeded the CPI–W for 1975, and it provided for annual adjustments thereafter based on the annual percentage increase in the CPI–W, rounded to the nearest multiple of $1 million.

The definition of ''financial institution'' in § 1003.2 provides that the Bureau will adjust the asset threshold based on the year-to-year change in the average of the CPI–W, not seasonally adjusted, for each 12-month period ending in November, rounded to the nearest $1 million. For 2016, the threshold was $44 million. During the 12-month period ending in November 2016, the average of the CPI–W increased by 0.8 percent. This increase results in no change to the asset-size threshold when rounded to the nearest $1 million. Thus, the exemption threshold will remain at $44 million. Therefore, banks, savings associations, and credit unions with assets of $44 million or less as of December 31, 2016, are exempt from collecting data in 2017. An institution's exemption from collecting data in 2017 does not affect its responsibility to report data it was required to collect in 2016.

II. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Pursuant to this final rule, comment 2(Financial institution)-2 in Regulation C, supplement I, is amended to update the exemption threshold. The amendment in this final rule is technical and non-discretionary, and it merely applies the formula established by Regulation C for determining any adjustments to the exemption threshold. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). At a minimum, the Bureau believes the amendments fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on January 1, 2017. The amendment in this final rule is technical and non-discretionary, and it applies the method previously established in the agency's regulations for determining adjustments to the threshold.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a).

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320), the agency reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 1003

Banking, Banks, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth above, the Bureau amends Regulation C, 12 CFR part 1003, as set forth below:

PART 1003—HOME MORTGAGE DISCLOSURE (REGULATION C)

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 12 U.S.C. 2803, 2804, 2805, 5512, 5581.

■ 2. In Supplement I to Part 1003, under *Section 1003.2—Definitions,* under the definition ''*Financial institution*'', paragraph 2 is revised to read as follows:

Supplement I to Part 1003—Staff Commentary

* * * * *

Section 1003.2—Definitions

* * * * *

Financial institution.

* * * * *

2. *Adjustment of exemption threshold for banks, savings associations, and credit unions.* For data collection in 2017, the asset-size exemption threshold is $44 million. Banks, savings associations, and credit unions with assets at or below $44 million as of December 31, 2016, are exempt from collecting data for 2017.

* * * * *

Dated: December 15, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–30731 Filed 12–19–16; 4:15 pm]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending Act (Regulation Z) Adjustment to Asset-Size Exemption Threshold

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau is amending the official commentary that interprets the requirements of the Bureau's Regulation Z (Truth in Lending) to reflect a change in the asset-size threshold for certain creditors to qualify for an exemption to the requirement to establish an escrow account for a higher-priced mortgage loan based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) for the 12-month period ending in November. The exemption threshold is adjusted to increase to $2.069 billion from $2.052 billion. The adjustment is based on the .8 percent increase in the average of the CPI–W for the 12-month period ending in November 2016. Therefore, creditors with assets of less than $2.069 billion (including assets of certain affiliates) as of December 31, 2016, are exempt, if other requirements of Regulation Z also are met, from establishing escrow accounts for higher-priced mortgage loans in 2017. This asset limit will also apply during a grace period, in certain circumstances, with respect to transactions with applications received before April 1 of 2018. The adjustment to the escrows exemption asset-size threshold will also increase a similar threshold for small-creditor portfolio and balloon-payment qualified mortgages. Balloon-payment qualified

mortgages that satisfy all applicable criteria, including being made by creditors that have (together with certain affiliates) total assets below the threshold, are also excepted from the prohibition on balloon payments for high-cost mortgages.

DATES: This final rule is effective January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Jaclyn Maier, Counsel, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA to add section 129D(a), which contains a general requirement that an escrow account be established by a creditor to pay for property taxes and insurance premiums for certain first-lien higher-priced mortgage loan transactions. TILA section 129D also generally permits an exemption from the higher-priced mortgage loan escrow requirement for a creditor that meets certain requirements, including any asset-size threshold the Bureau may establish.

In the 2013 Escrows Final Rule,[1] the Bureau established such an asset-size threshold of $2 billion, which would adjust automatically each year, based on the year-to-year change in the average of the CPI–W for each 12-month period ending in November, with rounding to the nearest million dollars.[2] In 2015, the Bureau revised the criteria for small creditors, and rural and underserved areas, for purposes of certain special provisions and exemptions from various requirements provided to certain small creditors under the Bureau's mortgage rules.[3] As part of this revision the Bureau made certain changes that affect how the asset-size threshold applies. The Bureau revised § 1026.35(b)(2)(iii)(C) and its accompanying commentary to include in the calculation of the asset-size threshold the assets of the creditor's affiliates that regularly extended covered transactions secured by first liens during the applicable period. The Bureau also added a grace period from calendar year to calendar year to allow an otherwise eligible creditor that exceeded the asset limit in the preceding calendar year (but not in the calendar year before the preceding year) to continue to operate as a small creditor with respect to transactions with applications received before April 1 of the current calendar year.[4] [5] For 2016, the threshold was $2.052 billion.

During the 12-month period ending in November 2016, the average of the CPI–W increased by .8 percent. As a result, the exemption threshold is increased to $2.069 billion for 2017. Thus, if the creditor's assets together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2016 are less than $2.069 billion on December 31, 2016, and it meets the other requirements of § 1026.35(b)(2)(iii), it will be exempt in 2017 from the escrow-accounts requirement for higher-priced mortgage loans and will also be exempt from the escrow-accounts requirement for higher-priced mortgage loans for purposes of any loan consummated in 2018 for which the application was received before April 1, 2018. The adjustment to the escrows exemption asset-size threshold will also increase the threshold for small-creditor portfolio and balloon-payment qualified mortgages under Regulation Z. The requirements for small-creditor portfolio qualified mortgages at § 1026.43(e)(5)(i)(D) reference the asset threshold in § 1026.35(b)(2)(iii)(C). Likewise, the requirements for balloon-payment qualified mortgages at § 1026.43(f)(1)(vi) reference the asset threshold in § 1026.35(b)(2)(iii)(C). Under § 1026.32(d)(1)(ii)(C), balloon-payment qualified mortgages that satisfy all applicable criteria in § 1026.43(f)(1)(i) through (vi) and (f)(2), including being made by creditors that have (together with certain affiliates) total assets below the threshold in § 1026.35(b)(2)(iii)(C), are also excepted from the prohibition on balloon payments for high-cost mortgages.

II. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Pursuant to this final rule, comment 35(b)(2)(iii)–1 in Regulation Z is amended to update the exemption threshold. The amendment in this final rule is technical and merely applies the formula previously established in Regulation Z for determining any adjustments to the exemption threshold. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). At a minimum, the Bureau believes the amendments fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on January 1, 2017. The amendment in this notice is technical and applies the method previously established in the agency's regulations for automatic adjustments to the threshold.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a).

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320), the agency reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth above, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

[1] 78 FR 4726 (Jan. 22, 2013).

[2] *See* 12 CFR 1026.35(b)(2)(iii)(C).

[3] *See* 80 FR 59943 (Oct. 2, 2015).

[4] *See* 80 FR 59943, 59951 (Oct. 2, 2015).

[5] The Bureau also issued an interim final rule in March 2016 to revise certain provisions in Regulation Z to effectuate the HELP Rural Communities Act's amendments to TILA (Pub. L. 114–94, section 89003 (2015)). The rule broadened the cohort of creditors that may be eligible under TILA for the special provisions allowing origination of balloon-payment qualified mortgages and balloon-payment high-cost mortgages, as well as for the escrow exemption. *See* 81 FR 16074 (Mar. 25, 2016).

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 2. In Supplement I to Part 1026, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans, 35(b)(2) Exemptions, Paragraph 35(b)(2)(iii),* paragraph 1.iii.E introductory text is revised and paragraph 1.iii.E.*4* is added to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

* * * * *

35(b)(2) Exemptions.

* * * * *

Paragraph 35(b)(2)(iii).

1. * * *

iii. * * *

E. Under § 1026.35(b)(2)(iii)(C), the $2,000,000,000 asset threshold adjusts automatically each year based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. The Bureau will publish notice of the asset threshold each year by amending this comment. For calendar year 2017, the asset threshold is $2,069,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2016 has total assets of less than $2,069,000,000 on December 31, 2016, satisfies this criterion for purposes of any loan consummated in 2017 and for purposes of any loan consummated in 2018 for which the application was received before April 1, 2018. For historical purposes:

* * * * *

4. For calendar year 2016, the asset threshold was $2,052,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2015 had total assets of less than $2,052,000,000 on December 31, 2015, satisfied this criterion for purposes of any loan consummated in 2016 and for purposes of any loan consummated in 2017 for which the application was received before April 1, 2017.

* * * * *

Dated: December 15, 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2016–30730 Filed 12–19–16; 4:15 pm]

BILLING CODE 4810–AM–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG50

Small Business Size Standards for Manufacturing; Correction

AGENCY: U.S. Small Business Administration.

ACTION: Correcting amendments.

SUMMARY: The U.S. Small Business Administration (SBA) is correcting a final rule that appeared in the **Federal Register** on January 26, 2016 (81 FR 4469). The rule increased small business size standards for a number of industries in North American Industry Classification System (NAICS) Sector 31–33, Manufacturing. The rule also stated that SBA was amending Footnote 5 to the table of size standards relating to NAICS 326211, Tire Manufacturing (except Retreading), to reflect the current Census Product Classification Codes 3262111 and 3262113. However, SBA inadvertently omitted code 3262111 from the revised text in Footnote 5. This action corrects the omission. This correction does not affect the 1,500-employee small business size standard for NAICS 326211.

DATES: Effective December 21, 2016.

FOR FURTHER INFORMATION CONTACT: Dr. Jorge Laboy-Bruno at (202) 205–6618 or *sizestandards@sba.gov,* Office of Size Standards, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: On January 26, 2016, SBA published a final rule implementing changes to the size standards for a number of industries in NAICS Sectors 31–33, Manufacturing (81 FR 4469). As discussed in the preamble of the rule, SBA intended to amend paragraphs (a) and (b) of Footnote 5 to the table of size standards relating to NAICS 326211, Tire Manufacturing (except Retreading), by replacing the former Census classification codes 30111 and 30112 with the new Census Product Classification Codes 3262111 and 3262113. However, the amended text inadvertently omitted the new Census Product Classification code 3262111. This action corrects that omission, but does not affect the 1,500-employee small business size standard for NAICS 326211.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

Accordingly, 13 CFR part 121 is corrected by making the following correcting amendments:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

§ 121.201 [Amended]

■ 2. In Footnote 5 to the table in § 121.201, amend paragraphs (a) and (b) by adding the phrase ''3262111 and'' before the number ''3262113'' each time it appears.

A. John Shoraka,

Associate Administrator for Government Contracting and Business Development.

[FR Doc. 2016–30568 Filed 12–20–16; 8:45 am]

BILLING CODE 8205–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9056; Directorate Identifier 2016–NM–007–AD; Amendment 39–18743; AD 2016–25–17]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems) Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. This AD was prompted by an occurrence that was reported of rudder pedal restriction on a SAAB Model 2000 airplane with the large potable water system (LPWS) installed, equipped with in-line heaters. This AD requires installation of shrinkable tubes on the water piping of the basic potable water system (BPWS). We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 25, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 25, 2017.

ADDRESSES: For service information identified in this final rule, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* Internet *http://www.saabgroup.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9056.

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–2016–9056; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1112 ; fax 425–227–1149.

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 Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. The NPRM published in the **Federal Register** on September 8, 2016 (81 FR 62024) (''the NPRM''). The NPRM was prompted by an occurrence that was reported of rudder pedal restriction on a SAAB Model 2000 airplane with the LPWS installed, equipped with in-line heaters. The NPRM proposed to require installation of shrinkable tubes on the water piping of the BPWS. We are issuing this AD to prevent water spray in case of a failed pipe or coupling during water filling on the ground. This condition, if not corrected, could freeze parts of the flight control system, possibly resulting in reduced control of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0013, dated January 14, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. The MCAI states:

> An occurrence was reported of rudder pedal restriction on a SAAB 2000 aeroplane with the Large Potable Water System (LPWS) installed, equipped with in-line heaters (options 38:201 and 38:201–1). Subsequent investigation showed that this event was the result of a ruptured in-line heater attachment, causing water leakage at the inlet tubing for the in-line heater in the lower part of the forward fuselage (Zone 116). In flight, the water froze on the rudder control mechanism, causing the rudder pedal restriction. Analysis after the reported event indicates that the pitch control mechanism (including pitch disconnect/spring unit) may also be frozen, which would prevent disconnection and normal pitch control.
>
> This condition, if not corrected, could result in further occurrences of water spray, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, EASA issued Emergency AD 2013–0172–E, to require deactivation of the LPWS. Following that, EASA AD 2013–0172R1 [which corresponds to FAA AD 2014–15–04, Amendment 39–17906 (79 FR 45337, August 5, 2014)] introduced a temporary alternative procedure for filling, reactivation and operation of the LPWS.
>
> Finally, EASA AD 2014–0255 [which corresponds to FAA AD 2016–12–05, Amendment 39–18554 (81 FR 38903, June 15, 2016) was issued, superseding EASA AD 2013–0172R1, to require a modification allowing reactivating of the system and the use of regular filling procedures.
>
> Although the Basic Potable Water System (BPWS) does not contain an in-line heater, which was the major risk contributor and the actual cause of the previous leakage events in the LPWS, a Zonal Safety Analysis performed by SAAB concluded that the implementation of spray shield (tube/hose) for the water piping is necessary for the BPWS as well, to protect the flight controls and electrical equipment from water spray in case of a failed pipe or coupling during water filling on ground.
>
> Consequently SAAB developed a modification and issued Service Bulletin (SB) 2000–38–012 to provide modification instructions to install shrinkable tubes as spray shields.
>
> For reasons described above, this [EASA] AD requires installation of shrinkable tubes on the water piping of the BPWS.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9056.

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.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

Saab has issued Service Bulletin 2000–38–012, dated August 20, 2015. The service information describes how to install shrinkable tubes on the water piping of the BPWS. 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 7 airplanes of U.S. registry.

We also estimate that it takes about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $3,650 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $29,120 or $4,160 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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):

2016–25–17 Saab AB, Saab Aeronautics (formerly known as Saab AB, Saab Aerosystems): Amendment 39–18743; Docket No. FAA–2016–9056; Directorate Identifier 2016–NM–007–AD.

(a) Effective Date

This AD is effective January 25, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to certain Saab AB, Saab Aeronautics (formerly known as Saab AB, Saab Aerosystems) Model SAAB 2000 airplanes, certificated in any category, serial numbers 017, 019 through 021 inclusive, 027 through 028 inclusive, 030, 034, 040, 050, and 052.

(d) Subject

Air Transport Association (ATA) of America Code 38, Water/waste.

(e) Reason

This AD was prompted by an occurrence that was reported of rudder pedal restriction on a SAAB Model 2000 airplane with the large potable water system installed, equipped with in-line heaters. We are issuing this AD to prevent water spray in case of a failed pipe or coupling during water filling on the ground. This condition, if not corrected, could freeze parts of the flight control system, possibly resulting in reduced control of the airplane.

(f) Compliance

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

(g) Repair of Basic Potable Water System (BPWS)

Within 24 months after the effective date of this AD, install shrinkable tubes on the water piping of the BPWS, in accordance with the Accomplishment Instructions of SAAB Service Bulletin 2000–38–012, dated August 20, 2015.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1112; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Saab AB, Saab Aeronautics' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0013, dated January 14, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9056.

(j) Material Incorporated by Reference

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

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

(i) SAAB Service Bulletin 2000–38–012, dated August 20, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* Internet *http://www.saabgroup.com.*

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

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

Issued in Renton, Washington, on December 1, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–29509 Filed 12–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–5816; Directorate Identifier 2015–NM–029–AD; Amendment 39–18731; AD 2016–25–05]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. This AD was prompted by reports of cracking found in the splice plates, hinge fittings, terminal fittings, the upper skin of the outboard

and center sections, upper chord, and rear spar webs before reaching the inspection interval specified in AD 2006–10–16. Cracked and fractured Maraging steel fasteners were also found. This AD requires repetitive inspections for cracking, an inspection to determine whether fasteners are magnetic, repetitive ultrasonic inspections for cracking and fractures of affected fasteners, and related investigative and corrective actions if necessary. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 25, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 25, 2017.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5816.

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–2015–5816; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *nathan.p.weigand@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2006–10–16, Amendment 39–14600 (71 FR 28570, May 17, 2006) (''AD 2006–10–16''). AD 2006–10–16 applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. The NPRM published in the **Federal Register** on November 27, 2015 (80 FR 74052) (''the NPRM''). The NPRM was prompted by reports of cracking found in the splice plates, hinge fittings, terminal fittings, the upper skin of the outboard and center sections, upper chord, and rear spar webs before reaching the inspection interval specified in AD 2006–10–16. Cracked and fractured Maraging steel fasteners were also found. The NPRM proposed to reduce the compliance time for certain inspections and add repetitive inspections for cracking of the splice plates, hinge fittings, terminal fittings, upper skin of the outboard and center sections, and rear spar webs in Zone B. The NPRM also proposed to require an inspection to determine whether fasteners are magnetic in Zone C, repetitive ultrasonic inspections for cracking and fractures of affected fasteners, and related investigative and corrective actions if necessary. The NPRM also added an optional modification, which would terminate certain repetitive inspections, provided post-modification inspections and corrective action are done if necessary. We are issuing this AD to detect and correct this cracking, which could lead to reduced structural capability of the outboard and center sections of the horizontal stabilizer and could result in loss of control of the airplane.

Comments

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

Request To Clarify Inspections

Atlas Airlines, United Airlines, and The Boeing Company requested that we clarify the inspection required by the proposed AD. Atlas Airlines stated that the ''Proposed AD Requirements'' paragraph of the NPRM states that the proposed AD would retain all the requirements of AD 2006–10–16. Atlas Airlines also stated that paragraph (f) of AD 2006–10–16 is not included in the proposed AD and noted that paragraph (g)(3) of the proposed AD identifies only Groups 7 through 9 as the applicable groups for the Zone A inspections. Atlas Airlines asked for clarification of the Zone A inspections.

Boeing noted that AD 2006–10–16 includes Zone C inspections as specified in Part 5 of Boeing Service Bulletin 747–55A2050, Revision 1, dated May 1, 2003, and included Zone A inspections for Groups 1 through 6. Boeing noted that these inspections have not been removed by Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015. Boeing also requested that we revise the proposed AD to address the Zone C inspections in Part 5 of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, and the Zone A inspections for Groups 1 through 6.

United Airlines disagreed with not restating the requirements of AD 2006–10–16. United Airlines stated that operators might miss that Zone A inspections and Zone C, Part 5, inspections required by AD 2006–10–16 are intended to be mandated. United Airlines noted that although the preamble of the NPRM stated that all inspections of AD 2006–10–16 are retained, paragraph (g) of the proposed AD only specifies new requirements and does not include certain Zone A inspections and Zone C, Part 5, inspections.

We agree that clarification is necessary. As stated in the preamble to the NPRM, we intended to retain all requirements of AD 2006–10–16. However, the actions specified in the proposed AD do not include the inspections referred to by the commenters. We have determined that instead of including those actions in this final rule, we will issue this action as a stand-alone AD. Thus, AD 2006–10–16 is not superseded, making it clear that all actions in AD 2006–10–16 continue to be required. In addition, we have revised this AD to specify when accomplishing certain actions in this AD terminates actions specified in AD 2006–10–16. We have made the following changes:

- Revised paragraph (g)(1) of this AD to specify that accomplishing a Zone B inspection required by paragraph (g)(1) of this AD terminates the inspections required by paragraph (g) of AD 2006–10–16 for the inspected area only.
- Revised paragraph (g)(2) of this AD to specify that accomplishing a Zone B inspection required by paragraph (g)(2) of this AD terminates the inspections required by paragraph (i) of AD 2006–10–16 for the inspected area only.
- Revised paragraph (g)(3) of this AD to specify that accomplishing Zone A and Zone B inspections required by

paragraph (g)(3) of this AD terminates the inspections required by paragraphs (f), (i), and (l) of AD 2006–10–16 for the inspected area only.

• Added paragraph (i)(1)(iii) to this AD to clarify that accomplishing the actions specified in paragraph (i)(1) of this AD terminates inspections required by paragraph (g) of AD 2006–10–16 for Zone B, as specified in Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, for the modified area only.

• Added paragraph (i)(1)(iv) to this AD to clarify that accomplishing the actions specified in paragraph (i) of this AD terminates inspections required by paragraph (k) of AD 2006–10–16 for Zone C, as specified in Part 5 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, for the modified area only.

• Added paragraph (i)(2)(ii) of this AD to clarify that accomplishing the actions specified in paragraph (i)(2) of this AD terminates the repetitive inspections required by paragraph (k) of AD 2006–10–16 for Zone C, as specified in Part 5 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, for the inspected area only.

• Added paragraph (i)(3)(ii) of this AD to clarify that accomplishing the actions specified in paragraph (i)(3) of this AD terminates the repetitive inspections required by paragraph (i) of AD 2006–10–16 for Zone B, as specified in Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, for the modified area only.

Request To Update Terminating Action Language for Zone C Inspections

Boeing requested that we revise paragraph (i)(2) of the proposed AD to clarify which Zone C inspections are terminated. Boeing noted that paragraph (i)(2) of the proposed AD specifies that the actions terminate Zone C inspections specified in Part 6 of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, and noted that Zone C inspections in Part 5 of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, are also terminated.

We agree to clarify the terminating action for the Zone C inspections, and have revised paragraph (i)(2) of this AD accordingly.

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 change described previously and minor editorial changes. We have determined that these minor changes:

• Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM.

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 Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015. The service information describes procedures for accomplishing Zone A, Zone B, and Zone C inspections for cracking of the upper skin and upper rear spar chord of the outboard and center sections of the horizontal stabilizer, and related investigative and corrective actions if necessary. The service information also describes procedures for a magnetic inspection to determine the type of fasteners, ultrasonic inspections for cracking and fractures of affected fasteners, and related investigative and corrective actions if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 116 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS—REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Zone A Inspections (required by AD 2006–10–16).	8 work-hours × $85 per hour = $680	$0	$680	Up to $78,880.
Zone B Open-hole nondestructive testing (NDT) Inspection (required by AD 2006–10–16 for Groups 3, 4, and 5 airplanes; and for Groups 1, 2, and 3 airplanes, if done).	30 work-hours × $85 per hour = $2,550	0	2,550	Up to $295,800.
Zone C Maraging or H–11 Steel Fastener Inspection (required by AD 2006–10–16 for Groups 1, 2, and 3 airplanes).	8 work-hours × $85 per hour = $680	0	680	Up to $78,880.
New Zone B Inspections	248 work-hours × $85 per hour = $21,080.	0	21,080	$2,445,280.
New Zone C Inspection	26 work-hours × $85 per hour = $2,210	0	2,210	$256,360.

ESTIMATED COSTS—OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product
Open-hole NDT Inspections (high frequency eddy current inspections).	Up to 298 work-hours × $85 per hour = up to $25,330.	$0	Up to $25,330.
Zone B Modification	Up to 313 work-hours × $85 per hour = up to $26,605.	Up to $3,486	Up to $30,091.
Post-Modification Inspections	Up to 298 work-hours × $85 per hour = up to $25,330.	$0	Up to $25,330.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–25–05 The Boeing Company: Amendment 39–18731; Docket No. FAA–2015–5816; Directorate Identifier 2015–NM–029–AD.

(a) Effective Date

This AD is effective January 25, 2017.

(b) Affected ADs

This AD affects AD 2006–10–16, Amendment 39–14600 (71 FR 28570, May 17, 2006) (''AD 2006–10–16'').

(c) Applicability

This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by reports of cracking found in the splice plates, hinge fittings, terminal fittings, the upper skin of the outboard and center sections, upper chord, and rear spar webs before reaching the inspection interval specified in AD 2006–10–16. Cracked and fractured Maraging steel fasteners were also found. We are issuing this AD to detect and correct this cracking, which could lead to reduced structural capability of the outboard and center sections of the horizontal stabilizer and could result in loss of control of the airplane.

(f) Compliance

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

(g) Repetitive Inspections/Investigative and Corrective Actions

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, except as required by paragraphs (h)(1) and (h)(2) of this AD: Do the applicable actions specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, and all applicable related investigative and corrective actions, in accordance with the applicable part of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, except as required by paragraph (h)(3) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the applicable inspections specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015.

(1) For Group 1 through 3 airplanes identified in Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015: Do non-destructive test (NDT) inspections (ultrasonic, high frequency eddy current, and low frequency eddy current inspections) or open-hole NDT inspections (high frequency eddy current inspections) of Zone B for cracking, in accordance with Part 3 or Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, as applicable. Accomplishing a Zone B inspection required by this paragraph terminates the inspections required by paragraph (g) of AD 2006–10–16 for the inspected area only.

(2) For Group 4 through 6 airplanes identified in Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015: Do open-hole NDT inspections (high frequency eddy current inspections) of Zone B for cracking, in accordance with Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015. Accomplishing a Zone B inspection required by this paragraph terminates the inspections required by paragraph (i) of AD 2006–10–16 for the inspected area only.

(3) For Group 7 through 9 airplanes identified in Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015: Do inspections of Zone A (detailed or high frequency eddy current inspections) and Zone B (open-hole high frequency eddy current inspections) for cracking, in accordance with Part 1, Part 2, or Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, as applicable. Accomplishing Zone A and Zone B inspections required by this paragraph terminates the inspections required by paragraphs (f), (i), and (l) of AD 2006–10–16 for the inspected area only.

(4) For Group 1 through 3 airplanes identified in Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015: Do an inspection of Zone C Maraging or H–11 steel fasteners to determine whether fasteners are magnetic, in accordance with Part 6 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015.

(h) Exceptions to Service Bulletin Specifications

(1) Where Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, specifies a compliance time ''after the Revision 2 date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) The Condition column of Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, refers to airplanes with certain total flight cycles and total flight hours. This AD, however, applies to the

airplanes with the specified total flight cycles and total flight hours as of the effective date of this AD.

(3) Where Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, specifies to contact Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(i) Optional Terminating Action

(1) For Group 1 through 3 airplanes identified in Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015: Accomplishing the Zone B modification, including all applicable related investigative and corrective actions, specified in Part 7 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, except as required by paragraph (h)(3) of this AD, terminates the repetitive inspections specified in paragraphs (i)(1)(i) through (i)(1)(iv) of this AD for the modified area only.

(i) Inspections required by paragraph (g)(1) of this AD for Zone B, as specified in Part 3 and Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015.

(ii) Inspections required by paragraph (g)(4) of this AD for Zone C, as specified in Part 6 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015.

(iii) Inspections required by paragraph (g) of AD 2006–10–16 for Zone B, as specified in Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015.

(iv) Inspections required by paragraph (k) of AD 2006–10–16 for Zone C, as specified in Part 5 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015.

(2) For Group 1 through 3 airplanes identified in Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015: Accomplishing the Zone B open-hole NDT inspection, repairing any cracking as applicable, and replacing fasteners as specified in Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, terminates the actions specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD for the inspected area only.

(i) The inspections required by paragraph (g)(4) of this AD for Zone C, as specified in Part 6 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015.

(ii) The repetitive inspections required by paragraph (k) of AD 2006–10–16 for Zone C, as specified in Part 5 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015.

(3) For Group 4 through 9 airplanes identified in Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015: Accomplishing the Zone B modification, including all applicable related investigative and corrective actions, specified in Part 7 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, except as required by paragraph (h)(3) of this AD, terminates the actions specified in paragraphs (i)(3)(i) and (i)(3)(ii) of this AD for the modified area only.

(i) The repetitive inspections required by paragraph (g)(2) or (g)(3) of this AD, as applicable, only for Zone B, as specified in Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015.

(ii) The repetitive inspections required by paragraph (i) of AD 2006–10–16 for Zone B, as specified in Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015.

(j) Repetitive Post-Modification Inspections and Corrective Actions

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015: Do the applicable inspections specified in paragraphs (j)(1) and (j)(2) of this AD, and all applicable corrective actions, in accordance with Part 8 of the Accomplishment Instructions of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, except as required by paragraph (h)(3) of this AD. Do all applicable corrective actions before further flight. Repeat the applicable inspections at the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015.

(1) For Group 1 through 3 airplanes identified in Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, on which the Zone B modification specified in paragraph (i)(1) of this AD is done: Do non-destructive test (NDT) inspections (ultrasonic, high frequency eddy current, and low frequency eddy current inspections) or open-hole NDT inspections (high frequency eddy current inspections) of Zone B for cracking.

(2) For Group 4 through 9 airplanes identified in Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, on which the Zone B modification specified in paragraph (i)(3) of this AD is done: Do open-hole NDT inspections (high frequency eddy current inspections) of Zone B for cracking.

(k) Parts Installation Prohibition

As of the effective date of this AD, no person may install any Maraging or H–11 steel fasteners in the locations specified in this AD. Where Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015, specifies to install H–11 bolts (kept fasteners), this AD requires installation of Inconel bolts.

(l) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved for AD 2006–10–16, are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD, except for approved AMOCs that allow installation of Maraging or H–11 steel fasteners.

(m) Related Information

For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *nathan.p.weigand@faa.gov.*

(n) Material Incorporated by Reference

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

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

(i) Boeing Service Bulletin 747–55A2050, Revision 2, dated January 23, 2015.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on November 25, 2016.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–29307 Filed 12–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8845; Directorate Identifier 2016–NM–094–AD; Amendment 39–18732; AD 2016–25–06]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes. This AD was prompted by a report of fatigue cracking in a rear spar lower cap of the horizontal stabilizer. This AD requires repetitive inspections for cracking of the rear spar lower caps of the horizontal stabilizer, post-modification and post-repair inspections, and corrective actions if necessary. This AD also provides an optional terminating fatigue life enhancement modification. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 25, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 25, 2017.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone: 562–797–1717; Internet: *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8845.

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–2016–8845 or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Haytham Alaidy, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5224; fax: 562–627–5210; email: *haytham.alaidy@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 The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes. The NPRM published in the **Federal Register** on August 22, 2016 (81 FR 56540) (''the NPRM''). The NPRM was prompted by a report of fatigue cracking in a rear spar lower cap of the horizontal stabilizer. The NPRM proposed to require repetitive inspections for cracking of the rear spar lower caps of the horizontal stabilizer, post-modification and post-repair inspections, and corrective actions if necessary. The proposed AD also included an optional terminating fatigue life enhancement modification. We are issuing this AD to detect and correct fatigue cracking in the rear spar lower caps of the horizontal stabilizer, which, paired with cracking in adjacent areas, could adversely affect the structural integrity of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. Boeing supported the NPRM.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin MD80–55A072, dated April 8, 2016. The service information describes procedures for doing inspections for cracking of the rear spar lower caps of the horizontal stabilizer, post-modification and post-repair inspections, and corrective actions. 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 395 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	3 work-hours × $85 per hour = $255 per inspection cycle	$0	$255 per inspection cycle	$100,725 per inspection cycle.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product
Modification	59 work-hours × $85 per hour = $5,015 per stabilizer	$1,267	$6,282 per stabilizer.

We estimate the following costs to do any necessary replacement that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	368 work-hours × $85 per hour = $31,280 per stabilizer	$31,408	$62,688 per stabilizer.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions that require repair using a method specified in paragraph (k) of this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2016–25–06 The Boeing Company: Amendment 39–18732; Docket No. FAA–2016–8845; Directorate Identifier 2016–NM–094–AD.

(a) Effective Date

This AD is effective January 25, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by a report of fatigue cracking in a Model MD–88 rear spar lower cap of the horizontal stabilizer. We are issuing this AD to detect and correct fatigue cracking in the rear spar lower caps of the horizontal stabilizer, which, paired with cracking in adjacent areas, could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Repetitive Inspections and Corrective Actions

Except as specified in paragraph (i)(1) of this AD, at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD80–55A072, dated April 8, 2016: Do an open hole high frequency eddy current inspection (HFEC) or surface HFEC inspection for cracking of the rear spar lower caps of the horizontal stabilizer, and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A072, dated April 8, 2016, except as specified in paragraph (i)(2) of this AD. Do all applicable corrective actions before further flight. Repeat the inspection thereafter at the applicable interval specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD80–55A072, dated April 8, 2016, until accomplishment of the actions provided by paragraph (h) of this AD.

(h) Optional Terminating Action

Accomplishment of the fatigue life enhancement modification in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A072, dated April 8, 2016, terminates the repetitive inspections required by paragraph (g) of this AD.

(i) Service Information Exceptions

(1) Where paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD80–55A072, dated April 8, 2016, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) If any cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin MD80–55A072, dated April 8, 2016, specifies to contact Boeing for appropriate action: Before further flight,

repair the cracking using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(j) Post-Modification and Post-Repair Actions

For airplanes on which any modification or repair specified in (g) or (h) of this AD has been done: At the applicable time and intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD80–55A072, dated April 8, 2016, do all applicable post-modification and post-repair inspections and all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–55A072, dated April 8, 2016; except as specified in paragraph (i)(2) of this AD. All applicable corrective actions must be done before further flight.

(k) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) Except as required by paragraph (i)(2) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(4)(i) and (k)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or sub-step is labeled ''RC Exempt,'' then the RC requirement is removed from that step or sub-step. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(l) Related Information

For more information about this AD, contact Haytham Alaidy, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5224; fax: 562–627–5210; email: *haytham.alaidy@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin MD80–55A072, dated April 8, 2016.

(ii) Reserved.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone: 562–797–1717; Internet: *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on November 25, 2016.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–29306 Filed 12–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8847; Directorate Identifier 2016–NM–020–AD; Amendment 39–18742; AD 2016–25–16]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This AD was prompted by reports of two cases where the main landing gear (MLG) failed to fully extend; it was determined that interference between the MLG door and the MLG fairing seal prevented the MLG door from opening fully. This AD requires repetitive inspections of the MLG fairing, fairing seal, door, and adjacent structures; and replacement or repair of affected parts and fasteners, or removal of the MLG door, if necessary. This AD also requires installation of a safety guide in the MLG fairing and an increase of the spacing between the MLG door and the fairing, which would terminate the repetitive inspections. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 25, 2017.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 25, 2017.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8847.

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–2016–8847; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, Aerospace Engineer,

Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7303; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply certain Bombardier, Inc. Model CL–600–2E25 (Regional Jet Series 1000) airplanes. The NPRM published in the **Federal Register** on August 26, 2016 (81 FR 58874) (''the NPRM'').

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2015–30, dated December 30, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

> Two cases of main landing gear (MLG) failure to fully extend have been reported on model CL–600–2C10/–2D15/–2D24 aeroplanes. Investigation determined that interference between the MLG door and the MLG fairing seal prevented the MLG door from opening.
>
> Although model CL–600–2E25 aeroplanes feature new MLG door design, similar interference between the MLG door and the MLG fairing seal could exist on aeroplanes listed in the Applicability section of this [Canadian] AD. An MLG failing to extend may result in an unsafe asymmetric landing configuration.
>
> This [Canadian] AD mandates the repetitive inspection and rectification [which could include replacement or repair of affected parts and fasteners, or removal of the door, if necessary], as required, of the MLG fairing and seal, MLG door, and adjacent structures, until the mandatory terminating action is completed.
>
> The terminating action includes installation of a safety guide in the MLG fairing and an increase of the spacing between the MLG door and the fairing, which would terminate the repetitive inspections. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8847.

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.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM 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 Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013. The service information describes procedures for detailed inspections of the MLG fairing, fairing seal, door, and adjacent structures; replacement or repair of affected parts and fasteners and removal of the MLG door.

We also reviewed Bombardier Service Bulletin 670BA–32–049, dated May 26, 2015. The service information describes procedures for installation of a safety guide in the MLG fairing and an increase of the spacing between the MLG door and the fairing.

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 40 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and Installation.	50 work-hours × $85 per hour = $4,250	$0	$4,250	$170,000

We have received no definitive data on the costs for the on-condition repairs that will be required based on the results of the inspection.

We estimate the following costs to do any necessary replacements/removals that will be required based on the results of the required inspection. We have no way of determining the number of aircraft that might need these replacements/removals:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of damaged fairing seal.	6 work-hours × $85 per hour = $510 per seal replacement	$921 per seal	$1,431 per seal replacement.
Removal of MLG door	3 work-hours × $85 per hour = $255 per removal of MLG door	0	255 per removal of MLG door.

OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product
Installation of MLG door	13 work-hours × $85 per hour = $1,105	$0	$1,105

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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):

2016–25–16 Bombardier, Inc.: Amendment 39–18742; Docket No. FAA–2016–8847; Directorate Identifier 2016–NM–020–AD.

(a) Effective Date

This AD is effective January 25, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2E25 (Regional Jet Series 1000) airplanes, certificated in any category, serial numbers 19002 through 19041 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by reports of two cases where the main landing gear (MLG) failed to fully extend; it was determined that interference between the MLG door and the MLG fairing seal prevented the MLG door from opening fully. We are issuing this AD to detect and correct interference between the MLG door and the MLG fairing seal. Such interference could result in a MLG failing to fully extend, which could cause an unsafe asymmetric landing configuration.

(f) Compliance

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

(g) Inspection of MLG Fairing, Fairing Seal, Door, and Adjacent Structures

Within 660 flight hours after the effective date of this AD, conduct a detailed inspection for damage to the MLG fairing, fairing seal, door, and adjacent structures, and for missing parts and fasteners, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013. Repeat the inspection thereafter at intervals not to exceed 660 flight hours until the installation required by paragraph (m) of this AD is done.

(h) Replacement of MLG Fairing Seal or Door Removal

If damage to the MLG fairing seal is found during any inspection required by paragraph (g) of this AD, before further flight, replace the seal, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013; or remove the MLG door, in accordance with Part C of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013.

(i) Repair of the MLG Door or MLG Door Removal

If damage to the MLG door is found during any inspection required by paragraph (g) of this AD, before further flight, repair using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO); or remove the MLG door, in accordance with Part C of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013.

(j) Repair of the MLG Fairing

If damage to the MLG fairing is found during any inspection required by paragraph (g) of this AD, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(k) Repair of the Adjacent Structure and Other Corrective Actions

If damage to the adjacent structure is found or if any part or fastener is found missing or damaged during any inspection required by paragraph (g) of this AD, before further flight, do the applicable actions specified in paragraphs (k)(1) and (k)(2) of this AD.

(1) Replace missing or damaged parts and fasteners, in accordance with Part A of the Accomplishment Instruction of Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013, except where Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013, specifies to contact Bombardier, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(2) Repair damaged structure using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(l) Reinstallation of the MLG Door

For any MLG door that has been removed as specified in paragraph (h) or (i) of this AD: Reinstallation of the door, if accomplished, must be done in accordance with Part D of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013. Before further flight after any reinstallation, the inspection required by paragraph (g) of this AD must be done and the inspection must be repeated thereafter at the times specified in paragraph (g) of this AD until the installation required by paragraph (m) of this AD is done.

(m) Installation of a Safety Guide on the MLG Fairing and Increase of Spacing Between MLG Door and Fairing

Except as required by paragraph (n) of this AD: Within 6,600 flight hours or 36 months, whichever occurs first, after the effective date of this AD, install a safety guide on the MLG fairing and increase the spacing between the MLG door and the fairing, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–049, dated May 26, 2015. Accomplishment of these actions terminates the requirements of paragraphs (g) and (l) of this AD.

(n) Provisions for Removed/Reinstalled Doors

If the MLG door has been removed in accordance with Part C of the Accomplishment Instructions of Bombardier

Service Bulletin 670BA–32–041, dated March 28, 2013, the installation required by paragraph (m) of this AD may be delayed until the MLG door is reinstalled in accordance with paragraph (l) of this AD. When the removed MLG door is reinstalled, the installation required by paragraph (m) of this AD must be done at the time specified in paragraph (m) of this AD or before further flight after reinstallation of the removed MLG door, whichever occurs later.

(o) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(p) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2015–30, dated December 30, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8847.

(q) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013.

(ii) Bombardier Service Bulletin 670BA–32–049, dated May 26, 2015.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.govfxsp0;/federal-registerfxsp0;/cfr/ibr-locations.htmlfxsp0;.*

Issued in Renton, Washington, on December 1, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–29513 Filed 12–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–446]

Schedules of Controlled Substances: Temporary Placement of Six Synthetic Cannabinoids (5F–ADB, 5F–AMB, 5F–APINACA, ADB–FUBINACA, MDMB–CHMICA and MDMB–FUBINACA) Into Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this notice of intent to temporarily schedule six synthetic cannabinoids: methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate [5F-ADB; 5F-MDMB-PINACA]; methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate [5F-AMB]; *N*-(adamantan-1-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide [5F-APINACA, 5F-AKB48]; *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide [ADB-FUBINACA]; methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate [MDMB-CHMICA, MMB-CHMINACA] and methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate [MDMB-FUBINACA], into schedule I pursuant to the temporary scheduling provisions of the Controlled Substances Act (CSA). This action is based on a finding by the Administrator that the placement of these synthetic cannabinoids into schedule I of the Controlled Substances Act is necessary to avoid an imminent hazard to the public safety. Any final order will impose the administrative, civil, and criminal sanctions and regulatory controls applicable to schedule I substances under the Controlled Substances Act on the manufacture, distribution, possession, importation, exportation of, and research and conduct with, instructional activities of these synthetic cannabinoids.

DATES: December 21, 2016.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION: Any final order will be published in the **Federal Register** and may not be effective prior to January 20, 2017.

Legal Authority

The Drug Enforcement Administration (DEA) implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801–971. Titles II and III are referred to as the ''Controlled Substances Act'' and the ''Controlled Substances Import and Export Act,'' respectively, and are collectively referred to as the ''Controlled Substances Act'' or the ''CSA'' for the purpose of this action. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Under the CSA, every controlled substance is classified into one of five schedules based upon its potential for abuse, its currently accepted medical use in treatment in the United States, and the degree of dependence the drug or other substance may cause. 21 U.S.C. 812. The initial schedules of controlled substances established by Congress are found at 21 U.S.C. 812(c), and the current list of all scheduled substances is published at 21 CFR part 1308.

Section 201 of the CSA, 21 U.S.C. 811, provides the Attorney General with the authority to temporarily place a substance into schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b) if she

finds that such action is necessary to avoid an imminent hazard to the public safety. 21 U.S.C. 811(h)(1). In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1), the Attorney General may extend the temporary scheduling for up to one year. 21 U.S.C. 811(h)(2).

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under section 202 of the CSA, 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 355. 21 U.S.C. 811(h)(1); 21 CFR part 1308. The Attorney General has delegated scheduling authority under 21 U.S.C. 811 to the Administrator of the DEA. 28 CFR 0.100.

Background

Section 201(h)(4) of the CSA 21 U.S.C. 811(h)(4), requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of any intention to temporarily place a substance into schedule I of the CSA.[1] The Acting Administrator transmitted notice of his intent to place 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA in schedule I on a temporary basis to the Assistant Secretary by letter dated April 22, 2016. The Assistant Secretary responded to this notice by letter dated May 2, 2016, and advised that based on a review by the Food and Drug Administration (FDA), there were no investigational new drug applications or approved new drug applications for 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA or MDMB-FUBINACA. The Assistant Secretary also stated that the HHS had no objection to the temporary placement of 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA or MDMB-FUBINACA into schedule I of the CSA. 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA or MDMB-FUBINACA are not currently listed in any schedule under the CSA.

To find that placing a substance temporarily into schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator is required to consider three of the eight factors set forth in 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. 21 U.S.C. 811(h)(3). Consideration of these factors includes actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution. 21 U.S.C. 811(h)(3).

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I. 21 U.S.C. 811(h)(1). Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. 21 U.S.C. 812(b)(1).

5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA

Available data and information for 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA indicate that these synthetic cannabinoids (SCs) have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision.

Synthetic Cannabinoids

SCs are substances synthesized in laboratories that mimic the biological effects of delta-9-tetrahydrocannabinol (THC), the main psychoactive ingredient in marijuana. It is believed that SCs were first introduced on the designer drug market in several European countries as ''herbal incense'' before the initial encounter in the United States by U.S. Customs and Border Protection (CBP) in November 2008. From 2009 to the present, misuse and abuse of SCs has increased in the United States with law enforcement encounters describing SCs applied onto plant material and in designer drug products intended for human consumption. It has been demonstrated that the substances and the associated designer drug products are abused for their psychoactive properties. With many generations of SCs having been encountered since 2009, 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA are some of the latest, and the abuse of these substances is negatively impacting communities.

As observed by the DEA and CBP, SCs originate from foreign sources, such as China. Bulk powder substances are smuggled via common carrier into the United States and find their way to clandestine designer drug product manufacturing operations located in residential neighborhoods, garages, warehouses, and other similar destinations throughout the country. According to online discussion boards and law enforcement encounters, applying by spraying or mixing the SCs with plant material provides a vehicle for the most common route of administration—smoking (using a pipe, a water pipe, or rolling the drug-laced plant material in cigarette papers).

5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA, and MDMB-FUBINACA have no accepted medical use in the United States. Use of these specific SCs has been reported to result in adverse effects in humans including deaths (see 3-Factor document in ''Supporting and Related Material'' section). Use of other SCs has resulted in signs of addiction and withdrawal, and based on the similar pharmacological profile of these six substances, it is believed that there will be similar observed adverse effects.

5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA are SCs that have pharmacological effects similar to the schedule I hallucinogen delta-Δ-tetrahydrocannabinol (THC) and temporarily and permanently controlled schedule I synthetic cannabinoid substances. In addition, the misuse of 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and/or MDMB-FUBINACA have been associated with either overdoses requiring emergency medical intervention or death (see factor 6). With no approved medical use and limited safety or toxicological information, 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA have emerged on the designer drug market, and the abuse of these substances for their psychoactive properties is concerning. The DEA's analysis is available in its entirety under ''Supporting and Related Material'' of the public docket for this action at *www.regulations.gov* under docket number DEA–443.

Factor 4. History and Current Pattern of Abuse

Synthetic cannabinoids have been developed over the last 30 years as tools for investigating the endocannabinoid system (*e.g.* determining CB1 and CB2 receptor activity). The first encounter of SCs within the United States occurred in November 2008 by CBP. Since then the popularity of SCs and their

[1] As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the Department of Health and Human Service (HHS) in carrying out the Secretary's scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, Mar. 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

associated products has increased steadily as evidenced by law enforcement seizures, public health information, and media reports. 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA are SCs that have been recently encountered (see ''Supporting and Related Material,'' Factor 5). Multiple overdoses involving emergency medical intervention or deaths have been associated with 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA.

Research and clinical reports have demonstrated that SCs are applied onto plant material so that the material may be smoked as users attempt to obtain a euphoric and/or psychoactive ''high,'' believed to be similar to marijuana. Data gathered from published studies, supplemented by discussions on Internet discussion Web sites, demonstrate that these products are being abused mainly by smoking for their psychoactive properties. The adulterated products are marketed as ''legal'' alternatives to marijuana. In recent overdoses, 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA have been shown to be applied onto plant material, similar to the SCs that have been previously available.

Law enforcement personnel have encountered various application methods including buckets or cement mixers in which plant material and one or more SCs (including 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and/or MDMB-FUBINACA) are mixed together, as well as large areas where the plant material is spread out so that a dissolved SC mixture can be applied directly. Once mixed, the SC plant material is then allowed to dry before manufacturers package the product for distribution, ignoring any control mechanisms to prevent contamination or to ensure a consistent, uniform concentration of the substance in each package. Adverse health consequences may also occur from directly ingesting the substance(s) during the manufacturing process. 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA, similar to other SCs, have been encountered in form of dried leaves or herbal blends.

The designer drug products laced with SCs, including 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA, are often sold under the guise of ''herbal incense'' or ''potpourri,'' use various product names, and are routinely labeled ''not for human consumption.'' Additionally, these products are marketed as a ''legal high'' or ''legal alternative to marijuana'' and are readily available over the Internet, in head shops, or sold in convenience stores. There is an incorrect assumption that these products are safe, that they are a synthetic form of marijuana, and that labeling these products as ''not for human consumption'' is a legal defense to criminal prosecution.

A major concern, as reiterated by public health officials and medical professionals, is the targeting and direct marketing of SCs and SC-containing products to adolescents and youth. This is supported by law enforcement encounters and reports from emergency departments; however, all age groups have been reported by media as abusing these substances and related products. Individuals, including minors, are purchasing SCs from Internet Web sites, gas stations, convenience stores, and head shops.

Factor 5. Scope, Duration and Significance of Abuse

SCs, including 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA, continue to be encountered on the illicit market regardless of scheduling actions that attempt to safeguard the public from the adverse effects and safety issues associated with these substances. Numerous substances are encountered each month, differing only by small modifications intended to avoid prosecution while maintaining the pharmacological effects. Law enforcement and health care professionals continue to report abuse of these substances and their associated products.

As described by the National Institute on Drug Abuse (NIDA), many substances being encountered in the illicit market, specifically SCs, have been available for years but have reentered the marketplace due to a renewed popularity.

The threat of serious injury to the individual following the ingestion of 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA and other SCs persists. Numerous calls have been received by poison centers regarding the abuse of products potentially laced with SCs that have resulted in visits to emergency departments. Law enforcement continues to encounter novel SCs on the illicit market, including 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA (see factor 5 in ''Supporting and Related Material'').

The following information details information obtained through NFLIS [2] (queried on November 7, 2016), including dates of first encounter, exhibits/reports, and locations.

5F-ADB: NFLIS—2,311 reports, first encountered in September 2014, locations include: Arizona, Arkansas, California, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Missouri, New Jersey, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, Virginia, and Wisconsin.

5F-AMB: NFLIS—3,349 reports, first encountered in January 2014, locations include: Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin, and Wyoming.

5F-APINACA: NFLIS—1,936 reports, first encountered in August 2012, locations include: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, North Dakota, Ohio, Oklahoma, Pennsylvania, Puerto Rico, South Carolina, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

ADB-FUBINACA: NFLIS—942 reports, first encountered in March 2014, locations include: Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Texas, Utah, Virginia, and Wyoming.

MDMB-CHMICA: NFLIS—227 reports, first encountered in March 2015, locations include: Arkansas, Georgia, Indiana, Kentucky, Louisiana, Nevada, Ohio, Oklahoma, South Carolina, and Texas.

MDMB-FUBINACA: NFLIS—507 reports, first encountered in July 2015, locations include: Arkansas, California, Colorado, Connecticut, Georgia, Idaho,

[2] The National Forensic Laboratory Information System (NFLIS) is a national drug forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by state and local forensic laboratories in the United States.

Indiana, Kansas, Kentucky, Louisiana, Missouri, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Texas, Virginia, Wisconsin, and West Virginia.

Factor 6. What, if Any, Risk There Is to the Public Health

5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA have all been identified in overdose and/or cases involving death attributed to their abuse. Adverse health effects reported from these incidents involving 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and/or MDMB-FUBINACA have included: Nausea, persistent vomiting, agitation, altered mental status, seizures, convulsions, loss of consciousness and/or cardio toxicity. Large clusters of overdoses requiring medical care have been reported involving 5F-AMB, MDMB-FUBINACA, MDMB-CHMICA and 5F-ADB. Reported deaths involving these SCs have included 5F-ADB (8); 5F-AMB (6); 5F-APINACA (1); ADB-FUBINACA (2); MDMB-CHMICA (4), European Monitoring Centre for Drugs and Drug Addiction has reported an additional 12 deaths involving MDMB-CHMICA; and MDMB-FUBINACA (1) (see factor 6 in ''Supporting and Related Material'').

Finding of Necessity of Schedule I Placement to Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information summarized above, the continued uncontrolled manufacture, distribution, importation, exportation, conduct of research and chemical analysis, possession, and abuse of 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA pose an imminent hazard to the public safety. The DEA is not aware of any currently accepted medical uses for these substances in the United States. A substance meeting the statutory requirements for temporary scheduling, 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA indicate that these SCs have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by section 201(h)(4) of the CSA, 21 U.S.C. 811(h)(4), the Administrator, through a letter dated April 22, 2016, notified the Assistant Secretary of the DEA's intention to temporarily place these six substances in schedule I.

Conclusion

This notice of intent initiates a temporary scheduling action and provides the 30-day notice pursuant to section 201(h) of the CSA, 21 U.S.C. 811(h). In accordance with the provisions of section 201(h) of the CSA, 21 U.S.C. 811(h), the Administrator considered available data and information, herein sets forth the grounds for his determination that it is necessary to temporarily schedule methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate [5F-ADB; 5F-MDMB-PINACA]; methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate [5F-AMB]; *N*-(adamantan-1-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide [5F-APINACA, 5F-AKB48]; *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide [ADB-FUBINACA]; methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate [MDMB-CHMICA, MMB-CHMINACA] and methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate [MDMB-FUBINACA] in schedule I of the CSA, and finds that the placement of these substances into schedule I of the CSA on a temporary basis is necessary to avoid an imminent hazard to the public safety.

Because the Administrator hereby finds that it is necessary to temporarily place these SCs into schedule I to avoid an imminent hazard to the public safety, any subsequent final order temporarily scheduling these substances will be effective on the date of publication in the **Federal Register**, and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process. 21 U.S.C. 811(h)(1) and (2). It is the intention of the Administrator to issue such a final order as soon as possible after the expiration of 30 days from the date of publication of this notice. 5F-ADB, 5F-AMB, 5F-APINACA, ADB-FUBINACA, MDMB-CHMICA and MDMB-FUBINACA will then be subject to the regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, importation, exportation, research, conduct of instructional activities, and chemical analysis and possession of a schedule I controlled substance.

The CSA sets forth specific criteria for scheduling a drug or other substance. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done ''on the record after opportunity for a hearing'' conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

Regulatory Matters

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for an expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this notice of intent. In the alternative, even assuming that this notice of intent might be subject to section 553 of the APA, the Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Although the DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice and comment requirements of section 553 of the APA, the DEA notes

that in accordance with 21 U.S.C. 811(h)(4), the Administrator will take into consideration any comments submitted by the Assistant Secretary with regard to the proposed temporary scheduling order.

Further, the DEA believes that this temporary scheduling action is not a ''rule'' as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraphs (h)(23) through (28) to read as follows:

§ 1308.11 Schedule I

* * * * *

(h) * * *

(23) methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5F–ADB; 5F–MDMB–PINACA)	(7034)
(24) methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5F–AMB)	(7033)
(25) *N*-(adamantan-1-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5F–APINACA, 5F–AKB48)	(7049)
(26) *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: ADB–FUBINACA)	(7010)
(27) methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: MDMB–CHMICA, MMB–CHMINACA)	(7042)
(28) methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: MDMB–FUBINACA)	(7020)

Dated: December 13, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–30595 Filed 12–20–16; 8:45 am]

BILLING CODE 4410–09–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans to prescribe interest assumptions under the asset allocation regulation for valuation dates in the first quarter of 2017. The interest assumptions are used for valuing benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC. As discussed below, PBGC has published a separate final rule document dealing with interest assumptions under its regulation on Benefits Payable in Terminated Single-Employer Plans for January 2017.

DATES: Effective January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy (*Murphy.Deborah@PBGC.gov*), Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, 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 Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions—including interest assumptions—for valuing 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*).

The interest assumptions in Appendix B to Part 4044 are used to value benefits for allocation purposes under ERISA section 4044. Assumptions under the asset allocation regulation are updated quarterly and are intended to reflect current conditions in the financial and annuity markets. This final rule updates the asset allocation interest assumptions for the first quarter (January through March) of 2017.

The first quarter 2017 interest assumptions under the allocation regulation will be 1.87 percent for the first 20 years following the valuation date and 2.37 percent thereafter. In comparison with the interest assumptions in effect for the fourth quarter of 2016, these interest assumptions represent no change in the select period (the period during which the select rate (the initial rate) applies), a decrease of 0.11 percent in the select rate, and a decrease of 0.30 percent in the ultimate rate (the final rate).

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 valuation of benefits under plans with valuation dates during the first quarter of 2017, 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 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 2. In appendix B to part 4044, a new entry for January–March 2017, as set forth below, is added to the table.

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* *	*	*	*	*	*	*
January–March 2017	0.0187	1–20	0.0237	>20	N/A	N/A

Signed in Washington, DC.

Deborah Chase Murphy,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2016–30634 Filed 12–20–16; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS–SER–CAHA–22533; PPSECAHAS0, PPMPSPD1Z.YM0000]

RIN 1024–AE33

Special Regulations; Areas of the National Park System, Cape Hatteras National Seashore—Off-Road Vehicle Management

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) amends its special regulation for off-road vehicle (ORV) use at Cape Hatteras National Seashore, North Carolina, to revise the times that certain beaches open to ORV use in the morning, to extend the dates that certain seasonal ORV routes are open in the fall and spring, and to modify the size and location of certain vehicle-free areas. The NPS was required to consider these changes by section 3057 of the National Defense Authorization Act for Fiscal Year 2015. The NPS also amends this special regulation to allow the Superintendent to issue ORV permits for different lengths of time than are currently allowed, and to remove an ORV route designation on Ocracoke Island to allow vehicle access to a soundside area without the requirement of an ORV permit.

DATES: This rule is effective on January 20, 2017.

FOR FURTHER INFORMATION CONTACT: Superintendent, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, North Carolina 27954. Phone 252–475–9032.

SUPPLEMENTARY INFORMATION:

Background

Description of Cape Hatteras National Seashore

Situated along the Outer Banks of North Carolina, Cape Hatteras National Seashore (Seashore or park) was authorized by Congress in 1937 and established in 1953 as the nation's first national seashore. Consisting of more than thirty thousand acres distributed along approximately 67 miles of shoreline, the Seashore is part of a dynamic barrier island system.

The Seashore contains important wildlife habitat created by dynamic environmental processes. Several species listed under the Endangered Species Act, including the piping plover, rufa subspecies of the red knot, and five species of sea turtles, are found within the park. The Seashore also serves as a popular recreation destination where users participate in a variety of activities.

Authority and Jurisdiction To Promulgate Regulations

In the NPS Organic Act (54 U.S.C. 100101), Congress granted the NPS broad authority to regulate the use of areas under its jurisdiction. The Organic Act authorizes the Secretary of the Interior, acting through the NPS, to ''prescribe such regulations as the Secretary considers necessary or proper for the use and management of [National Park] System units.'' 54 U.S.C. 100751(a).

Off-Road Motor Vehicle Regulation

Executive Order 11644, Use of Off-Road Vehicles on the Public Lands, was issued in 1972 in response to the widespread and rapidly increasing off-road driving on public lands ''often for legitimate purposes but also in frequent conflict with wise land and resource management practices, environmental values, and other types of recreational activity.'' Executive Order 11644 was amended by Executive Order 11989 in 1977, and together they are jointly referred to in this rule as the ''E.O.'' The E.O. requires Federal agencies that allow motorized vehicle use in off-road areas to designate specific areas and routes on public lands where the use of motorized vehicles may be permitted and to minimize user conflicts and resource impacts.

The NPS regulation at 36 CFR 4.10(b) implements the E.O. and requires that routes and areas designated for ORV use be promulgated as special regulations and that the designation of routes and areas must comply with 36 CFR 1.5 and E.O. 11644. It also states that ORV routes and areas may be designated only in national recreation areas, national seashores, national lakeshores, and national preserves. This rule is consistent with these authorities and with Section 8.2.3.1 (Motorized Off-road Vehicle Use) of NPS Management Policies 2006, available at: *http://www.nps.gov/policy/mp/policies.html.*

Recent ORV Management at Cape Hatteras National Seashore

In 2010, the NPS completed the Off-Road Vehicle Management Plan and Environmental Impact Statement (ORV

FEIS) for ORV use at the Seashore to guide the management and use of ORVs at the Seashore. As a part of the selected alternative, certain elements of the ORV FEIS were implemented through rulemaking. The final rule for ORV management at the Seashore was published in the **Federal Register** on January 23, 2012 (77 FR 3123) (2012 Final Rule).

On December 19, 2014, the President signed the National Defense Authorization Act for Fiscal Year 2015 (2014 Act). Section 3057 of the 2014 Act requires the Secretary of the Interior to consider three specific changes to the 2012 Final Rule regarding:

- Morning opening times of beaches that are closed to ORV use at night;
- Extending the dates for seasonal ORV routes; and
- The size and location of vehicle-free areas (VFAs).

On February 17, 2016, the NPS published the Consideration of Modifications to the Final Rule for Off-Road Vehicle Management Environmental Assessment (EA). The EA evaluated:

- The times that beach routes open to ORV use in the mornings;
- Extending the dates that seasonal ORV routes are open in the fall and spring; and
- Modifying the size and location of VFAs.

The EA also considered:

- Issuing ORV permits for different lengths of time;
- Revising some ORV route designations; and
- Providing access improvements for soundside locations on Ocracoke Island.

The EA, which contains a full description of the purpose and need for taking action, scoping, the alternatives considered, maps and the environmental impacts associated with the project, may be viewed on the NPS planning Web site at *http://parkplanning.nps.gov/caha-orv-ea* under the ''Document List'' link. Public comments on the EA were accepted until March 18, 2016. The EA resulted in a Finding of No Significant Impact (FONSI) that was signed on December 19, 2016 and is available at *http://parkplanningfxsp0;.nps.gov/caha-orv-ea* under the ''Document List'' link.

Summary of Public Comments on the Proposed Rule

The NPS published a proposed rule on August 22, 2016 (81 FR 56550). The NPS accepted comments through the mail, hand delivery, and the Federal eRulemaking Portal at *http://www.regulations.gov.* Comments were accepted through October 21, 2016. After considering the public comments and after additional review, the NPS did not make any changes to the proposed rule. A summary of comments and NPS responses is provided below.

Beach Opening Times

1. Comment: Several commenters requested that all beaches or priority beaches at the Seashore be opened to ORV use at 6:00 a.m. or earlier when nighttime driving is restricted.

NPS Response: The rule states that ORV use is not allowed on designated routes in sea turtle nesting habitat before 6:00 a.m. between May 1 and September 14, and between September 15 and November 15 if sea turtles remain. This will ensure that there will be sufficient light for resource management staff to safely and properly complete their morning surveys for nesting activities. The actual opening times are not stated in the rule. They will be published by the NPS annually based on the civil twilight time at sunrise and sunset for each month that nighttime ORV restrictions are in place. Civil twilight is the period of time before sunrise and after sunset when the sun is less than 6 degrees below the horizon when there is enough visibility to conduct ordinary outdoor activities. From May through October these times range from 5:20 a.m. to 6:50 a.m. Allowing ORV access before 6:00 a.m. for the months when nighttime driving is restricted would not provide resource management staff enough light to complete their morning beach surveys properly.

2. Comment: One commenter was concerned that the rule does not identify criteria for setting the morning beach opening times and designating priority beaches that may open before 7:00 a.m. The commenter requested the NPS identify the priority beaches in the rule.

NPS Response: The location and times of priority beach openings are intentionally omitted from the rule to provide NPS management with the flexibility to adapt to changes in visitation patterns and workload associated with the demonstrated variability of wildlife nesting on beaches. The priority beaches are identified in the FONSI and will also be included in the Superintendent's Compendium and published annually in the park's ORV Brochure. After reviewing each season's visitation patterns, Seashore conditions, and wildlife nesting activity, the NPS will publish information about opening times for priority beaches.

3. Comment: Several commenters stated that having different opening times for different months and different beaches could confuse visitors.

NPS Response: The NPS understands this concern and intends to provide clear information and direction for all Seashore visitors. The NPS will clearly notify the public about opening times and locations by several methods. Priority beaches and opening times will be published at the beginning of each season in the Superintendent's Compendium, the ORV Brochure, and on the park Web site (*www.nps.gov/caha*). The Web site also provides a daily update on which ORV routes are open or closed due to wildlife nesting activities or Seashore conditions.

Dates for Use of Seasonal ORV Routes

4. Comment: Several commenters suggested a variety of dates when seasonal ORV routes around the villages and Ocracoke Campground should be opened for ORV use. Commenters also requested expanded use periods for seasonal ORV routes that are not in front of villages or the Ocracoke Campground.

NPS Response: Extending the seasonal ORV route periods for six weeks or more was considered and dismissed during the EA process due to the higher visitation rates and larger staff requirements that would be needed to manage active turtle and bird nests during those periods. Because of wildlife nesting activity in the spring and late summer, the NPS's emphasis on providing a diversity of visitor experiences, and the importance of managing the workload of NPS staff, the rule does not make any changes to the dates for seasonal ORV routes other than the routes in front of villages and the Ocracoke Campground.

5. Comment: One commenter requested that the NPS open ORV routes on the Friday before spring break week if that date falls before the opening date identified in the rule.

NPS Response: The NPS considered this request, but there is no standard school spring break vacation week and this period varies substantially throughout the country. Opening the Friday before spring break would increase management complexity and make it more difficult to notify the public about the opening dates for the ORV season.

Size and Location of Vehicle Free Areas (VFAs)

6. Comment: Commenters suggested a wide variety of modifications to the VFAs. Some commenters recommended prohibiting beach driving or increasing the number and size of VFAs. Other commenters sought substantial reductions of VFA mileage. Many

commenters suggested changes to VFAs at specific ramps and routes throughout the Seashore, especially in and around the Cape Point area. One commenter requested that no changes to the existing VFAs be made, noting these are nesting areas where seasonal ORV use would introduce additional harassment of wildlife, disruption of habitat, and visitor conflicts.

NPS Response: When considering the modifications to the VFAs, the NPS began with the existing VFAs as a baseline, considered each of the VFAs along the Seashore, and identified particular places where changes could be made while remaining consistent with management requirements at the Seashore. Although the rule does not establish any VFAs directly, the rule includes changes to designated ORV routes that result in corresponding changes to the size and location of VFAs at the Seashore. The rule changes certain ORV routes to allow greater access on each of the islands without substantially impacting the balance of visitor opportunities, the complexity of staff workload, public safety, or sensitive wildlife species. Protective wildlife buffers will be in place, regardless of route designation, to protect beach nesting species both within ORV routes and VFAs. The specific changes to VFAs resulting from the rule will not change the implementation and effectiveness of these buffers. The VFAs at the Seashore, as modified by the rule, continue to allow for large areas where pedestrians can utilize the beach without ORVs.

7. Comment: One commenter requested Ramp 2—which the NPS proposed to open to ORV use in the proposed rule—be used only seasonally, or that the NPS designate the first ¼ mile of the ORV route (south of Ramp 2) as a pass through only zone with no ORV parking allowed. The commenter suggested that these changes to the proposed rule would avoid visitor conflicts.

NPS Response: The realignment of Ramp 2 to the south, along with the construction of a pedestrian walkway (also accessible by people with disabilities) near the Coquina Beach bathhouse, should alleviate any potential safety issues associated with reopening Ramp 2 to ORV use. There are currently additional walking paths other than Ramp 2 that provide pedestrian access to Coquina Beach that will alleviate visitor conflicts. The NPS will post signs that direct pedestrians to those locations to avoid user conflicts on the realigned ramp. Following the opening of a realigned Ramp 2, the NPS will evaluate any visitor use conflicts and may implement an appropriately-sized no stopping zone if necessary.

Permit Durations

8. Comment: One commenter requested that the NPS specify the proposed changes to permit durations in the rule, rather than in the Superintendent's Compendium.

NPS Response: Given the highly dynamic nature of the Seashore and tourism in the area, the NPS believes that it is prudent to provide management flexibility to NPS staff regarding the length of permits as circumstances change over time.

Other Access Improvements

9. Comment: One commenter noted that redesignating Ramp 45 as a park road—a management action that was included in the EA—should have been stated in the proposed rule. The commenter raised concerns that designating an ORV route as a park road would set a precedent and could potential result in larger re-designations in the future.

NPS Response: Old Ramp 45 is an existing park road currently closed to vehicle traffic. The road continues to be maintained with culverts and a hard packed pervious surface. Unlike the designation of a route for ORV use, NPS regulations do not require a special regulation to reopen a park road to motor vehicle use. Reopening this road for vehicular use will not affect any other route or road within the Seashore.

The Final Rule

This rule implements the selected action in the FONSI and amends the special regulation for ORV use at the Seashore as it relates to:

- The morning opening times of beaches that are closed to ORV use at night;
- The dates that some seasonal ORV routes are open in the fall and spring;
- The size and location of VFAs;
- The duration of ORV permits; and
- Other access improvements.

Beach Opening Times

The rule states that ORV use is not allowed on designated routes in sea turtle nesting habitat (ocean intertidal zone, ocean backshore, dunes) before 6:00 a.m. between May 1 and September 14, and between September 15 and November 15 if sea turtles remain. Instead of establishing opening times for each ORV route in the rule, the NPS will publish the opening times for each route on an annual basis in the Superintendent's Compendium and on the park Web site (*www.nps.gov/caha*). This will give the Superintendent the flexibility to adjust opening times each year based on changing conditions at the Seashore and the ability of park staff to patrol and complete resource management inventories on beaches before they are opened to vehicle use. The NPS expects that most ORV routes will continue to open at 7:00 a.m. The NPS may open certain ''priority'' beach routes to ORV use before 7:00 a.m., but no earlier than 6:00 a.m. This will allow ORV users to access the more popular beaches earlier in the morning. NPS resource staff will patrol these ''priority'' beaches before opening so that park resources are protected even though earlier access will be allowed.

Dates for Use of Seasonal ORV Routes

The rule extends the dates for ORV use of seasonal designated routes in front of the villages of Rodanthe, Waves, Salvo, Avon, Frisco, and Hatteras and the Ocracoke Campground. These routes will open two weeks earlier in the fall and close two weeks later in the spring, making these seasonal routes open to ORV use from October 15 through April 14. These seasonal extensions are in areas and at times of the year which will not result in measurable impacts to sensitive wildlife, visitor experience, safety, or workload complexity for park staff.

Size and Location of VFAs

The changes in the rule to designated ORV routes will modify the size and location of VFAs and improve ORV access in some locations. This rule makes the following changes to the designated ORV routes at the Seashore. Ramps 2.5 and 59.5 will not be constructed and are therefore removed from the chart of designated ORV routes. Ramp 2 will be restored to ORV use, extending the existing ORV route approximately 0.5 miles to the north and providing ORV access to the route from either ramp 4 or ramp 2. Ramp 59 will continue to be open to ORV use, extending the existing year-round ORV route approximately 0.5 miles. The seasonal ORV route at ramp 34 will be extended approximately 1 mile to the north and the seasonal ORV route at ramp 23 will be extended approximately 1.5 miles to the south. These changes will slightly increase ORV access on each of the islands without measurably impacting visitor experience, safety, sensitive wildlife species, or the workload complexity for NPS staff.

Permit Durations

The existing regulations for the Seashore state that annual permits are valid for the calendar year for which they are issued, and that seven-day

permits are valid from the date of issue. This rule removes this provision and instead states that ORV permits are valid for the dates specified in the permit. The Superintendent will publish the standard duration of permits in the Compendium and on the park's Web site (*www.nps.gov/caha*). The standard duration of permits may be changed from time to time based upon circumstances at the Seashore and visitation patterns. To start, however, ORV permits will be valid for one year from the date of issuance instead of being valid for the calendar year of issuance, and the existing 7-day ORV permit will be replaced by a 10-day ORV permit. The 10-day ORV permit will allow many ORV users to access the beaches over two weekends, depending upon when they arrive at the Seashore.

The NPS intends to continue to recover the costs of administering the ORV permit program under 54 U.S.C. 103104.

Access Improvements—Ocracoke Island

The NPS is removing the existing ORV route designation along Devil Shoals Road (also referred to as Dump Station Road). An ORV permit will no longer be required to travel this road because motor vehicles are allowed on park roads without a permit under general NPS regulations. This route is therefore removed as a designated ORV route in the rule. Devil Shoals Road is an existing dirt road located across North Carolina State Highway 12 from the Ocracoke Campground that has been maintained as part of the park's road network. This road meets NPS road design standards as a Class II connector road than can provide normal passenger vehicle access to park areas of scenic and recreational interest on a dirt/gravel surface. This change allows for limited vehicular soundside access on Ocracoke Island without the requirement to purchase an ORV permit.

Access Improvements—Hatteras Island

This rule extends the existing Cape Point bypass route south of ramp 44 by approximately 0.4 miles to the north so that it joins with ramp 44. This rule also extends the existing bypass route by approximately 600 feet to the south to provide additional ORV access near Cape Point when the ORV route along the beach is closed for safety or resource protection.

Other Updates

This rule makes several changes to the language in the existing ORV regulation to clarify and more accurately reflect existing conditions. Ramp 25.5 is renamed ''ramp 25''; ramp 32.5 is renamed ''ramp 32''; ramp 47.5 is renamed ''ramp 48''; the description of the soundside ORV route at Little Kinnakeet is changed to reflect that it begins just west of the Kinnakeet lifesaving structures; and additional details are added to further clarify where existing routes terminate (*e.g.* the routes adjacent to ramps 32, 48, and 63 do not end exactly at the ramp). These clarifying changes do not increase or decrease ORV access at the Seashore.

Maps

The changes to routes and ramps made as a result of this rule are available at *http://parkplanningfxsp0;.nps.gov/caha-orv-ea.*

Compliance With Other Laws, Executive Orders, and Department Policy

Use of Off-Road Vehicles on the Public Lands (Executive Order 11644)

As discussed previously, the E.O. applies to ORV use on federal public lands that is not authorized under a valid lease, permit, contract, or license. Section 3(4) of E.O. 11644 provides that ORV ''areas and trails shall be located in areas of the National Park system, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.'' Since the E.O. clearly was not intended to prohibit all ORV use everywhere in these units, the term ''adversely affect'' does not have the same meaning as the somewhat similar terms ''adverse impact'' or ''adverse effect'' commonly used in the National Environmental Policy Act of 1969 (NEPA). Under NEPA, a procedural statute that provides for the study of environmental impacts, the term ''adverse effect'' refers to any effect, no matter how minor or negligible.

Section 3(4) of the E.O., by contrast, does not prescribe procedures or any particular means of analysis. It concerns substantive management decisions, and must instead be read in the context of the authorities applicable to such decisions. The Seashore is an area of the National Park System. Therefore, the NPS interprets the E.O. term ''adversely affect'' consistent with its NPS Management Policies 2006. These policies require the NPS to allow only ''appropriate uses'' of parks and to avoid ''unacceptable impacts'' to park resources or values. The NPS has evaluated this rule and confirmed that it complies with these policies.

Specifically, this rule will not impede the attainment of the Seashore's desired future conditions for natural and cultural resources as identified in the ORV FEIS. The NPS has determined this rule will not unreasonably interfere with the atmosphere of peace and tranquility, or the natural soundscape maintained in natural locations within the Seashore. Therefore, within the context of the E.O., ORV use on the ORV routes amended by this rule (which are also subject to safety and resource closures and other species management measures that will be implemented under this rule) will not adversely affect the natural, aesthetic, or scenic values of the Seashore.

Section 8(a) of the E.O. requires NPS to monitor the effects of the use of off-road vehicles on lands under its jurisdiction. On the basis of the information gathered, NPS shall from time to time amend or rescind designations of areas or other actions taken pursuant to the E.O. as necessary to further the policy of the E.O. The existing ORV FEIS and Record of Decision identify monitoring and resource protection procedures, and desired future conditions to provide for the ongoing and future evaluation of impacts of ORV use on protected resources. The Superintendent has the authority under this rule and under 36 CFR 1.5 to close portions of the Seashore as needed to protect park resources and values, and public health and safety.

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 (OMB) 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 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. It directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed

this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on information contained in a report entitled, ''Benefit-Cost and Regulatory Flexibility Analyses: Special Regulations of Off-Road Motor Vehicles at Cape Hatteras National Seashore'', available for public review at: *http://parkplanningfxsp0;.nps.gov/caha-orv-ea.* According to that report, no entities, small or large, are directly regulated by this rule, which regulates visitors' use of ORVs. The courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates them. Therefore, agencies must assess the impacts on directly regulated entities, but are not required to analyze in a regulatory flexibility analysis the indirect effects from rules on small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2) of the SBREFA. 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 (UMRA)

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. The designated ORV routes are located entirely within the Seashore, and will not result in direct expenditure by State, local, or tribal governments. This rule addresses public use of NPS lands, and imposes no requirements on other agencies or governments. Therefore, a statement containing the information required by the UMRA (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 taking implications under Executive Order 12630. Access to private property located within or adjacent to the Seashore will not be affected, and this rule does not regulate uses of private property. Therefore, a takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rule only affects use of NPS-administered lands and imposes no requirements on other agencies or governments. A federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, 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 (PRA) (44 U.S.C. 3501 et seq.)

This rule does not contain any new collection of information that requires approval by Office of Management and Budget (OMB) under the PRA of 1995. OMB has approved the information collection requirements associated with NPS Special Park Use Permits and has assigned OMB Control Number 1024–0026 (expires 12/31/2016 and in accordance with 5 CFR 1320.10, the agency may continue to conduct or sponsor this collection of information while the submission is pending at OMB). We estimate the annual burden associated with this information collection to be 8,500 hours per year. 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 (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required because the NPS issued a FONSI. The EA and FONSI are available at *http://parkplanningfxsp0;.nps.gov/caha-orv-ea* under the ''Document List'' link. These documents contain a full description of the alternatives that were considered, the environmental impacts associated with the project, public involvement, and other supporting documentation. The NPS considered public comments made on the EA in drafting this rule. The NPS has evaluated substantive comments received on the proposed rule to develop the final rule.

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.

Drafting Information

The primary authors of this regulation were Russel J. Wilson, Chief Regulations, Jurisdiction and Special Park Uses, National Park Service; and Jay Calhoun, Regulations Program Specialist, National Park Service.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for part 7 continues to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under DC Code 10–137 and DC Code 50–2201.07.

■ 2. Amend § 7.58 by revising paragraphs (c)(2)(iv) and (c)(9), the paragraph (c)(12) subject heading, and paragraph (c)(12)(i) to read as follows:

§ 7.58 Cape Hatteras National Seashore.

* * * * *

(c) * * *.

(2) * * *

(iv) ORV permits are valid for the dates specified on the permit. The public will be notified of any changes to ORV permit durations through one or more of the methods listed in § 1.7(a) of this chapter.

* * * * *

(9) *ORV routes.* The following tables indicate designated ORV routes. The following ramps are designated for off-road use to provide access to ocean beaches: 2, 4, 23, 25, 27, 30, 32, 34, 38, 43, 44, 48, 49, 55, 59, 63, 67, 68, 70, and 72. Designated ORV routes and ramps are subject to resource, safety, seasonal, and other closures implemented under § 7.58(c)(10). Soundside ORV access ramps are described in the table below. For a village beach to be open to ORV use during the winter season, it must be at least 20 meters (66 feet) wide from the toe of the dune seaward to mean high tide line. Maps showing designated routes and ramps are available in the Office of the Superintendent and on the Seashore Web site.

When is the route open?	Where is the route located?
Bodie Island—Designated Routes	
Year Round	Ramp 2 to 0.2 miles south of ramp 4.
September 15–March 14	0.2 miles south of ramp 4 to the eastern confluence of the Atlantic Ocean and Oregon Inlet.
Hatteras Island—Designated Routes	
Year Round	1.5 miles south of ramp 23 to ramp 27.
	Ramp 30 to approximately 0.3 miles south of ramp 32
	The following soundside ORV access routes from NC Highway 12 to Pamlico Sound between the villages of Salvo and Avon: soundside ramps 46, 48, 52, 53, 54. The soundside ORV access at Little Kinnakeet starts just to the west of the Kinnakeet lifesaving structures and continues to the sound.
	Ramp 38 to 1.5 miles south of ramp 38.
	The following soundside ORV access routes from NC Highway 12 to Pamlico Sound between the villages of Avon and Buxton: soundside ramps 57, 58, 59, and 60.
	0.4 miles north of ramp 43 to Cape Point to 0.3 miles west of ''the hook.''
	Bypass which extends due south from the opening at ramp 44, running continuously behind the dunes until the bypass connects with the beach.
	Interdunal route (''Inside Road'') from intersection with Lighthouse Road (i.e. ramp 44) to ramp 49, with one spur route from the interdunal route to ramp 48.
	Just east of Ramp 48 to east Frisco boundary.
	A soundside ORV access route from Museum Drive to Pamlico Sound near Coast Guard Station Hatteras Inlet
	Pole Road from Museum Drive to Spur Road to Pamlico Sound, with one spur route, commonly known as Cable Crossing, to Pamlico Sound and four spur routes to the ORV route below.
	Ramp 55 southwest along the ocean beach for 1.6 miles, ending at the intersection with the route commonly known as Bone Road.
October 15–April 14	0.1 mile south of Rodanthe Pier to 1.5 mile south of ramp 23
	1.0 mile north of ramp 34 to ramp 38 (Avon)
	East Frisco boundary to west Frisco boundary (Frisco village beach)
	East Hatteras boundary to ramp 55 (Hatteras village beach)
Ocracoke Island—Designated Routes	
Year Round	Ramp 59 to just southwest of ramp 63.
	Routes from NC Highway 12 to Pamlico Sound located north of the Pony Pens, commonly known as Prong Road, Barrow Pit Road, and Scrag Cedar Road.
	1.0 mile northeast of ramp 67 to 0.5 mile northeast of ramp 68
	0.4 miles northeast of ramp 70 to Ocracoke inlet.
	From ramp 72 to a pedestrian trail to Pamlico Sound, commonly known as Shirley's Lane.
October 15–April 14	0.5 mile northeast of ramp 68 to ramp 68 (Ocracoke Campground area).
September 15–March 14	A route 0.6 mile south of ramp 72 from the beach route to a pedestrian trail to Pamlico Sound.
	A route at the north end of South Point spit from the beach route to Pamlico Sound.

* * * * *

(12) *Hours of Operation/Night-Driving Restrictions.* (i) Hours of operation and night-driving restrictions are listed in the following table:

HOURS OF OPERATION/NIGHT DRIVING RESTRICTIONS

When are the restrictions in place?	Where are the restrictions in place?
November 16–April 30	All designated ORV routes are open 24 hours a day.
May 1–September 14	Designated ORV routes in sea turtle nesting habitat (ocean intertidal zone, ocean backshore, dunes) are closed at 9:00 p.m. and open no earlier than 6:00 a.m. The Seashore will publish exact opening times on an annual basis.

HOURS OF OPERATION/NIGHT DRIVING RESTRICTIONS—Continued

When are the restrictions in place?	Where are the restrictions in place?
September 15–November 15	Designated ORV routes in sea turtle nesting habitat (ocean intertidal zone, ocean backshore, dunes) are closed at 9:00 p.m. and open no earlier than 6:00 a.m., but the Superintendent may open designated ORV routes, or portions of the routes, 24 hours a day if no turtle nests remain. The Seashore will publish exact opening times on an annual basis.

* * * * *

Michael Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–30735 Filed 12–20–16; 8:45 am]

BILLING CODE 4312–52–P

POSTAL SERVICE

39 CFR Part 111

New Mailing Standards for Domestic Mailing Services Products

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: On October 12, 2016, the Postal Service filed a notice of mailing services price adjustments with the Postal Regulatory Commission (PRC), effective January 22, 2017. This final rule contains the revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) that we will adopt to implement the changes coincident with the price adjustments.

DATES: *Effective date:* January 22, 2017.

FOR FURTHER INFORMATION CONTACT: Audrey Meloni at (856) 933–4360, or Lizbeth Dobbins at (202) 268–3789.

SUPPLEMENTARY INFORMATION: Final prices are available under Docket Number R2017–1 on the Postal Regulatory Commission's Web site at *www.prc.gov.*

The Postal Service's final rule includes: Changes to prices, several mail classification updates, mailpiece marking changes, modifications to mailpiece weights and mail preparation categories, multiple product simplification efforts, a few minor revisions to the DMM to condense language and eliminate redundancy, a change to the redemption period of a money order claim from two years to one year, the addition of Official Mail Accounting System (OMAS) stamp shipment fee language, and updates to Enterprise Post Office Box Online (ePOBOL) process that change payment periods for online Post Office Box activity. Changes to Collect On Delivery will be published in a future final rule.

Comments on Proposed Changes and USPS Response

The Postal Service received 21 formal responses encompassing 34 comments on our price-change related proposal. Five responses included comments regarding more than one issue.

Standard Mail Name Change to USPS Marketing Mail

Nine comments requested that the Postal Service reconsider its decision to rename Standard Mail to USPS Marketing Mail. The commenters suggested that using the term ''marketing'' would indicate ''advertising mail'' or ''junk mail'' and cause the mail to have a lower ''open rate''. Customers were unclear how a name change would encourage more people to use the mail.

Additional comments asked about the indicia, labeling criteria, transition period, and the lack of discussion with the industry and supportive research that would support such a measure that could be costly to both the USPS™ and the mailing industry.

One commenter believed the change would help promote the use of mail for marketing; while another was willing to explore an 18-month transition period before any changes to indicia would be required.

USPS Response

The Postal Service is updating the name to reflect vibrancy and to breathe new life into the former ''Third-Class Mail'' and ''Standard Mail''. We expressed a desire at the National Postal Forum and through MTAC in early 2016 to improve the position of Standard Mail in the marketplace and to improve its perception.

In response to feedback from the mailing community, the new indicia or postage markings should not be used for letter or flat mail until January 2018 at the earliest. Tray label and pallet markings will be deferred until mid-2017 at the earliest. Other types of changes, such as changes to postage statements and forms, can move forward with the January 2017 price change. This phased transition period will allow both hardware and software changes to be implemented successfully.

First-Class Mail up to 3.5 ounces

Three commenters requested clarification on the pricing methodology for computing prices for First-Class Mail up to 3.5 ounces, and for residual pieces from either a presorted or automation mailing.

One comment suggested that heavier letters might slow down processing for mail service providers. The same commenter wanted to know whether the next price increase would be within the existing CPI allowances for the existing product, or the USPS would seek higher pricing based on this current proposed change.

Additional comments cited the lack of DMM language in the proposed rule identifying the types of pieces to which the weight increase changes would apply (such as enveloped pieces only, envelopes containing discs, heavy letters only, etc.), and clarifying the barcode placement for such pieces.

USPS Response

There are no changes to the pricing methodology for residual mail pieces. Also, there are no changes to the requirements for enveloped mail pieces, heavy letters, or envelopes containing discs. The market dominant price change will be done using the Centralized Accounting Postage System (CAPS), and all applicable DMM sections have been updated in this final rule.

First-Class Package Service

One commenter asked if the new Labeling List 104 was being proposed as an added convenience.

USPS Response

Use of the new labeling list is optional.

USPS Marketing Mail Letters Weight Limit

Three commenters requested clarification of the USPS Marketing Mail weight limits. One wanted to know if the Notice 123, *Price List* would be updated to reflect these changes. Another requested clarification regarding the barcode clear zone.

USPS Response

USPS Marketing Mail automation letters weight will increase to 3.5 ounces, eliminating the previous piece/pound price for 3.3 to 3.5 ounces. Automation letters over 3.5 ounces will pay the applicable flats prices, however, for non-automation letters; the weight is up to 4 ounces.

Notice 123, *Price List,* will be updated to reflect all the piece/pound and weight changes and will be available on Postal Explorer at *pe.usps.com* beginning January 22, 2017. The applicable DMM sections regarding barcode clear zones are also updated with this final rule

USPS Marketing Mail Flats Weight Limit

Three comments were received. One comment stated that the Postal Service has not considered the unintended effects of the proposed rule change, and the associated loss of revenue, and suggested withdrawing this change. The commenter suggested that many mailers will take advantage of the rule change by combining more mailpieces, thus reducing the number of pieces entered and the associated revenue, while increasing the average cost to handle those pieces.

Another comment wanted clarification regarding the effect of this change on booklets and folded self-mailers.

Lastly, one comment stated that raising the weight limit on the piece/pound break is a great move as long as the rate is not raised to make up for the resulting lost revenue.

USPS Response

There will be no changes to the parameters of booklets or Folded Self-Mailers.

Permit and Annual Mailing Fees

Two comments requested clarification about the elimination of permit and annual mailing fees, specifically with regard to Bound Printed Matter and the QBRM quarterly fee.

USPS Response

A permit application fee and annual mailing fee must be paid for any destination entry Bound Printed Matter flats (except for qualifying Full-service Intelligent Mail barcode mailings). There is no application fee or annual mailing fee if a mailer uses Bound Printed Matter to mail parcels only.

There is no change to the QBRM quarterly fee at this time.

Combining 3-Digit and AADC

Two comments addressed the combining of 3-Digit and AADC letters, requesting clarification regarding the mandatory origin 3-Digit trays for the local SCF area, and the use of labeling lists L801 and L003.

USPS Response

Labeling list L003 will be combined with L801 with the following exceptions. With this final rule, effective January 22, 2017, all First-Class and Standard Mail automation/machinable letters will no longer be sorted to the 3 Digit level. They will be sorted to the AADC level, after optional 5-Digit sort, whether they are Destinating AADC trays or Originating AADC trays. The current requirement that origin SCF mail be sorted down to 3-Digit trays will be eliminated. There is no minimum quantity for Origin AADC trays; however, less bundling should result in fuller trays, and the use of many fewer trays. The entry price is the same. The L801 will be applicable to all of this type of mail.

The use of 3 Digit trays will still apply to Nonmachinable letters in all three classes, and Periodicals Machinable/Automation prices. Destinating and Originating 3 Digit trays can still be made for these three classes of Nonmachinable letters along with Periodicals machinable/auto letters. The origin 3-Digit tray preparation will thus remain the same for all Nonmachinable letters and Periodicals machinable/automation letters. Labeling List 002 will be used, which may involve L003 for 3-Digit schemes.

Prices

One organization submitted two comments suggesting that a price increase for commercial USPS Marketing Mail flats would result from increasing the pound rate and decreasing the per piece rate; producing a potential 4–10 percent increase in postage costs for their mailings.

USPS Response

Comments from comparable mailers expressed satisfaction with the prices as proposed. [A request for a recent postage statement so that USPS could do a before-and-after analysis to see if correct prices were being charged was not received.]

FSS Price Structure

Two comments were received. One strongly supported the proposal to eliminate the FSS-specific price structures for Periodicals, USPS Marketing Mail, and Bound Printed Matter; however, the commenter disagreed with the proposal to leave the 250-pound minimum intact, fearing the unintended consequences of curtailing the benefits sought to be realized by the restoration of a more rational price structure.

Another comment asked if the Notice 123 would be updated and if FSS facility preparation would become mandatory.

USPS Response

The 250-pound minimum requirements will remain intact. The Notice 123, *Price List,* will be updated on January 22, 1017, to remove all pricing related to FSS preparation. Additionally, FSS facility preparation will be optional.

Shipping Products Permit

One comment asked what indicia changes are proposed, and whether USPS data under the combined permit would be broken down by product.

USPS Response

There will be no changes to current procedures. Each product must be identified for volume reporting purposes.

Informed Delivery

One comment regarding the Informed Delivery enhancement suggested that the process would add another level of complexity and potential for errors, thereby, increasing costs.

USPS Response

Informed Delivery is outside the scope of the price changes addressed in this final rule.

General

We received three comments of a general nature. One comment suggested that DMM exhibit 708.7.1.1 was missing an indicator for presorted Bound Printed Matter flats, and another requested that educational webinars should be provided on Premium Forwarding Service and Share Mail.

USPS Response

The DMM will be updated as part of the January 22, 2017, price change implementation. Educational seminars will be presented on various subjects in the near future.

Overview of Changes Made by This Final Rule

Flats Sequencing System (FSS)

As background, on December 18, 2013, the Postal Service began to require bundle and pallet preparation of flat-size Standard Mail®, Periodicals, and Bound Printed Matter mailpieces for delivery within ZIP Codes™ served by FSS processing (78 FR 76533–76548). This requirement was incorporated into

the DMM on January 26, 2014. Subsequently, on May 31, 2015, the Postal Service introduced FSS specific price structures for flat-sized Bound Printer Matter, Standard Mail, and Periodicals mailpieces, pursuant to PRC Order no. 2472, issued on May 7, 2015. This final rule removes all FSS specific pricing structures from Periodicals, Standard Mail and Bound Printed Matter. One change, for example, requires mailers to add Optional Endorsement Lines (OELs) on each FSS scheme mailpiece. For FSS preparation, mailers place qualifying mailpieces from all price categories into a separate pool for each individual 5-digit FSS scheme combination.

All carrier route Bound Printed Matter (BPM), carrier route Periodicals and carrier route (except saturation) Standard Mail flats meeting the standards in DMM 201.6.2 must be sorted to FSS schemes, properly bundled and placed on or in pallets, trays, sacks or approved containers, for FSS scheme ZIP Code combinations within the same facility. Mailings (excluding saturation mailings of Standard Mail) with non-presorted BPM flats may be included in FSS preparation, but will continue to be ineligible for presorted or carrier route prices.

To reiterate, all mailpieces in a 5-digit scheme FSS bundle must be identified with an OEL, as described in DMM 708.7.0. Mailpieces entered under a combined mailing of Standard Mail and Periodicals flats (DMM 705.15.0) still include class and price markings, applicable to the price paid, in addition to the OEL.

Periodicals, Standard Mail, and Bound Printed Matter flats properly included in a FSS scheme bundle qualify for the piece price applied prior to inclusion in the FSS scheme pool with the following exceptions for Standard Mail:

1. A carrier route mailpiece in a FSS bundle on a FSS scheme pallet will receive the Basic CR-Bundles/Pallet price.

2. A carrier route mailpiece in a FSS bundle on a FSS facility pallet will receive the Basic CR price.

Additional information on each mail class affected is under the Bound Printed Matter, Periodicals, and Standard Mail sections.

First-Class Mail—Combine First-Class Mail (FCM) Commercial Automation Automated Area Distribution Center (AADC) and 3-Digit Sortations for Letters and Cards Into One Combined Sortation Level Known as AADC

Currently, there are four presort levels for FCM Commercial Automation Letters and Cards: Mixed AADC, AADC, 3-Digit, and 5-Digit. To help simplify the pricing structure, the Postal Service implemented the same price for AADC Automation Letters (Cards) and 3-Digit Automations Letters (Cards) in Docket No. R2012–3. The Postal Service is now combining AADC and 3-Digit presort levels into one sortation. The new sortation name will be AADC. The existing labeling List 801 will drive the FCM AADC separations, and origin entry separations, based on labeling List 002, will be modified to reflect origin entry AADC separations.

First-Class Mail—Increase the Weight Standard for First-Class Mail (FCM) Commercial Automation and Machinable Letters and Cards From Up to 3.3 Ounces to Up to 3.5 Ounces

Currently, the ''up to'' weight standard for FCM Commercial Machinable Letters is 3.3 ounces. This lower weight break of up to 3.3 ounces is being increased due to mail processing improvements. Since machinable letters must follow the standards for Automation Letters (except for IMb), the same weight maximum should apply. Based on this, the Postal Service will increase the weight maximum from 3.3 ounces to 3.5 ounces. This change does not apply to the maximum weight of Booklets which are capped at 3.0 ounces.

First-Class Mail—One Price for Up To 3.5 Ounces for First-Class Mail (FCM) Commercial Automation Letters

Currently, the same price applies for one- and two-ounce pieces for each individual mail sortation level for FCM Commercial Automation Letters. With this final rule there will be one price for up to 3.5 ounces for each individual mail sortation level for FCM Commercial Automation Letters. This will also apply to mixed-weight FCM Residual mailings up to 3.5 ounces. The current preparation requirements for non-blended trays, such as one ounce, up to two ounces, and now extending to 3.5 ounces will continue. This change does not include FCM single-piece letters (non-residual) or FCM Flats.

First-Class Mail—Simplifying and Renaming FCM Alternate Postage as FCM Share Mail

The Postal Service will rename Alternate Postage as Share Mail. This implements a proposal published in the June 9, 2016, Postal Bulletin (Issue #22443). Share Mail allows Postal Service customers to distribute single-piece FCM letters or cards to consumers, who may in turn mail those pieces to any domestic address, without having to affix postage. Share Mail pieces are permitted to weigh up to one ounce each. Payment is collected electronically from the customer's Postage Due and Centralized Accounting Postage System (CAPS) Account. Invoicing is performed manually, by the Postal Service's Share Mail Program Office in Marketing. To continue the Postal Service's efforts to simplify its product line, the Share Mail payment tiers will be collapsed into one, and upfront postage payment requirements will be eliminated. Unique Intelligent Mail barcodes are no longer required nor is a signed Marketing Agreement. Picture Permit will no longer be available in order to help expedite the approval process. A customer who wishes to participate must submit a request to the Share Mail Program Office along with production pieces to ensure readability for postal processing. Share Mail relies on Intelligent Mail barcode (IMb) technology and scan data collected as the mailpiece travels through the mailstream to determine piece counts, so readability is paramount.

Periodicals—Eliminate Flats Sequencing System (FSS) Pricing

The Postal Service will eliminate the FSS specific price structures for Periodicals Outside-County. FSS preparation will still be required and all FSS marking requirements will remain as is. Outside-County Periodicals flats properly included in a FSS scheme bundle will qualify for the price applied prior to inclusion in the FSS scheme pool. If a FSS scheme pallet is drop-shipped to a DFSS facility, the pallet will receive Carrier Route pallet pricing. If a FSS facility pallet is drop-shipped to a DFSS facility the pallet will receive DSCF pallet pricing. Qualifying FSS scheme pieces entered at a DFSS facility will receive DSCF pound pricing. FSS scheme bundles on an FSS scheme pallet will receive carrier route bundle prices. FSS scheme bundles on an FSS facility pallet will receive 3-digit/SCF bundle pricing. FSS scheme and facility sack/trays or other authorized container

will receive 3-digit/SCF sack/tray prices.

Standard Mail—Renaming Standard Mail as ''USPS Marketing Mail''

The Postal Service will rename Standard Mail as ''USPS Marketing Mail''. This name change will better communicate to our customers the message that Standard Mail fits into their marketing mix.

To help smooth the transition for this change, the Postal Service will modify postage statements and the DMM for January 2017 and implement other changes to postal forms or documents during the normal update cycles. The initial implementation date for mailers to adopt the new USPS Marketing Mail abbreviations (such as MKT in lieu of STD) is July 1, 2018. Abbreviations and examples of permit imprints will be available in a future Postal Bulletin.

Bound Printed Matter—Eliminate Flat Sequencing System (FSS) Pricing

The Postal Service is eliminating FSS specific price structures for Bound Printed Matter Flats. FSS preparation will still be required, and all FSS marking requirements will remain in place. Bound Printed Matter flat pieces included in an FSS scheme bundle will qualify for the zone and entry piece pricing and pound pricing applicable to the mailing piece before inclusion in the FSS scheme pool. If an FSS container is drop shipped to a DFSS facility, those pieces will receive DSCF pricing.

Standard Mail—Combine AADC and 3 Digit Automation Sorts for Letters Into One Sort Level

Currently there are four presort levels for Standard Mail and Standard Mail Nonprofit Automation Letters: Mixed AADC Automation Letters, AADC Automation Letters, 3-Digit Automation Letters, and 5-Digit Automation Letters. To simplify the pricing structure, the Postal Service implemented the same price for AADC Automation Letters and 3-Digit Automation Letters in Docket No. R2013–1. The Postal Service is combining these two presort levels (AADC and 3-Digit) into one new sortation which will be named AADC.

Standard Mail—Increase the Weight Standard for Standard Mail and Standard Mail Nonprofit Nonautomation Machinable Letters From Up to 3.3 Ounces to Up to 3.5 Ounces

Currently, the ''up to'' weight standard for Standard Mail and Standard Mail Nonprofit Machinable Letters is 3.3 ounces. This lower ''weight break'' is no longer needed due to improvements in mail processing equipment. Since machinable letters must follow the standards for Automation Letters (except for the IMb standards), the weight maximum should also apply. Accordingly, the Postal Service will increase the weight maximum from 3.3 ounces to 3.5 ounces. This change does not include Standard Mail Ride-Along mailpieces which are capped at 3.3 ounces and are inserted into a host Periodicals mailpiece.

It is important that both the Industry and the Postal Service evaluate the effects of higher weight breaks for First-Class Mail automation letters and cards along with Standard Mail letters. Collaboration and feedback throughout calendar year 2017 will be critical in helping to determine whether higher weights cause processing or address quality metrics to be put at risk.

Standard Mail—Reduce the Number of Simple Sample Tiers

There are currently six volume tiers for Standard Mail Commercial and Nonprofit Simple Samples. Based on the volume thresholds currently used by most customers, the Postal Service will collapse the existing six tiers into two new tiers: Volumes up to and including 200,000 pieces, and volumes greater than 200,000 pieces.

Standard Mail—Eliminate Flat Sequencing System (FSS) Pricing

The Postal Service will eliminate the FSS-specific price structures within Standard Mail and Standard Mail Nonprofit. FSS preparation will still be required and all FSS marking requirements will remain intact.

Standard Mail and Standard Mail Nonprofit flats properly included in a FSS scheme pool will qualify for the price applied prior to the FSS scheme pool with the following exceptions:

1. A carrier route mailpiece in an FSS bundle on an FSS scheme pallet will receive the Basic CR-Bundles/Pallet price, and

2. A carrier route mailpiece in a FSS bundle on an FSS facility pallet will receive the Basic CR price.

If an FSS pallet is drop shipped to a DFSS facility, those pieces will receive DSCF pricing.

Standard Mail—Increase Standard Mail and Standard Mail Nonprofit Flats, Nonautomation Letters, and Nonmachinable Letters Piece-Price Weight Break Structure From 3.3 Ounces to 4.0 Ounces

The current piece/pound price structure for Standard Mail and Standard Mail Nonprofit Flats, Nonautomation Letters, and Nonmachinable Letters does not provide a simple, clear view of the actual price of a mailing, especially if it includes nonidentical-weight pieces between 3.3 and 4 ounces. The Postal Service will increase the piece price weight break structure from 3.3 ounces to 4.0 ounces for Standard Mail and Standard Mail Nonprofit Flats, and Nonautomation and Nonmachinable Letters. Pieces up to 4 ounces will pay the same price and a pound price will apply over 4 ounces. This will not include Nonautomation Machinable Letters.

Extra Services (Returns Simplification)—Eliminate BRM Parcels Permit & Account Maintenance Fee

Business Reply Mail (BRM) currently consists of letters, flats, and parcels. Occasionally, BRM customers may choose to use Business Reply Mail for return parcels because they possess a BRM permit for inbound correspondence. The Postal Service will waive the annual permit fee for those customers using BRM exclusively for return parcels. This will align BRM parcels with other returns products. BRM permit fees for letters and flats, and for weight-averaged BRM letters, flats and parcels, will remain.

Extra Services—Eliminate QBRM Permit Fees

The Postal Service is also eliminating the annual permit fees for Business Reply customers who use only QBRM Basic and High Volume Qualified for letters and cards. All other fees and postage pricing remain intact.

Extra Services—Shipping Services Permit Fees

The Postal Service will eliminate the fees for certain outbound and return permits used for parcel shipments including associated annual account maintenance fees. This will streamline the application and returns process, and eliminate the need to pay permit application fees for additional entry points. Shipping Products included under this umbrella are outbound shipments of Priority Mail Express, Priority Mail, First-Class Package Service, Parcel Select (including Parcel Select Lightweight), Bound Printed Matter (parcels only), Media Mail, and Library Mail, as well as for return shipments of MRS, Parcel Return Service and BRM (parcels only).

Extra Services (Address Correction)—Adjust Standard Mail Forwarding Fee to 2 Decimal Places

Standard Mail letters and flats mailers that use this service are charged the

Forwarding Fee via Address Correction Service (ACS) billing which is managed by the ACS Department of Address Management Systems in Memphis, TN. The ACS data file, Shipping Notice data file, and the Invoice data file have an implied decimal position that is conducive to 2-decimal places for address correction services. When mailers use these files to track their ACS fees and costs, they must recognize that the Forwarded Fee product codes have an implied 3-decimal place price and must manipulate the data files provided to them through ACS so that the decimal place differences are recognized in all of the data files provided via ACS. This would adjust the Standard Mail Forwarding Fee to 2-decimal point places to allow mailers to track their ACS fees and costs without making adjustments for the Forwarding Fees.

Extra Services—Money Order Redemption Period

To be consistent with Banking Industry Standards and other companies' comparable money order offerings, the Postal Service will change the time limit for claims for improper payment to a limit of one year. This language will be updated on the reverse side of the domestic and international money order form so the purchaser is aware of the time limit.

Extra Services—Enterprise PO Boxes Online (ePOBOL) Payment Process Change

The Postal Service plans to allow Enterprise PO Boxes Online customers to modify their current payment period to align their multiple PO Boxes, Caller Service, and Reserve payments to one due date per year, when using an Enterprise Payment Account (EPA). Eligible customers will be allowed to pay pro-rated fees on a one-time basis to align all payments to a selected annual renewal date in the future. This method is optional and will be available for all of an eligible customer's PO Boxes and Caller Service numbers. When the true-up date is reached they will continue to pay for the 12 month term as committed when first enrolled in the Enterprise Payment Account.

Extra Services—OMAS Stamp Delivery Fee for Federal Agencies Ordering Stamps From the Stamp Fulfillment Center

Federal agencies have the option today to order stamps from the USPS Stamp Fulfillment Services in Kansas City and to pay for the stamps through their Official Mail Accounting System (OMAS) accounts. It has been a long-standing practice to charge customers other than federal agencies a nominal handling fee for all purchases ordered through Stamp Fulfillment Services. Beginning January 1, 2017, these fees will apply to federal agencies using OMAS.

The handling fee schedule can be found in section 1560 of the *Mail Classification Schedule,* under References, on the Postal Regulatory Commission Web site at *http://www.prc.gov/.*

Extra Services—Resources

The Postal Service will provide additional resources to assist customers with this price change for competitive products. These tools include price lists, downloadable price files, and **Federal Register** Notices, which may be found on the Postal Explorer® Web site at *pe.usps.com.*

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

***Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM)**

* * * * *

200 Commercial Letters, Cards, Flats, and Parcels

201 Physical Standards

1.0 Physical Standards for Machinable Letters and Cards

* * * * *

1.1.2 Weight Standards for Machinable Letters

[Revise 1.1.2 to read as follows:]

The maximum weight for Presorted First-Class Mail machinable letters is 3.5 ounces (0.2188 pound). The maximum weight for USPS Marketing Mail machinable letters is 3.5 ounces (0.2188 pound).

* * * * *

2.0 Physical Standards for Nonmachinable Letters

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2.1 Criteria for Nonmachinable Letters

[Revise the last sentence of 2.1 to read as follows:]

* * * In addition, a letter-size piece is nonmachinable if it weighs more than 3.5 ounces (except Periodicals nonmachinable letters cannot weigh more than 3.3 ounces), unless it has a barcode and is eligible for, and claims, automation letter prices or USPS Marketing Mail Carrier Route (barcoded) letter prices.

* * * * *

3.0 Physical Standards for Machinable and Automation Letters and Cards

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3.5 Maximum Weight, Machinable and Automation Letters and Cards

The following maximum weight limits apply:

[Revise 3.5b as follows:]

b. Machinable enveloped letters and cards—3.5 ounces. (see 3.6 for pieces over 3 ounces.)

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4.0 Physical Standards for Flats

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4.7 Flat-Size Pieces Not Eligible for Flat-Size Prices

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Exhibit 4.7b Pricing for Flats Exceeding Maximum Deflection (see 4.6)

[Revise Exhibit 4.7b as follows:]

* * * * *

Eligibility as presented	Eligibility with failed deflection
PERIODICALS OUTSIDE COUNTY	
[Delete Machinable barcoded FSS]	*[Delete Nonmachinable barcoded 5-digit flat].*
* * * * * * *	
[Delete Machinable nonbarcoded FSS]	*[Delete Nonmachinable nonbarcoded 5-digit flat].*
* * * * * * *	
USPS MARKETING MAIL	
[Delete Automation FSS Sch Pallet]	*[Delete Nonautomation FSS Sch Pallet].*
[Delete Automation FSS Other]	*[Delete Nonautomation FSS Other].*
[Delete Automation FSS Sch Cont.]	*[Delete Nonautomation FSS Sch Cont.].*
[Delete Automation FSS Facility Cont.]	*[Delete Nonautomation FSS Facility Cont.].*
* * * * * * *	
BOUND PRINTED MATTER	
* * * * * * *	
[Delete Barcoded/noncoded FSS Sch flat]	*[Delete Presorted parcel].*
* * * * * * *	

202 Elements on the Face of a Mailpiece

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5.0 Barcode Placement Letters and Flats

5.1 Letter-Size

* * * * *

5.1.2 General Barcode Placement for Letters

[Revise the second and third sentences to read as follows:]

* * * A nonautomation letter may bear an Intelligent Mail barcode under 708.4.0. Mailers must print the barcode either in the address block or in the barcode clear zone, except for pieces that weigh more than 3.5 ounces which must include the barcode in the address block. * * *

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203 Basic Postage Statement, Documentation, and Preparation Standards

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4.0 Letter and Flat Trays

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4.5 Letter Tray Strapping Exception

[Revise second sentence to read as follows:]

Strapping is not required for any letter tray placed on a 5-digit, 3-digit, or SCF pallet secured with stretchwrap. If the processing and distribution manager gives a written waiver, strapping is not required for any mixed AADC letter tray of First-Class Mail or for any letter tray that originates and destinates in the same SCF or AADC (mail processing plant) service area.

* * * * *

207 Periodicals

* * * * *

12.0 Nonbarcoded (Presorted) Eligibility

* * * * *

12.2 Prices—Outside-County

Outside-County nonbarcoded (Presorted) prices are based on the following criteria:

[Revise 12.2a, b, and c to read as follows.]

a. Piece prices are based on shape, machinability, barcoding, and presort level. The presort level of the piece is based primarily on the bundle level of the piece, except the presort level of pieces loose in trays is based on the tray level and qualifying FSS scheme flats are based on presort levels prior to inclusion in the FSS scheme bundle.

b. Bundle prices are based on the bundle and container sortation level except FSS scheme bundles in/on a FSS scheme container receives carrier route pricing; FSS scheme bundles in/on a FSS facility container receives 3-digit/SCF pricing.

c. Container prices are based on the type of container (tray, sack, or pallet), the level of sortation of the container and where the container is entered except FSS facility containers and FSS scheme sacks or trays receive 3-digit/SCF pricing and where the container is entered, and FSS scheme pallets receive carrier route prices and where the pallet is entered.

12.3 Prices—In-County

* * * * *

12.3.2 Three-Digit Prices

3-digit prices apply to:

* * * * *

[Add new item c as follows:]

c. Flat-size pieces not qualifying for carrier route or 5-digit prices, but properly included in a FSS scheme pool prepared under 705.14.0.

* * * * *

13.0 Carrier Route Eligibility

* * * * *

13.2 Sorting

13.2.1 Basic Standards

Preparation to qualify eligible pieces for carrier route prices is optional and need not be performed for all carrier routes in a 5-digit area. Carrier route prices apply to copies that are prepared in carrier route bundles of six or more addressed pieces each, subject to these standards:

* * * * *

b. *Nonletter-size mailings.* Carrier route prices apply to carrier route bundles that are sorted in one of the following ways:

[Add new item 13.2.1b4 as follows:]

4. Qualifying carrier route mailpieces sorted into FSS bundles and prepared on pallets under 705.14.0.

* * * * *

13.3 Walk-Sequence Prices

13.3.1 Eligibility

[Revise 13.3.1 to read as follows:]

The high density or saturation prices apply to each piece in a carrier route mailing, eligible under 13.2.1 and prepared under 705.8.0, 23.0, or (non-letter-size mail only) 705.10.0, 705.12.0, 705.13.0 or 705.14.0, that also meets the corresponding addressing and density standards in 13.3.4. High density and saturation mailings must be prepared in carrier walk sequence according to USPS schemes see 23.8 except nonletter-size mailpieces that are included in FSS bundles.

* * * * *

14.0 Barcoded (Automation) Eligibility

* * * * *

14.4 Prices—In-County

* * * * *

14.4.2 Three-Digit Prices

3-digit automation prices apply to:

* * * * *

[Add new item c as follows:]

c. Flat-size pieces not qualifying for carrier route or 5-digit prices, but properly included in a FSS scheme pool prepared under 705.14.0.

* * * * *

18.0 General Mail Preparation

* * * * *

18.5 FSS Preparation

[Revise the text of 18.5 to read as follows.]

Flat sized Periodicals In-County priced mailings, along with a maximum of 5,000 Outside-County pieces for the same issue (see 1.1.4) may be optionally sorted under FSS preparation standards. All other Periodicals flats including Saturation (Non-simplified addressed) and High Density priced flats (except Firm bundles) destinating and qualifying to FSS zones in L006, must be prepared under 705.14.0.

* * * * *

29.0 Destination Entry

* * * * *

29.4 Destination Sectional Center Facility

* * * * *

29.4.2 Price Eligibility

[Revise the text of 29.4.2 to read as follows.]

Determine price eligibility as follows:

a. Pound Prices. Outside-County pieces are eligible for DSCF pound prices when placed on an SCF or more finely presorted container, deposited at the DSCF, DFSS or USPS-designated facility (see also 29.4.2b), and addressed for delivery within the DSCF's or DFSS service area. Non-letter-size pieces are also eligible when the mailer deposits 5-digit bundles at the destination delivery unit (DDU) (the facility where the carrier cases mail for delivery to the addresses on the pieces) and the 5-digit bundles are in or on the following types of containers:

1. A merged 5-digit scheme or merged 5-digit sack.

2. A merged 5-digit scheme, merged 5-digit, or 5-digit scheme pallet.

b. Container Prices. Mailers may claim the DSCF container price for SCF or FSS and more finely presorted containers that are entered at and destined within the service area of the SCF or FSS at which the container is deposited.

29.5 Destination Flat Sequencing System (DFSS) Facility Entry

* * * * *

29.5.2 Eligibility

[Revise the first sentence of 29.5.2 to read as follows.]

DSCF prices apply to eligible FSS pieces deposited at a USPS-designated FSS processing facility and correctly placed in a flat tray, sack, alternate approved container or on a pallet, labeled to a FSS scheme processed by that facility, under labeling list L006, column B or C. * * *

* * * * *

230 First-Class Mail

233 Prices and Eligibility

* * * * *

5.0 Additional Eligibility Standards for Automation First-Class Mail

* * * * *

5.4 Price Application- Automation Cards and Letters

Automation prices apply to each piece that is sorted under 235.6.0 into the corresponding qualifying groups:

[Revise the text in items a, b, and c to read as follows.]

a. Groups of 150 or more pieces in 5-digit/scheme trays qualify for the 5-digit price. Preparation to qualify for the 5-digit price is optional. Pieces placed in full AADC trays in lieu of 5-digit/scheme overflow trays under 235.6.5 are eligible for the 5-digit prices.

b. Groups of 150 or more pieces in AADC trays qualify for the AADC price.

c. Groups of fewer than 150 pieces in AADC origin and pieces placed in mixed AADC trays in lieu of AADC overflow trays under 235.6.5 are eligible for the AADC prices.

* * * * *

235 Mail Preparation

1.0 General Definition of Terms

* * * * *

1.3 Terms for Presort Levels

1.3.1 Letters and Cards

Terms used for presort levels are defined as follows:

[Add new i and renumber current items i and j as new j and k]

i. Origin/optional entry AADC: the ZIP Code in the delivery address on all pieces begins with one of the 3-digit prefixes processed at the AADC in whose service area the mail is verified/entered.

* * * * *

1.4 Preparation Definition and Instructions

[Renumber items i through o as j through p.]

[Add new item i to read as follows.]

i. An *origin AADC* tray contains all mail (regardless of quantity) for an AADC ZIP Code area processed by the AADC or SCF in whose service area the mail is verified/entered. Only one less-than-full tray may be prepared for each AADC area.

* * * * *

6.0 Preparing Automation Letters

* * * * *

6.2 Mailings

The requirements for mailings are as follows:

* * * * *

[Revise item b to read as follows.]

b. First-Class Mail. A single automation price First-Class Mail mailing may include pieces prepared at 5-digit, AADC, and mixed AADC prices.

* * * * *

6.5 Tray Preparation

[Revise the introductory text of 6.5 to read as follows.]

Instead of preparing overflow trays with fewer than 150 pieces, mailers may include these pieces in an existing qualified tray of at least 150 or more pieces at the next tray level. (For example, if a mailer has 30 overflow 5-digit pieces for ZIP Code 20260, these pieces may be added to an existing qualified AADC tray for the correct destination and the overflow 5-digit pieces will still qualify for the 5-digit

price.) Mailers must note these trays on standardized documentation (see 708.1.2). Pieces that are placed in the next tray level must be grouped by destination and placed in the front or back of that tray. Mailers may use this option selectively for AADC ZIP Codes. This option does not apply to origin/entry trays. Preparation sequence, tray size, and Line 1 labeling:

* * * * *

[Delete item b and renumber items c and d as b and c.]

[Revise renumbered item b to read as follows.]

b. AADC: optional, but required for AADC price (150-piece minimum except no minimum for origin entry AADC); overflow allowed; For Line 1, use L801, Column B.

6.6 Tray Line 2

Line 2: ''FCM LTR'' and:

* * * * *

[Delete items c and d and renumber items e and f as c and d.]

* * * * *

[Revise the heading of 240 to read as follows:]

240 USPS Marketing Mail

[Revise, by finding and replacing ''Standard Mail'' with ''USPS Marketing Mail'' throughout section 240]

243 Prices and Eligibility

1.0 Prices and Fees

* * * * *

[Revise the title to 1.2 to read as follows.]

1.2 USPS Marketing Mail Price Application

[Revise 1.2 to read as follows.]

USPS Marketing Mail prices are based on the weight of the pieces as follows:

a. The appropriate minimum per piece price applies to USPS Marketing Mail automation or machinable letter-sized mailpiece that weighs 3.5 ounces (0.2188 pound) or less, Nonautomation nonmachinable letters that weigh 4.0 ounces (0,25 pounds) or less, flat-sized mailpieces that weighs 4.0 ounces (0.25 pound) or less and presorted Marketing Parcels and irregular parcels that weighs 3.3 ounces (0.2063 pound) or less.

b. A price determined by adding the per piece charge and the corresponding per pound charge applies to any USPS Marketing Mail piece that weighs more than the following: Nonmachinable letters and flats that weigh more than 4.0 ounces, presorted Marketing Parcels and Irregular parcels that weigh more than 3.3 ounces, and machinable parcels 3.5 ounces or more.

* * * * *

4.0 Price Eligibility for USPS Marketing Mail

* * * * *

4.2 Minimum Per Piece Prices

The minimum per piece prices (the minimum postage that must be paid for each piece) apply as follows:

* * * * *

[*Revise the third sentence of item c to read as follows.*]

c. * * * Except for Customized MarketMail pieces, discounted per piece prices also may be claimed for destination network distribution center (DNDC), destination sectional center facility (DSCF), and destination delivery unit (DDU)) under 246. * * *

4.3 Piece/Pound Prices

[Revise the last sentence of 4.3 to read as follows.]

* * * Discounted per pound prices also may be claimed for destination entry mailings DNDC, DSCF, and DDU under 246.

* * * * *

5.0 Additional Eligibility Standards for Nonautomation USPS Marketing Mail Letters, Flats, and Presorted Standard Mail Parcels

* * * * *

5.2 Weight Standards for Machinable Letter Pieces

[Revise 5.2 to read as follows.]

Maximum weight limit for machinable nonautomation USPS Marketing mail letters is 3.5 ounces (0.2188 pound).

* * * * *

5.6 Nonautomation Price Application—Flats

5.6.1 5-Digit Prices for Flats

The 5-digit price applies to flat-size pieces:

[Add new item d as follows.]

* * * * *

d. In an FSS bundle of 10 or more pieces properly placed in sack of at least 125 pieces or 15 pounds of pieces or on a pallet under 705.14.0.

5.6.2 3-Digit Prices for Flats

* * * * *

[Add new item c as follows.]

c. In an FSS bundle of 10 or more pieces properly placed in sack of at least 125 pieces or 15 pounds of pieces or on a pallet under 705.14.0.

* * * * *

[Delete item 5.6.5, FSS Scheme Piece Price for Flats, in its entirety and renumber current 5.6.6 as new 5.6.5.]

5.6.5 Mixed ADC Prices for Flats

[Revise renumbered 5.6.5 to read as follow:]

Mixed ADC prices apply to flat-size pieces in bundles that do not qualify for 5-digit, 3-digit, or ADC prices; placed in mixed ADC sacks or on ASF, NDC, or mixed NDC pallets under 705.8.0.

* * * * *

6.0 Additional Eligibility Standards for Enhanced Carrier Route USPS Marketing Mail Letters and Flats

6.1 General Enhanced Carrier Route Standards

* * * * *

6.1.2 Basic Eligibility Standards

[Revise item c to read as follows:]

c. Be sorted to carrier routes (except under 705.14.0), marked, and documented under 245.9.0, 705.8.0, or 705.14.0.

* * * * *

[Delete the last sentence in item h, in its entirety.]

6.3 Basic Price Enhanced Carrier Route Standards

* * * * *

6.3.3 Basic Price Eligibility—Flats

Basic prices apply to each piece in a carrier route bundle of 10 or more pieces that is:

[Revise item a to read as follows:]

a. Palletized under 705.8.0, 705.10.0, 705.12.0, 705.13.0 or 705.14.0 (FSS scheme bundles on a FSS facility pallet or prior eligibility to inclusion in FSS scheme pool).

* * * * *

6.3.4 Basic Carrier Route Bundles on a 5-digit Pallet (Basic–CR Bundles/Pallet) Price Eligibility–Flats

[Revise item 6.3.4 to read as follows:]

Basic—CR Bundles/Pallet prices apply to each piece in a carrier route bundle of 10 or more pieces that are palletized under 705.8.0 on a 5-digit carrier route or 5-digit scheme carrier route pallet entered at an Origin (None), DNDC, DSCF, or DDU entry or palletized under 705.14.0 on a FSS scheme pallet (in a FSS Scheme bundle).

6.4 High Density and High Density Plus (Enhanced Carrier Route) Standards—Letters

* * * * *

[Delete 6.4.3, High Density and High Density Plus Discount for Heavy Letters, in its entirety.]

6.5 High Density and High Density Plus (Enhanced Carrier Route) Standards—Flats

* * * * *

6.5.2 High Density and High Density Plus Prices for Flats

High density or high density plus prices apply to each piece meeting the density standards in 6.5.1 or in a carrier route bundle of 10 or more pieces that is:

[Revise item a to read as follows.]

a. Palletized under 705.8.0, 705.10.0, 705.12.0, 705.13.0 or 705.14.0 (eligibility prior to inclusion in FSS scheme bundles).

* * * * *

[Add new item e to 6.5.2 to read as follows.]

e. Placed in a FSS facility or scheme sack containing at least 125 pieces or 15 pounds of high density priced pieces or at least 300 pieces of high density plus priced pieces (pieces must qualify for price prior to inclusion in FSS bundle).

6.6 Saturation ECR Standards—Letters

* * * * *

[Delete 6.6.3, Saturation Discount for Heavy Letters, in its entirety.]

* * * * *

7.0 Eligibility Standards for Automation USPS Marketing Mail

* * * * *

7.4 Price Application for Automation Letters

Automation prices apply to each piece that is sorted under 245.10.0, into the corresponding qualifying groups:

* * * * *

[Revise item a to read as follows.]

a. Groups of 150 or more pieces in 5-digit/scheme trays qualify for the 5-digit price. Preparation to qualify for that price is optional. Pieces placed in full AADC trays under 245.7.5 in lieu of 5-digit/scheme overflow trays are eligible for 5-digit prices (see 245.7.5).

[Delete item b and renumber items c and d as items b and c.]

[Revise renumbered item b to read as follows.]

b. Groups of fewer than 150 pieces in origin AADC trays and groups of 150 or more pieces in an AADC tray qualify for the AADC price. Pieces placed in mixed AADC trays under 245.7.5 in lieu of AADC overflow trays also are eligible for AADC prices (see 245.7.5).

* * * * *

7.5 Price Application for Automation Flats

Automation prices apply to each piece properly sorted into qualifying groups:

[Revise items a and b to read as follows.]

a. The 5-digit price applies to flat-size pieces in a 5-digit/scheme bundle or pooled in a FSS scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable;

b. The 3-digit price applies to flat-size pieces in a 3-digit/scheme bundle or pooled in a FSS scheme bundle of 10 or more pieces.

* * * * *

[Delete items e through h in their entirety.]

* * * * *

245 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

1.3.1 Letters

Terms used for presort levels are defined as follows:

* * * * *

[Revise item e to read as follows:]

e. Origin/entry AADC: The ZIP Code in the delivery address on all pieces is addressed for delivery service area of the same automated area distribution center (AADC) (see L801).

* * * * *

1.4 Preparation Definition and Instructions

* * * * *

[Renumber items r through x as s through y.]

[Add new item r to read as follows.]

r. An *origin AADC* tray contains all mail (regardless of quantity) for an AADC ZIP Code area processed by the AADC or SCF in whose service area the mail is verified/entered. Only one less-than-full tray may be prepared for each AADC area.

* * * * *

1.6 FSS Preparation

[Revise the text of 1.6 to read as follows.]

Except for USPS Marketing Mail flats mailed at Saturation prices, all USPS Marketing Mail flats and meeting the physical standards in 201.6.2 destinating to a FSS scheme in accordance with labeling list L006 must be prepared under 705.14.0.

* * * * *

6.0 Preparing Enhanced Carrier Route Letters

* * * * *

6.6 General Traying and Labeling

[Revise the introductory text to read as follows.]

For all ECR letters over 3.5 ounces and all ECR letters that are not automation-compatible or delivery-point barcoded, prepare trays as explained below. Also prepare trays as explained below when a mailing contains some pieces over 3.5 ounces and some pieces up to 3.5 ounces. Pieces with simplified addresses must be prepared in separate trays from pieces with other forms of addressing. For ECR automation-compatible letters that are delivery-point barcoded and weigh up to 3.5 ounces, prepare trays under 6.7. Preparation sequence, tray size, and labeling:

* * * * *

6.7 Traying and Labeling for Automation-Compatible ECR Letters

[Revise first sentence of the introductory text to read as follows.]

Mailers must make full carrier route and 5-digit carrier routes trays, when possible, for automation-compatible, delivery-point barcoded ECR letters that weigh up to 3.5 ounces. * * *

* * * * *

7.0 Preparing Automation Letters

* * * * *

7.5 Tray Preparation

[Revise the introductory text to read as follows.]

Instead of preparing overflow trays with fewer than 150 pieces, mailers may include these pieces in an existing qualified tray of at least 150 or more pieces at the next tray level. (For example, if a mailer has 30 overflow 5-digit pieces for ZIP Code 20260, these pieces may be added to an existing qualified AADC tray for the correct destination and the overflow 5-digit pieces will still qualify for the 5-digit price). Mailers must note these trays on standardized documentation (see 708.1.2). Pieces that are placed in the next tray level must be grouped by destination and placed in the front or back of that tray. Mailers may use this option selectively for AADC ZIP Codes. This option does not apply to origin/entry AADC trays. Preparation sequence, tray size, and Line 1 labeling:

* * * * *

[Delete item b and renumber items c and d as items b and c.]

[Revise renumbered item b to read as follows.]

b. AADC: Optional, but required for AADC price (150-piece minimum except no minimum for origin entry AADC); overflow allowed. For Line 1, use L801, Column B.

* * * * *

7.6 Tray Line 2

Line 2: ''MKT LTR'' and:

[Delete items c and d and renumber items e and f as c and d.]

* * * * *

8.0 Preparing Nonautomation Flats

8.1 Basic Standards

All mailings and all pieces in each mailing at Regular USPS Marketing Mail and Nonprofit USPS Marketing Mail nonautomation prices are subject to specific preparation standards in 8.2 through 8.9 and to these general standards (automation price mailings must be prepared under 10.0):

* * * * *

[Revise item d to read as follows:]

d. Sortation determines price eligibility as specified in 243.5.0 except when included in a FSS scheme bundle under 705.14.0.

* * * * *

9.0 Preparing Enhanced Carrier Route Flats

9.1 Basic Standards

All mailings and all pieces in each mailing at Enhanced Carrier Route USPS Marketing Mail and Enhanced Carrier Route Nonprofit USPS Marketing Mail nonautomation prices are subject to specific preparation standards in 9.2 through 9.7 and to these general standards:

* * * * *

[Revise items d and e to read as follows:]

d. All pieces in the mailing must meet the specific sortation and preparation standards in 9.0 or the palletization standards in 705.8.0 except when included in a FSS scheme bundle under 705.14.0. Flat-size pieces may be prepared under 705.9.0 through 705.13.0.

e. Sortation determines price eligibility as specified in 243.5.0 except when included in a FSS scheme bundle under 705.14.0.

* * * * *

246 Enter and Deposit

* * * * *

6.0 Destination Flat Sequencing System (DFSS) Facility Entry

* * * * *

6.2 Eligibility

[Revise the first sentence of 6.2 to read as follows.]

DSCF prices apply to pieces deposited at a USPS-designated FSS processing site and correctly placed in or on a container labeled to a FSS scheme or FSS Facility processed by that site under labeling list L006 (Column B or Column C).

* * * * *

260 Bound Printed Matter

263 Prices and Eligibility

1.0 Prices and Fees for Bound Printed Matter

1.1 Nonpresorted Bound Printed Matter

* * * * *

1.1.1 Prices

[Revise the second sentence of 1.1.1 to read follows.]

* * * The nonpresorted price applies to BPM not mailed at the Presorted or carrier route prices. * * *

* * * * *

1.2 Presorted and Carrier Route Bound Printed Matter

* * * * *

1.2.3 Price Application

[Revise the first sentence of 1.2.3 to read as follows.]

The presorted Bound Printed Matter price has a per piece charge and a per pound charge. * * *

* * * * *

1.2.8 Computing Postage for Permit Imprint

[Revise the introductory text of 1.2.8 to read as follows.]

Presorted and Carrier Route Bound Printed Matter mailings paid with permit imprint are charged a per pound price and a per piece price as follows:

* * * * *

4.0 Price Eligibility for Bound Printed Matter

4.1 Price Eligibility

BPM prices are based on the weight of a single addressed piece or 1 pound, whichever is higher, and the zone (where applicable) to which the piece is addressed. Price categories are as follows:

* * * * *

[Revise items b and c to read as follows.]

b. Presorted Price. The Presorted price applies to BPM prepared in a mailing of at least 300 BPM pieces, prepared and presorted as specified in 265.5.0, 265.8.0, 705.8.0, 705.14.0 and 705.21.0. Each parcel must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0.

c. Carrier Route Price. The Carrier Route price applies to BPM prepared in a mailing of at least 300 pieces presorted to carrier routes, prepared and presorted as specified in 265.6.0, 265.9.0, 705.8.0 or 705.14.0. Each parcel must bear a unique Intelligent Mail package barcode or extra services barcode, including a postal routing code, prepared under 708.5.0.

* * * * *

4.2 Destination Entry Price Eligibility

[Revise the first sentence of the introductory text to read as follows.]

BPM destination entry prices apply to BPM mailings prepared as specified in 705.8.0, 705.14.0 and 265, and addressed for delivery within the service area of a destination network distribution center, sectional center facility, or delivery unit where they are deposited by the mailer. * * *

* * * * *

[Revise item b to read as follows.]

b. A destination sectional center facility (DSCF) includes all facilities in L005 and destination flats sequencing system (DFSS) in L006.

* * * * *

265 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.6 FSS Preparation

[Revise text of 1.6 to read as follows.]

BPM flats claiming presorted prices in FSS scheme bundles, meeting the standards in 201 and destinating to a FSS scheme in accordance with labeling list L006, must be prepared under 705.14.0.

* * * * *

266 Enter and Deposit

* * * * *

5.0 Destination Sectional Center Facility (DSCF) Entry

* * * * *

5.2 Presorted Flats

[Revise the text of 5.2 to read as follows.]

Presorted flats and automation flats in sacks for the FSS scheme, 5-digit, 3-digit, and SCF sort levels or on pallets at the 5-digit scheme, 5-digit, 3-digit, SCF, and ASF sort levels may claim

DSCF prices. Mail must be entered at the appropriate facility under 5.1.

* * * * *

7.0 Destination Flat Sequencing System (DFSS) Facility Entry

* * * * *

7.2 Eligibility

[Revise the first sentence of 7.2 to read as follows.]

DSCF prices apply to pieces deposited at a USPS-designated FSS processing facility and correctly placed on a container labeled to a FSS scheme or a FSS facility processed by that facility or to a single 5-digit destination processed by that facility under labeling list L006.

* * * * *

503 Extra and Additional Services

* * * * *

1.10 Receipts

[Revise the text of 1.10 to read as follows.]

Except for certificate of mailing under 5.0, the mailer receives a USPS sales receipt and the postmarked (round-dated) extra service form for services purchased at retail channels. The mailer must provide the receipt when submitting an insurance claim or filing an inquiry. For articles mailed via PC Postage or other online services, the mailer may access a computer printout online that identifies the applicable extra service number, total postage paid, insurance fee amount, declared value, declared mailing date, origin ZIP Code, and delivery ZIP Code. For three or more pieces with extra or accountable services presented for mailing at one time, the mailer uses Form 3877 (firm sheet) or USPS-approved privately printed firm sheets (see 1.7.2) in lieu of the receipt portion of the individual form. All entries made on firm sheets must be computer generated or made by typewriter, ink, or ballpoint pen. Alterations must be initialed by the mailer and accepting employee. Obliterate all unused portions of the addressee column with a diagonal line. USPS-approved privately printed firm sheets that contain the same information as Form 3877 may be approved by the local Postmaster or manager Business Mail Entry. The mailer may omit columns from privately printed Form 3877 that are not applicable to extra service requested. If the mailer wants the firm sheets receipted by the USPS (postmarked), the mailer must present the firm sheets with the articles to be mailed at a Post Office. The postmarked firm sheets become the mailer's receipts. For Registered Mail and COD (when Label 3816 is used), the mailer submits the forms in duplicate and receives one copy as a mailing receipt after the entries are verified by the postal employee accepting the mailing. Except for Registered Mail and COD items, the USPS keeps no mailing records for mail pieces bearing extra services.

4.0 Insured Mail

* * * * *

4.1.1 Additional Insurance-Priority Mail Express

[Revise 4.1.1 to read as follows.]

Additional insurance, up to a maximum coverage of $5,000.00, may be purchased for merchandise valued at more than $100.00 sent by Priority Mail Express. The additional insurance fee is in addition to postage and other fees. Coverage is limited to the actual value of the contents, regardless of the fee paid, or the highest insurance value increment for which the fee is fully paid, whichever is lower. When ''signature required'' service is not requested or when ''waiver of signature'' is requested, additional insurance is not available.

* * * * *

505 Return Services

1.0 Business Reply Mail (BRM)

* * * * *

1.1.3 Basic Qualified BRM (QBRM)

[Revise the first sentence of 1.1.3 to read as follows.]

For basic qualified BRM a permit holder is required to pay an account maintenance fee under 1.1.8, and a per-piece fee under 1.1.7, in addition to the applicable letter or card First-Class Mail postage for each returned piece. * * *

1.1.4 High-Volume Qualified BRM

[Revise the text of 1.1.4 to read as follows.]

In addition to the account maintenance, per-piece fees and applicable postage required under 1.1.3, a quarterly fee under 1.1.11 is required for high-volume QBRM.

* * * * *

1.2 Permits

* * * * *

1.2.2 Application Process

[Revise the first sentence of 1.2.2 to read as follows.]

The mailer may apply for a BRM permit by submitting a completed Form 3615 to the Post Office issuing the permit and except under 1.2.3 paying the annual permit fee. * * *

1.2.3 Annual Permit Fee

[Revise the first sentence of 1.2.3 to read as follows.]

Except for QBRM permits, a permit fee must be paid once each 12-month period at each Post Office where a BRM permit is held. * * *

1.2.4 Renewal of Annual Permit Fee

[Revise the introductory text of 1.2.4 to read as follows.]

Except for QBRM permits, an annual renewal notice is provided to each BRM permit holder by the USPS. QBRM permits do not expire unless the account is unused for a period of 12 months. The renewal notice and the payment for the next 12 months must be returned by the expiration date to the Post Office that issued the permit. After the expiration date, if the permit holder has not paid the annual permit fee, then returned BRM pieces are treated as follows:

* * * * *

1.2.6 Revocation of a Permit

[Revise the text of 1.2.6 to read as follows.]

The USPS may revoke any BRM permit because of format errors or for refusal to pay the applicable permit fees (annual, accounting, quarterly, or monthly), postage, or per piece fees. If the permit was revoked due to format errors, then a former permit holder may obtain a new permit and permit number by completing and submitting a new Form 3615, paying the required BRM annual permit fee (if applicable), paying a new annual account maintenance fee (if applicable), and, for the next 2 years, submitting two samples of each BRM format to the appropriate Post Office for approval.

507 Mailer Services

1.0 Treatment of Mail

* * * * *

4.3.4 Holding Mail

[Revise the first sentence of 4.3.4 to read as follows.]

At the sender's request, the delivery Post Office holds mail, other than Registered Mail, insured, Certified Mail, Adult Signature, Signature Confirmation and return receipt for merchandise, for no fewer than 3 days nor more than 30 days. * * *

* * * * *

508 Recipient Services

1.0 Recipient Options

1.1 Basic Recipient Concerns

* * * * *

1.1.7 Priority Mail Express and Accountable Mail

* * * * *

[Revise item f to read as follows.]

f. A notice is provided to the addressee for a mailpiece that cannot be delivered. If the piece is not called for or redelivery is not requested, the piece is returned to the sender after 15 days (five days for Priority Mail Express), unless the sender specifies fewer days on the piece.

* * * * *

1.8 Commercial Mail Receiving Agencies

1.8.1 Procedures

* * * * *

[Revise item d to read as follows.]

d. A CMRA is authorized to accept the following accountable mail from their customers for mailing at the Post Office: Insured, Priority Mail Express, Certified Mail, USPS Tracking, and Signature Confirmation mail. The sender (CMRA customer) must present accountable mail items not listed to the Post Office for mailing.

* * * * *

7.0 Hold For Pickup

* * * * *

7.2 Basic Information

* * * * *

7.2.5 Extra Services

[Delete item e in its entirety.]

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

604 Postage Payment Methods and Refunds

* * * * *

5.0 Permit Imprint (Indicia)

[Revise the heading and text of 5.1.4 to read as follows.]

5.1.4 Permit and Application Information

A mailer may obtain a permit to use a permit imprint indicia by submitting Form 3615 to the Post Office where mailings are made, or online under the terms and conditions in the Business Customer Gateway portal at *https://gateway.usps.com.* Mail Anywhere allows a qualified mailer to maintain a single permit for a postage payment method for mailings at any Business Mail Acceptance site under 705.23.3.2.

5.1.5 Application Fee

[Revise the text of 5.1.5 to read as follows.]

No application fee is required.

* * * * *

5.2 Suspension and Revocation

* * * * *

5.2.2 Revocation of Permit

[Revise the first sentence of 5.2.2 to read as follows.]

A permit may be revoked for use in operating any unlawful scheme or enterprise, if no mailings or payment of postage occurred during any consecutive 2-year period, for refusal to provide information about permit imprint use or mailings, and for noncompliance with any standard applicable to permit imprints. * * *

5.3 Indicia Design, Placement, and Content

* * * * *

5.3.10 Use of a Local Permit Imprint in Other Mailing Locations

A permit imprint displaying the city, state, and permit number of a mailer's original permit may be applied to pieces in a mailing presented for verification and acceptance at another Post Office location under the following conditions:

[Delete item a and renumber items b through d as items a through c]

* * * * *

[Revise the heading and introductory text of 5.5 to read as follows.]

5.5 Share Mail

Share Mail is an electronic postage payment mechanism for single-piece First-Class Mail letters or postcards, addressed to any domestic address, that weigh no more than one ounce each. Customers wishing to participate in this program must submit their request in writing to the Manager, New Solutions, Mailing Services, USPS, 475 L'Enfant Plaza SW., Room 5440, Washington, DC 20260–4440. Customers participating in the Share Mail postage payment program must, at a minimum, meet the following requirements:

* * * * *

9.0 Exchanges and Refunds

* * * * *

9.2 Postage and Fee Refunds

* * * * *

11.0 Postage Due Weight Averaging Program

11.1 Basic Information

* * * * *

11.1.3 Quality Control

[Revise the first sentence of the introductory text to read as follows.]

PDWA customers may elect to establish a quality control program to ensure that all missorted and accountable mail (including Certified Mail), return receipt for merchandise, USPS Tracking, Adult Signature, and Signature Confirmation) is identified and returned to the servicing Post Office prior to being opened. * * *

* * * * *

609 Filing Indemnity Claims for Loss or Damage

1.0 General Filing Instructions

* * * * *

1.3 Who May File

A claim may be filed by:

* * * * *

[Revise item e to reads as follows.]

1.5 Where and How to File

1.5.1 Claims Filed Online

* * * * *

700 Special Standards

[Throughout section 700, find and replace the name of ''Standard Mail'' to ''USPS Marketing Mail'']

703 Nonprofit USPS Marketing Mail and Other Unique Eligibility

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

14.0 FSS Scheme Preparation

14.1 General

[Revise the introductory text of 14.1 to read as follows.]

All presorted and high density plus, high density and basic carrier route USPS Marketing Mail, presorted and carrier route Bound Printed Matter (BPM), and Periodicals flats including all carrier route flats meeting the standards in 201.6.2 must be separated/pooled into FSS schemes, properly bundled and placed on or in pallets, trays, sacks, or approved alternate containers, for FSS scheme ZIP Code combinations within the same facility. Mailings that include 10 or more pieces of USPS Marketing Mail flats, 6 or more pieces of Periodicals flats, or 10 or more pieces (or 10 or more pounds) of BPM flats to an FSS scheme must be separated/pooled into FSS scheme bundles. The Postal Service also recommends the use of authorized flat trays in lieu of sacks for FSS bundles. FSS scheme bundles that are not required to be placed in a FSS scheme or FSS facility container are combined with bundles of non-FSS sorted bundles and placed on an applicable SCF, 3-digit

or NDC container. Mailers must prepare FSS scheme qualifying mailpieces for each individual FSS scheme combination, and then prepare bundles of uniform size from those pieces. Mailings (excluding saturation mailings of USPS Marketing Mail) with nonpresorted BPM flats may be included in FSS preparation, but will not be eligible for presorted or carrier route prices. Mailpieces that meet the eligibility standards for 5-digit or 3-digit automation, 5-digit or 3-digit nonautomation, carrier route (except USPS Marketing Mail saturation) or presort will continue to be eligible for those piece prices when prepared in accordance with the FSS preparations standards. Mailpieces and bundles must also be prepared as follows:

* * * * *

14.2 Basic Standards

14.2.1 Basic Standards

[Revise the introductory text and items a through e to read as follows.]

All Periodicals flats (including carrier route flats) meeting the standards in 201.6.2 and destinating to FSS sites as shown in L006 must be prepared according to these standards. Mailings of In-County Periodicals flats and the associated Outside-County Periodicals flats mailings of 5,000 pieces or less may be prepared according to these standards. Periodicals are subject to the following:

a. Pricing eligibility is based on 207.11.0 through 207.14.0. FSS bundles placed on FSS facility pallets, sacks, trays, or approved alternate container will claim the 3-Digit/SCF bundle price. FSS bundles placed on a FSS scheme pallet, sack, tray or approved alternate container will claim the Carrier Route bundle price.

b. FSS scheme pallets will be assessed the Carrier Route Pallet price. FSS facility sort level pallets will be charged a 3-Digit/SCF Pallet container price. FSS scheme or facility sacks or trays will be assessed the 3-Digit/SCF Sack/Tray price. Pallets, sacks and trays entered at a DFSS will claim the DSCF entry price.

c. The Outside-County pound price for mail entered at a DFSS will be theDSCF price. The Inside-County price will claim prices for the ''None'' entry level.

d. Mailers must provide standardized presort documentation under 708.1.0 that demonstrates eligibility for prices in accordance with 207.14.0 and 207.25.0.

e. Each mailpiece must be identified with an optional endorsement line in accordance with Exhibit 708.7.1.1, or when authorized, using a red Label 5 SCH barcoded pressure-sensitive bundle label.

* * * * *

14.3 USPS Marketing Mail

14.3.1 Basic Standards

[Revise the introductory text of 14.3.1 to read as follows.]

All flat-size USPS Marketing Mail mailpieces (except saturation) must be separated/pooled into 5-digit FSS scheme bundles and placed on pallets, or in sacks or approved alternate containers, for delivery to ZIP Codes having Flats Sequencing System (FSS) processing capability, as shown in L006. USPS Marketing Mail flats are subject to the following:

* * * * *

[Revise items b and c to read as follows.]

b. Mailers must provide standardized presort documentation under 708.1.0 that demonstrates eligibility for prices in accordance with 243.

c. Each mailpiece must be identified with an optional endorsement line in accordance with Exhibit 708.7.1.1; or when authorized, using a red Label 5 SCH barcoded pressure-sensitive bundle label.

* * * * *

14.4 Bound Printed Matter

14.4.1 Basic Standards

[Revise the introductory text of 14.4.1 to read as follows.]

Bound Printed Matter (BPM) flats that meet the standards in 201.6.2 must be separated/pooled into FSS scheme bundles and placed on pallets, or in flat trays, sacks, or approved alternate containers, for delivery to ZIP Codes having FSS processing capability, as shown in L006. BPM flats are subject to the following:

* * * * *

[Revise items b, c and d to read as follows.]

b. Mailers must provide standardized presort documentation under 708.1.0 that demonstrates eligibility for prices in accordance with 263.

c. Mailers must separate/pool all eligible flat-size mailpieces into FSS scheme bundles according to L006.

d. Each mailpiece must be identified with an optional endorsement line in accordance with Exhibit 708.7.1.1; or when authorized, using a red Label 5 SCH barcoded pressure-sensitive bundle label.

* * * * *

15.0 Combining USPS Marketing Mail Flats and Periodicals Flats

15.1.0 Basic Standards

* * * * *

15.1.6 Piece Prices

[Revise the text of 15.1.6 to read as follows.]

Apply piece prices based on the bundle level except FSS scheme bundles apply the piece prices based on the original bundle level. Pieces contained within mixed class bundles may claim prices based on the presort level of the bundle.

* * * * *

15.1.11 Preparation for FSS Zones

[Revise the introductory text of 15.1.11 to read as follows.]

Mailers authorized to combine mailings of USPS Marketing Mail flats and Periodicals flats must prepare these mailings under 14.0, when the mailing includes pieces destinating within one or more of the FSS zones in L006. The following applies:

[Revise item a to read as follows.]

a. Each mailpiece must be identified with an optional endorsement line (OEL), including the correct ZIP Code listed in L006, Column B, in accordance with Exhibit 708.7.1.1. The OEL described in 2.2 must not be used with mailpieces prepared under this option.

* * * * *

15.4.0 Pallet Preparation

15.4.1 Pallet Preparation, Sequence and Labeling

When combining USPS Marketing Mail and Periodicals flats within the same bundle or combining bundles of USPS Marketing Mail flats and bundles of Periodicals flats on pallets, bundles must be placed on pallets. Preparation, sequence and labeling:

[Reverse the order of items a and b to read as follows.]

a. *5-digit scheme carrier routes, required.* Pallet must contain only carrier route bundles for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, 5-digit carrier routes pallet preparation begins with 15.4.1c. Labeling:

1. Line 1: L001.

2. Line 2: ''STD/PER FLTS''; followed by ''CARRIER ROUTES'' (or ''CR–RTS''); followed by ''SCHEME'' (or ''SCH''); followed by ''MIX COMAIL.''

b. *Merged 5-digit scheme, optional.* Not permitted for bundles containing non-carrier route automation-compatible flats under 201.6.0. Required for all other bundles. Pallet must contain carrier route bundles and non-

carrier route 5-digit bundles (Presorted bundles only) for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, merged 5-digit pallet preparation begins with 15.4.1d. Labeling:

1. Line 1: L001.

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2. Line 2: ''STD/PER FLTS CR/5D;'' followed by ''SCHEME'' (or ''SCH''); followed by ''MIX COMAIL.''

* * * * *

708 Technical Specifications

1.0 Standardized Documentation for First-Class Mail, Periodicals, USPS Marketing Mail, and Flat-Size Bound Printed Matter

* * * * *

1.2 Format and Content

For First-Class Mail, Periodicals, USPS Marketing Mail, and Bound Printed Matter, standardized documentation includes:

* * * * *

[Revise the introductory text of item e, to read as follows.]

e. At the end of the documentation, a summary report of the number of pieces mailed at each price for each mailing by postage payment method (flat pieces mailed under FSS sort by 5-digit, 3-digit, saturation, high density, high density plus, basic carrier route and by entry point for drop shipment mailings) and the number of pieces in each mailing. This information must match the information reported on the postage statement(s). For Periodicals mailings, documentation also must provide:

1.6 Detailed Zone Listing for Periodicals

1.6.1 Definition and Retention

[Revise the first sentence of 1.6.1 to read as follows.]

The publisher must be able to present documentation to support the number of copies of each edition of an issue, by entry point, mailed to each zone, and at DDU, DSCF, DADC, DNDC, and In-County prices. * * *

* * * * *

1.6.3 Zone Abbreviations

Use the actual price name or the authorized zone abbreviation in the listings in 1.0 and 207.17.4.2:

ZONE ABBREVIATION RATE EQUIVALENT

[In the chart directly under 1.6.3, delete the row containing FSS under 'Zone Abbreviation' and Outside-County, DFSS under 'Rate Equivalent' in their entirety.]

* * * * *

7.0 Optional Endorsement Lines (OELs)

7.1 OEL Use

7.1.1. Basic Standards

[Revise the first sentence of the introductory text to read as follows.]

An optional endorsement line (OEL) may be used to label bundles instead of applying pressure-sensitive bundle labels or facing slips to the top piece of bundles except each mailpiece in a FSS bundle must bear an optional endorsement line in human-readable text, including the correct ZIP code listed in Column B of L006, as described in Exhibit 7.1.1 * * *

Exhibit 7.1.1 OEL Formats

[Revise Exhibit 7.1.1 to read as follows.]

Sortation Level	OEL Example
Firm—BPM machinable parcels	******FIRM 12345.
Firm—Periodicals	******FIRM 12345.
Origin Mixed ADC—Periodicals (3-digit ZIP Code prefix)	******ORIGIN MIXED ADC 117.
Carrier Route—Periodicals basic	******CARRT LOT**C–001. ******CR LOT 1234A**C–001.
Carrier Route—Periodicals & Mkt Mail basic FSS	******SCH 5–DIGIT 12345 FSSC.
Carrier Route—Periodicals high density	******CARRT WSH**C–001.
Carrier Route—Periodicals & Mktg Mail High density FSS	******SCH 5- DIGIT 12345 FSSB.
Carrier Route—Periodicals saturation	******CARRT WSS**C–001.
Carrier Route—Periodicals Saturation FSS	******SCH 5–DIGIT 12345 FSSH.
ECR—Mktg Mail basic	******ECRLOT**C–001. ******ECRLOT 1234A**C–001.
ECR—Mktg Mail high density or high density plus	******ECRWSH**C–001.
ECR—Mktg Mail High Density Plus FSS	******SCH 5–DIGIT 12345 FSSA.
ECR—Mktg Mail saturation	******ECRWSS**C–001.
Carrier Route—Bound Printed Matter	******CARRT SORT**C–001.
Carrier Route FSS—Bound Printed Matter	******SCH 5–DIGIT 12345 FSSM.
5-Digit	5–DIGIT 12345.
5-Digit (Nonautomation FSS flats)	******SCH 5–DIGIT 12345 FSSE.
5-Digit Scheme (Automation flats)	******SCH 5–DIGIT 12345.
5-Digit Scheme (Automation FSS flats)	******SCH 5–DIGIT 12345 FSSD.
3-Digit	******3–DIGIT 771.
3-Digit (Nonautomation FSS flats)	******SCH 5–DIGIT 12345 FSSG.
3-Digit Scheme (Automation flats)	******SCH 3–DIGIT 006.
3-Digit Scheme	******SCH 5-Digit (Automation FSS flats) 12345 FSSF.
ADC (3-digit ZIP Code prefix)	******ALL FOR ADC 105.
ADC (5-digit ZIP Code)	******ALL FOR ADC 90197.
ADC (Automation FSS flats)	******SCH 5–DIGIT 12345 FSSK.
ADC (Nonautomation FSS flats)	******SCH 5–DIGIT 12345 FSSL.
Mixed ADC (3-digit ZIP Code prefix)	******MIXED ADC 640.
Mixed ADC (5-digit ZIP Code)	******MIXED ADC 60821.
Presorted BPM (FSS flats)	******SCH 5–DIGIT 12345 FSSJ.
Nonpresorted BPM FSS	******SCH 5–DIGIT 12345 FSSN.
Optional tray level piece ID for automation letters:	
AADC (3-digit ZIP Code prefix)	******ALL FOR AADC 050.
AADC (5-digit ZIP Code)	******ALL FOR AADC 07099.
Mixed AADC (3-digit ZIP Code prefix)	******MIXED AADC 870.
Mixed AADC (5-digit ZIP Code)	******MIXED AADC 75197.

Sortation Level	OEL Example
Additional required human-readable text for use with combined mailings of USPS Marketing Mail and Periodical flats:	
5-Digit Scheme (and other sortation levels as appropriate)	******SCH 5–DIGIT 12345 MIX COMAIL.
5-Digit Scheme (Automation FSS flats)	*****SCH 5–DIGIT 12345 FSSD COMAIL.
5-Digit (Nonautomation FSS flats)	*****SCH 5–DIGIT 12345 FSSE COMAIL.
3-Digit (Automation FSS flats)	*****SCH 5–DIGIT 12345 FSSF COMAIL.
3-Digit (Nonautomation FSS flats)	*****SCH 5–DIGIT 12345 FSSG COMAIL.
ADC (Automation FSS flats)	*****SCH 5–DIGIT 12345 FSSK COMAIL.
ADC (Nonautomation FSS flats)	*******SCH 5–DIGIT 12345 FSS COMAIL.
Carrier Route high density plus (FSS flats)	******SCH 5–DIGIT 12345.
FSSG COMAIL	******SCH 5–DIGIT 12345 FSSA COMAIL.
Carrier Route high density (FSS flats)	******SCH 5-DIGIT 12345 FSSB COMAIL.
FSSC COMAIL	******SCH 5-DIGIT 12345 FSSA COMAIL.
Carrier Route high density (FSS flats)	******SCH 5-DIGIT 12345 FSSC COMAIL.
Carrier Route basic	******SCH 5-DIGIT 12345 FSSC COMAIL.

* * * * *

7.1.8 Required OEL Use in Combined Mailings of USPS Marketing Mail and Periodicals Flats

* * * The following additional standards also apply:

* * * * *

[Revise item c to read as follows.]

c. When combined mailings of USPS Marketing Mail and Periodicals flats are prepared to FSS zones under 705.15.1.11, each mailpiece must bear an optional endorsement line in human-readable text, including the correct ZIP code listed in Column B of L006, as described in Exhibit 7.1.1.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

* * * * *

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–30381 Filed 12–20–16; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0543 FRL–9956–98-Region 9]

Determination of Attainment of the 2008 Ozone National Ambient Air Quality Standards; Eastern San Luis Obispo, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing our determination that the San Luis Obispo (Eastern San Luis Obispo) ozone nonattainment area (NAA) in California has attained the 2008 ozone National Ambient Air Quality Standards (NAAQS or ''standards'') by the applicable attainment date of July 20, 2016. This determination is based on complete, quality-assured and certified data for the 3-year period preceding that attainment date. Based on this determination, the Eastern San Luis Obispo NAA will not be reclassified to a higher ozone classification.

DATES: This rule will be effective on January 20, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2016–0543. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly-available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly-available only in hard copy form. Publicly-available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Nancy Levin, EPA Region IX, (415) 972–3848, *levin.nancy@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

Table of Contents

I. Summary of Proposed Rule

On October 12, 2016 (81 FR 70382), the EPA proposed to determine that the Eastern San Luis Obispo ozone NAA has attained the 2008 ozone standard by the applicable attainment date of July 20, 2016, based on complete, quality-assured and certified ambient air quality monitoring data for the 2013–2015 monitoring period. San Luis Obispo County is the northern-most county within the air basin designated by California as the South Central Coast Air Basin. The NAA encompasses roughly the eastern half of San Luis Obispo County. For the precise boundaries of the Eastern San Luis Obispo 2008 ozone NAA, see 40 CFR 81.305.

Our proposed rule provided background information on the 2008 ozone standards,[1] the EPA's classification of the Eastern San Luis Obispo NAA under the Clean Air Act (CAA) as ''Marginal'' for the 2008 ozone standard, and the EPA's prior approval of an extension of the applicable attainment date for the area from July 20, 2015 to July 20, 2016 (81 FR 26697, May 4, 2016). In our proposed rule, we described our obligation under CAA section 181(b)(2)(A) to determine whether an ozone NAA attained the ozone NAAQS by the applicable attainment date within six months of that date; how we determine whether an area's air quality meets the 2008 ozone standard; and the relevant air quality monitoring agencies in the Eastern San Luis Obispo ozone NAA, their monitoring network plans, and the relevant ozone monitoring sites. We also discussed our previous review of the networks and network plans, the annual certifications of ambient air monitoring data, and our determination of completeness for 2013–2015 data from the two ozone monitoring sites within the Eastern San Luis Obispo NAA.

Our proposed rule included a table of ozone ''design values'' at the two ozone monitoring sites in the Eastern San Luis

[1] Since the primary and secondary 2008 ozone standards are the same, we hereafter refer to them herein using the singular ''2008 ozone standard.''

Obispo NAA.[2] *See* 81 FR 70382, at 70384. As explained in our proposed rule, the 2008 ozone standard is attained in an area when the design value is less than or equal to 0.075 parts per million (ppm), as determined in accordance with 40 CFR part 50, appendix P, at each monitoring site within the area. *See* 40 CFR 50.15. Based on our review of the monitoring data, which showed a design value for the area of 0.073 ppm (based on data collected at the Red Hills site) for 2013–2015, and taking into account the extent and reliability of the applicable ozone monitoring network, we proposed to determine that the Eastern San Luis Obispo NAA has attained the 2008 ozone standard by the applicable attainment date of July 20, 2016 based on complete, certified and quality-assured data for the 2013–2015 period. Lastly, we noted that if we finalize our proposed determination, then the Marginal Eastern San Luis Obispo NAA would not be subject to reclassification to ''Moderate'' for the 2008 ozone standard, that a determination of attainment by the applicable attainment date would not constitute a redesignation, and that the designation status of the Eastern San Luis Obispo area would remain nonattainment for the 2008 ozone standard until such time as the EPA determines that the area meets the CAA requirements for redesignation to attainment. Please see our proposed rule for more information concerning these topics.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. Final Action

Under CAA section 181(b)(2)(A), and based on the rationale presented in our proposed rule and summarized above, the EPA is finalizing our determination that the Eastern San Luis Obispo ozone NAA has attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2016. The EPA is making this determination based on complete, quality-assured and certified ambient air quality monitoring data for the 2013–2015 monitoring period. As a result of this determination, the Eastern San Luis Obispo 2008 ozone NAA will not be reclassified to a higher classification for the 2008 ozone standard.

IV. Statutory and Executive Order Reviews

This action is a determination based on air quality data 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 (Public Law 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not 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. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 21, 2017. 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, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: December 8, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.282 is amended by adding paragraph (i) to read as follows:

§ 52.282 Control strategy and regulations: Ozone

* * * * *

(i) *Determination of attainment.* The EPA has determined that, as of January 20, 2017, the San Luis Obispo (Eastern San Luis Obispo) 2008 8-hour ozone nonattainment area in California has attained the 2008 ozone standard by the July 20, 2016 applicable attainment date, based upon complete, quality-

[2] The design value is a statistic that describes the air quality status of a given location relative to the level of the NAAQS. For the purpose of comparison with the 2008 ozone standard, the design value for a site is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentrations. The design value for a given area is based on the monitoring site with the highest design value.

assured and certified data for 2013–2015. Therefore, the EPA has met its obligation pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality data as of the attainment date, whether the area attained the standard. As a result of this determination, the San Luis Obispo (Eastern San Luis Obispo) 2008 ozone nonattainment area in California will not be reclassified for failure to attain by the July 20, 2016 applicable attainment date under section 181(b)(2)(A).

[FR Doc. 2016–30476 Filed 12–20–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2013–0799; FRL- 9956–90-Region 4]

Air Plan Approval; Tennessee; Regional Haze Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) on April 19, 2013. Tennessee's April 19, 2013, SIP revision (Progress Report) addresses requirements of the Clean Air Act (CAA or Act) and EPA's rules that require each state to submit periodic reports describing progress towards reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the State's existing SIP addressing regional haze (regional haze plan). EPA is approving Tennessee's Progress Report on the basis that it addresses the progress report and adequacy determination requirements for the first implementation period for regional haze.

DATES: This rule will be effective January 20, 2017.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2013–0799. 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: Michele Notarianni, 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. Ms. Notarianni can be reached by phone at (404) 562–9031 and via electronic mail at *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the Regional Haze Rule,[1] each state was required to submit its first implementation plan addressing regional haze visibility impairment to EPA no later than December 17, 2007. *See* 40 CFR 51.308(b). Tennessee submitted its regional haze plan on April 4, 2008, and like many other states subject to the Clean Air Interstate Rule (CAIR), relied on CAIR to satisfy best available retrofit technology (BART) requirements for emissions of sulfur dioxide and nitrogen oxides from electric generating units in the State.

On April 24, 2012, EPA finalized a limited approval of Tennessee's April 4, 2008, regional haze plan as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–51.308.[2] Also in this April 24, 2012, action, EPA finalized a limited disapproval of Tennessee's regional haze plan because of deficiencies arising from the State's reliance on CAIR to satisfy certain regional haze requirements. *See* 77 FR 24392. On June 7, 2012, EPA promulgated Federal Implementation Plans (FIPs) to replace reliance on CAIR with reliance on the Cross State Air Pollution Rule (CSAPR) to address deficiencies in CAIR-dependent regional haze plans of several states, including Tennessee's regional haze plan.[3] *See* 77 FR 33642.

Each state is also required to submit a progress report in the form of a SIP revision every five years that evaluates progress towards the RPGs for each mandatory Class I Federal area within the state and for each mandatory Class I Federal area outside the state which may be affected by emissions from within the state. *See* 40 CFR 51.308(g). Each state is also required to submit, at the same time as the progress report, a determination of the adequacy of its existing regional haze plan. *See* 40 CFR 51.308(h). The first progress report was due five years after submittal of the initial regional haze plan.

On April 19, 2013, as required by 40 CFR 51.308(g), TDEC submitted to EPA, in the form of a revision to Tennessee's SIP, a report on progress made towards the RPGs for Class I areas in the State and for Class I areas outside the State that are affected by emissions from sources within the State. This submission also includes a negative declaration pursuant to 40 CFR 51.308(h)(1) that the State's regional haze plan is sufficient in meeting the requirements of the Regional Haze Rule.

In a notice of proposed rulemaking (NPRM) published on September 28, 2016 (81 FR 66596), EPA proposed to approve Tennessee's Progress Report on the basis that it satisfies the requirements of 40 CFR 51.308(g) and 51.308(h). No comments were received on the September 28, 2016, proposed rulemaking. The details of Tennessee's submittal and the rationale for EPA's action is further explained in the NPRM. *See* 81 FR 66596 (September 28, 2016).

II. Final Action

EPA is finalizing approval of Tennessee's Regional Haze Progress Report SIP revision, submitted by the State on April 19, 2013, as meeting the applicable regional haze requirements

[1] Located in 40 CFR part 51, subpart P.

[2] This April 24, 2012, action did not include the BART determination for Eastman Chemical Company (Eastman). On November 27, 2012, EPA finalized approval of the BART requirements for Eastman that were provided in the April 4, 2008, regional haze SIP, as later modified and supplemented on May 14, 2012, and May 25, 2012 (77 FR 70689).

[3] Although a number of parties challenged the legality of CSAPR and the D.C. Circuit initially vacated and remanded CSAPR to EPA in *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), the United States Supreme Court reversed the D.C. Circuit's decision on April 29, 2014, and remanded the case to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, and CSAPR is now in effect. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015).

set forth in 40 CFR 51.308(g) and 51.308(h).

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 (Public Law 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 February 21, 2017. 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 oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: December 1, 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 RR—Tennessee

■ 2. Section 52.2220(e), is amended by adding an entry for ''April 2013 Regional Haze Progress Report'' at the end of the table to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
* * *	*	*	* *	*
April 2013 Regional Haze Progress Report	Tennessee	4/19/2013	12/21/2016, [insert **Federal Register** citation].	

[FR Doc. 2016–30184 Filed 12–20–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0669; FRL–9956–66-Region 9]

Determination of Attainment of the 2008 Ozone National Ambient Air Quality Standards; Mariposa County, California

AGENCY: The Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to determine that the Mariposa County, California Moderate Nonattainment Area (NAA) has attained the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS or ''standards''). This determination is based on complete, quality-assured and certified data for 2013–2015. Preliminary data for 2016 are consistent with continued attainment of the standards in the Mariposa County NAA. This determination suspends any unfulfilled obligations to submit revisions to the state implementation plan (SIP) related to attainment of the 2008 ozone standards for the Mariposa County NAA for as long as the area continues to meet those standards.

DATES: This rule is effective on February 21, 2017 without further notice, unless the EPA receives adverse comments by January 20, 2017. If the EPA receives such comments, the EPA will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2016–0669 at *http://www.regulations.gov,* or via email to *levin.nancy@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Nancy Levin, EPA Region IX, (415) 972–3848, *levin.nancy@epa.gov.*

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

Table of Contents

I. What is the background for this action?

A. Ozone NAAQS, Area Designations and Classifications

The Clean Air Act (CAA or ''Act'') requires the EPA to establish national primary and secondary standards for certain widespread pollutants, such as ozone, that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare.[1] In the 1970s, the EPA promulgated primary and secondary ozone standards, based on a 1-hour average. In 1997, we replaced the 1-hour ozone standards with primary and secondary 8-hour ozone standards. In 2008, we tightened the 8-hour ozone standards to the level of 0.075 parts per million (ppm), daily maximum 8-hour average.[2] *See* 73 FR 16436 (March 27, 2008); 40 CFR 50.15. Since the primary and secondary ozone standards are the same, we refer to them hereafter in this document using the singular ''2008 ozone standard'' (or simply ''standard'') or NAAQS. The 2008 ozone standard is met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppm, as determined in accordance with 40 CFR part 50, Appendix P.

The EPA designated NAAs for the 2008 ozone standard on May 21, 2012, effective July 20, 2012 (77 FR 30088). In that action, the EPA classified (by operation of law) the Mariposa County, California[3] NAA as a ''Marginal'' nonattainment area. The original attainment date for the 2008 ozone standard for this Marginal ozone nonattainment area was as expeditious as practicable but not later than July 20, 2015. *See* 40 CFR 51.1103.

In May 2016, the EPA determined that the Mariposa County NAA failed to attain the 2008 ozone standard by the applicable attainment date of July 20, 2015, and reclassified the area to the next higher classification, *i.e.,* ''Moderate.'' Our determination was based on complete, quality-assured and certified data for 2012–2014.[4] States with Moderate ozone NAAs are required to submit revisions to the applicable SIP that comply with the requirements set forth in subpart 2 of part D of title I of the CAA and in the EPA's ozone implementation rule for the 2008 ozone NAAQS in 40 CFR part 51, subpart AA. The relevant SIP requirements include, among other requirements, attainment demonstrations and associated reasonably available control measures (RACM), reasonable further progress (RFP) plans, and contingency measures for failure to attain or make RFP. The applicable attainment date for areas

[1] *See* sections 108 and 109 of the Clean Air Act (CAA or ''Act''). Primary standards represent ambient air quality standards the attainment and maintenance of which the Environmental Protection Agency (EPA) has determined, including a margin of safety, are requisite to protect the public health. Secondary standards represent ambient air quality standards the attainment and maintenance of which the EPA has determined are requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. CAA section 109(b).

[2] In 2015, we tightened the ozone National Ambient Air Quality Standards (NAAQS or ''standards'') even further and established 0.070 parts per million (ppm), 8-hour average, as the new ozone NAAQS. *See* 80 FR 65292 (October 26, 2015). While the 1979 1-hour ozone NAAQS and 1997 8-hour ozone NAAQS have been revoked, the 2008 ozone NAAQS remains in effect.

[3] Mariposa County is located in central California and is the southern-most county within the air basin designated by California as the Mountain Counties Air Basin. The nonattainment area designation for Mariposa County encompasses the entire county.

[4] 81 FR 26697 (May 4, 2016). The 2012–2014 design value for the Mariposa County NAA was 0.078 parts per million, which exceeded the 2008 ozone NAAQS of 0.075 ppm, daily maximum 8-hour average. We note that today's action is based on the 2013–2015 design value.

classified as Moderate nonattainment for the 2008 ozone NAAQS is as expeditious as practicable but not later than July 20, 2018. *See* 40 CFR 51.1103.

B. Relevant Statutory and Regulatory Requirements

Under the provisions of EPA's ozone implementation rule for the 2008 ozone NAAQS, if the EPA issues a determination that an area is attaining the relevant standard, also known as a Clean Data Determination, the requirements for such area to submit attainment demonstrations and associated RACM, RFP plans, contingency measures and other planning SIPs related to attainment of the 2008 ozone NAAQS are suspended until such time as the area is redesignated to attainment for the 2008 ozone NAAQS. However, if the EPA later determines, through notice-and-comment rulemaking, that the area has again violated the 2008 ozone NAAQS, the area is again required to submit such plans. *See* 40 CFR 51.1118. While these requirements are suspended, the EPA is not precluded from acting upon these SIP elements at any time if submitted to the EPA for review and approval.

C. Ambient Air Quality Monitoring Data

A determination of whether an area's air quality meets the 2008 ozone NAAQS is generally based upon three consecutive calendar years of complete, quality-assured data measured at established State and Local Air Monitoring Stations (SLAMS) in the NAA and entered into the EPA Air Quality System (AQS) database. Data from ambient air monitoring sites operated by state or local agencies in compliance with EPA monitoring requirements must be submitted to AQS. Heads of monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, the EPA relies primarily on data in AQS when determining the attainment status of an area. *See* 40 CFR 50.15; 40 CFR part 50, Appendix P; 40 CFR part 53; 40 CFR part 58, Appendices A, C, D and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, Appendix P.

The 2008 ozone standard is met at an ambient air quality monitoring site when the design value is less than or equal to 0.075 ppm, as determined in accordance with 40 CFR part 50, Appendix P. *See* 40 CFR 50.15. The design value is a statistic that describes the air quality status of a given location relative to the level of the NAAQS. For the purpose of comparison with the 2008 ozone standard, the design value for a site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. When the design value is less than or equal to 0.075 ppm (based on the rounding convention in 40 CFR part 50, Appendix P) at each monitoring site within the area, then the area is meeting the NAAQS. The data completeness requirement is met when the 3-year average percent of days with valid monitoring data is at least 90 percent, and no single year has less than 75 percent data completeness as determined in accordance with 40 CFR part 50, Appendix P.

II. What is the EPA's analysis of the Relevant Air Quality data?

A. Monitoring Network and Data Considerations

The California Air Resources Board (CARB) and local air pollution control districts and air quality management districts (''districts'') operate ambient air monitoring stations throughout the State of California. CARB is the lead monitoring agency in the Primary Quality Assurance Organization (PQAO) that includes all the monitoring agencies in the State with a few exceptions.[5] [6]

Within the Mariposa County ozone nonattainment area, there is one ozone SLAMS (referred to as the Jerseydale site) that is operated by CARB, and one SLAMS (referred to as the Turtleback Dome site in Yosemite National Park) that is operated by the National Park Service (NPS). The ozone monitoring site operated by NPS at Turtleback Dome is one of many sites throughout the U.S. and Canada that comprise the Clean Air Status and Trends Network (CASTNET).[7] Ozone monitors at CASTNET sites meet the EPA's ambient air quality monitoring requirements of 40 CFR part 58, and data from such sites are submitted to AQS. Ozone data from CASTNET sites, such as Turtleback Dome, are eligible for use in determining compliance with the ozone NAAQS. CARB is the PQAO for the Jerseydale site. The NPS is the PQAO for the Turtleback Dome site.

All state and local air monitoring agencies are required to submit annual monitoring network plans to the EPA.[8] An annual monitoring network plan discusses the status of the air monitoring network, as required under 40 CFR part 58.10. CARB submits the annual monitoring network plans for the Jerseydale site.

Since 2007, the EPA has regularly reviewed these annual monitoring network plans for compliance with the applicable reporting requirements in 40 CFR part 58. With respect to ozone, the EPA found that the area's annual monitoring network plans meet the applicable requirements under 40 CFR part 58. *See* EPA letters to CARB approving annual monitoring network plans for the years 2013, 2014 and 2015.[9] The 2016 CASTNET annual network plan, dated June 23, 2016, includes the Turtleback Dome site.[10]

The EPA also concluded from its Technical System Audit of the CARB PQAO (conducted during Summer 2015), that the combined ambient air monitoring network operated by CARB currently meets or exceeds the requirements for the minimum number of SLAMS for the 2008 ozone standard.[11] All of the monitoring sites in the PQAO are reviewed with respect to monitoring objectives, spatial scales and other site criteria as required by 40 CFR part 58, Appendix D.

CARB oversees the quality assurance of all data collected within the CARB PQAO. Also, CARB annually certifies that the data it submits to AQS are

[5] A Primary Quality Assurance Organization (PQAO) means a monitoring organization, a group of monitoring organizations or other organization that is responsible for a set of stations that monitor the same pollutant and for which data quality assessments can be pooled. Each criteria pollutant sampler/monitor at a monitoring station must be associated with only one PQAO. (40 CFR 58.1).

[6] The Bay Area Air Quality Management District (AQMD), the South Coast AQMD and the San Diego Air Pollution Control District are each designated as the PQAO for their respective ambient air monitoring programs.

[7] Clean Air Status and Trends Network (CASTNET) is a national monitoring network established to assess trends in pollutant concentrations, atmospheric deposition and ecological effects due to changes in air pollutant emissions. For additional background on CASTNET, *see https://www.epa.govfxsp0;/castnet.*

[8] *See* 40 CFR 58.10(a)(1).

[9] Letter from Meredith Kurpius, Manager, Air Quality Analysis Office, EPA Region IX, to Karen Magliano, Chief, Air Quality Data Branch, Planning and Technical Support Division, CARB, dated March 7, 2014, approving CARB's 2013 annual monitoring network report; letter from Meredith Kurpius, Manager, Air Quality Analysis Office, EPA Region IX, to Karen Magliano, Chief, Air Quality Data Branch, Planning and Technical Support Division, CARB, dated January 27, 2015, approving CARB's 2014 annual monitoring report; and letter from Meredith Kurpius, Manager, Air Quality Analysis Office, U.S. EPA Region IX, to Ravi Ramalingam, Chief Consumer Products and Air Quality Assessment Branch, Air Quality Planning and Science Division, CARB, dated November 13, 2015, approving CARB's 2015 annual monitoring network report.

[10] The 2016 CASTNET Annual Network Plan is available at *https://www.epa.gov/sites/production/files/2016-07/documents/castnet_plan_2016_final.pdf.*

[11] Letter from Elizabeth J. Adams, Acting Director, Air Division, EPA Region IX, to Richard Corey, Executive Officer, CARB, dated August 31, 2016, transmitting findings of the EPA's 2015 Technical System Audit of the CARB's ambient air monitoring program.

complete and quality-assured. This includes data from all CARB sites, including the Jerseydale site.[12] Data from the Turtleback Dome site are certified by the NPS.[13]

As noted above, there are two ozone SLAMS monitoring sites operating within the Mariposa County NAA. These sites monitor ozone concentrations on a continuous basis using EPA reference or equivalent methods.[14] [15]

Lastly, consistent with the requirements contained in 40 CFR part 50, the EPA has reviewed the quality-assured and certified ozone ambient air monitoring data, as recorded in AQS for the applicable monitoring period, collected at the monitoring sites in the Mariposa County NAA for completeness. The EPA has determined that the data are complete.[16] For the two ozone monitoring sites in Mariposa County, daily maximum 8-hour average concentrations are available for at least 90 percent of the days within the ozone monitoring season, on average for the 2013–2015 period, and daily maximum 8-hour average concentrations are available for at least 75 percent of the days within the ozone monitoring season for each individual year within that period.

B. Evaluation of the Ambient Air Quality Data

As noted above, the applicable attainment date for the Mariposa County ozone NAA is July 20, 2018; however, we have reviewed the data collected at the two monitoring sites within that area during the most recent three-year period (2013–2015) to determine whether the area has already attained the 2008 ozone standard. Table 1 shows the fourth-highest daily maximum 8-hour ozone concentrations for 2013 through 2015 at both sites in the Mariposa County ozone NAA and shows the design values for 2013–2015. The design value for a given area is based on the monitoring site in the area with the highest design value. In this case, the design value for 2013–2015 for the Mariposa County ozone NAA is at the Jerseydale site and is 0.075 ppm, which is equal to the standard (*i.e.,* 0.075 ppm). Therefore, we are determining, based on the complete, quality-assured and certified data for 2013–2015, that the Mariposa County Moderate ozone NAA has attained the 2008 ozone standard. We have also reviewed preliminary data for 2016 and find that they are consistent with continued attainment of the standard in the Mariposa County NAA.[17]

TABLE 1—2013–2015 OZONE DESIGN VALUES AT SITES WITHIN THE MARIPOSA COUNTY NAA

Monitoring site	AQS site identification number	Fourth-highest daily maximum 8-hour ozone concentration (ppm)			Design value (2013–2015)
		2013	2014	2015	
Yosemite NP—Turtleback Dome	06–043–0003	0.073	0.077	0.073	0.074
Jerseydale	06–043–0006	0.077	0.077	0.071	0.075

Source: EPA AQS Quick Look Report (AMP450), August 10, 2016.

III. What is the effect of this action?

With this determination that the Mariposa County ozone NAA has attained the 2008 ozone NAAQS, the obligation on the State of California to submit SIP revisions related to attainment of the 2008 ozone standard in Mariposa County, including but not limited to SIP revisions demonstrating attainment and RFP, is suspended until such time as Mariposa County is redesignated to attainment for the 2008 ozone standard, at which time the requirements no longer apply. However, if the EPA determines, through notice-and-comment rulemaking, that Mariposa County has once again violated the 2008 ozone NAAQS, then the area is again required to submit the attainment-related SIP revisions. *See* 40 CFR 51.1118.

This final determination of attainment for the Mariposa County NAA does not constitute a redesignation to attainment. Under CAA section 107(d)(3)(E), redesignations to attainment require states to meet a number of additional statutory criteria, including EPA's approval of a SIP revision demonstrating maintenance of the standard for 10 years after redesignation. The designation status of the Mariposa County area will remain Moderate nonattainment for the 2008 ozone NAAQS until such time as the EPA determines that the area meets the CAA requirements for redesignation to attainment.

IV. Final Action

The EPA is taking direct final action to determine that the Mariposa County Moderate ozone NAA has attained the 2008 ozone standard based on complete, quality-assured and certified ambient air quality monitoring data for the 2013–2015 monitoring period. Preliminary data for 2016 are consistent with continued attainment of the standard in the Mariposa County NAA. Upon the effective date of this determination, the requirements for the Mariposa County NAA to submit planning SIPs related to attainment of the standard are suspended until the area is redesignated or the EPA determines that the area has violated the standard, at which time the area would again be required to submit such plans.

We do not think anyone will object to this determination, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing to make the same determination made herein. If we

[12] *See, e.g.,* letter from Ravi Ramalingam, Chief, Air Quality Data Branch, CARB, to Elizabeth Adams, Acting Director, Air Division, EPA Region 9, certifying calendar year 2015 ambient air quality data and quality assurance data, May 10, 2016.

[13] *See, e.g.,* letter from Barkley Sive, Air Resources Division Program Manager, National Park Service, to Lew Weinstock, EPA Office of Air Quality Policy and Standards, certifying calendar year 2015 ambient air quality data and quality assurance, dated April 27, 2016.

[14] *See* the CARB's *Annual Monitoring Network Report for Twenty-five Districts in California* (July 2015). The EPA approved an ozone season waiver for the Jerseydale site. See letter from Meredith Kurpius, Manager, Air Quality Analysis Office, EPA Region IX, to Ravi Ramalingam, Chief, Consumer Products and Air Quality Assessment Branch, CARB, dated March 8, 2016. The Jerseydale ozone monitor operates only in the warmer six months of the year. The site is at a high elevation where access during the winter can be problematic. Ozone concentrations during the winter at the Jerseydale site are well below the levels of the 2008 ozone standard.

[15] *See* the CARB's *Annual Monitoring Network Report for Twenty-five Districts in California* (July 2015).

[16] *See* EPA, Air Quality System, Design Value Report, July 25, 2016.

[17] *See* EPA's Ozone Watch. The November 8, 2016 Ozone Watch reports that the preliminary 2014–2016 Design Value for Mariposa County 2008 ozone NAA is 0.075 ppm. *http://oaqpsapps.epa.gov/;MadeInAQAG/index.php?title=Ozone_Watch.*

receive adverse comments by January 20, 2017, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final action will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final action will be effective without further notice on February 21, 2017.

V. Statutory and Executive Order Reviews

This action makes a determination based on air quality data and does not impose additional requirements beyond those imposed by state law. For that reason, the 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);
- 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 the 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 the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian tribes, and thus this action will not 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. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 21, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of Nitrogen, Ozone, Volatile organic compounds.

Dated: December 2, 2016.

Deborah Jordan,

Acting Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.282 is amended by adding paragraph (j) to read as follows:

§ 52.282 Control strategy and regulations: Ozone

* * * * *

(j) *Determination of attainment.* The EPA has determined that, as of February 21, 2017, the Mariposa County 2008 8-hour ozone nonattainment area in California has attained the 2008 ozone standard, based upon complete, quality-assured and certified data for 2013–2015. Under the provisions of the EPA's ozone implementation rule (see 40 CFR 51.1118), this determination suspends the requirements for the area to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures for failure to attain or make reasonable further progress and other planning SIPs related to attainment of the 2008 ozone standard for as long as the area continues to attain the 2008 ozone standard. If the EPA determines, after notice-and-comment rulemaking, that the Mariposa County ozone nonattainment area no longer meets the 2008 ozone standard, the corresponding determination of attainment for this area shall be withdrawn.

[FR Doc. 2016–30477 Filed 12–20–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2014–0720; A–1–FRL–9952–94–Region 1]

Air Plan Approval; MA; Infrastructure State Implementation Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving most elements of State Implementation Plan (SIP) submissions from Massachusetts regarding the infrastructure requirements of the Clean Air Act (CAA or Act) for the 1997 ozone, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide

(NO_2), and 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). EPA is also conditionally approving three aspects of the Commonwealth's submittals. In addition, we are also making findings of failure to submit pertaining to various aspects of the prevention of significant deterioration (PSD) requirements of infrastructure SIPs. Lastly, we are removing 40 CFR 52.1160 as legally obsolete. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on January 20, 2017.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2014–0720. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *http://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact 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 legal holidays.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Environmental Engineer, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05–02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912; (617) 918–1046; *mcconnell.robert@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. The term ''the Commonwealth'' refers to the state of Massachusetts.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose

On July 20, 2016 (81 FR 47133), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Massachusetts which proposed approval of most elements of SIP submissions from the Commonwealth regarding the infrastructure requirements of the CAA for the 1997 ozone, 2008 lead, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, proposed to conditionally approve three aspects of the Commonwealth's submittals, and proposed findings of failure to submit pertaining to various aspects of the PSD requirements of infrastructure SIPs. Additionally, we proposed to remove 40 CFR 52.1160 as legally obsolete. The Commonwealth submitted its infrastructure State Implementation Plan (ISIP) for the 1997 ozone NAAQS on December 14, 2007, its ISIP for the 2008 Pb NAAQS on December 4, 2012, and its ISIPs for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS on June 6, 2014.

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 1997 ozone, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. These submissions must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2), or certifications that their existing SIPs for the NAAQS already meet those requirements. Table 1 below provides a summary of the actions we are taking on the various portions of the Commonwealth's infrastructure submittals.

TABLE 1—FINAL ACTION ON MA INFRASTRUCTURE SIP SUBMITTALS FOR VARIOUS NAAQS

Element	1997 Ozone	2008 Pb	2008 Ozone	2010 NO_2	2010 SO_2
(A): Emission limits and other control measures	CA	CA	CA	CA	CA
(B): Ambient air quality monitoring and data system	A	A	A	A	A
(C)(i): Enforcement of SIP measures	A	A	A	A	A
(C)(ii): PSD program for major sources and major modifications.	PF	PF	PF	FS	FS
(C)(iii): Permitting program for minor sources and minor modifications.	A	A	A	A	A
(D)(i)(I): Contribute to nonattainment/interfere with maintenance of NAAQS (prongs 1 and 2).	NI	A	NS	A	NS
(D)(i)(II): PSD (prong 3)	PF/CA	PF/CA	PF/CA	FS/CA	FS/CA
(D)(i)(II): Visibility Protection (prong 4)	A	A	A	A	A
(D)(ii): Interstate Pollution Abatement	PF	PF	PF	FS	FS
(D)(ii): International Pollution Abatement	A	A	A	A	A
(E)(i): Adequate resources	A	A	A	A	A
(E)(ii): State boards	A	A	A	A	A
(E)(iii): Necessary assurances with respect to local agencies.	NA	NA	NA	NA	NA
(F): Stationary source monitoring system	A	A	A	A	A
(G): Emergency power	CA	A	CA	A	CA
(H): Future SIP revisions	A	A	A	A	A
(I): Nonattainment area plan or plan revisions under part D.	+	+	+	+	+
(J)(i): Consultation with government officials	FS	FS	FS	FS	FS
(J)(ii): Public notification	A	A	A	A	A
(J)(iii): PSD	PF	PF	PF	FS	FS
(J)(iv): Visibility protection	+	+	+	+	+
(K): Air quality modeling and data	A	A	A	A	A
(L): Permitting fees	A	A	A	A	A
(M): Consultation and participation by affected local entities.	A	A	A	A	A

In the above table, the key is as follows:

A	Approve.
CA	Conditional approval.
FS	Finding of failure to submit.
NA	Not applicable.
NI	Not included in submittal we are acting on in today's action.
NS	No Submittal.
PF	Prior finding of failure to submit.
+	Not germane to infrastructure SIPs.

The specific requirements of ISIPs and the rationale for EPA's proposed actions on the Commonwealth's submittals are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving most portions of Massachusetts ISIP submittals for the 1997 ozone, 2008 lead, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS as outlined within Table 1 of this final rulemaking.

Additionally, EPA is conditionally approving three portions of these submittals. First, for the five NAAQS listed within Table 1 we are conditionally approving an aspect of the Commonwealth's submittals for element 110(a)(2)(A) pertaining to ambient air quality standards because the current, SIP-approved version of 310 CMR 7.00, *Air Pollution Control,* does not reflect the current version of the various NAAQS we are taking action on in this rulemaking. However, by letter dated June 14, 2016, the Commonwealth committed to rectify this deficiency by adding a definition of NAAQS to 310 CMR 7.00 that includes a calendar date to address this issue. Therefore, EPA is conditionally approving this SIP revision. Second, we are conditionally approving the Commonwealth's submittals for element 110(a)(2)(G) pertaining to contingency plans for the 1997 ozone, 2008 ozone, and 2010 SO_2 NAAQS pursuant to Massachusetts commitment within their June 14, 2016 letter to submit a regulation meeting the contingency plan requirement of element 110(a)(2)(G). And last, we are conditionally approving the aspect of 110(a)(2)(D)(i)(II) for the five NAAQS listed within Table 1 pertaining to the Commonwealth's Nonattainment New Source Review (NNSR) program pursuant to the state's June 14, 2016 letter committing to submit portions of 310 CMR 7.00: *Appendix A,* to EPA as a SIP revision request. Massachusetts must make the above mentioned submittals to EPA by a date no later than one year from EPA's final action on these infrastructure SIPs. If the Commonwealth fails to do so, this approval will become a disapproval on that date, and we will notify Massachusetts by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Massachusetts SIP. EPA subsequently will publish a notice in the notice section of the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitments within the applicable time frame, the conditionally approved submissions will remain a part of the SIP until EPA takes final action approving or disapproving the new legislative authority. If EPA disapproves the new submittal, these conditionally approved aspects of the Commonwealth's ISIPs will also be disapproved at that time. If EPA approves the Commonwealth's submittals, they will be fully approved in their entirety and replace the conditionally approved items in the Massachusetts SIP. If the conditional approval is converted to a disapproval, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c).

As noted within Table 1 of this final rulemaking notice, we are also making findings of failure to submit for the aspects of the Commonwealth's ISIPs noted within CAA sections 110(a)(2)(C)(ii), (D)(i)(II), (D)(ii), J(i), and J(iii). These findings relate to inadequacies with Massachusetts' program for the prevention of significant deterioration (PSD), and are elaborated on within our July 20, 2016 NPR. As mentioned in our proposed rulemaking, the Commonwealth is subject to a PSD Federal Implementation Plan (FIP), and has implemented and enforced the federal PSD program through a delegation agreement. See 76 FR 31241; May 31, 2011. Therefore, our findings of failure to submit will not trigger any additional FIP obligation by the EPA under section 110(c)(1), because the deficiency is addressed by the FIP already in place. Moreover, the state is not subject to mandatory sanctions solely as a result of this finding, because the SIP submittal deficiencies are neither with respect to a sub-element that is required under part D nor in response to a SIP call under section 110(k)(5) of the Act.

Furthermore, as proposed, we are incorporating into the Massachusetts SIP sections 6 and 6A of the state's Conflict of Interest law, which the Commonwealth submitted on June 6, 2014, and are removing 40 CFR 52.1160 regarding Massachusetts Low Emission Vehicle program in that this section is legally obsolete.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of M.G.L c. 268A, sections 6 and 6A of the Commonwealth's Conflict of Interest law submitted to EPA on June 6, 2014, as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through *http://www.regulations.gov*.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 21, 2017. 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, Lead, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 13, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF AIR QUALITY IMPLEMENTATION PLANS

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

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

Subpart W—Massachusetts

■ 2. Section 52.1119 is amended by adding paragraphs (a)(3) through (5) to read as follows:

§ 52.1119 Identification of plan-conditional approval

* * * * *

(a) * * *

(3) Massachusetts submitted an infrastructure State Implementation Plan (ISIP) for the 1997 ozone national ambient air quality standard (NAAQS) on December 14, 2007, submitted an ISIP for the 2008 Pb NAAQS on December 4, 2012, and submitted ISIPs for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS on June 6, 2014. On June 14, 2016, Massachusetts submitted a letter committing to add a definition of NAAQS to Massachusetts regulation 310 CMR 7.00, and to submit the amended version of this regulation to EPA as a SIP revision request, by a date no later than one year from the effective date of EPA's actions on these ISIPs. In light of this commitment, the portion of the Commonwealth's ISIP submittals mentioned above made to address Clean Air Act section 110(a)(2)(A), Emission limits and other control measures, is conditionally approved.

(4) Massachusetts submitted an infrastructure State Implementation Plan (ISIP) for the 1997 ozone national ambient air quality standard (NAAQS) on December 14, 2007, submitted an ISIP for the 2008 Pb NAAQS on December 4, 2012, and submitted ISIPs for the 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS on June 6, 2014. On June 14, 2016, Massachusetts submitted a letter committing to submit portions of 310 CMR 7.00: Appendix A: Emission Offsets and Nonattainment Review, to EPA as a SIP revision request, by a date no later than one year from the effective date of EPA's actions on these ISIPs. In light of this commitment, the portions of the Commonwealth's ISIP submittals mentioned above made to address Clean Air Act section 110 (a)(2)(D)(i)(II), PSD, is conditionally approved.

(5) Massachusetts submitted an infrastructure State Implementation Plan (ISIP) for the 1997 ozone national ambient air quality standard (NAAQS) on December 14, 2007, and submitted ISIPs for the 2008 ozone and 2010 SO_2 NAAQS on June 6, 2014. On June 14, 2016, Massachusetts submitted a letter committing to submit 310 CMR 8.00, The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies, to EPA as a SIP revision request, by a date no later than one year from the effective date of EPA's actions on these ISIPs. In light of this commitment, the portions of the Commonwealth's ISIP submittals mentioned above made to address Clean Air Act section 110 (a)(2)(G), Emergency power, is conditionally approved.

■ 3. Section 52.1120 is amended by adding paragraphs (c)(145) through (147) to read as follows:

§ 52.1120 Identification of plan

* * * * *

(c) * * *

(145) Revisions to the State Implementation Plan (SIP) submitted by the Massachusetts Department of Environmental Protection on December 14, 2007. The submittal consists of an Infrastructure SIP for the 1997 ozone national ambient air quality standard.

(146) Revisions to the State Implementation Plan (SIP) submitted by the Massachusetts Department of Environmental Protection on December 4, 2012. The submittal consists of an Infrastructure SIP for the 2008 lead national ambient air quality standard.

(147) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on June 6, 2014. The submittal consists of Infrastructure SIPs for the 2008 ozone, 2010 NO_2, and 2010 SO_2 national ambient air quality standards.

(i) Incorporation by reference.

(A) Section 6, ''Financial interest of state employee, relative, or associates; disclosure,'' of the Massachusetts General Laws Annotated, chapter 268A, ''Conduct of Public Officials and Employees,'' as amended by Statute 1978, chapter 210, § 9.

(B) Section 6A, ''Conflict of interest of public officials; reporting requirement,'' of the Massachusetts General Laws Annotated, chapter 268A, ''Conduct of Public Officials and Employees,'' as amended by Statute 1984, chapter 189, § 163.

§ 52.1160 [Removed and Reserved]

■ 4. Section 52.1160 is removed and reserved.

■ 5. In § 52.1167, Table 52.1167 is amended by adding a state citation for conflict of interest law at the end of the table to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

[See Notes at end of Table]

State citation	Title/subject	Date submitted by State	Date approved by EPA	**Federal Register** citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
M.G.L. c. 268A, sections 6 and 6A.	Conduct of Public Officials and Employees.	June 6, 2014	12/21/16	[Insert **Federal Register** citation].	147	Approved Section 6: Financial interest of state employee, relative or associates; disclosure, and Section 6A: Conflict of interest of public official; reporting requirement.

Notes:
1. This table lists regulations adopted as of 1972. It does not depict regulatory requirements which may have been part of the Federal SIP before this date.
2. The regulations are effective statewide unless otherwise stated in comments or title section.

[FR Doc. 2016–30466 Filed 12–20–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2016–0372; FRL–9956–59–Region 5]

Air Plan Approval; Ohio; Redesignation of the Columbus, Ohio Area to Attainment of the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finding that the Columbus, Ohio area is attaining the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard) and redesignating the area to attainment for the 2008 ozone NAAQS because the area meets the statutory requirements for redesignation under the Clean Air Act (CAA or Act). The Columbus area includes Delaware, Fairfield, Knox, Licking, and Mason Counties. EPA is also approving, as a revision to the Ohio State Implementation Plan (SIP), the state's plan for maintaining the 2008 ozone standard through 2030 in the Columbus area. Finally, EPA finds adequate and is approving the state's 2020 and 2030 volatile organic compound (VOC) and oxides of nitrogen (NO_X) Motor Vehicle Emission Budgets (MVEBs) for the Columbus area. The Ohio Environmental Protection Agency (Ohio EPA) submitted the SIP revision and redesignation request on June 16, 2016.

DATES: This final rule is effective December 21, 2016.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2016–0372. 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 either through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. What is being addressed in this document?

This rule takes action on the June 16, 2016, submission from Ohio EPA requesting redesignation of the Columbus area to attainment for the 2008 ozone standard. The background for today's action is discussed in detail in EPA's proposal, dated September 28, 2016 (81 FR 66578). In that rulemaking, we noted that, under EPA regulations at 40 CFR part 50, the 2008 ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.075 ppm, when truncated after the thousandth decimal place, at all of the ozone monitoring sites in the area. (*See* 40 CFR 50.15 and appendix P to 40 CFR part 50.) Under the CAA, EPA may redesignate nonattainment areas to attainment if sufficient complete, quality-assured data are available to determine that the area has attained the standard and if it meets the other CAA redesignation requirements in section 107(d)(3)(E). The proposed rule, dated September 28, 2016, provides a detailed discussion of how Ohio has met these CAA requirements.

As discussed in the proposed rule, quality-assured and certified monitoring data for 2013–2015 and preliminary data for 2016 show that the Columbus area has attained and continues to attain the 2008 ozone standard. In the maintenance plan submitted for the area, Ohio has demonstrated that the ozone standard will be maintained in the area through 2030. Finally, Ohio has adopted 2020 and 2030 VOC and NO_X MVEBs for the Columbus area that are supported by Ohio's maintenance demonstration.

II. What comments did we receive on the proposed rule?

EPA provided a 30-day review and comment period for the September 28, 2016, proposed rule. The comment

period ended on October 28, 2016. During the comment period, comments in support of the action were submitted on behalf of the Ohio Utility Group and its member companies. We received no adverse comments on the proposed rule.

III. What action is EPA taking?

EPA is determining that the Columbus nonattainment area is attaining the 2008 ozone standard, based on quality-assured and certified monitoring data for 2013–2015 and that the Ohio portion of this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus changing the legal designation of the Columbus area from nonattainment to attainment for the 2008 ozone standard. EPA is also approving, as a revision to the Ohio SIP, the state's maintenance plan for the area. The maintenance plan is designed to keep the Columbus area in attainment of the 2008 ozone NAAQS through 2030. Finally, EPA finds adequate and is approving the newly-established 2020 and 2030 MVEBs for the Columbus area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the state of planning requirements for this ozone nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

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 February 21, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and

classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 5, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.1885 is amended by adding paragraph (pp)(2) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(pp) * * *

(2) Approval—On June 16, 2016, the Ohio Environmental Protection Agency submitted a request to redesignate the Columbus area to attainment of the 2008 ozone NAAQS. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in eight years as required by the Clean Air Act. The 2020 motor vehicle emissions budgets for the Columbus area are 50.66 tons per summer day (TPSD) for VOC and 90.54 TPSD for NO_X. The 2030 motor vehicle emissions budgets for the Columbus area are 44.31 TPSD for VOC and 85.13 TPSD for NO_X.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.336 is amended by revising the entry for Columbus, OH in the table entitled ''Ohio—2008 8-Hour Ozone NAAQS (Primary and secondary)'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—2008—8-HOUR OZONE NAAQS

[Primary and secondary]

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* *	*	* *	*	*
Columbus, OH: [2] Delaware County, Fairfield County, Franklin County, Knox County, Licking County, Madison County.	December 21, 2016 ...	Attainment.		
* *	*	* *	*	*

[1] This date is July 20, 2012, unless otherwise noted.
[2] Excludes Indian country located in each area, unless otherwise noted.

* * * * *

[FR Doc. 2016–30470 Filed 12–20–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 750

[HQ–OPPT–2016–0525; FRL–9955–15]

RIN 2070–AK28

Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Section 6 of the Toxic Substances Control Act (TSCA) provides EPA with several authorities for addressing risks from chemical substances and includes procedures that EPA must follow in doing so. EPA promulgated regulations shortly after TSCA was enacted to implement the procedural requirements for rulemaking under TSCA section 6 as they existed at that time. TSCA was recently amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act. This final rule removes the regulations specifying certain procedural requirements for rulemaking under TSCA section 6, including the requirement for a hearing, because TSCA, as amended, no longer mandates those procedures.

DATES: This final rule is effective December 21, 2016.

FOR FURTHER INFORMATION CONTACT: Cindy Wheeler, Chemical Control Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 566–0484; email address: *wheeler.cindy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What is the agency's authority for taking this action?

The authority for this action is TSCA section 6, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act (15 U.S.C. 2605).

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(A), provides that ''rules of agency organization, procedure, or practice'' are exempt from notice and comment requirements. This action involves revisions to the rules that set out the general rulemaking procedure for EPA under the prior version of TSCA, and the action does not affect the substance of any determinations EPA will make under the amended TSCA section 6. Accordingly, these revisions fall under the exemption provided in APA section 553(b)(3)(A), and the EPA is not taking comment on this action.

B. Does this action apply to me?

This action affects only Agency procedure in future rulemakings under TSCA section 6 and has no particular applicability to the public. If you have any questions regarding the applicability of this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What action is the agency taking?

This action removes 40 CFR part 750, subpart A (the general procedural requirements for rulemaking under TSCA section 6, including the requirement for a hearing). Subpart A detailed hearing-related procedures as well as the content and timing of EPA's notices and the Agency's record. This action also removes the similar provisions from the procedural rules in subparts B and C for exemptions from the prohibitions in TSCA section 6(e) applicable to polychlorinated biphenyls.

TSCA, enacted in 1976, was intended to provide EPA with the tools necessary to develop information and manage risks associated with chemicals in commerce. TSCA section 6(a) requires EPA to take action to address unreasonable risks that EPA determines are presented by chemical substances or mixtures. Under TSCA section 6 as enacted in 1976, if EPA had a reasonable basis to conclude that the manufacture (including import), processing, distribution in commerce, use, or disposal of a chemical substance or mixture presented an unreasonable risk of injury to health or the environment, EPA would have to by rule apply requirements to the substance or mixture to the extent necessary to address the unreasonable risk using the least burdensome requirement. These requirements could include prohibitions or limitations on manufacturing processing, distribution in commerce, commercial use, or disposal; marking (labeling) requirements; and recordkeeping requirements. This section of TSCA also established certain procedures that EPA would have to follow in promulgating such rules. As enacted in 1976, TSCA section 6(c) required, among other things, that EPA provide the opportunity for an informal hearing and that EPA make certain findings and publish certain statements.

EPA published final procedural regulations to implement the TSCA section 6 procedural requirements shortly thereafter in the **Federal Register** of December 2, 1977, (42 FR 61259). These procedural regulations, codified as 40 CFR part 750, are quite detailed with respect to the contents of Notices of Proposed Rulemaking, hearing procedures, the handling of public comments, and docketing of comments and other supporting materials. These procedural requirements for rulemaking under TSCA section 6 have been amended several times, most notably in 1978 to add interim procedural rules for filing and processing petitions for exemptions from the TSCA section 6(e) ban on the manufacture of polychlorinated biphenyls (PCBs) (43 FR 50905, November 1, 1978), and in 1979 to add similar rules for petitions for exemptions from the TSCA section 6(e) bans on PCB processing and distribution in commerce (44 FR 31558, May 31, 1979).

On June 22, 2016, the President signed the Frank R. Lautenberg Chemical Safety for the 21st Century Act into law. This legislation amends many sections of TSCA, including TSCA section 6. While the new law still directs EPA to take action against unreasonable risks presented by chemical substances or mixtures, EPA's duties under TSCA section 6 have been significantly modified to include specific deadlines and procedures for prioritizing chemicals for risk evaluations, conducting the risk evaluations and promulgating regulations to address unreasonable risks that are identified. Notably, once unreasonable risks have been identified through a risk evaluation, TSCA section 6(c)(1) now requires EPA to issue a proposed rule to address the risks no later than one year after the final risk evaluation is published, and the final rule must be issued no later than two years after the final risk evaluation is published, subject to the limited extension authorized by TSCA section 6(c)(1)(C).

After reviewing 40 CFR part 750 in light of the amendments to TSCA, EPA has determined that the procedural regulations in subpart A do not facilitate the efficient administrative process envisioned by the Frank R. Lautenberg Chemical Safety for the 21st Century Act. Subpart A was principally promulgated to provide further details related to the informal hearing process under TSCA as originally enacted. However, with the statutory amendments' removal of the informal hearing requirement and addition of ambitious deadlines for action under section 6, subpart A is particularly outdated and no longer designed for effective implementation of section 6. To the extent subpart A simply reflected administrative requirements of TSCA and the Administrative Procedure Act, the current version of TSCA and the Administrative Procedure Act will continue to apply on their own terms, and section 6 of TSCA as amended prescribes considerably more procedure than the previous version of TSCA. To the extent subpart A goes beyond the current statutory requirements of such law, EPA believes that the layering of additional procedural requirements by regulation is both unnecessary to ensure a transparent rulemaking process with robust public participation and not well-suited to the rapid throughput required by the law. EPA also believes the requirements are in some respects outdated with respect to current technology. The remainder of this notice elaborates on these points.

First, regarding the hearing-related provisions of 40 CFR part 750, TSCA section 6, as amended, no longer requires EPA to provide an opportunity for an informal hearing on a proposed rule. After TSCA was amended on June 22, 2016 and before this final rule, 40 CFR part 750 inaccurately referred to ''the informal hearing required by section 6(c)(2)(C) of TSCA'' when, in fact, TSCA section 6 no longer requires EPA to provide an opportunity for informal hearing and TSCA section 6(c)(2)(C) in particular now refers to another topic. Given that EPA is no longer required to provide an opportunity for an informal hearing on a proposed rule under TSCA section 6, and that the statutory citations in the hearing-related regulations are no longer correct, much of 40 CFR part 750 is no longer needed or appropriate.

Moreover, by establishing a two-year deadline for final rules after unreasonable risks are identified through risk evaluation, Congress expressed an intention for EPA to move relatively quickly to address unreasonable risks. Although Congress also established a limited process by which EPA could extend this deadline, EPA does not believe that Congress intended for extended deadlines to be a routine occurrence. The cumbersome nature of the informal hearing-related provisions established in 40 CFR part 750 would make it difficult for EPA to meet the newly-established rulemaking deadlines.

Yet EPA does not interpret the removal of the hearing requirement as an indication that reduced public input is desired. To the contrary, the amended TSCA section 6 specifically requires public comment periods at several stages during the chemical prioritization, risk evaluation, and risk management processes. EPA interprets the removal of the informal hearing requirement as being motivated by Congressional intent to simplify and thereby quicken the pace of TSCA section 6 rulemaking, considering the establishment of new rulemaking deadlines and the manner in which the tools for managing EPA's administrative rulemaking process have evolved over the 40 years since TSCA was enacted (*e.g.,* the advent of electronic commenting). Under the Administrative

Procedure Act (5 U.S.C. 553), EPA must give interested persons an opportunity to participate in a legislative rulemaking by submitting written comments. In addition, for existing chemicals under TSCA, EPA often holds public meetings in order to solicit oral comments as well as written comments.

Next, while EPA must still consider and publish a statement on certain factors when promulgating a rule under TSCA section 6(a), the factors have changed. For example, TSCA section 6(c) as originally enacted required EPA to consider and publish a statement with respect to the availability of substitutes for various uses of a chemical substance or mixture. TSCA section 6(c) as amended requires EPA to, in deciding whether to prohibit or restrict a chemical substance or mixture in a manner that substantially prevents a specific condition of use, and in setting an appropriate transition period for such chemical substance or mixture, consider, to the extent practicable, whether technically and economically feasible alternatives that benefit health or the environment will be reasonably available as a substitute when the proposed prohibition or other restriction takes effect. Therefore, EPA is removing the outdated specification of the content and timing of EPA notices in 40 CFR part 750, subpart A, and instead EPA's notices in future section 6 rulemakings will conform to TSCA as amended.

As EPA noted in 1987 (52 FR 23054), the initiation of a section 6 proceeding could be by proposed rule, advance notice of proposed rulemaking, or notice of other appropriate action. The agency is not changing its position on this matter by removing 40 CFR 750.2(a). As the agency stated previously, ''Federal courts have acknowledged that rulemaking commences before the publication of a notice of proposed rulemaking. See, for example, *Natural Resources Defense Council* v. *EPA,* 595 F. Supp. 1255 (S.D.N.Y. 1984), where the court found that EPA may use an ANPR to initiate a rulemaking proceeding under section 4 of TSCA.'' Therefore, the provision regarding when a proceeding begins does not need to be codified in the CFR.

Lastly, modern electronic tools and remote conferencing were not available when TSCA was enacted nor when procedural requirements under 40 CFR part 750 regarding Agency records were promulgated by EPA. EPA believes that it is now reasonable and prudent to use its information resources, including information technology, to establish an electronic record to contain rulemaking documents being considered and public comments submitted, a possibility not anticipated by the outdated record provisions. Consistent with TSCA section 2's expression of Congressional intent that EPA carry out TSCA in a reasonable and prudent manner, and in consideration of the environmental, economic, and social impacts that any action taken under TSCA may have, (15 U.S.C. 2601), electronic correspondence can reduce burden and costs for the regulated entities by eliminating the costs associated with printing and mailing documents, and traveling to hearings, while at the same time improving EPA's efficiency in reviewing public comments, making decisions, and disseminating information to the public.

Therefore, after considering the points discussed earlier in this notice, EPA is removing the general TSCA section 6 procedural requirements contained in subpart A of 40 CFR part 750. EPA is not making any changes to the procedures contained in subparts B and C of 40 CFR part 750 for petitions for exemptions from the prohibitions in TSCA section 6(e), other than to remove references to the informal hearing-related procedures as well as the content and timing of EPA's notices and the Agency's record corresponding to the removal of subpart A.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not contain any information collection activities that require approval under the PRA, 44 U.S.C. 3501 *et seq.* This rulemaking removes unnecessary internal EPA procedures and does not impose any requirements on the public.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA, 5 U.S.C. 601 *et seq.* The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute.

D. Unfunded Mandates Reform Act

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

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it merely removes procedural requirements that the Agency must follow when conducting rulemaking under TSCA section 6. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), 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 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve any technical standards, and is therefore not subject to considerations under NTTAA section 12(d), 15 U.S.C. 272 note.

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

This action does not establish an environmental health or safety standard, and is therefore not is not subject to environmental justice considerations under Executive Order 12898 (59 FR 7629, February 16, 1994), because it does not establish an environmental health or safety standard. This regulatory action is a procedural change and does not have any impact on human health or the environment.

K. Congressional Review Act (CRA)

This rule is exempt from the CRA (5 U.S.C. 801 *et seq.*) because it is a rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 40 CFR Part 750

Administrative practice and procedure, Chemicals, Environmental protection, Hazardous substances.

Dated: December 8, 2016.

Gina McCarthy,

Administrator.

Therefore, 40 CFR chapter I is amended as follows:

PART 750—PROCEDURES FOR RULEMAKING UNDER SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT [AMENDED]

■ 1. The authority citation for part 750 continues to read as follows:

Authority: 15 U.S.C. 2605.

Subpart A—[Removed and Reserved]

■ 2. Subpart A, consisting of §§ 750.1 through 750.9 and an appendix, is removed and reserved.

■ 3. Revise § 750.10 to read as follows:

§ 750.10 Applicability

Sections 750.10–750.15 apply to all rulemakings under authority of section 6(e)(3)(B) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e)(3)(B) with respect to petitions filed pursuant to § 750.11(a).

■ 4. Revise § 750.13 to read as follows:

§ 750.13 Notice of proposed rulemaking.

Rulemaking for PCB exemptions filed pursuant to § 750.11(a) shall begin with the publication of a notice of proposed rulemaking in the **Federal Register**. The notice shall state in summary form the required information described in § 750.11(c). Due to time constraints, the notice need not indicate what action EPA proposes to take on the exemption petitions.

§§ 750.14 and 750.15 [Removed]

■ 5. Remove §§ 750.14 and 750.15.

§ 750.16 [Redesignated as § 750.14]

■ 6. Redesignate § 750.16 as § 750.14.

§§ 750.17 through 750.20 [Removed]

■ 7. Remove §§ 750.17 through 750.20.

§§ 750.21 [Redesignated as § 750.15]

■ 8. Redesignate § 750.21 as § 750.15, and revise it to read as follows:

§ 750.15 Final rule.

(a) [Reserved]

(b) EPA will grant or deny petitions under TSCA section 6(e)(3)(B) submitted pursuant to § 750.11.

(c) In determining whether to grant an exemption to the PCB ban, the Agency shall apply the two standards enunciated in TSCA section 6(e)(3)(B).

■ 9. Revise § 750.30 to read as follows:

§ 750.30 Applicability

Sections 750.30 through 750.35 apply to all rulemakings under authority of section 6(e)(3)(B) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e)(3)(B) with respect to petitions for PCB processing and distribution in commerce exemptions filed pursuant to § 750.31(a).

■ 10. Revise § 750.33 to read as follows:

§ 750.33 Notice of proposed rulemaking.

Rulemaking for PCB exemptions filed pursuant to § 750.31(a) shall begin with the publication of a notice of proposed rulemaking in the **Federal Register**. The notice shall state in summary form the required information described in § 750.31(c).

§§ 750.34 and 750.35 [Removed]

■ 11. Remove §§ 750.34 and 750.35.

§ 750.36 [Redesignated as § 750.34]

■ 12. Redesignate § 750.36 as § 750.34.

§§ 750.37 through 750.40 [Removed]

■ 13. Remove §§ 750.37 through 750.40.

§ 750.41 [Redesignated as § 750.35]

■ 14. Redesignate § 750.41 as § 750.35, and revise it to read as follows:

§ 750.35 Final rule.

(a) [Reserved]

(b) EPA will grant or deny petitions under TSCA section 6(e)(3)(B) submitted pursuant to § 750.31.

(c) In determining whether to grant an exemption to the PCB ban, EPA will apply the two standards enunciated in TSCA section 6(e)(3)(B).

[FR Doc. 2016–30055 Filed 12–20–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–6072–N]

Medicare Program; Implementation of Prior Authorization Process for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Items and Publication of the Initial Required Prior Authorization List of DMEPOS Items That Require Prior Authorization as a Condition of Payment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Implementation of list and phases.

SUMMARY: This document announces the implementation of the prior authorization program for certain durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) items in two phases and the issuance of the initial Required Prior Authorization List of DMEPOS items that require prior authorization as a condition of payment.

DATES: Phase one of implementation is effective on March 20, 2017. Phase two of implementation is effective on July 17, 2017.

FOR FURTHER INFORMATION CONTACT: Jennifer Phillips, (410) 786–1023. Linda O'Hara (410) 786–8347. Scott Lawrence (410) 786–4313.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1832, 1834, and 1861 of the Social Security Act (the Act) establish that the provision of durable medical equipment, prosthetic, orthotics, and supplies (DMEPOS) is a covered benefit under Part B of the Medicare program.

Section 1834(a)(15) of the Act authorizes the Secretary to develop and periodically update a list of DMEPOS items that the Secretary determines, on the basis of prior payment experience, are frequently subject to unnecessary utilization and to develop a prior authorization process for these items.

In the December 30, 2015 final rule (80 FR 81674), titled ''Medicare Program; Prior Authorization Process for Certain Durable Medical Equipment,

Prosthetics, Orthotics, and Supplies'', we implemented section 1834(a)(15) of the Act by establishing an initial Master List (called the Master List of Items Frequently Subject to Unnecessary Utilization) of certain DMEPOS that the Secretary determined, on the basis of prior payment experience, are frequently subject to unnecessary utilization and by establishing a prior authorization process for these items. The Master List is self-updating annually, and items remain on the Master List for 10 years from the date the item was added to the Master List. Items are removed from the list sooner than 10 years if the purchase amount drops below the payment threshold described later in this section. We will notify the public annually of any additions and deletions from the Master List by posting the notification in the **Federal Register** and on the CMS Prior Authorization Web site. The Master List includes items that meet the following criteria:

++ Appear on the DMEPOS Fee Schedule list.

++ Have an average purchase fee of $1,000 or greater (adjusted annually for inflation) or an average monthly rental fee schedule of $100 or greater (adjusted annually for inflation). (These dollar amounts are referred to as the payment threshold).

++ Meet either of the following criteria:

—Identified in a Government Accountability Office (GAO) or Department of Health and Human Services Office of Inspector General (OIG) report that is national in scope and published in 2007 or later as having a high rate of fraud or unnecessary utilization.

—Listed in the 2011 or later Comprehensive Error Rate Testing (CERT) program's Annual Medicare Fee-For-Service (FFS) Improper Payment Rate Report and/or the Supplementary Appendices for the Medicare Fee-for-Service Improper Payments Report.

II. Provisions of the Document

In the December 30, 2015 final rule (80 FR 81689), we stated that we would inform the public of those DMEPOS items on the Required Prior Authorization List in the **Federal Register** with 60-day notice before implementation. The Required Prior Authorization List specified in § 414.234(c)(1) is selected from the Master List of Items Frequently Subject to Unnecessary Utilization (as described in § 414.234(b)(1)), and items on the Required Prior Authorization List require prior authorization as a condition of payment. Additionally, we stated that CMS may elect to limit the prior authorization requirement to a particular region of the country if claims data analysis shows that unnecessary utilization of the selected item(s) is concentrated in a particular region. The purpose of this document is to inform the public that we are implementing the prior authorization program for certain DMEPOS items and to provide the initial Required Prior Authorization List of DMEPOS items that require prior authorization as a condition of payment. To assist stakeholders in preparing for implementation of the prior authorization program, CMS is providing 90 days' notice.

The following two DMEPOS items, represented by HCPCS (Healthcare Common Procedure Coding System) codes K0856 and K0861 are added to the Required Prior Authorization List:

- K0856 HCPCS: Power wheelchair, group 3 standard, single power option, sling/solid seat/back, patient weight capacity up to and including 300 pounds.
- K0861 HCPCS: Power wheelchair, group 3 standard, multiple power option, sling/solid seat/back, patient weight capacity up to and including 300 pounds.

Power wheelchairs, represented by HCPCS codes K0856 and K0861, will be subject to the requirements of the prior authorization program for certain DMEPOS items as outlined in § 414.234. (We note that these Group 3 power wheelchairs are not part of the separate Prior Authorization of Power Mobility Devices (PMDs) Demonstration.)

We will implement a national prior authorization program for K0856 and K0861 in two phases, as specified in the **DATES** section of this document. We are implementing the program in this manner to test the new prior authorization program because new complex claims processing systems changes are required for implementation. This phased-in approach will allow us to identify and resolve any unforeseen issues by using a smaller claim volume in phase one before national implementation occurs in phase two.

In phase one of implementation, which begins as specified in the **DATES** section of this document, we will limit the prior authorization requirement to one state in each of the four DME Medicare Administrative Contractors (MAC) geographic jurisdictions, as follows: Illinois, Missouri, New York, and West Virginia. Initially limiting the program to one state in each of the DME MAC geographic jurisdictions allows us to test the national claims processing system and the local DME MAC processes. In phase two, which begins as specified in the **DATES** section of this document, we will expand the program to the remaining states.

Prior to furnishing the item to the beneficiary and prior to submitting the claim for processing, a requester must submit a prior authorization request that includes evidence that the item complies with all applicable Medicare coverage, coding, and payment rules. Consistent with § 414.234(d), such evidence must include the order, relevant information from the beneficiary's medical record, and relevant supplier-produced documentation. After receipt of all applicable required Medicare documentation, CMS or one of its review contractors will conduct a medical review and communicate a decision that provisionally affirms or non-affirms the request.

We will issue specific prior authorization guidance in subregulatory communications, including final timelines, which are customized for the DMEPOS item subject to prior authorization, for communicating a provisionally affirmed or non-affirmed decision to the requester. In the December 30, 2015 final rule, we stated that this approach to final timelines provides flexibility to develop a process that involves fewer days, as may be appropriate, and allows us to safeguard beneficiary access to care. If at any time we become aware that the prior authorization process is creating barriers to care, we can suspend the program.

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: December 1, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2016–30273 Filed 12–19–16; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 8, and 20

[GN Docket No. 14–28; FCC 15–24]

Protecting and Promoting the Open Internet

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of applicability date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years for fixed broadband Internet access service (3060–1158) and for a period of two years for mobile broadband Internet access service (3060–1220), the information collections associated with the transparency rule enhancements adopted by the Commission in *Protecting and Promoting the Open Internet,* Report and Order on Remand, Declaratory Ruling, and Order (*Open Internet Order*). On August 11, 2015, the Commission requested approval of a modified information collection to include the transparency rule enhancements. OMB has approved the information collection as it applies to fixed broadband Internet access service for a period of three years (3060–1158) and, except for disclosure of packet loss, as it applies to mobile broadband Internet access service for a period of two years (3060–1220). The *Open Internet Order* stated that the Commission would publish a document in the **Federal Register** announcing the effective of the modified information collection requirements associated with the enhancements following OMB approval.

DATES: The modified information collection requirements contained in paragraphs 164, 166, 167, 169, 173, 174, 179, 180, and 181, published at 80 FR 19737, April 13, 2015, are applicable January 17, 2017 for fixed broadband Internet access service. The modified information collection requirements, except for disclosure of packet loss, contained in paragraphs 164, 166, 167, 169, 173, 174, 179, 180, and 181, published at 80 FR 19737, April 13, 2015, are applicable January 17, 2017 for mobile broadband Internet access service.

FOR FURTHER INFORMATION CONTACT: John B. Adams, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at (202) 418–2854, or email: *JohnB.Adams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document announces that, on December 15, 2016, OMB approved, for a period of three years, the information collection requirements relating to the enhancements to the transparency rule in paragraphs 164, 166, 167, 169, 173, 174, 179, 180, and 181 of the Commission's *Open Internet Order,* GN Docket No. 14–28, FCC 15–24, published at 80 FR 19737, April 13, 2015 applicable to fixed broadband Internet access service. The OMB Control Number is 3060–1158. This document also announces that, on December 15, 2016, OMB approved, for a period of two years, the information collection requirements relating to the enhancements to the transparency rule, except for disclosure of packet loss, in paragraphs 164, 166, 167, 169, 173, 174, 179, 180, and 181 of the Commission's *Open Internet Order,* GN Docket No. 14–28, FCC 15–24, published at 80 FR 19737, April 13, 2015 applicable to mobile broadband Internet access service. The OMB Control Number is 3060–1220. The Commission sought public comment on the associated burden estimates on May 20, 2015 (80 FR 29000) and on August 11, 2016 (81 FR 53145). The Commission publishes this document as an announcement of the applicability date of the enhancements. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Numbers, 3060–1158 and 3060–1220, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

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

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on December 15, 2016, for the information collection requirements relating to the enhancements to the transparency rule contained in paragraphs 164, 166, 167, 169, 173, 174, 179, 180, and 181 of the Commission's *Open Internet Order* applicable to fixed broadband Internet access service. The FCC also is notifying the public that it received final OMB approval on December 15, 2016, for the information collection requirements relating to the enhancements to the transparency rule, except for disclosure of packet loss, contained in paragraphs 164, 166, 167, 169, 173, 174, 179, 180, and 181 of the Commission's *Open Internet Order* applicable to mobile broadband Internet access service.

During OMB's review of the modified information collection, it determined that the mobile broadband disclosures were at a different stage than the fixed broadband disclosures and should therefore be approved for two years, with conditions, rather than the three year approval, without conditions, for fixed broadband. OMB therefore issued Control No. 3060–1220 for Transparency Rule Disclosures, Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14–28, FCC 15–24 (Mobile Broadband Disclosures) and Control No. 3060–1158 for Transparency Rule Disclosures, Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14–28, FCC 15–24 (Fixed Broadband Disclosures). Although there is a separate collection for mobile broadband disclosures, the FCC is reporting an identical burden estimate for the calculation and disclosure of broadband performance data by both fixed and mobile broadband providers, which was subject to public review and comment. Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number for fixed broadband Internet access service is 3060–1158. The OMB Control Number for mobile broadband Internet access service is 3060–1220.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Numbers: 3060–1158 (fixed broadband) and 3060–1220 (mobile broadband).

OMB Approval Date: December 15, 2016.

OMB Expiration Date: December 31, 2019 for fixed broadband Internet access service; December 31, 2018 for mobile broadband Internet access service.

Title: Transparency Rule Disclosures, Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14–28, FCC 15–24.

Form Number: N/A.

Respondents: Businesses or other for-profit entities; Not-for profit entities; State, local or tribal governments.

Number of Respondents and Responses: 3,188 respondents; 3,188 responses.

Estimated Time per Response: 31.2 hours (average).

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Mandatory. The statutory authority for this information collection is contained in sections 1, 2, 3, 4, 10, 201, 202, 301, 303, 316, 332, 403, 501, 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, as amended, and 47 U.S.C. 151, 152, 153, 154, 160, 201, 202, 301, 303, 316, 332, 403, 501, 503, and 1302.

Total Annual Burden: 99,466 hours.

Total Annual Cost: $640,000.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Act: No impact(s).

Needs and Uses: The Commission's transparency rule for providers of broadband Internet access service require all providers of broadband Internet access service to publicly disclose accurate information regarding the network management practices, performance, and commercial terms of their broadband Internet access services sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings. The rules ensure transparency and continued Internet openness, while making clear that broadband providers can manage their networks effectively. The enhancements to the transparency rule adopted in the *Open Internet Order* will better enable end-user consumers to make informed choices about broadband services by providing them with timely information tailored more specifically to their needs, and will similarly provide edge providers with the information necessary to develop new content, applications, services, and devices that promote the virtuous cycle of investment and innovation. The Commission anticipates that small entities may have less of a burden, and larger entities may have more of a burden than the average compliance burden. This is because larger entities serve more customers, are more likely to serve multiple geographic regions, and are not eligible to avail themselves of the temporary exemption from the enhancements granted to smaller providers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–30766 Filed 12–20–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2016–0126; FXES11130900000 167 FF09E42000]

RIN 1018–BB80

Endangered and Threatened Wildlife and Plants; Identification of 14 Distinct Population Segments of the Humpback Whale and Revision of Species-Wide Listing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in accordance with the Endangered Species Act of 1973, as amended (Act), are amending the List of Endangered and Threatened Wildlife (List) by removing the current species-level listing of the humpback whale (*Megaptera novaeangliae*), and in its place listing the Cape Verde Islands/Northwest Africa, Western North Pacific, Central America, and Arabian Sea distinct population segments (DPSs) as endangered and the Mexico DPS as threatened. Humpback whales in the remaining DPSs will no longer be protected under the Act. This amendment is based on a previously published determination by the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration, Department of Commerce, which has jurisdiction for this species.

DATES: This rule is effective December 21, 2016. *Applicability date:* The revised listings were applicable as of October 11, 2016.

FOR FURTHER INFORMATION CONTACT: Don Morgan, Chief, Branch of Recovery and State Grants, U.S. Fish and Wildlife Service, MS–ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; 703–358–2171.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Act (16 U.S.C. 1531 *et seq.*) and Reorganization Plan No. 4 of 1970 (35 FR 15627; October 6, 1970), NMFS has jurisdiction over the marine taxa identified in this rule. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as an endangered or threatened species. NMFS makes these determinations via its rulemaking process. We, the Service, are then responsible for publishing final rules to amend the Lists of Endangered and Threatened Wildlife and Plants (Lists) in title 50 of the Code of Federal Regulations (CFR) at 50 CFR 17.11(h) and 17.12(h), respectively.

Under section 4(a)(2)(A) of the Act, if NMFS determines that a species should be listed as endangered or threatened, or that a species' status should be changed from threatened to endangered, then NMFS is required to inform the Service of the status change. The Service is then responsible for implementing the status change by publishing a final rule to amend the appropriate List at 50 CFR 17.11(h) or 17.12(h). Under section 4(a)(2)(B) of the Act, if NMFS determines that a species should be removed from the List (delisted), or that a species' status should be changed from an endangered to a threatened species, then NMFS is required to recommend the status change to the Service. If the Service concurs with the recommended status change, then the Service will implement the status change by publishing a final rule to amend the appropriate List.

On April 21, 2015, NMFS published a proposed rule (80 FR 22304) to remove the species-level listing of the humpback whale (*Megaptera novaeangliae*) from 50 CFR part 224 and in its place list the Cape Verde Islands/Northwest Africa and Arabian Sea DPSs as endangered (at 50 CFR part 224) and the Western North Pacific and Central America DPSs as threatened (at 50 CFR part 223). NMFS solicited public comments on the proposed rule for 90 days, ending July 20, 2015. On September 8, 2016, NMFS published a final rule (81 FR 62260) to list the Cape Verde Islands/Northwest Africa, Western North Pacific, Central America, and Arabian Sea DPSs as endangered and the Mexico DPS as threatened. As of the effective date of NMFS' rule (October 11, 2016), the humpback whales that make up the remaining nine DPSs identified in the rule are no longer listed under the Act.

The removal of the species-level listing and the listing of the five humpback whale DPSs were applicable as of October 11, 2016. In the September 8, 2016, final rule (81 FR 62260), NMFS addressed all public comments received in response to the proposed rule. NMFS reconsidered its proposals with regard to the Western North Pacific, Mexico, and Central America DPSs, listing the Western North Pacific and Central America DPSs as endangered instead of threatened as proposed and listing the Mexico DPS as threatened instead of not listing it.

For the Western North Pacific DPS, NMFS considered the relatively low, slightly revised abundance estimate (1,059 instead of 1,100); the moderate reduction of its population size or growth rate likely from energy development, competition with fisheries, whaling, and vessel collisions; the serious reduction of its population size or growth rate likely from fishing gear entanglements; and the considerable uncertainty reflected in the distribution of Biological Review Team (BRT) votes in assigning extinction risk categories.

For the Mexico DPS, NMFS considered the revised abundance estimate that is significantly lower than previously thought (3,264 instead of 6,000–7,000) and the presence of the known fishing gear entanglement threat of moderate intensity.

For the Central America DPS, NMFS considered the original low abundance estimate of 500–600 (which was at the dividing line between BRT risk categories) and the more recently updated estimate of 411 (which is below the BRT's threshold of 500 between ''high risk of extinction'' and ''moderate risk of extinction''), the fact that the moderate threats of vessel collisions and fishing gear entanglement continue to act upon a population that is so small, and the considerable uncertainty reflected in the distribution of BRT votes for different extinction risk categories.

As discussed under the *Status Review* section of NMFS' final rule (see 81 FR 62261–62262; September 8, 2016), the BRT considered abundance and trend information carefully in evaluating extinction risk, but abundance was not the sole criterion for evaluating extinction risk. The thresholds described by the BRT were only general guidelines, and NMFS was required to consider them in light of the considerations just outlined. Under these circumstances, for these particular DPSs, the extinction risk is compounded by the lack of information on the population abundance trends. NMFS concluded that the Western North Pacific and Central America DPSs are in danger of extinction throughout their ranges and the Mexico DPS is likely to become endangered throughout its range within the foreseeable future.

Because humpback whales that make up some of the identified DPSs of humpback whale will no longer be protected under the Act and whales in one DPS are considered threatened rather than endangered, both section 4(a)(2)(A) and section 4(a)(2)(B) of the Act apply to our responsibility to implement the status changes by publishing a final rule to amend the List at 50 CFR 17.11(h).

In a September 6, 2016, memorandum (Memorandum from Gary Frazer to Donna Wieting, September 6, 2016), per section 4(a)(2)(B), we concur with NMFS's recommendation that humpback whales in nine DPSs are no longer endangered or threatened species and that whales in the Mexico DPS are now a threatened species rather than an endangered species. By publishing this final rule, we are taking the necessary administrative step to codify these changes in the List at 50 CFR 17.11(h).

Administrative Procedure Act

Because NMFS provided a public comment period on the proposed rule for the humpback whale, and we concur with NMFS' actions, we find good cause that the notice and public comment procedures of 5 U.S.C. 553(b) are unnecessary for this action. We also find good cause under 5 U.S.C. 553(d)(3) to make this rule effective immediately. The NMFS rule (81 FR 62260; September 8, 2016) revised the listing status of the humpback whale, extending protection under the Act to five DPSs and listing them at 50 CFR parts 223 and 224; this rule is an administrative action to add those DPSs to the List at 50 CFR 17.11(h). The public would not be served by delaying the effective date of this rulemaking action.

Required Determinations

National Environmental Policy Act

We have determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We outlined our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, under MAMMALS, by:

■ a. Removing the entry for ''Whale, humpback''; and

■ b. Adding entries, in alphabetical order, for ''Whale, humpback [Arabian Sea DPS]''; ''Whale, humpback [Cape Verde Islands/Northwest Africa DPS]''; ''Whale, humpback [Central America DPS]''; ''Whale, humpback [Mexico DPS]''; and ''Whale, humpback [Western North Pacific DPS]'', to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
Whale, humpback [Arabian Sea DPS].	*Megaptera novaeangliae*	Arabian Sea DPS—see 50 CFR 224.101.	E	35 FR 8491; 6/2/1970, 35 FR 18319; 12/2/1970, 81 FR 62260; 9/8/2016[N], 81 FR [Insert **Federal Register** page where the document begins], 12/21/2016.
Whale, humpback [Cape Verde Islands/Northwest Africa DPS].	*Megaptera novaeangliae*	Cape Verde Islands/Northwest Africa DPS—see 50 CFR 224.101.	E	35 FR 8491; 6/0/1970, 35 FR 18319; 12/2/1970, 81 FR 62260; 9/8/2016[N], 81 FR [Insert **Federal Register** page where the document begins], 12/21/2016.

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
Whale, humpback [Central America DPS].	*Megaptera novaeangliae*	Central America DPS—see 50 CFR 224.101.	E	35 FR 8491; 6/2/1970, 35 FR 18319; 12/2/1970, 81 FR 62260; 9/8/2016[N], 81 FR [Insert **Federal Register** page where the document begins], 12/21/2016.
Whale, humpback [Mexico DPS].	*Megaptera novaeangliae*	Mexico DPS—see 50 CFR 223.102.	T	35 FR 8491; 6/2/1970, 35 FR 18319; 12/2/1970, 81 FR 62260; 9/8/2016[N], 81 FR [Insert **Federal Register** page where the document begins], 12/21/2016, 50 CFR 223.213 50 CFR 223.214.
Whale, humpback [Western North Pacific DPS].	*Megaptera novaeangliae*	Western North Pacific DPS—see 50 CFR 224.101.	E	35 FR 8491; 6/2/1970, 35 FR 18319; 12/2/1970, 81 FR 62260; 9/8/2016[N], 81 FR [Insert **Federal Register** page where the document begins], 12/21/2016, 50 CFR 224.103.

Dated: December 5, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–30483 Filed 12–20–16; 8:45 am]

BILLING CODE 4333–15–P

Proposed Rules

Federal Register
Vol. 81, No. 245
Wednesday, December 21, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Doc. No. AMS–SC–16–0041; SC16–929–1]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Proposed Amendment to Marketing Order 929 and Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and Referendum Order.

SUMMARY: This rule proposes an amendment to Marketing Order No. 929 (order), which regulates the handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The amendment is based on a proposal made by the Cranberry Marketing Committee (Committee), which is responsible for the local administration of the order. The amendment would authorize the Committee to receive and expend voluntary contributions from domestic sources. Contributed funds would be used solely for research and development activities authorized under the order and would be free from any encumbrances as to their usage by the donor.

DATES: The referendum will be conducted from January 23, 2017 through February 13, 2017. The representative period for the purpose of the referendum is September 1, 2015 through August 31, 2016.

FOR FURTHER INFORMATION CONTACT: Abdullah Orozco, Marketing Specialist, or Michelle P. Sharrow, Rulemaking Branch Chief, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Abdullah.Orozco@ams.usda.gov* or *Michelle.Sharrow@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order and Agreement No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' Section 608c(17) of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorizes amendment of the order through this informal rulemaking action.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State programs covering cranberries grown in the production area unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) amended section 18c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 18c(17) of the Act and additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

AMS has considered these factors and has determined that the amendment proposed is not unduly complex and the nature of the proposed amendment is appropriate for utilizing the informal rulemaking process to amend the order.

The proposed amendment was unanimously recommended by the Committee following deliberations at a public meeting held August 17–18, 2015.

A proposed rule soliciting comments on the proposed amendment was issued on July 27, 2016, and published in the **Federal Register** on August 4, 2016 (81 FR 51383). No comments were received. AMS will conduct a producer referendum to determine support for the proposed amendment. If appropriate, a final rule will then be issued to effectuate the amendment favored by producers in the referendum.

The Committee's proposed amendment would amend the marketing order by authorizing the Committee to receive and expend voluntary contributions from domestic sources for research and development activities.

Proposal—Voluntary Contributions

This proposal would add a new section, § 929.43, Contributions, to the order. If implemented, this section

would authorize the Committee to accept voluntary financial contributions. Such contributions could only be accepted from domestic sources and would be free from any restrictions on their use by the donor. When received, the Committee would retain complete control of their use. The use of contributed funds would be limited to funding program activities authorized under § 929.45, Research and development.

Currently, program operations are solely financed through assessments collected from handlers regulated under the order. Sources not subject to the order have expressed an interest in supporting many of the research and development projects currently funded by the order. However, without the ability to accept financial contributions, the Committee has had to decline these offers. This proposal would provide authority to accept financial contributions. With the potential for additional funding, more research and development projects could be undertaken.

For the reasons stated above, it is proposed that § 929.43, Contributions, be added to provide authority to accept voluntary financial contributions.

Final Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Based on Committee data, there are approximately 1,200 cranberry growers in the regulated area and approximately 45 cranberry handlers who are subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $7,500,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), grower prices were $30.90 per barrel for cranberries during the 2014–15 marketing year. NASS also reported total bearing acres at 40,600 and average yield per acre at 10.3 tons for the 2014–15 marketing year.

Based on the total bearing acres provided by NASS and the approximate number of cranberry growers (1,200 growers), the average acreage per grower is 33.8 acres. Multiplying the average acreage per grower (33.8 acres) by the average yield per acre (10.3 tons) results in an average production of 348.5 tons. To convert the average production from tons to barrels, 348.5 tons is multiplied by 2,000 pounds (one ton equals 2,000 pounds) to equal 696,966.7 pounds and is then divided by 100 (100 pounds equals 1 barrel), resulting in an average production per growers of 6,969.7 barrels.

Multiplying the average production (6,967.7 barrels) by the grower price ($30.90 per barrel), provided by NASS, equals an average grower revenue of $215,301.90. Based on this calculation, the average annual grower revenue for the 2014–15 marketing year was below $750,000.

Using Committee information and shipment data, the majority of cranberry handlers could also be considered small businesses under SBA's definition. Therefore, the majority of cranberry growers and handlers may be classified as small entities under SBA definitions.

The amendment proposed by the Committee would add a new section, § 929.43, Contributions, to the order. If implemented, this section would authorize the Committee to accept voluntary financial contributions. Such contributions could only be accepted from domestic sources and would be free from any encumbrances or restrictions on their use by the donor. When received, the Committee would retain complete control of their use. The use of contributed funds would be limited to funding program activities authorized under § 929.45, Research and development.

The Committee's proposed amendment was unanimously recommended at a public meeting on August 17–18, 2015.

If the proposal is approved in referendum, there would be no direct financial effect on growers or handlers. This proposal would provide authority to accept financial contributions. With the potential for additional funding, more research and promotional projects could be undertaken. Therefore, it is anticipated that both small and large producer and handler businesses would benefit from its implementation.

Alternatives to this proposal, including making no changes at this time, were considered. However, the Committee believes it would be beneficial to authorize contributions from domestic sources which would help support research and promotional activities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189, ''Generic Fruit Crops.'' No changes in those requirements as a result of this action would be necessary. Should any changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Committee's meeting was widely publicized throughout the cranberry production area. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the August 17–18, 2015, meeting was public, and all entities, both large and small, were encouraged to express their views on this proposal.

A proposed rule concerning this action was published in the **Federal Register** on August 4, 2016 (81 FR 51383). Copies of the proposed rule were mailed or sent via facsimile to all Committee members and cranberry handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending October 3, 2016, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes have been made to the proposed amendments.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Richard Lower at his previously mentioned address in

the **FOR FURTHER INFORMATION CONTACT** section.

Findings and Conclusions

The findings and conclusions and general findings and determinations included in the proposed rule set forth in the August 4, 2016, issue of the **Federal Register** are hereby approved and adopted.

Marketing Order

Annexed hereto and made a part hereof is the document entitled ''Order Amending the Order Regulating the Handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.'' This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions. It is hereby ordered, that this entire rule be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400–407) to determine whether the annexed order amending the order regulating the handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York is approved by growers, as defined under the terms of the order, who during the representative period were engaged in the production of cranberries in the production area. The representative period for the conduct of such referendum is hereby determined to be September 1, 2015 through August 31, 2016.

The agents of the Secretary to conduct such referendum are designated to be Doris Jamieson and Christian D. Nissen, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.* respectively.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

Dated: December 14, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York [1]

Findings and Determinations

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The marketing order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. The marketing order, as amended, and as hereby proposed to be further amended, regulates the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing order;

3. The marketing order, as amended, and as hereby proposed to be further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The marketing order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of cranberries produced in the production area; and

5. All handling of cranberries produced in the production area as defined in the marketing order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing order amending the order contained in the proposed rule issued by the Administrator on July 27, 2016, and published in the **Federal Register** (81 FR 51383) on August 4, 2016, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

■ 1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Add § 929.43 to read as follows:

§ 929.43 Contributions.

The Committee may accept voluntary contributions to pay expenses incurred pursuant to § 929.45, Research and development. Such contributions may only be accepted if they are sourced from domestic contributors and are free from any encumbrances or restrictions on their use by the donor. The Cranberry Marketing Committee shall retain complete control of their use.

[FR Doc. 2016–30571 Filed 12–20–16; 8:45 am]

BILLING CODE 3410–02–P

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9504; Directorate Identifier 2016–NM–107–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 7X airplanes. This proposed AD was prompted by reports that during the assembly of structural elements on some airplanes, lack of established procedures and tools caused boring and torqueing defects to be present at some locations. This proposed AD would require a detailed visual inspection of bore holes for defects, replacement of bolts, and repair if necessary. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by February 6, 2017.

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

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

For service information identified in this NPRM, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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–2016–9504; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9504; Directorate Identifier 2016–NM–107–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2016–0116, dated June 16, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model FALCON 7X airplanes. The MCAI states:

> During the assembly of structural elements on some aeroplanes, lack of established procedures and tools caused boring and torqueing defects to be present at some locations on the foot of frame (FR) 36 and FR39. Dassault Aviation (DA) identified the individual aeroplanes that are potentially affected by this production deficiency. Quality control actions have been implemented to ensure that new aeroplanes, from s/n 183, cannot be affected by this defect.
>
> This condition, if not detected and corrected, would adversely affect the structural integrity of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires [a detailed visual] inspection of bore holes [for defects] and replacement of bolts at FR36 and FR39 and, depending on findings, accomplishment of a repair.
>
> To address this potential unsafe condition, DA published Service Bulletin (SB) F7X–379 to provide corrective action instructions.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9504.

Related Service Information Under 1 CFR Part 51

We reviewed Dassault Service Bulletin 7X–379, dated February 29, 2016. The service information describes procedures for a detailed visual inspection of bore holes at FR36 and FR39 for defects, replacement of bolts at FR36 and FR39, and repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 41 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and Replacement	6 work-hours × $85 per hour = $510	$26	$536	$21,976

We have received no definitive data that would enable us to provide cost estimates for the on-condition repair specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2016–9504; Directorate Identifier 2016–NM–107–AD.

(a) Comments Due Date

We must receive comments by February 6, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 7X airplanes, certificated in any category, serial numbers (S/Ns) 2, 5, and 8 through 182 inclusive; except S/Ns 141, 148, 149, 157, 159, 166, 170, 171, 174, 175, and 177 through 180 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by reports that during the assembly of structural elements on some airplanes, lack of established procedures and tools caused boring and torqueing defects to be present at some locations on the foot of frame (FR) 36 and FR39. We are issuing this AD to detect and correct defects in the bore holes at FR36 and FR39 that could adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Inspection of Bore Holes

At the applicable time identified in paragraphs (g)(1) or (g)(2) of this AD, remove the sheer bolts at FR36 and FR39, left hand and right hand, as identified in Dassault Service Bulletin 7X–379, dated February 29, 2016, and do a detailed visual inspection of the bore holes for defects, in accordance with Dassault Service Bulletin 7X–379, dated February 29, 2016.

(1) For airplanes with S/N 2 and 5: Before exceeding 4,100 flight cycles after the date of release to service after the first C-Check or within 3 months from the effective date of this AD, whichever occurs later.

(2) For airplanes other than those identified in paragraph (g)(1) of this AD: Before exceeding 4,100 flight cycles since the date of issuance of the original certificate of airworthiness or the original export certificate of airworthiness or within 3 months from the effective date of this AD, whichever occurs later.

(h) Repair of Bore Holes and Bolt Replacement

(1) If, during any inspection required by paragraph (g) of this AD, any defect is found, before further flight, repair the affected areas, and replace the sheer bolts at FR36 and FR39, in accordance with Dassault Service Bulletin 7X–379, dated February 29, 2016; except where Dassault Service Bulletin 7X–379, dated February 29, 2016, specifies to contact Dassault Aviation for instructions, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA).

(2) If, during any inspection required by paragraph (g) of this AD, no defect is found, before further flight, replace the sheer bolts at FR36 and FR39, in accordance with Dassault Service Bulletin 7X–379, dated February 29, 2016.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Dassault Aviation's EASA

DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0116, dated June 16, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9504.

(2) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on December 6, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–30029 Filed 12–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9507; Directorate Identifier 2016–NM–127–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (Embraer)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Embraer S.A. Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes. This proposed AD was prompted by changes to the airworthiness limitations, which add life-limited landing gear parts not previously identified. This proposed AD would require revising the maintenance or inspection program to incorporate new airworthiness limitations that add life limits for previously unidentified landing gear parts. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by February 6, 2017.

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

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

For service information identified in this NPRM, contact Empresa Brasileira de Aeronautica S.A. (Embraer), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—Brasil; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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–2016–9507; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2016–9507; Directorate Identifier 2016–NM–127–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2016–07–02, dated July 27, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Embraer S.A. Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes. The MCAI states:

> This [Brazilian] AD was prompted by changes to the Airworthiness Limitation Section of the Maintenance Review Board Report MRB 120–HI–200, which add life-limited landing gear parts not previously identified. We are issuing this [Brazilian] AD to prevent life-limited landing gear parts from being used beyond their safe-life limits, which could lead to collapse of the landing gear.

This proposed AD would require revising the maintenance or inspection program to incorporate new airworthiness limitations that add life limits for previously unidentified landing gear parts. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9507.

Related Service Information Under 1 CFR Part 51

We reviewed the following Embraer S.A. service information:

- Temporary Revision (TR) 28–1 to MRB Report 120–HI–200, dated May 17, 2016. This service information adds life-limited landing gear parts not previously identified to the airworthiness limitations section.
- Alert Service Bulletin 120–32–A543, dated July 11, 2016. This service information provides procedures for replacement of affected parts.

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

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 70 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Maintenance program revision	1 work-hour × $85 per hour = $85	$0	$85	$5,950

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (Embraer): Docket No. FAA–2016–9507; Directorate Identifier 2016–NM–127–AD.

(a) Comments Due Date

We must receive comments by February 6, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Embraer S.A. Model EMB–120, EMB–120RT, EMB–120ER, EMB–120FC, and EMB–120QC airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by changes to the Airworthiness Limitation Section of the Maintenance Review Board (MRB) Report 120–HI–200, which adds life-limited landing gear parts not previously identified. We are issuing this AD to prevent life-limited landing gear parts from being used beyond their safe-life limits, which could lead to collapse of the landing gear.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, by incorporating the life-limited landing gear parts and the applicable safe-life limits identified in table 1 to paragraph (g) of this AD, as specified in Embraer S.A. Temporary Revision (TR) 28–1 to MRB Report 120–HI–200, dated May 17, 2016.

TABLE 1 TO PARAGRAPH (g) OF THIS AD—LIFE-LIMITED LANDING GEAR PARTS

Part number	Description	Safe-life limits (landings)
19699–001–00	Pin drag strut, lower	104,054
19429–000–00	Piston tube (pre-modification service bulletin 120–032–0514)	30,000
19429–000–00	Piston tube (post-modification service bulletin 120–032–0514)	90,000
19946–001–00	Pin leg hinge	90,000
20030–001–00	Pin torque link	90,000
19437–000–00	Drag strut, upper half	104,054
20031–001–00	Pin drag strut hinge	104,054
19414–000–00	Piston tube	90,000

TABLE 1 TO PARAGRAPH (g) OF THIS AD—LIFE-LIMITED LANDING GEAR PARTS—Continued

Part number	Description	Safe-life limits (landings)
19919–000–00	Pin leg hinge	90,000

(h) Replace Affected Parts

The initial compliance for the replacement of affected parts is specified in paragraphs (h)(1) and (h)(2) of this AD. Replace affected parts with serviceable parts, in accordance with the Accomplishment Instructions of Embraer S.A. Alert Service Bulletin 120–32–A543, dated July 11, 2016.

(1) Before the applicable safe-life limit identified in table 1 to paragraph (g) of this AD, or within 90 days after the effective date of this AD, whichever occurs later.

(2) Within 90 days after the effective date of this AD for parts on which the current status is unknown.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install on any airplane a main landing gear part or nose landing gear part having a part number identified in table 1 to paragraph (g) of this AD, if it has reached or exceeded its safe-life limit, or if its current status is unknown.

(j) No Alternative Actions and Intervals

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance in accordance with the procedures specified in paragraph (k)(1) of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch ACO, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Agência Nacional de Aviação Civil (ANAC); or ANAC's authorized Designee. If approved by the ANAC Designee, the approval must include the Designee's authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) ANAC AD No.: 2016–07–02, dated July 27, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9507.

(2) For service information identified in this NPRM, contact Empresa Brasileira de Aeronautica S.A. (Embraer), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on December 6, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–30030 Filed 12–20–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AP23

Special Monthly Compensation for Veterans With Traumatic Brain Injury

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) seeks to amend its adjudication regulations to add an additional benefit for veterans with residuals of traumatic brain injury (TBI). This benefit was enacted by the Veterans' Benefits Act of 2010 and provides special monthly compensation for veterans with TBI who are in need of aid and attendance and, in the absence of such aid and attendance, would require hospitalization, nursing home care, or other residential institutional care. Prior to the law's enactment, veterans with TBI were not eligible for this benefit unless they had a separate service-related disability that qualified under the law.

DATES: Comments must be received on or before February 21, 2017.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AP23—Special Monthly Compensation for Veterans with Traumatic Brain Injury.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eric G. Mandle, Policy Analyst, Regulations Staff (211D), Compensation Service, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On October 13, 2010, the Veterans' Benefits Act of 2010, Public Law 111–275 (the Act) was signed into law. Section 601 of the Act amends 38 U.S.C. 1114, adding subsection (t) to include special monthly compensation (SMC) for veterans who as the result of service-connected disability, are in need of regular aid and attendance for the residuals of traumatic brain injury (TBI), and in the absence of such regular aid and attendance would require hospitalization, nursing home care, or other residential institutional care. The law grants an additional monetary allowance for veterans with residuals of TBI who require this higher level of care but would not otherwise qualify for the benefit under 38 U.S.C. 1114(r)(2). The amendment became effective October 1, 2011.

VA administers SMC benefits under 38 CFR 3.350. Additionally, 38 CFR

3.352 provides the criteria to determine the need for aid and attendance and whether a claimant is permanently bedridden; 38 CFR 3.552 requires adjustments of allowance for aid and attendance when a beneficiary is hospitalized. Internal guidance has been published since April 4, 2011, instructing VA offices engaged in claims adjudication on how to implement the new SMC provision, but a formal update to VA's adjudication regulations has not yet been published.

I. VA Interpretation of Public Law 111–275

Under this proposed rule, VA will directly implement 38 U.S.C. 1114(t), which states that an additional award of SMC is payable to a veteran who, as the result of service-connected disability, is in need of regular aid and attendance for the residuals of traumatic brain injury, is not eligible for additional compensation under 38 U.S.C. 1114(r)(2), and in the absence of such regular aid and attendance would require hospitalization, nursing home care, or other residential institutional care. VA would also make clear that a veteran entitled to this benefit shall be paid during periods he or she is not hospitalized at United States Government expense as if receiving the amount equal to the compensation authorized under 38 U.S.C. 1114(o) or the maximum rate authorized under 38 U.S.C. 1114(p) and, in addition to such compensation, a monthly allowance equal to the rate described in 38 U.S.C. 1114(r)(2).

VA believes that there are two potential readings of the Act. Under the first, more restrictive reading, a veteran affected by section 1114(t) would receive only the rate noted under 38 U.S.C. 1114(r)(2), *e.g.,* $2,983, in addition to any other rate of special monthly compensation the individual in question might happen to qualify for. Reading the Act in this way, however, would result in benefits that are less than the amount to which other veterans requiring the same level of care not related to TBI would be entitled. This is because the predicate rates built into section 1114(r), such as the rate authorized by subsection (o), the maximum rate authorized under subsection (p), or the intermediate rate authorized under subsections (n) and (o), will not typically be met for veterans suffering from TBI, rather than the other conditions enumerated in section 1114.

Under the second, more liberal interpretation of section 1114(t), VA would pay veterans who meet the criteria of section 1114(t) the full amount described by section 1114(r) (*i.e.,* the rate authorized by subsection (o), which is also the maximum rate authorized under subsection (p), in addition to the allowance authorized by subsection (r)). The statutory language, viewed together with its purpose and legislative history, can be interpreted as establishing that Congress intended that veterans receiving the aid and attendance allowance authorized by subsection (r)(2) necessarily also qualify for the predicate rates described in subsection (r).

VA finds that Congress' intent was to enact a law that pays veterans of this class an amount equal to the compensation authorized under section 1114(o) or the maximum rate authorized under section 1114(p), plus the additional amount described under section 1114(r)(2). VA chose the rates permitted under section 1114(o) and (p) because those are the highest rates permitted under section 1114 and therefore would be the most favorable rates for this group of veterans requiring this higher level of care.

Textually, subsection (r) generally preconditions receipt of the heightened aid and attendance allowance under either subsection (r)(1) or (r)(2) on receipt of one of the predicate rates identified in subsection (r), which include the rates specified in (o) and (p). Additionally, subsection (r) makes clear that a veteran is receiving that heightened allowance ''in addition to'' the special monthly compensation otherwise described in subsection (r). VA has long interpreted subsection (r) as reflecting the assumption that a veteran is necessarily in receipt of one of the predicate rates described in the body of subsection (r) whenever a veteran is in receipt of the heightened aid and attendance allowance under either subsection (r)(1) or (r)(2). This interpretation is reflected in VA's current regulations. *See* 38 CFR 3.352(b)(1) (higher level of aid and attendance authorized by 38 CFR 3.350(h) requires that the veteran be ''entitled to the compensation authorized under [subsection (o),] or the maximum rate of compensation authorized under [subsection (p)].'').

In support of this interpretation, VA notes that 38 U.S.C. 1114(r)(2) provides additional compensation to those veterans with certain service-connected disabilities who are in need of a higher level of care. The legislative history for section 601 of Public Law 111–275 indicates that subsection (t) is intended to provide additional compensation to veterans with TBI who do not have those qualifying service-connected disabilities and therefore are not otherwise eligible for benefits under (r)(2), but still require a higher level of care comparable to what would otherwise be contemplated by the allowance provided by (r)(2). *See* S. Rep. No. 111–71, at 17 (2009) (discussing the intent to provide the ting (r)(2) rate of compensation as evidence of Congress' intent to pay (t) aid and attendance at the rate commonly received by veterans entitled to (r)(2) payments. If Congress intended subsection (t) to confer a freestanding allowance, it is counterintuitive that Congress would link the allowance to (r)(2) rather than simply declaring that any veteran in need of regular aid and attendance for the residuals of TBI should receive a specified dollar amount. Instead, Congress chose to match the existing rate and aid and attendance requirements described under (r)(2). In so doing, Congress emphasized that the overall impairment and need for care are the same for those with TBI as they are for those with certain service-connected disabilities who require a higher level of aid and attendance. S. Rep. 111–71 at *18.

VA's interpretation of section 1114(t) would mean that the rate authorized by section 1114(o) and (p) is the ''other compensation under this section'' referenced in section 1114(t) for purposes of all cases under that section. We acknowledge that this interpretation imports a specfic meaning to the term ''other compensation'' that is not apparent on the face of that term. We find that this interpretation is warranted because interpreting the phrase ''other compensation under this section'' to refer only to other compensation for which the veteran independently qualifies would defeat the purpose of the legislation. The legislative history noted that 38 U.S.C. 1114(l) prescribes the basic monthy compensation amount for veterans in need of aid and attendance due to their service-connected disabilities and that section 1114(r)(2) prescribes an ''additional'' monthly amount payable for veterans in need of a higher level of care. S. Rep. 111–71 at *17. Congress thus recognized that the needs of veterans who qualify for the (r)(2) rate are met by payment of both a basic monthly SMC rate, which generally would be provided under subsections (l) through (p) of section 1114 and the heightened aid and attendance payment under (r)(2). Congress determined that legislation was needed to extend similar benefits to veterans with TBI because the provisions of section 1114 generally focus on physical disabilities and locomotion rather than cognitive or

psychological impairments associated with TBI. S. Rep. 111–71 at *17–18.

For the reasons stated in the legislative history, cognitive disability due to TBI generally would not qualify for the basic monthly SMC rates prescribed in section 1114(l)–(p). As a result, if the term ''other compensation under this section,'' as used in section 1114(t) were construed to mean compensation for which the veteran otherwise qualifies without regard to section 1114(t), a substantial part of the benefits contemplated by (r)(2)—*i.e.,* the basic monthly SMC rate—would be unavailable in most cases covered by section 1114(t). Such an interpretation would defeat the statute's clear purpose in that it would, based on section 1114's focus on physical disability, provide veterans covered by section 1114(t) with a monthly benefit well below the amount Congress has determined necessary to provide for the needs of veterans requiring a heightened level of care under (r)(2). Accordingly, we believe section 1114(t) is most properly construed to permit payment of both the ''additional'' amount specified in (r)(2) and the predicate SMC rate specified in section 1114(o) and (p).

VA finds the language of the amended statute to be ambiguous, but has determined that Congress intended to provide veterans in need of aid and attendance due to TBI residuals the same level of compensation as veterans entitled to the section 1114(r)(2) rate. *See Chevron, U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837, 842–844 (1984) (if Congress has not addressed ''the precise question at issue,'' a court should defer to an administering agency's construction of the statute so long as it is a ''permissible'' construction). VA believes its interpretation is the most logical one because it is unlikely that Congress would wish to bestow a lesser benefit on veterans with TBI than is applicable to veterans with certain service-connected disabilities that might otherwise qualify for the (r)(2) allowance, while simultaneously emphasizing that veterans with TBI may be in a functionally similar situation. This interpretation is also the most advantageous to veterans with TBI who require a higher level of care.

II. Regulatory Amendment Mechanics

This rulemaking proposes to amend § 3.350 by adding paragraph (j), proposes to amend § 3.352 by adding a new paragraph (b)(2) and revising the authority citation, and proposes to amend § 3.552(b) by adding a reference to 38 U.S.C. 1114(t) to paragraph (b)(2) and revising the authority citation.

Proposed paragraph (j) will set forth the general criteria prescribed by 38 U.S.C. 1114(t). Paragraph (j) would reference § 3.352 to provide guidance on determining the need for aid and attendance. Paragraph (j)(1) would provide that a veteran shall be entitled to the amount equal to the compensation authorized under 38 U.S.C. 1114(o) or the maximum rate authorized under 38 U.S.C. 1114(p) and, in addition to such compensation, a monthly allowance equal to the rate described in 38 U.S.C. 1114(r)(2) during periods he or she is not hospitalized at United States Government expense.

In addition, to ensure consistency with current § 3.350(h), VA proposes to reference revised § 3.552(b)(2) under proposed § 3.350(j)(1). Section 3.552(b)(2) requires VA to discontinue the aid and attendance benefit following hospitalization at government expense. Proposed § 3.350(j)(2) would note that an allowance under proposed paragraph (j) would be paid in lieu of any allowance authorized by 38 U.S.C. 1114(r)(1).

Section 3.352 governs the criteria for determining the need for aid and attendance and what is ''permanently bedridden'' for VA disability compensation purposes. VA proposes to amend § 3.352 to regulate entitlement to a higher level of aid and attendance allowance for residuals of TBI. Specifically, we propose to redesignate paragraphs (b)(2) through (b)(5) of § 3.352 as (b)(3) through (b)(6). Paragraph (b)(1)(iii) and newly redesignated paragraph (b)(4) of this section reference (b)(2). As such, those paragraphs would also be revised to reflect that (b)(2) would become (b)(3).

This rulemaking also proposes to add a new paragraph (b)(2) to § 3.352 stating that a veteran is entitled to the higher level of aid and attendance allowance for residuals of TBI, as authorized by § 3.350(j), in lieu of the regular aid and attendance allowance. Entitlement would be found when the veteran meets the requirements for entitlement to the regular aid and attendance allowance in paragraph (a) of the section and when the veteran needs a higher level of care (as defined in redesignated paragraph (b)(3) of the section) than is required to establish entitlement to the regular aid and attendance allowance, and in the absence of the provision of such higher level of care would require hospitalization, nursing home care, or other residential institutional care.

As previously discussed, VA has determined that Congress intended 38 U.S.C. 1114(t) to provide total compensation equal to the total rate paid after factoring total compensation paid in (r)(2) cases, who also receive payment under subsections (o) or (p). VA therefore proposes to apply the same definition of a higher level of care when determining entitlement under proposed § 3.350(j) as VA applies under § 3.350(h). Specifically, VA proposes to require that veterans entitled to SMC under section 1114(t) establish entitlement to the regular aid and attendance allowance in paragraph (a) of § 3.352, as well as establish a requirement for a higher level of care, where, in the absence of the higher level of care, the veteran would require hospitalization, nursing home care, or other residential institutional care. These requirements mirror the current requirements for entitlement under § 3.350(h) and § 3.352(b). We would clarify in § 3.352(b)(2)(i) and (ii) that the need for this higher level of aid and attendance must be as a result of service-connected residuals of traumatic brain injury. This requirement is consistent with the statutory language which requires that the veteran ''as a result of service-connected disability, is in need of regular aid and attendance for the residuals of [TBI].'' While the statutory language could be read to allow entitlement to section 1114(t) compensation to those veterans with any service-connected disability that also suffer from TBI residuals, VA believes that the phrase ''as a result of'' indicates Congress intended that the need for a higher level of aid and attendance for TBI residuals to be due to a service-connected disability. Further, the legislative history is clear that Congress intended section 1114(t) compensation to be provided to those veterans suffering from service-connected residuals of TBI. *See Chevron, supra; see* S. Rep. No. 111–71, at 17 (2009) (discussing that the committee bill ''would allow veterans suffering from severe TBIs to receive the highest level of aid and attendance benefits from VA''). We would also amend the authority citation for § 3.352(b) to add section 1114(t).

Lastly, VA proposes to amend 38 CFR 3.552(b)(2). Section 3.552 regulates adjustments of allowance for aid and attendance. Specifically, paragraph (b)(2) states that ''[w]hen a veteran is hospitalized at the expense of the United States Government, the additional aid and attendance allowance authorized by 38 U.S.C. 1114(r)(1) or (2) will be discontinued . . .''. To ensure consistency in its regulations, and to implement the conforming amendment of the Act, VA is amending that paragraph to include 38 U.S.C. 1114(t). This amendment is supported by the

plain language of the statute, which states ''[s]ubject to section 5503(c) of this title.'' Section 5503(c) of title 38 United States Code governs hospitalization of veterans and states, in effect, the rule we propose to establish here. We would also amend the authority citation for § 3.552(b). The current authority citation cites 38 U.S.C. 5503(e); however, the Veterans Education and Benefits Expansion Act of 2001, Public Law 107–103, 204(a), 115 Stat. 990, amended section 5503 by redesignating section 5503(e) as section 5503(c). Therefore, we would revise the authority citation to reflect the accurate legal authority as 38 U.S.C. 5503(c).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of this rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This proposed rule would directly affect only individuals and would not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.109, Veterans Compensation for Service-Connected Disability.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on December 13, 2016, for publication.

Dated: December 13, 2016.

Jeffrey Martin,

Office Program Manager, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 3 as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.350 to add paragraph (j) to read as follows:

§ 3.350 Special monthly compensation ratings.

* * * * *

(j) *Special aid and attendance benefit for residuals of traumatic brain injury (38 U.S.C. 1114(t)).* The special monthly compensation provided by 38 U.S.C. 1114(t) is payable to a veteran who, as the result of service-connected disability, is in need of regular aid and attendance for the residuals of traumatic brain injury, is not eligible for compensation under 38 U.S.C. 1114(r)(2), and in the absence of such regular aid and attendance would require hospitalization, nursing home care, or other residential institutional care. Determination of this need is subject to the criteria of § 3.352.

(1) A veteran described in this paragraph (j) shall be entitled to the amount equal to the compensation authorized under 38 U.S.C. 1114(o) or the maximum rate authorized under 38 U.S.C. 1114(p) and, in addition to such compensation, a monthly allowance equal to the rate described in 38 U.S.C. 1114(r)(2) during periods he or she is not hospitalized at United States Government expense. (*See* § 3.552(b)(2) as to continuance following admission for hospitalization.)

(2) An allowance authorized under 38 U.S.C. 1114(t) shall be paid in lieu of any allowance authorized by 38 U.S.C. 1114(r)(1).

(Authority: 38 U.S.C. 501, 38 U.S.C. 1114(t))

■ 3. Amend § 3.352 by:

■ a. Redesignating paragraphs (b)(2) through (b)(5) as (b)(3) through (b)(6);

■ b. In paragraph (b)(1)(iii), removing the phrase ''paragraph (b)(2)'' and in its place adding the phrase ''paragraph (b)(3)'';

■ c. Adding new paragraph (b)(2);

■ d. In redesignated paragraph (b)(4), removing the phrase ''paragraph (b)(2)'' and in its place adding the phrase ''paragraph (b)(3)''; and

■ e. In the authority citation at the end of paragraph (b), adding ''1114(t)''.

The addition and revision reads as follows:

§ 3.352 Criteria for determining need for aid and attendance and ''permanently bedridden.''

* * * * *

(b)(1) * * *

(2) A veteran is entitled to the higher level aid and attendance allowance authorized by § 3.350(j) in lieu of the regular aid and attendance allowance when all of the following conditions are met:

(i) As a result of service-connected residuals of traumatic brain injury, the veteran meets the requirements for entitlement to the regular aid and attendance allowance in paragraph (a) of this section.

(ii) As a result of service-connected residuals of traumatic brain injury, the veteran needs a ''higher level of care'' (as defined in paragraph (b)(3) of this section) than is required to establish entitlement to the regular aid and attendance allowance, and in the absence of the provision of such higher level of care the veteran would require hospitalization, nursing home care, or other residential institutional care.

* * *

(Authority: 38 U.S.C. 501, 1114(r)(2), 1114(t))

* * * * *

■ 4. Amend § 3.552(b) by:

■ a. In paragraph (b)(2), adding the phrase ''or 38 U.S.C. 1114(t)'' after the phrase ''authorized by 38 U.S.C. 1114(r)(1) or (2)''; and

■ b. At the end of paragraph (b), revising the authority citation.

The revision read as follows:

§ 3.552 Adjustment of allowance for aid and attendance.

* * * * *

(Authority: 38 U.S.C. 5503(c))

* * * * *

[FR Doc. 2016–30509 Filed 12–20–16; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0669; FRL–9956–67–Region 9]

Determination of Attainment of the 2008 Ozone National Ambient Air Quality Standards; Mariposa County, California

AGENCY: The Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Mariposa County, California Moderate Nonattainment Area (NAA) has attained the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS or ''standards''). This proposed determination is based on complete, quality-assured and certified data for 2013–2015. Preliminary data for 2016 are consistent with continued attainment of the standards in the Mariposa County NAA. If the determination is finalized as proposed, any unfulfilled obligations to submit revisions to the state implementation plan (SIP) related to attainment of the 2008 ozone standards for the Mariposa County NAA will be suspended for as long as the area continues to meet those standards.

DATES: Any comments must arrive by January 20, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2016–0669 at *http://www.regulations.gov,* or via email to *levin.nancy@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Nancy Levin, EPA Region IX, (415) 972–3848, *levin.nancy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us'' or ''our'' is used, we mean the EPA. In the Rules and Regulations section of this **Federal Register**, we are making a determination that the Mariposa County, California Moderate NAA has attained the 2008 8-hour ozone NAAQS as a direct final rule without prior proposal because the Agency views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for this determination of attainment is set forth in the direct final rule. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final rule, which is located in the Rules and Regulations section of this **Federal Register**.

Dated: December 2, 2016.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2016–30474 Filed 12–20–16; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Parts 1600, 1630, and 1631

Definitions; Cost Standards and Procedures; Purchasing and Property Management

AGENCY: Legal Services Corporation.

ACTION: Proposed rule; Extension of comment period.

SUMMARY: The Legal Services Corporation (''LSC'') issued a proposed rule in the **Federal Register** of October 28, 2016 [FR Doc. 2016–25831], concerning proposed amendments to its regulations governing definitions, cost standards and procedures, and purchasing and property management. This notice extends the comment period for 30 days to January 26, 2017.

DATES: Comments must be submitted by January 26, 2017.

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

Email: lscrulemaking@lsc.gov. Include ''Parts 1630/1631 Rulemaking'' in the subject line of the message.

Fax: (202) 337–6519, ATTN: Parts 1630/1631 Rulemaking.

Mail: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, ATTN: Parts 1630/1631 Rulemaking.

Hand Delivery/Courier: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, ATTN: Parts 1630/1631 Rulemaking.

Instructions: Electronic submissions are preferred via email with attachments in Acrobat PDF format. LSC may not consider written comments sent via any other method or received after the end of the comment period.

FOR FURTHER INFORMATION CONTACT: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007, (202) 295–1563 (phone), (202) 337–6519 (fax), *sdavis@lsc.gov.*

SUPPLEMENTARY INFORMATION: LSC is extending the public comment period stated in the **Federal Register** notice for this rulemaking. 81 FR 75006, Oct. 28, 2016. In that notice, LSC proposed amendments to its regulations governing definitions (45 CFR part 1600), cost standards and procedures (45 CFR part 1630), and purchasing and property management (45 CFR part 1631). LSC has received requests for an extension of the comment period to allow interested parties and stakeholders additional time to develop their comments on the proposed rulemaking, including obtaining data about the potential effects of proposed changes. LSC is therefore extending the comment period for 30 days, from December 27, 2016 to January 26, 2017.

Dated: December 16, 2016.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2016–30717 Filed 12–20–16; 8:45 am]

BILLING CODE 7050–01–P

Notices

Federal Register
Vol. 81, No. 245
Wednesday, December 21, 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

Submission for OMB Review; Comment Request

December 15, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 20, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Supplemental Nutrition Assistance Program: State Options.

OMB Control Number: 0584–0496.

Summary of Collection: The Food, Conservation and Energy Act of 2008, Public Law 110–246, Section 4001–4002, amended the Food and Nutrition Act of 2008 to rename the Food Stamp Program the ''Supplemental Nutrition Assistance Program (SNAP). The Act establishes SNAP as a means-tested program under which needy households may apply for and receive assistance to supplement their ability to purchase food. The Act specifies national eligibility standards and imposes certain administrative requirements on State agencies in administering the program. The program is directly administered by State agencies, which are responsible for determining the eligibility of applicant households and issuing benefits to those households entitled to benefits under the Act.

Need and Use of the Information: FNS will collect information from State agencies on how the various SNAP implementation options will be determined. The information collected will be used by FNS to establish quality control reviews, standards and self-employment costs.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 746.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–30654 Filed 12–20–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 15, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 20, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Institute of Food and Agriculture

Title: 4–H Enrollment Report.

OMB Control Number: 0524–0045.

Summary of Collection: The 1914 Smith-Lever Act created the Cooperative Extension System and the land-grant universities and their federal partner, the Extension Service, now the National Institute of Food and Agriculture, USDA. The mission of the National 4–H Headquarters; National Institute of Food and Agriculture, United States Department of Agriculture; is to advance scientific knowledge for agriculture, the environment, human and animal health and well-being, and communities by creating opportunities for youth. 4–H is

the premier youth development program of the United States Department of Agriculture. Originating in the early 1900's as ''four-square education,'' the 4–H's (head-heart-hands-health) seek to promote positive youth development, facilitate learning and engage youth in the work of their community to enhance the quality of life.

Need and Use of the Information: The annual 4–H Enrollment Report is the principal means by which the 4–H movement can keep track of its progress, as well as emerging needs, potential problems and opportunities. All of the information necessary to run the 4–H program is collected from individuals clubs, and other units. The information collected is used to report, as requested by the Congress or the Administration, on rural versus urban outreach, enrollment by race, youth participation in leadership, community service, etc. It is also used to determine market share or percentage of the youth of each state by age and place of residence who are enrolled in the 4–H youth development program. Without the information it would be impossible to justify federal funding for the 4–H program.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 109.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 111.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–30672 Filed 12–20–16; 8:45 am]

BILLING CODE 3410–09–P

DEPARTMENT OF AGRICULTURE

Forest Service

Virginia Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Virginia Resource Advisory Committee (RAC) will meet in Roanoke, VA. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *www.fs.fed.us/r8/gwj.*

DATES: The meeting will be held at 10:00 a.m. to 6:00 p.m. on the following dates:

- April 10, 2017
- April 17, 2017
- April 24, 2017

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 meetings will be held at the George Washington and Jefferson National Forests (NF) Supervisor's Office, Conference Room, 5162 Valleypointe Parkway, Roanoke, Virginia.

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 George Washington and Jefferson NF Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rebecca Robbins, RAC Coordinator by phone at (540) 265–5173 or via email at *rebeccarobbins@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 meetings is to prioritize and recommend projects for Title II funds. 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 April 3, 2017 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Rebecca Robbins, RAC Coordinator, George Washington and Jefferson NF Supervisor's Office, 5162 Valleypointe Parkway, Roanoke, Virginia 24019; or by email to *rebeccarobbins@fs.fed.us,* or via facsimile to 540–265–5145.

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: December 15, 2016.

Joby P. Timm

Forest Supervisor.

[FR Doc. 2016–30729 Filed 12–20–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[12/15/2016 through 12/16/2016]

Firm name	Firm address	Date accepted for investigation	Product(s)
Advanced Design Consulting USA, Inc..	126 Ridge Road, P.O. Box 187, Lansing, NY 14882.	12/15/2016	The firm manufactures complex scientific components and instruments for government laboratories and corporations world wide.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2016–30723 Filed 12–20–16; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Extension of Deadline for Nominations of Members To Serve on the Commerce Data Advisory Council (CDAC)

AGENCY: Economics and Statistics Administration (ESA), Department of Commerce.

ACTION: Extension of Deadline for Nominations of Members to the Commerce Data Advisory Council (CDAC).

SUMMARY: The Secretary of Commerce is requesting nomination of individuals to the Commerce Data Advisory Council. The Secretary will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides committee and membership criterial

DATES: The Economics and Statistics Administration must receive nominations of members by midnight January 6, 2017.

ADDRESSES: Please submit nominations to the email account *DataAdvisoryCouncil@doc.gov,* this account is specifically set up to receive Data Advisory Council applications. Nominations may also be submitted by postal delivery to Burton Reist, Director of External Affairs, Economics and Statistics Administration/DFO CDAC, Department of Commerce, 1401 Constitution Avenue NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Burton Reist, Director of External Affairs, Economics and Statistics Administration, Department of Commerce, at (202) 482–3331 or email *BReist@doc.gov,* also at 1401 Constitution Avenue NW., Washington DC 20230.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Commerce (Department) collects, compiles, analyzes, and disseminates a treasure trove of data, including data on the Nation's economy, population, and environment. This data is fundamental to the Department's mission and is used for the protection of life and property, for scientific purposes, and to enhance economic growth. However, the Department's capacity to disseminate the increasing amount of data held and to disseminate it in formats most useful to its customers is significantly constrained.

In order to realize the potential value of the data the Department collects, stores, and disseminates, the Department must minimize barriers to accessing and using the data. Consistent with privacy and security considerations, the Department is firmly committed to unleashing its untapped data resources in ways that best support downstream information access, processing, analysis, and dissemination.

The Commerce Data Advisory Council (CDAC) provides advice and recommendations, to include process and infrastructure improvements, to the Secretary on ways to make Commerce data easier to find, access, use, combine and disseminate. The aim of this advice shall be to maximize the value of Commerce data to all users including governments, businesses, communities, academia, and individuals.

The Secretary will draw CDAC membership from the data industry academia, non-profits and state and local governments with a focus on recognized expertise in collection, compilation, analysis, and dissemination. As privacy concerns span the entire data lifecycle, expertise in privacy protection also will be represented on the Council. The Secretary will select members that represent the entire spectrum of Commerce data including demographic, economic, scientific, environmental, patent, and geospatial data. The Secretary will select members from the information technology, business, non-profit, and academic communities, and state and local governments. Collectively, their knowledge will include all types of data Commerce distributes and the full lifecycle of data collection, compilation, analysis, and dissemination.

II. Description of Duties

The Council shall advise the Secretary on ways to make Commerce data easier to find, access, use, combine, and disseminate. Such advice may include recommended process and infrastructure improvements. The aim of this advice shall be to maximize the value of Commerce data to governments, businesses, communities, and individuals.

In carrying out its duties, the Council may consider the following:

—Data management practices that make it easier to track and disseminate integrated, interoperable data for diverse users;

—Best practices that can be deployed across Commerce to achieve common, open standards related to taxonomy, vocabulary, application programming interfaces (APIs), metadata, and other key data characteristics;

—Policy issues that arise from expanding access to data, including issues related to privacy, confidentiality, latency, and consistency;

—Opportunities and risks related to the combination of public and private data sources and the development of joint data products and services resulting from public-private partnerships;
—External uses of Commerce data and similar federal, state, and private data sets by businesses; and,
—Methods to enhance communication and collaboration between stakeholders and subject-matter experts at Commerce on data access and use.

The Council meets up to four times a year, budget permitting. Special meetings may be called when appropriate.

Federal Advisory Committee Act (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees, is the governing instrument for the CDAC.

III. Membership

1. The Council shall consist of up to 20 members.

2. The Secretary shall select and appoint members and members shall serve at the pleasure of the Secretary.

3. Members shall represent a cross-section of business, academic, non-profit, and non-governmental organizations.

4. The Secretary will choose members of the Council who ensure objectivity and balance, a diversity of perspectives, and guard against potential for conflicts of interest.

5. Members shall be prominent experts in their fields, recognized for their professional and other relevant achievements and their objectivity.

6. In order to ensure the continuity of the Commerce Data Advisory Council, the Council shall be appointed so that each year the terms expire of approximately one-third of the members of the Council.

7. Council members serve for terms of two years and may be reappointed to any number of additional terms. Initial appointments may be for 12-, 18- and 24-month increments to provide staggered terms.

8. Nominees must be able to actively participate in the tasks of the Council, including, but not limited to regular meeting attendance, Council meeting discussant responsibilities, and review of materials, as well as participation in conference calls, webinars, working groups, and special Council activities.

9. Should a council member be unable to complete a two-year term and when vacancies occur, the Secretary will select replacements who can best either replicate the expertise of the departing member or provide the CDAC with a new, identified needed area of expertise. An individual chosen to fill a vacancy shall be appointed for the remainder of the term of the member replaced or for a two-year term as deemed. A vacancy shall not affect the exercise of any power of the remaining members to execute the duties of the Council.

10. No employee of the federal government can serve as a member of the Census Scientific Advisory Committee.

All members of the Commerce Data Advisory Council shall adhere to the conflict of interest rules applicable to Special Government Employees as such employees are defined in 18 U.S.C. 202(a). These rules include relevant provisions in 18 U.S.C. related to criminal activity, Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635), and Executive Order 12674 (as modified by Executive Order 12731).

IV. Compensation

1. Membership is under voluntary circumstances and therefore members do not receive compensation for service on the Commerce Data Advisory Council.

2. Members shall receive per diem and travel expenses as authorized by 5 U.S.C. 5703, as amended, for persons employed intermittently in the Government service.

V. Nominations Information

The Secretary will consider nominations of all qualified individuals to ensure that the CDAC includes the areas of subject matter expertise noted above (see ''Background and Membership''). Individuals may nominate themselves or other individuals, and professional associations and organizations may nominate one or more qualified persons for membership on the CDAC. Nominations shall state that the nominee is willing to serve as a member of the Council. A nomination package should include the following information for each nominee:

1. A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.,* what specific attributes recommend him/her for service in this capacity), and the nominee's field(s) of expertise;

2. A biographical sketch of the nominee and a copy of his/her resume or curriculum vitae; and

3. The name, return address, email address, and daytime telephone number at which the nominator can be contacted.

The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership. The Department has special interest in assuring that women, minority groups, and the physically disabled are adequately represented on advisory committees; and therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or disabled candidates. The Department of Commerce also encourages geographic diversity in the composition of the Council. All nomination information should be provided in a single, complete package and received by the stated deadline, January 6, 2017. Interested applicants should send their nomination package to the email or postal address provided above.

Potential candidates will be asked to provide detailed information concerning financial interests, consultancies, research grants, and/or contracts that might be affected by recommendations of the Council to permit evaluation of possible sources of conflicts of interest. Finally, nominees will be required to certify that they are not subject to the Foreign Agents Registration Act (22 U.S.C. 611) or the Lobbying Disclosure Act (2 U.S.C. 1601 *et seq.*).

Dated: December 15, 2016.

Burton Reist,

Director of External Affairs, Economics and Statistics Administration.

[FR Doc. 2016–30665 Filed 12–20–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–850, A–588–851, A–485–805]

Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan; Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Romania: Final Results of the Expedited Third Five-Year Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Effective December 21, 2016.

SUMMARY: As a result of these sunset reviews, the Department of Commerce (the Department) finds that revocation of the antidumping duty orders on certain large diameter carbon and alloy seamless standard, line and pressure pipe (large diameter pipe) from Japan and certain small diameter carbon and

alloy seamless standard, line and pressure pipe (small diameter pipe) from Japan and Romania would likely lead to a continuation or recurrence of dumping at the margins identified in the ''Final Results of Review'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, 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) 482–0410.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2016, the Department published the notice of initiation of the third sunset reviews of the antidumping duty orders on large diameter pipe from Japan and small diameter pipe from Japan and Romania, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[1] The Department received notices of intent to participate in both of the Japan reviews from TMK IPSCO, Vallourec Star, L.P. (Vallourec), and United States Steel Corporation (U.S. Steel), domestic interested parties (collectively, the petitioners) and a notice of intent to participate in the Romania review from Vallourec and U.S. Steel, within the deadline specified in 19 CFR 351.218(d)(1)(i). The petitioners claimed interested party status for each of these reviews under section 771(9)(C) of the Act, as manufacturers of the domestic like product in the United States.

On October 3, 2016, the Department received a complete substantive response from the petitioners for each of the reviews within the deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited sunset reviews of these antidumping duty orders.

Scope of the Orders

Large Diameter Pipe From Japan

The products covered by this order are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes. The seamless pipes subject to this order are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.19.10.30, 7304.19.10.45, 7304.19.10.60, 7304.19.50.50, 7304.31.60.10, 7304.31.60.50, 7304.39.00.04, 7304.39.00.06, 7304.39.00.08, 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, 7304.51.50.15, 7304.51.50.45, 7304.51.50.60, 7304.59.20.30, 7304.59.20.55, 7304.59.20.60, 7304.59.20.70, 7304.59.60.00, 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, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheading is provided for convenience and customs purposes. The written product description remains dispositive.[2]

Small Diameter Pipe From Japan and Romania

The products covered by these orders include small diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows. The seamless pipes subject to these orders are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.19.10.20, 7304.19.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the HTSUS. The HTSUS subheading is provided for convenience and customs purposes. The written product description remains dispositive.[3]

Analysis of Comments Received

All issues raised in these reviews, including the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked, are addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://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 Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn.*

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(c)(1), (2), and (3) of the Act, the Department determines that revocation of the order on large diameter pipe from Japan and the orders on small diameter pipe from Japan and Romania would be likely to lead to continuation or recurrence of dumping up to the following weighted-average margin percentages:

Country	Weighted-average margin (percent)
Japan (Large Diameter)	107.80
Japan (Small Diameter)	106.07
Romania (Small Diameter)	14.25

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: December 15, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[1] *See Initiation of Five-Year (''Sunset'') Review,* 81 FR 60343 (September 1, 2016).

[2] A full description of the scope of the order is contained in the Memorandum from Deputy Assistant Secretary Christian Marsh to Assistant Secretary Paul Piquado, ''Issues and Decision Memorandum for the Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders on Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan (A–588–850), Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan (A–588–851) and Romania (A–485–805),'' dated concurrently with and hereby adopted by this notice (Issues and Decision Memorandum).

[3] *See* Issues and Decision Memorandum.

[FR Doc. 2016–30732 Filed 12–20–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 161020988–6988–01]

RIN 0625–XC026

Revisions to User Fees for Export and Investment Promotion Services/Events

AGENCY: U.S. & Foreign Commercial Service, International Trade Administration, Commerce.

ACTION: Notice of proposed fee revisions and request for comment.

SUMMARY: The U.S. & Foreign Commercial Service (US&FCS) within the International Trade Administration (ITA) is seeking comment on its proposal to adjust user fees in light of an independent cost study which concluded that the US&FCS is not fully covering its costs for providing services under the current fee structure, as provided in the Office of Management and Budget (OMB) Circular A–25. ITA provides a wide range of export and investment promotion information and services to U.S. individuals and entities. The services considered here are a subset of ITA activities that involve relatively more intensive time engagements with particular client firms; ITA will continue to provide information and services that are less intensive and/or benefit the general public without charge. As part of this proposal, US&FCS also proposes to revise the standards related to company size for determining the fees to be charged.

DATES: We will consider all comments that we receive by January 16, 2017.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal: www.Regulations.gov.* The identification number is ITA–2016–0012.
- Postal Mail/Commercial Delivery to Docket No. ITA–2016–0012, International Trade Administration, U.S. & Foreign Commercial Service, Office of Strategic Planning & Resource Management, 1400 Constitution Avenue NW., Rm. C125, Washington, DC 20235.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by US&FCS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. US&FCS will accept anonymous comments (enter ''N/A'' in required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Ms. Aditi Palli, International Trade Administration, U.S. & Foreign Commercial Service, Office of Strategic Planning, 1400 Constitution Avenue NW., Rm. 21022, Washington, DC 20230, Phone: (202) 482–2025.

SUPPLEMENTARY INFORMATION:

Background

The statutory mission of US&FCS is to ''place primary emphasis on the promotion of exports of goods and services from the United States, particularly by small businesses and medium-sized businesses, and on the protection of United States business interests abroad . . . through activities that include assisting United States exporters.'' 15 U.S.C. Sec. 4721(b). The statute further defines the term ''United States exporter'' at 15 U.S.C. Sec. 4721(j) as a U.S. citizen, U.S. corporation, or foreign corporation that is more than 95% U.S.-owned, that ''exports or seeks to export, goods or services produced in the United States.'' In addition, US&FCS leads the federal government's investment promotion efforts ''to attract and retain investment in the American economy'' as provided in Executive Order 13577—SelectUSA Initiative (June 15, 2011). In carrying out these efforts, US&FCS may collect user fees from U.S. economic development organizations that seek to promote their locality to foreign investors.

OMB Circular A–25 requires the recovery of an appropriate share of the full cost through user fees for goods and services provided to recipients of benefits beyond those accruing to the general public. Specifically, section 6 of Circular A–25 states that ''when a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full cost to the Federal Government for providing the special benefit, or the market price).'' A ''user fee'' is the amount paid by a recipient of a special benefit beyond those benefits accruing to the general public. A ''special benefit'' may accrue and a user fee be imposed when a government service: (a) Enables the beneficiary to obtain more immediate or substantial gains or values than those that accrue to the general public; (b) is performed at the request or for the convenience of the recipient, and is beyond the services regularly received by members of the same industry or group or by the general public; or (c) provides business stability or contributes to public confidence in the business activity of the beneficiary.

The direct or indirect cost of a service provided by the Federal Government includes, but is not limited to, the following:

- Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement. Retirement costs should include all (funded or unfunded) accrued costs not covered by employee contributions as specified in Circular A–11.
- Physical overhead, consulting, or other indirect costs including material and supply costs, utilities, insurance travel, and rents or imputed rents on land, buildings, and equipment.
- The management and supervisory costs.
- The costs of enforcement, collection, research, establishment of standards, and regulation, including any environmental impact statements.

Business Size Standards

To comply with the Small Business Act, US&FCS, in consultation with the Small Business Administration (SBA), proposes the following standards related to company size:

- *Small Business:* The company qualifies as a ''small business'' under SBA's size standards matched to the North American Industry Classification System Codes.
- *Medium-sized Business:* The company does not qualify under SBA's size standards matched to the North American Industry Classification System Codes, but has less than $1 billion in annual revenue.
- *Large Business:* The company does not qualify under SBA's size standards matched to the North American Industry Classification System Codes and has more than $1 billion in annual revenue.

The US&FCS is committed to ensuring small and medium-sized enterprises (SMEs) can access the services that US&FCS provides. The US&FCS has historically offered a discount to SMEs, as well as to U.S. economic development organizations and non-profit educational institutions. US&FCS proposes to continue discounted fees for these target populations. Rather than applying a

standard discount rate to all services, the fees proposed for each service are based on price sensitivity survey results as well as other considerations, such as the need to ensure that user fees set the proper expectation about the value-added for one service relative to other service offerings. The result is an average discount of 70 percent for small companies, U.S. economic development organizations, and non-profit educational institutions, and 30 percent for medium-sized companies.

User Fee Schedule

The US&FCS offers export and investment promotion services to U.S. businesses that consist of Standardized Fee Services and Customized Fee Services. For each of these services, the US&FCS collects fees according to the User Fee Schedule that is made available on its Web site and agency publications. The ''Standardized Fee Services'' listed in the User Fee Schedule are services that are performed in the same general manner by all US&FCS field units. Other ''Customized Services,'' not shown in the chart below, entail substantive variation of the scope of work with fees based on the level of effort required and direct costs incurred. Under this notice, US&FCS proposes to turn more Customized Fee Services into Standardized Fee Services to improve the consistency and clarity of fees to be charged.

The US&FCS proposes to modify the user fees for both Standardized Fee Services and Customized Fee Services. The proposed new User Fee Schedule provided below lists each standardized fee service and the estimated number of hours for completion of service delivery. To determine the large company fee for any service, a flat hourly rate of $46 for locally employed staff, $150 for commercial officers and $80 for U.S.-based staff is multiplied by the estimated workload hours for each employee type. To determine the fees for a small business and medium-sized business, price sensitivity survey results were analyzed to determine the discount to be applied. Direct costs, such as transportation or an interpreter, will be discussed with the client and assessed in addition to the user fee. For Customized Fee Services, the estimated workload hours will vary, but the user fee will be calculated based on the weighted average hourly rate of $90 per hour for large companies, $70 per hour for medium-sized enterprises, and $30 per hour for small businesses. The services included in this proposal are described below.

1. *Business Service Provider* A listing of U.S. and foreign business service providers that offer export/investment assistance; such as consultants, lawyers, freight forwarders, etc. The fee is paid for by the business service provider to be listed on US&FCS's Web sites.

2. *Certified Trade/Investment Mission:* Provides a group of U.S. companies or economic development organizations with a market briefing, networking reception and Gold Key Service in-country as part of a mission organized by an economic development organization or US&FCS office/team. The fees for these missions are separate from DOC Executive-led Missions, which are organized by Industry and Analysis/Trade Promotion Programs.

3. *Featured U.S. Exporter:* Provides U.S. companies with an opportunity to enhance their international marketing efforts through improved search engine optimization via .gov link-backs to their company's Web site. The service entails listing their goods/services overseas on a trusted U.S. government Web site with a brief description and contact information.

4. *Gold Key Service:* Provides U.S. companies with matchmaking appointments with up to five interested partners in a foreign market; including: Identification and outreach to potential matching firms; sending client's information to identified matching firms; preparing a profile of interested firms; and providing a report with the profile and contact information for interested firms.

5. *Initial Market Check:* Provides U.S. firms with a report containing information needed to evaluate the potential of their product or service offering in a specific target market; including: A snapshot of the market potential of the product/service; feedback from up to five local contacts on their level of interest in the product/service; and analysis and recommendations for next steps.

6. *International Company Profile—Full Report:* Full: Provides U.S. companies and economic development organizations with a comprehensive background report on a specific foreign company, including: Information on company size, sales data, business activities, corporate structure, shareholders and directors, references, financial data creditworthiness and market outlook; site visit and interviews with principals; information sources consulted in preparing the report; and analysis of information collected.

7. *International Company Profile—Partial Report:* Provides U.S. companies and economic development organizations with a partial background report on a specific foreign company; including: Information on company size, sales data, business activities, references, corporate structure, and shareholders/directors; information sources consulted in preparing the report; and brief analysis of information collected.

8. *International Partner Service:* Provides U.S. companies with a list of up to five partners/distributors that have expressed an interest in the client's goods/services; including: Identification and outreach to potential matching firms; sending client's information to identified matching firms; preparing a profile of interested firms; and providing a report with the profile and contact information for interested firms.

9. *International Partner Search + Virtual Introductions:* Provides the same as above, but also includes virtual introductions via conference calls with up to five of the contacts identified.

10. *Other Customized Services/Events:* Includes all other services/events not listed.

11. *Single Company or Location Promotion:* Provides a U.S. firm or locality with a promotional event (such as a technical seminar, press conference, luncheon, dinner, cocktail reception, etc.) to help increase awareness of their locality or existing/new products/services in a specific market, including: organizing the event logistics/venue; conducting a targeted direct mail or email campaigns; managing the promotional campaign and event-related logistics; providing logistical and promotional support on-site during the event; and providing a post-event de-briefing to discuss next steps.

12. *Target Market Analysis:* Provides U.S. firms with an analysis of the most promising target markets overseas for their product/service based on analysis of secondary research/data (macroeconomic/commercial & trade/risk data).

13. *Trade Show Representation:* Provides U.S. companies and economic development organizations with the ability to increase their marketing exposure at a trade show when they are unable to attend in-person; entails conducting pre-trade show promotions via Internet/social media/email campaign; representing the client at the trade show; displaying the client's promotional materials at the trade show; conducting outreach to foreign buyers/distributors in attendance at the trade show; and providing contact information for each overseas company that expressed interest in the client's products/services at the trade show.

14. *Verified Contact List:* Provides U.S. firms with a basic contact list of up to five to 10 agents, distributors and partners in a foreign market. The

information included in the contact list will have been reviewed and verified for accuracy only and no information will be provided on the level of interest in the client's products/services.

15. *Webinar:* Provides U.S. firms and economic development organizations with export knowledge and/or market intelligence from experts located around the globe via an online webinar. The webinars are archived on export.gov.

16. *Web site Globalization:* provides U.S. companies with services to enhance the strength of their Web site for the purpose of attracting foreign partners/business.

User Fee Discounts

The US&FCS currently offers various discounts to SMEs, economic development organizations and non-profit educational institutions. US&FCS proposes to discount services for all small businesses, economic development organization and non-profit educational institutions by an average of ~70 percent and for all medium-sized enterprises by an average of ~30 percent. Under this notice, US&FCS also proposes to eliminate the current SME incentive program, which currently offers an additional discount for first-time users of US&FCS services.

Full cost rates and SME discount rates are provided on the next page so that the public can comment upon the implications of full and SME rates.

PROPOSED USER FEE SCHEDULE FOR EXPORT PROMOTION SERVICES

Service/Event	Average hours (per client)	Current fee [1]			Proposed fee [1]		
		Small [2]	Medium	Large [3]	Small [2]	Medium	Large [3]
Business Service Provider.	4	$300 + $50 for translation if needed.	$600 + $50 for translation if needed.	$600 + $50 for translation if needed.	$150 + $50 for translation if needed.	$250 + $50 for translation if needed.	$350 + $50 for translation if needed.
Certified Trade Mission (market briefing and/or networking reception and/or Gold Key Service—GKS).	70	$28 per staff hour + any direct costs	$28 per staff hour + any direct costs	$28 per staff hour + any direct costs	Full Package: $1,200. Networking Reception and GKS: $1,100 Market Briefing and GKS: $1,000 Market Briefing and Networking Reception: $250 + any direct costs	Full Package: $2,800. Networking Reception and GKS: $2,700 Market Briefing and GKS: $2,400 Market Briefing and Networking Reception: $500 + any direct costs	Full Package: $4,000. Networking Reception and GKS: $3,900. Market Briefing and GKS: $3,500. Market Briefing and Networking Reception: $600. + any direct costs.
Featured U.S. Exporter listing (5 markets).	8	$150 + $50 for translation if needed.	$300 + $50 for translation if needed.	$300 + $50 for translation if needed.	$150 + $50 for translation if needed.	$350 + $50 for translation if needed.	$500. + $50 for translation if needed.
Gold Key Service ..	62	$700 + $350 for 2nd day.	$2,300 + $1,000 for 2nd day.	$2,300 + $1,000 for 2nd day.	$950 + $350 for 2nd day.	$2,300 + $1,000 for 2nd day.	$3,400. + $1,200 for 2nd day.
Initial Market Check.	20	$450	$1,280	$1,280	$450	$1,000	$1,300.
International Company Profile—Full.	31	$600	$900	$900	$700	$1,200	$2,000.
International Company Profile—Partial.	12	N/A	N/A	N/A	$350	$850	$1,100.
International Partner Search.	40	$550	$1,400	$1,400	$750	$1,400	$2,800.
International Partner Search + Virtual Introductions.	45	N/A	N/A	N/A	$900	$1,750	$3,250.
Other Customized Services and Events.	N/A	$28 per staff hour + any direct costs	$80 per staff hour + any direct costs	$80 per staff hour + any direct costs	$30 per staff hour + any direct costs	$70 per staff hour + any direct costs	$90 per staff hour + any direct costs.
Single Company Promotion.	Events requires 20 to 40; 40 to 80; or 80 to 110.	$28 per staff hour + any direct costs	$80 per staff hour + any direct costs	$80 per staff hour + any direct costs	20 to 40 hours of staff time: $800. 40 to 80 hours of staff time: $1,500 80 to 110 hours of staff time: $2,600 + any direct costs.	20 to 40 hours of staff time: $1,800. 40 to 80 hours of staff time: $2,000 80 to 110 hours of staff time: $4,800 + any direct costs.	20 to 40 hours of staff time: $2,600. 40 to 80 hours of staff time: $4,500. 80 to 110 hours of staff time: $6,300. + any direct costs.
Target Market Analysis.	5	N/A	N/A	N/A	$150	$350	$500.
Trade Show Representation.	12	N/A	N/A	N/A	$400	$950	$1,350.
Verified Contact List.	5	N/A	N/A	N/A	$150	$350	$450.

[1] Other direct costs not included in the service description must be assumed by the client. Types of other direct costs include translation, transportation, use of contractors, venue rental, catering, etc.

[2] Fees listed also apply to Economic Development Organizations and Non-profit Educational Institutions

[3] Fees listed also apply to Foreign Companies, regardless of their size, that use US&FCS services, particularly the Business Service Provider listing, to promote themselves to U.S. exporters.

PROPOSED USER FEE SCHEDULE FOR EXPORT PROMOTION SERVICES—Continued

Service/Event	Average hours (per client)	Current fee [1]			Proposed fee [1]		
		Small [2]	Medium	Large [3]	Small [2]	Medium	Large [3]
Webinar	2	$28 per staff hour	$28 per staff hour	$28 per staff hour	$25 per webinar hour.	$25 per webinar hour.	$25 per webinar hour.
Website Globalization.	4	N/A	N/A	N/A	$100	$300	$400.

PROPOSED USER FEE SCHEDULE FOR INVESTMENT PROMOTION SERVICES

Service	Average hours (per client)	Current fee for economic development organizations [4]	Proposed fee for economic development organizations [4]
Certified Investment Mission (market briefing, networking reception and Gold Key Service).	70	$28 per staff hour + any direct costs.	Full Package: $1,200. Networking Reception and GKS: $1,100. Market Briefing and GKS: $1,000. Market Briefing and Networking Reception: $250. + any direct costs.
Gold Key Service	62	$700 + $350 for 2nd day.	$950 + $350 for 2nd day.
International Company Profile—Full.	31	$600	$700.
International Company Profile—Partial.	12	N/A	$350.
Other Customized Services/Events.	N/A	$28 per staff hour + any direct costs.	$30 per staff hour + any direct costs.
Single Location Promotion	20 to 40; 40 to 80; or 80 to 110.	$28 per staff hour + any direct costs.	20–40 hours of staff time: $800. 40–80 hours of staff time: $1,500. 80–110 hours of staff time: $2,000. + any direct costs.

Notes:

• *Business Service Provider:* Fee is for up to 5 categories. To be listed in more than 5 categories, there is an additional fee per category of $60 for large companies, $40 for medium-sized enterprises and $30 for small businesses.

• *Certified Trade Mission:* The fee is assessed on a per Post/city basis. Applicants will be charged a fee for an Initial Market Check if US&FCS staff is uncertain about their market potential. The fee paid by the applicant will then be applied to their Certified Trade Mission fee if they participate in the mission.

• *Featured U.S. Exporter:* Listings are typically provided for up to 5 markets; however, they can be provided for an individual market for $100 for large companies, $40 for medium-sized enterprises and $30 for small businesses.

• *Initial Market Check:* Will be a required precursor to more time intensive services if US&FCS staff is uncertain about a client's market potential. Fees paid for the Initial Market Check will then be applied to any follow-on service if the results are positive. The fee is assessed on a per country basis.

• *International Company Profile—Partial:* Does not include a site visit.

• Webinars will be archived and made available to the general public, so the requirement to cover US&FCS's costs does not apply; however, a minimal fee is proposed to help ensure the suitability of participants and cover the cost of any special benefit that may derive from attending in real-time, such as question and answer opportunities. Uniform pricing is proposed as the enforcement of pricing by size standards of each registrant would create an administrative burden. Some webinars will be provided at no charge when the purpose is primarily to promote US&FCS or other United States Government events, activities, etc.

Determining the Cost of Performing Each Service

The cost of service methodology developed by US&FCS was designed to bring the organization closer to full cost recovery guidance set forth in OMB Circular A–25. To set user fees that are ''self-sustaining,'' the US&FCS had to determine the true cost of providing various export and investment promotion services.

Federal Accounting Standards permit US&FCS to use an activity-based costing model to determine the true cost of services listed in the proposed User Fee Schedule. The activities were defined in accordance with the US&FCS list of services offered by US&FCS, including both standard and customized services.

As part of the cost of service study, the US&FCS conducted a workload survey to obtain a more accurate estimate of the true cost for delivery of specific services. The workload survey was designed and distributed to all US&FCS international and domestic field units. The data submitted by various US&FCS field units was then aggregated to determine the global average of workload for each standard or customized service. Using FY2015 US&FCS budget data, fringe benefits and non-labor related costs (*e.g.,* materials, supplies, rent, utilities, and equipment) were prorated to determine the burdening rate that was to be added to the hourly rate. This resulted in an hourly rate that accounts for all applicable labor and non-labor costs

[4] Other direct costs not included in the service description must be covered by the client in the form of additional user fees. Types of other direct costs include translation, transportation, use of contractors, venue rental, catering, etc.

specifically related to the delivery of services, which is consistent with federal accounting standards.

Conclusion

Based on the information provided above, the US&FCS believes its proposed fees are consistent with both the mission of US&FCS to promote ''exports of goods and services from the United States, particularly by small businesses and medium-sized businesses,'' and the objective of OMB Circular A–25 to ''promote efficient allocation of the nation's resources by establishing charges for special benefits provided to the recipient that are at least as great as the cost to the U.S. Government of providing the special benefits.''

Frank Spector,

Senior Advisor, Office of Trade Promotion Programs.

[FR Doc. 2016–30423 Filed 12–20–16; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–964; A–201–838]

Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Continuation of Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (the ''ITC'') that revocation of the antidumping duty (''AD'') orders on seamless refined copper pipe and tube (''copper pipe and tube'') from the People's Republic of China (''PRC'') and Mexico would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing this notice of continuation of the AD orders.

DATES: Effective December 21, 2016.

FOR FURTHER INFORMATION CONTACT: Robert Galantucci, 202–482–2923, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 22, 2010, the Department published the AD orders on copper pipe and tube from the PRC and Mexico.[1] On October 1, 2015, the Department initiated [2] and the ITC instituted [3] five-year (sunset) reviews of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the ''Act''). As a result of its reviews, the Department determined that revocation of the *Orders* would likely lead to continuation or recurrence of dumping.[4] The Department, therefore, notified the ITC of the magnitude of the dumping margins likely to prevail should the *Orders* be revoked.[5] On December 8, 2016, the ITC published its determination that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to section 751(c) of the Act.[6]

Scope of the Orders

For the purpose of the *Orders,* the products covered are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to six inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter (''OD''), regardless of wall thickness, bore (*e.g.,* smooth, enhanced with inner grooves or ridges), manufacturing process (*e.g.,* hot finished, cold-drawn, annealed), outer surface (*e.g.,* plain or enhanced with grooves, ridges, fins, or gills), end finish (*e.g.,* plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (*e.g.,* plastic, paint), insulation, attachments (*e.g.,* plain, capped, plugged, with compression or other fitting), or physical configuration (*e.g.,* straight, coiled, bent, wound on spools).

The scope of the *Orders* covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials (''ASTM'') ASTM–B42, ASTM–B68, ASTM–B75, ASTM–B88, ASTM–B88M, ASTM–B188, ASTM–B251, ASTM–B251M, ASTM–B280, ASTM–B302, ASTM–B306, ASTM–359, ASTM–B743, ASTM–B819, and ASTM–B903 specifications and meeting the physical parameters described therein. Also included within the scope of the *Orders* are all sets of covered products, including ''line sets'' of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase ''all sets of covered products'' denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

''Refined copper'' is defined as: (1) Metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits:

Element	Limiting Content Percent by Weight
Ag—Silver	0.25
As—Arsenic	0.5
Cd—Cadmium	1.3
Cr—Chromium	1.4
Mg—Magnesium	0.8
Pb—Lead	1.5
S—Sulfur	0.7
Sn—Tin	0.8
Te—Tellurium	0.8
Zn—Zinc	1.0
Zr—Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of the *Orders* are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to the *Orders* are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Products subject to the *Orders* may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

Continuation of the *Orders*

As a result of the determinations by the Department and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of

[1] *See Seamless Refined Copper Pipe and Tube from Mexico and the People's Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value from Mexico,* 75 FR 71070 (November 22, 2010) (''*Orders*'').

[2] *See Initiation of Five-Year (''Sunset'') Review,* 80 FR 59133 (October 1, 2015).

[3] *See Seamless Refined Copper Pipe and Tube from China and Mexico; Institution of Five-Year Reviews,* 80 FR 59186 (October 1, 2015).

[4] *See Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Preliminary Results of the Sunset Reviews of the Antidumping Duty Orders,* 81 FR 4252 (January 26, 2016) and accompanying Preliminary Decision Memorandum; *Seamless Refined Copper Pipe and Tube from the People's Republic of China and Mexico: Final Results of the Full Sunset Reviews of the Antidumping Duty Orders,* 81 FR 38134 (June 13, 2016).

[5] *Id.*

[6] *See Seamless Refined Copper Pipe and Tube From China and Mexico; Determination,* 81 FR 88704 (December 8, 2016).

dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), the Department hereby orders the continuation of the AD orders on copper pipe and tube from the PRC and Mexico. United States Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

These five-year sunset reviews and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: December 14, 2016.

Paul Piquado,

Assistant Secretary, for Enforcement and Compliance.

[FR Doc. 2016–30653 Filed 12–20–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Results and Amended Final Results of the Antidumping Duty Administrative Review; 2010–2011

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On November 23, 2016, the United States Court of International Trade (the Court) sustained the final second remand redetermination pertaining to the administrative review of the antidumping duty order on Chlorinated Isocyanurates from the People's Republic of China (PRC) for the period of review of June 1, 2010, through May 31, 2011.[1] Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co., v United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department of Commerce (the Department) is notifying the public that the final judgment in this case is not in harmony with the *2010–2011 AR Final Results,*[2] and that the Department is amending the *2010–2011 AR Final Results* with respect to the weighted-average dumping margin assigned to both Juangcheng Kangtai Chemical Co. Ltd. (Kangtai), and Hebei Jiheng Chemical Co., Ltd. (Jiheng).

DATES: Effective December 3, 2016.

FOR FURTHER INFORMATION CONTACT: Emily Halle, 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) 482–0176.

SUPPLEMENTARY INFORMATION:

Background

On January 22, 2013, the Department published the *2010–2011 AR Final Results.* On July 24, 2014, the Court remanded the *2010–2011 AR Final Results* to the Department regarding our primary surrogate country selection as follows: (1) Provide a reasonable explanation why the range of the GNIs listed on the Surrogate Country Memorandum qualify the countries as proximate and ''economically comparable'' to the PRC, including a discussion of why the Department believes India's GNI does not, if that continues to be our determination, qualify it as an economically comparable country, and (2) place the data on the record that the Department relied upon to make our determination. The Court also accepted the Department's request for a voluntary remand of the final results with the following instructions to: (1) Reconsider whether the ILO wage rate used to value the labor FOP includes labor, retirement, and employee benefit expenses, and whether these expenses are double counted if the Department does not adjust the financial ratio to correctly reflect overlapping expenses in the financial statements; (2) explain the Department's change in methodology for calculating intra-company transportation costs by collecting additional information if necessary and to provide parties an opportunity to comment on any new additional information; and (3) explain our change in the calculation of our by-product methodology and to request additional information if necessary, and to provide parties an opportunity to comment on any new additional information.[3]

Upon consideration of the First Remand Results,[4] on August 20, 2015, the Court remanded the *2010–2011 AR Final Results* and First Remand Results to the Department as follows: (1) To either remove the labor items identified among the selling, general and administrative (SG&A) expenses of the financial statements from MVC or explain why adhering to the Department's Labor Methodology policy is inappropriate in this instance; (2) to either supply valid reasons to support changing the byproduct methodology in this proceeding which amounts to a ''sufficient, reasoned analysis,'' supported by substantial evidence, or to revert to the ''former'' methodology, with any appropriate modification (*e.g.,* capping) to avoid illogical conclusions that do not match the real world experience of the respondents; (3) to value urea using Philippine domestic pricing data or explain why GTA import data is superior to the domestic pricing data on the record; and (4) to select the best SVs for hydrogen and chlorine that reflect a full consideration of the interested parties' comments and how these inputs were valued in prior administrative reviews.[5] On November 23, 2016, the Court sustained the Department's Final Second Redetermination, and entered final judgment.[6]

Timken Notice

In its decision in *Timken,* as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The

[1] *See Clearon Corp., and Occidental Chemical Corp., et al.* v. *United States,* Consol. Ct. No. 13–00073, Slip Op. 16–110 (CIT 2016); *see also* Memorandum, ''Antidumping Duty Administrative Review of Chlorinated Isocyanurates from the People's Republic of China: Final Results of Second Redetermination Pursuant to Remand,'' March 22, 2016 (Final Second Redetermination), and available here: *http://enforcement.trade.gov/remands/15–91.pdf.*

[2] *See Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010–2011,* 78 FR 4386 (January 22, 2013) (*2010–2011 AR Final Results*).

[3] *See Clearon Corp., and Occidental Chemical Corp., et. al.* v. *United States,* Slip Op. 14–88, Consolidated Court No. 13–00073 (CIT 2014) (*First Redetermination*).

[4] *See Clearon Corp., and Occidental Chemical Corp., et. al.* v. *United States,* Final Results of Redetermination Pursuant to Remand, December 11, 2014 (First Remand Results).

[5] *See Clearon Corp., and Occidental Chemical Corp., et. al.* v. *United States,* Slip Op. 15–91, Consolidated Court No. 13–00073 (CIT 2015).

[6] *See Clearon Corp., and Occidental Chemical Corp., et. al.* v. *United States,* Slip Op. 16–110, Consolidated Court No. 13–00073 (CIT 2016).

Court's final judgment affirming the *2010–2011 AR Final Results* constitutes the Court's final decision which is not in harmony with the *2010–2011 AR Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending a final and conclusive court decision.

Amended Final Results of Review

Because there is now a final court decision, the Department is amending the *2010–2011 AR Final Results* with respect Jiheng and Kangtai, as follows:

Exporter	Weighted-average margin percentage
Hebei Jiheng Chemical Co., Ltd.	31.22
Juancheng Kangtai Chemical Co., Ltd.	34.21

In the event the Court's ruling is not appealed or, if appealed, upheld by a final and conclusive court decision, the Department will instruct the U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise based on the revised rate the Department determined and listed above.

Cash Deposit Requirements

Because there have been subsequent administrative reviews for Jiheng and Kangtai, the case deposit rates will remain the rates established in the *2012–2013 Final Results,* which are 0.00 percent respectively for both Jiheng and Kangtai.[7]

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(l), 75l(a)(l), and 777(i)(l) of the Act.

Dated: December 15, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–30728 Filed 12–20–16; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 4539 (January 28, 2015) (*2012–2013 Final Results*).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–911]

Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is rescinding the administrative review of the countervailing duty order on circular welded carbon quality steel pipe (CWP) from the People's Republic of China (PRC) for the period January 1, 2015, through December 31, 2015, based on the timely withdrawal of the request for review.

DATES: Effective December 21, 2016.

FOR FURTHER INFORMATION CONTACT: Rebecca M. Janz, 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) 482–2972.

SUPPLEMENTARY INFORMATION:

Background

On July 5, 2016, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the countervailing duty order on CWP from the PRC for the period January 1, 2015, through December 31, 2015.[1] The Department received a timely-filed request from Wheatland Tube Company (the petitioner), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), for an administrative review of this countervailing duty order.[2] Pursuant to this request and in accordance with 19 CFR 351.221(c)(1)(i), on September 12, 2016, the Department published in the **Federal Register** a notice of initiation with respect to 20 individually-named companies or company groups.[3] On December 12, 2016, the petitioner timely withdrew its request for an administrative review.[4]

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 81 FR 43584 (July 5, 2016).

[2] *See* letter from the petitioner, ''Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Request for Administrative Review,'' dated July 29, 2016.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 62720 (September 12, 2016).

[4] *See* letter from the petitioner, ''Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated December 12, 2016.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The petitioner withdrew its request for review by the 90-day deadline. No other parties requested an administrative review of the order. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding the administrative review of the countervailing duty order on CWP from the PRC covering the period January 1, 2015, through December 31, 2015.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. Countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice in the **Federal Register**.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: December 15, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–30727 Filed 12–20–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Chesapeake Bay Watershed Environmental Literacy Indicator Tool

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to

take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 21, 2017.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Shannon Sprague, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 207, Annapolis, MD 21403, 410–267–5664 or *shannon.sprague@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new information collection.

The Chesapeake Bay Watershed Agreement of 2014 requires monitoring of progress towards the environmental literacy goal: ''Enable students in the region to graduate with the knowledge and skills needed to act responsibly to protect and restore their local watersheds.'' NOAA, on behalf of the Chesapeake Bay Program, will ask the state education agencies for Maryland, Pennsylvania, Delaware, Virginia, West Virginia, and the District of Columbia to survey their local education agencies (LEAs) to determine: (1) LEA capacity to implement a comprehensive and systemic approach to environmental literacy education, (2) student participation in Meaningful Watershed Educational Experiences during the school year, (3) sustainability practices at schools, and (4) LEA needs for improving environmental literacy education programming. LEAs (generally school districts, in some cases charter school administration) are asked to complete the survey on the status of their LEA on a set of key indicators for the four areas listed above. One individual from each LEA is asked to complete this survey once every two years.

II. Method of Collection

Respondents will submit their information electronically on web-based survey forms.

III. Data

OMB Control Number: 0648-xxxx.
Form Number(s): None.

Type of Review: Regular (request for a new information collection).

Affected Public: State, Local, or Tribal government (local education agencies); Not-for-profit organizations (charter schools).

Estimated Number of Respondents: The survey will be distributed to approximately 983 local education agencies.

Estimated Time per Response: 1.5 hours.

Estimated Total Annual Burden Hours: 1,106 hours.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 16, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–30757 Filed 12–20–16; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Conflict of Interest Disclosure for Nonfederal Government Individuals Who Are Candidates To Conduct Peer Reviews

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 21, 2017.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael Liddel (301) 427–8139 or *Michael.Liddel@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved collection.

The Office of Management and Budget (OMB) issued government-wide guidance to enhance the practice of peer review of government science documents. OMB's Final Information Quality Bulletin for Peer Review (''Peer Review Bulletin'' or PRB) (available at *http://www.whitehouse.gov/omb/memoranda/fy2005/m05-03.pdf*) establishes minimum peer review standards for influential scientific information that Federal agencies intend to disseminate.

The Peer Review Bulletin also directs Federal agencies to adopt or adapt the National Academy of Sciences (NAS) policy for evaluating conflicts of interest when selecting peer reviewers who are not Federal government employees (federal employees are subject to Federal ethics requirements). For peer review purposes, the term ''conflicts of interest'' means any financial or other interest which conflicts with the service of the individual because it could: (1) Significantly impair the individual's objectivity; or (2) create an unfair competitive advantage for any person or organization. NOAA has adapted the NAS policy and developed two confidential conflict disclosure forms which the agency will use to examine prospective reviewers' potential financial conflicts and other interests that could impair objectivity or create an unfair advantage. One form is for peer reviewers of studies related to government regulation and the other form is for all other influential scientific information subject to the Peer Review Bulletin. In addition, the latter form has been adapted by NOAA's Office of

Oceanic and Atmospheric Research for potential reviewers of scientific laboratories.

The forms include questions about employment as well as investment and property interests and research funding. Both forms also require the submission of curriculum vitae. NOAA is seeking to collect this information from potential peer reviewers who are not government employees when conducting a peer review pursuant to the PRB. The information collected in the conflict of interest disclosure is essential to NOAA's compliance with the OMB PRB, and helps to ensure that government studies are reviewed by independent, impartial peer reviewers.

II. Method of Collection

Forms may be downloaded from the Internet and are fillable and signable electronically or manually. They may be submitted, along with the Curriculum Vitae, via email or regular mail.

III. Data

OMB Control Number: 0648–0567.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 321.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 161.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 16, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–30724 Filed 12–20–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information and the National Telecommunications and Information Administration (NTIA) on spectrum management policy matters.

DATES: The meeting will be held on January 25, 2017, from 1:00 p.m. to 4:00 p.m., Eastern Standard Time (EST).

ADDRESSES: The meeting will be held at the Verizon Technology and Policy Center, 1300 I St NW., Suite 500 East, Washington, DC 20005. Public comments may be mailed to the Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4600, Washington, DC 20230, or emailed to *dreed@ntia.doc.gov.*

FOR FURTHER INFORMATION CONTACT: David J. Reed, Designated Federal Officer, at (202) 482–5955 or *dreed@ntia.doc.gov;* and/or visit NTIA's Web site at *http://www.ntia.doc.gov/category/csmac.*

SUPPLEMENTARY INFORMATION: *Background:* The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to: License radio frequencies in a way that maximizes public benefits; keep wireless networks as open to innovation as possible; and make wireless services available to all Americans. *See* Charter at *http://www.ntia.doc.gov/files/ntia/publications/csmac_2015_charter_renewal_2–26–15.pdf.*

This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: *http://www.ntia.doc.gov/category/csmac.*

Matters to Be Considered: The Committee provides advice to the Assistant Secretary to assist in developing and maintaining spectrum management policies that enable the United States to maintain or strengthen its global leadership role in the introduction of communications technology, services, and innovation; thus expanding the economy, adding jobs, and increasing international trade, while at the same time providing for the expansion of existing technologies and supporting the country's homeland security, national defense, and other critical needs of government missions. The Committee will hear the response of NTIA to the Committee's recommendations provided at the end of the last session in August 2016, as well as discuss the questions it will address this session. NTIA intends to post a detailed agenda on its Web site prior to the meeting, at *http://www.ntia.doc.gov/category/csmac.* To the extent that the meeting time and agenda permit, members of the public may speak to or otherwise address the Committee regarding the agenda items. *See Open Meeting and Public Participation Policy,* available at *http://www.ntia.doc.gov/category/csmac.*

Time and Date: The meeting will be held on January 25, 2017, from 1:00 p.m. to 4:00 p.m. EST. The meeting time and agenda are subject to change. The meeting will be available via two-way audio link and may be webcast. Please refer to NTIA's Web site, at *http://www.ntia.doc.gov/category/csmac,* for the most up-to-date meeting agenda and access information.

Place: The meeting will be held at the Verizon Technology and Policy Center, 1300 I St NW., Suite 500 East, Washington, DC 20005. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4600, Washington, DC 20230.

The meeting will be open to the public and members of the press on a first-come, first-served basis, as space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language

interpretation or other ancillary aids, are asked to notify Mr. Reed at (202) 482–5955 or *dreed@ntia.doc.gov* at least ten (10) business days before the meeting.

Status: Interested parties are invited to attend and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of a meeting may send them via postal mail to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4600, Washington, DC 20230. It would be helpful if paper submissions also include a compact disc (CD) that contains the comments in Microsoft Word and/or PDF file formats. CDs should be labeled with the name and organizational affiliation of the filer. Alternatively, comments may be submitted via electronic mail to *dreed@ntia.doc.gov* and should also be in one or both of the file formats specified above. Comments must be received five (5) business days before the scheduled meeting date in order to provide sufficient time for review. Comments received after this date will be distributed to the Committee, but may not be reviewed prior to the meeting.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, member list, agendas, minutes, and reports are available on NTIA's Web site at *http://www.ntia.doc.gov/category/csmac.*

Dated: December 15, 2016.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2016–30679 Filed 12–20–16; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2016–0055]

Extension of the Extended Missing Parts Pilot Program

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) implemented a pilot program (Extended Missing Parts Pilot Program) in which an applicant, under certain conditions, can request a 12-month time period to pay the search fee, the examination fee, any excess claim fees, and the surcharge (for the late submission of the search fee and the examination fee) in a nonprovisional application. The Extended Missing Parts Pilot Program benefits applicants by permitting additional time to determine if patent protection should be sought—at a relatively low cost—and by permitting applicants to focus efforts on commercialization during this period. The Extended Missing Parts Pilot Program benefits the USPTO and the public by adding publications to the body of prior art, and by removing from the USPTO's workload those nonprovisional applications for which applicants later decide not to pursue examination. While the USPTO has not yet completed its evaluation of the program, the number of participants in the program over the past several years indicates that there may be sufficient benefits to the patent community. Thus, the USPTO is extending the Extended Missing Parts Pilot Program until January 2, 2018, to allow the USPTO to continue its evaluation of the pilot program. The requirements of the program have not changed.

DATES: *Duration:* The Extended Missing Parts Pilot Program will run through January 2, 2018. Therefore, any certification and request to participate in the Extended Missing Parts Pilot Program must be filed on or before January 2, 2018. The USPTO may further extend the pilot program (with or without modifications) depending on the feedback received and the continued effectiveness of the pilot program.

FOR FURTHER INFORMATION CONTACT: Eugenia A. Jones, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–7727, or Erin M. Harriman, Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–7747.

Inquiries regarding this notice may be directed to the Office of Patent Legal Administration, by telephone at (571) 272–7701, or by electronic mail at *PatentPractice@uspto.gov.* Alternatively, mail may be addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Eugenia A. Jones.

SUPPLEMENTARY INFORMATION: On December 8, 2010, after considering written comments from the public, the USPTO changed the missing parts examination procedures in certain nonprovisional applications by implementing a pilot program (*i.e.,* Extended Missing Parts Pilot Program). *See Pilot Program for Extended Time Period To Reply to a Notice to File Missing Parts of Nonprovisional Application,* 75 FR 76401 (Dec. 8, 2010), 1362 *Off. Gaz. Pat. Office* 44 (Jan. 4, 2011). Over the course of the pilot program, the USPTO provided extensions of the Extended Missing Parts Pilot Program through notices published in the **Federal Register**. The most recent notice extended the program until December 31, 2016, to allow the USPTO time to seek public comment on whether the Extended Missing Parts Pilot Program offers sufficient benefits to the patent community for it to be made permanent. *See Extension of Extended Missing Parts Pilot Program,* 80 FR 80325 (Dec. 24, 2015), 1422 *Off. Gaz. Pat. Office* 192 (Jan. 19, 2016).

On September 6, 2016, the USPTO sought public comment on whether the Extended Missing Parts Pilot Program offers sufficient benefits to the patent community for it to be made permanent or whether the USPTO should permit the pilot program to expire. *See Request for Comments on the Extended Missing Parts Pilot Program,* 81 FR 61195 (Sept. 6, 2016), 1430 *Off. Gaz. Pat. Office* 269 (Sept. 27, 2016). The USPTO received a total of two comments, and both comments appear to support the pilot program. The two comments are available via the USPTO's Internet Web site at *https://www.uspto.gov/patent/laws-and-regulations/comments-public/comments-extended-missing-parts-pilot-program.* While the USPTO has not yet completed its evaluation of the pilot program, the increase in the number of participants in the program over the past five years indicates that there may be sufficient benefits to the patent community. Thus, the USPTO is extending the Extended Missing Parts Pilot Program until January 2, 2018, to allow the USPTO to continue its evaluation of the pilot program.

The requirements of the program, which have not been modified, are reiterated below. Applicants are strongly advised to review the pilot program requirements before making a request to participate in the Extended Missing Parts Pilot Program. *See Pilot Program for Extended Time Period To Reply to a Notice To File Missing Parts of Nonprovisional Application,* 75 FR 76401 (Dec. 8, 2010), 1362 *Off. Gaz. Pat. Office* 44 (Jan. 4, 2011).

The USPTO cautions all applicants that, in order to claim the benefit of a prior provisional application, the statute

requires a nonprovisional application filed under 35 U.S.C. 111(a) to be filed within 12 months after the date on which the corresponding provisional application was filed. *See* 35 U.S.C. 119(e). It is essential that applicants understand that the Extended Missing Parts Pilot Program cannot and does not change this statutory requirement. Title II of the Patent Law Treaties Implementation Act of 2012 (PLTIA) amended the provisions of title 35, United States Code, including 35 U.S.C. 119(e), to implement the Patent Law Treaty (PLT). *See* Public Law 112–211, § 20–203, 126 Stat. 1527, 1533–37 (2012). In the rulemaking to implement the PLT and title II of the PLTIA, the USPTO provided that an applicant may file a petition under 37 CFR 1.78(b) to restore the benefit of a provisional application filed up to fourteen months earlier. *See Changes To Implement the Patent Law Treaty,* 78 FR 62367, 62368–69 (Oct. 21, 2013) (final rule). Any petition to restore the benefit of a provisional application must include the benefit claim, the petition fee, and a statement that the delay in filing the subsequent application was unintentional. This change was effective on December 18, 2013, and applies to any application filed before, on, or after December 18, 2013. However, if a nonprovisional application is filed outside the 12 month period from the date on which the corresponding provisional application was filed, the nonprovisional application is not eligible for participation in the Extended Missing Parts Pilot Program, even though the applicant may be able to restore the benefit of the provisional application by submitting a petition under 37 CFR 1.78(b).

I. *Requirements:* In order for an applicant to be provided a 12-month (non-extendable) time period to pay the search and examination fees and any required excess claims fees in response to a Notice to File Missing Parts of Nonprovisional Application under the Extended Missing Parts Pilot Program, the applicant must satisfy the following conditions: (1) The applicant must submit a certification and request to participate in the Extended Missing Parts Pilot Program with the nonprovisional application on filing, preferably by using Form PTO/AIA/421, titled ''Certification and Request for Extended Missing Parts Pilot Program''; (2) the application must be an original (*i.e.,* not a Reissue) nonprovisional utility or plant application filed under 35 U.S.C. 111(a) within the duration of the pilot program; (3) the nonprovisional application must directly claim the benefit under 35 U.S.C. 119(e) and 37 CFR 1.78 of a prior provisional application filed within the previous 12 months, and the specific reference to the provisional application must be in an application data sheet under 37 CFR 1.76 (*see* 37 CFR 1.78(a)(3)); and (4) the applicant must not have filed a nonpublication request.

As required for all nonprovisional applications, the applicant will need to satisfy filing date requirements and publication requirements. In the rulemaking to implement the PLT and title II of the PLTIA, the USPTO provided that an application (other than an application for a design patent) filed on or after December 18, 2013, is not required to include a claim to be entitled to a filing date. *See Changes To Implement the Patent Law Treaty,* 78 FR 62367, 62638 (Oct. 21, 2013) (final rule). This change was effective on December 18, 2013, and applies to any application filed under 35 U.S.C. 111 on or after December 18, 2013. However, if an application is filed without any claims, the Office of Patent Application Processing will issue a notice giving the applicant a two-month (extendable) time period within which to submit at least one claim in order to avoid abandonment (*see* 37 CFR 1.53(f)). The Extended Missing Parts Pilot Program does not change this time period. In accordance with 35 U.S.C. 122(b), the USPTO will publish the application promptly after the expiration of 18 months from the earliest filing date for which benefit is sought. Therefore, the nonprovisional application should also be in condition for publication as provided in 37 CFR 1.211(c). The following are required in order for the nonprovisional application to be in condition for publication: (1) The basic filing fee; (2) the executed inventor's oath or declaration in compliance with 37 CFR 1.63 or an application data sheet containing the information specified in 37 CFR 1.63(b); (3) a specification in compliance with 37 CFR 1.52; (4) an abstract in compliance with 37 CFR 1.72(b); (5) drawings in compliance with 37 CFR 1.84 (if applicable); (6) any application size fee required under 37 CFR 1.16(s); (7) any English translation required by 37 CFR 1.52(d); and (8) a sequence listing in compliance with 37 CFR 1.821–1.825 (if applicable). The USPTO also requires any compact disc requirements to be satisfied and an English translation of the provisional application to be filed in the provisional application if the provisional application was filed in a non-English language and a translation has not yet been filed. If the requirements for publication are not met, the applicant will need to satisfy the publication requirements within a two-month extendable time period.

As noted above, applicants should request participation in the Extended Missing Parts Pilot Program by using Form PTO/AIA/421. For utility patent applications, the applicant may file the application and the certification and request electronically using the USPTO electronic filing system, EFS-Web, and selecting the document description of ''Certification and Request for Missing Parts Pilot'' for the certification and request on the EFS-Web screen. Form PTO/AIA/421 is available on the USPTO Web site at *http://www.uspto.gov/sites/default/files/forms/aia0421.pdf.* Information regarding EFS-Web is available on the USPTO Web site at *http://www.uspto.gov/patents-application-process/applying-online/about-efs-web*.

The utility application including the certification and request to participate in the pilot program may also be hand-carried to the USPTO or filed by mail, for example, by Priority Mail Express® in accordance with 37 CFR 1.10. However, applicants are advised that, effective November 15, 2011, as provided in the Leahy-Smith America Invents Act, a new additional fee of $400.00 for a non-small entity ($200.00 for a small entity) is due for any nonprovisional utility patent application that is not filed by EFS-Web. *See* Public Law 112–29, 10(h), 125 Stat. 283, 319 (2011). This non-electronic filing fee is due on filing of the utility application or within the two-month (extendable) time period to reply to the Notice to File Missing Parts of Nonprovisional Application. Applicants will not be given the 12-month time period to pay the non-electronic filing fee. Therefore, utility applicants are strongly encouraged to file their utility applications via EFS-Web to avoid this additional fee.

For plant patent applications, the applicant must file the application including the certification and request to participate in the pilot program by mail or hand-carried to the USPTO since plant patent applications cannot be filed electronically using EFS-Web. *See Legal Framework for Electronic Filing System—Web (EFS-Web),* 74 FR 55200 (Oct. 27, 2009), 1348 *Off. Gaz. Pat. Office* 394 (Nov. 24, 2009).

II. *Processing of Requests:* If the applicant satisfies the requirements (discussed above) on filing of the nonprovisional application and the application is in condition for publication, the USPTO will send the applicant a Notice to File Missing Parts

of Nonprovisional Application that sets a 12-month (non-extendable) time period to submit the search fee, the examination fee, any excess claims fees (under 37 CFR 1.16(h)–(j)), and the surcharge under 37 CFR 1.16(f) (for the late submission of the search fee and examination fee). The 12-month time period will run from the mailing date, or notification date for e-Office Action participants, of the Notice to File Missing Parts. For information on the e-Office Action program, *see Electronic Office Action,* 1343 *Off. Gaz. Pat. Office* 45 (June 2, 2009), and *http://www.uspto.gov/patents-application-process/checking-application-status/e-office-action-program.* After an applicant files a timely reply to the Notice to File Missing Parts within the 12-month time period and the nonprovisional application is completed, the nonprovisional application will be placed in the examination queue based on the actual filing date of the nonprovisional application.

For a detailed discussion regarding treatment of applications that are not in condition for publication, processing of improper requests to participate in the program, and treatment of authorizations to charge fees, *see Pilot Program for Extended Time Period To Reply to a Notice to File Missing Parts of Nonprovisional Application,* 75 FR 76401, 76403–04 (Dec. 8, 2010), 1362 *Off. Gaz. Pat. Office* 44, 47–49 (Jan. 4, 2011).

III. *Important Reminders:* Applicants are reminded that the disclosure of an invention in a provisional application should be as complete as possible because the claimed subject matter in the later-filed nonprovisional application must have support in the provisional application in order for the applicant to obtain the benefit of the filing date of the provisional application.

Furthermore, the nonprovisional application as originally filed must have a complete disclosure that complies with 35 U.S.C. 112(a) and is sufficient to support the claims submitted on filing and any claims submitted later during prosecution. New matter cannot be added to an application after the filing date of the application. *See* 35 U.S.C. 132(a). In the rulemaking to implement the PLT and title II of the PLTIA, the USPTO provided that, in order to be accorded a filing date, a nonprovisional application (other than an application for a design patent) must include a specification with or without claims. *See Changes To Implement the Patent Law Treaty,* 78 FR 62367, 62369 (Oct. 21, 2013) (final rule). This change was effective on December 18, 2013, and applies to any application filed under 35 U.S.C. 111 on or after December 18, 2013. Although a claim is not required in a nonprovisional application (other than an application for a design patent) for filing date purposes *and* the applicant may file an amendment adding additional claims as prescribed by 35 U.S.C. 112 and drawings as prescribed by 35 U.S.C. 113 later during prosecution, the applicant should consider the benefits of submitting a complete set of claims and any necessary drawings on filing of the nonprovisional application. This would reduce the likelihood that any claims and/or drawings added later during prosecution might be found to contain new matter. Also, if a patent is granted and the patentee is successful in litigation against an infringer, provisional rights to a reasonable royalty under 35 U.S.C. 154(d) may be available only if the claims that are published in the patent application publication are substantially identical to the patented claims that are infringed, assuming timely actual notice is provided. Thus, the importance of the claims that are included in the patent application publication should not be overlooked.

Applicants are also advised that the extended missing parts period does not affect the 12-month priority period provided by the Paris Convention for the Protection of Industrial Property (Paris Convention). Accordingly, any foreign filings must, in most cases, still be made within 12 months of the filing date of the provisional application if the applicant wishes to rely on the provisional application in the foreign-filed application or if protection is desired in a country requiring filing within 12 months of the earliest application for which rights are left outstanding in order to be entitled to priority.

For additional reminders, *see Pilot Program for Extended Time Period To Reply to a Notice to File Missing Parts of Nonprovisional Application,* 75 FR 76401, 76405 (Dec. 8, 2010), 1362 *Off. Gaz. Pat. Office* 44, 50 (Jan. 4, 2011).

Dated: December 15, 2016.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2016–30733 Filed 12–20–16; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Supporting Effective Educator Development Grant Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information:

Supporting Effective Educator Development (SEED) Grant Program

Notice inviting applications for new awards for fiscal year (FY) 2016.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.367D

Dates:

Applications Available: December 21, 2016.

Deadline for Notice of Intent to Apply: January 20, 2017.

Date of Informational Webinar: The SEED program intends to hold a Webinar designed to provide technical assistance to interested applicants. Detailed information regarding this Webinar will be provided on the SEED Web site at *http://innovation.ed.gov/what-we-do/teacher-quality/supporting-effective-educator-development-grant-program/.*

Deadline for Transmittal of Applications: March 7, 2017.

Deadline for Intergovernmental Review: April 20, 2017.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The SEED program provides funding for grants to National Not-for-Profit Organizations for projects that support teacher or principal training or professional enhancement activities and that are supported by at least Moderate Evidence of Effectiveness. The purpose of the program is to increase the number of Highly Effective Teachers and Principals by developing or expanding the implementation of practices that are demonstrated to have an impact on improving Student Achievement or Student Growth. These grants will allow eligible entities to develop, expand, and evaluate practices that can serve as models that can be sustained and disseminated.

Please note that on December 10, 2015, President Obama signed into law the Every Student Succeeds Act (ESSA), which reauthorized the Elementary and Secondary Education Act of 1965 (ESEA). ESSA provided specific statutory authority for the SEED program, under section 2242, for grant competitions beginning with funds appropriated for FY 2017. Accordingly,

this FY 2016 SEED competition will be the final SEED competition under the statutory and regulatory provisions in effect prior to enactment of the ESSA. Consequently, except as noted, all references to the ESEA in this notice are to the ESEA as amended by the No Child Left Behind Act.

Priorities: This competition includes four absolute priorities, one of which is required for all applicants, and four competitive preference priorities. Absolute Priority 1 and Competitive Preference Priority 1 are from 34 CFR 75.226. Absolute Priorities 2 through 4 and Competitive Preference Priorities 2 and 3 are from the notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on February 12, 2013 (78 FR 9815) (''SEED NFP''). Competitive Preference Priority 4 is from the Department's notice of final supplemental priorities and definitions, published in the **Federal Register** on December 10, 2014 (79 FR 73425) (''Supplemental Priorities'').

Absolute Priorities: Under 34 CFR 75.105(c)(3) we consider only applications that meet Absolute Priority 1 and meet one or more of Absolute Priorities 2 through 4.

These priorities are:

Absolute Priority 1: Supporting Practices and Strategies for Which There Is Moderate Evidence of Effectiveness.

Projects that are supported by Moderate Evidence of Effectiveness.

Absolute Priority 2: Teacher or Principal Recruitment, Selection, and Preparation.

This priority funds projects that will create or expand practices and strategies that increase the number of Highly Effective Teachers or Highly Effective Principals by recruiting, selecting, and preparing talented individuals to work in schools with high concentrations of High-Need Students. Projects must include activities that focus on creating or expanding high-performing teacher preparation programs, principal preparation programs, or both. Activities may include but are not limited to expanding clinical experiences, redesigning and implementing program coursework to align with State standards and district requirements for P–12 teachers, providing induction and other support for program participants in their classrooms and schools, and developing strategies for tracking the effect program graduates have on the achievement of their students or the performance of their schools.

In addition, an applicant must propose a plan demonstrating a rigorous, competitive selection process to determine which aspiring teachers or principals participate in the applicant's proposed activities.

Absolute Priority 3: Professional Development for Teachers of Academic Subjects.

This priority funds projects that will create or expand practices and strategies that increase the number of Highly Effective Teachers by providing professional development opportunities to teachers, including special education teachers, in schools with high concentrations of High-Need Students. Projects must focus on increasing Student Achievement in academic subjects by providing high-quality professional development to teachers. The academic subjects that may be addressed through professional development under this priority include foreign languages, civics and government, economics, arts, history, physical education, geography, environmental education, and financial literacy.

Applicants are required to describe the need of the proposed districts to be served for teacher professional development in the selected high-need academic subjects and to demonstrate alignment of the proposed projects with State standards.

In addition, applicants must describe how they plan to measure the impact the professional development has on teacher effectiveness. Applicants must determine teacher effectiveness through a rigorous, transparent, and fair evaluation in which performance is differentiated using multiple measures of effectiveness and based in significant part on Student Growth.

Note: The list of subjects provided in this priority is illustrative. Applicants may propose to address other academic subjects or areas, such as writing, reading, or mathematics, which partner schools and districts have demonstrated to be high-need.

Absolute Priority 4: Advanced Certification and Advanced Credentialing.

This priority funds projects that will create or expand practices and strategies based on advanced certification or advanced credentialing that increase the number of Highly Effective Teachers, Highly Effective Principals, or both, who work in schools with high concentrations of High-Need Students.

Applicants are required to focus their proposed projects on encouraging and supporting teachers, principals, or both, who seek a nationally recognized, standards-based advanced certificate or advanced credential through high-quality professional enhancement projects designed to improve teaching and learning for teachers who may take on Career Ladder Positions, principals, or both who would serve as models, mentors, and coaches for other teachers, principals, or both working in schools with high concentrations of High-Need Students.

In addition, the effectiveness of teachers or principals who receive advanced certification or credentialing must be determined through a rigorous, transparent, and fair evaluation in which performance is differentiated using multiple measures of effectiveness and based in significant part on Student Growth.

Finally, an applicant must propose a plan demonstrating a rigorous, competitive selection process to determine which teachers or principals participate in the applicant's proposed activities.

Competitive Preference Priorities: Under 34 CFR 75.105(c)(2)(i) we award an additional four points to an application that meets Competitive Preference Priority 1. We award an additional one point to an application that meets Competitive Preference Priority 2. We award an additional two points to an application that meets Competitive Preference Priority 3. We award up to an additional three points to an application, depending on how well the application meets Competitive Preference Priority 4. The total number of points an application may receive for addressing the competitive preference priorities is 10. These points are in addition to any points the application earns under the selection criteria. Addressing these competitive preference priorities is optional, and applicants may choose to respond to none, one, two, three, or all four of the competitive preference priorities for this competition.

These priorities are:

Competitive Preference Priority 1: Supporting Practices and Strategies for Which There Is Strong Evidence of Effectiveness (0 or 4 points).

Projects that are supported by Strong Evidence of Effectiveness.

Competitive Preference Priority 2: Improving Efficiency (Cost-Effectiveness) (0 or 1 point).

Projects that will identify strategies for providing cost-effective, high-quality services at the State, regional, or local level by making better use of available resources. Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of Open Educational Resources, or other strategies.

Competitive Preference Priority 3: Promoting Science, Technology, Engineering, and Mathematics (STEM) Education [1] (0 or 2 points).

This priority funds projects that address one or both of the following priority areas:

(a) Increasing the opportunities for high-quality preparation of, or professional development for, teachers of STEM subjects.

(b) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women, who are teachers of STEM subjects and have increased opportunities for high-quality preparation or professional development.

In addition, applicants must describe how they plan to measure the impact the proposed project activities have on teacher effectiveness. Applicants must determine teacher effectiveness through a rigorous, transparent, and fair evaluation in which performance is differentiated using multiple measures of effectiveness and based in significant part on Student Growth.

Note: Applicants may choose to respond to one or both of the priority areas and are not required to respond to each priority area in order to receive the maximum available points under this competitive preference priority.

Competitive Preference Priority 4: Supporting High-Need Students (0 to 3 points).

This priority funds projects that are designed to improve academic outcomes for one or more of the following groups of students:

(i) Students served by Rural Local Educational Agencies.

(ii) Students with disabilities.

(iii) English learners.

(iv) Students who are members of federally recognized Indian tribes.

Note: Applicants may choose to respond to one or more of the priority areas and are not required to respond to each priority area in order to receive the maximum available points under this competitive preference priority.

Definitions

The following definitions are from the SEED NFP, the Supplemental Priorities, and 34 CFR 77.1. The source of each definition is noted in parentheses following the text of the definition.

Career Ladder Positions means school-based instructional leadership positions designed to improve instructional practice, which teachers may voluntarily accept, such as positions described as master teacher, mentor teacher, demonstration or model teacher, or instructional coach, and for which teachers are selected based on criteria that are predictive of the ability to lead other teachers. (SEED NFP)

High-Minority School means a school as that term is defined by a local educational agency (LEA), which must define the term in a manner consistent with its State's Teacher Equity Plan, as required by section 1111(g)(1)(B) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The applicant must provide the definition(s) of ''High-Minority Schools'' used in its application. (Supplemental Priorities)

Note: The requirement concerning State Teacher Equity Plans is set out in section 1111(g)(1)(B) of the ESEA, as amended by the ESSA. Applicants that did not establish Teacher Equity Plans after ESSA took effect can rely on their prior Teacher Equity Plan.

High-Need Students means students who are at risk of educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend High-Minority Schools, who are far below grade level, who have left school before receiving a Regular High School Diploma, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English learners. (Supplemental Priorities)

Highly Effective Principal means a principal whose students, overall and for each subgroup as described in section 1111(b)(2)(C)(v)(II) of the ESEA (*i.e.,* economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency), achieve high rates (*e.g.,* one and one-half grade levels in an academic year) of Student Growth. Eligible applicants may include multiple measures, provided that principal effectiveness is evaluated, in significant part, based on Student Growth. Supplemental measures may include, for example, high school graduation rates; college enrollment rates; evidence of providing supportive teaching and learning conditions, support for ensuring effective instruction across subject areas for a well-rounded education, strong instructional leadership, and positive family and community engagement; or evidence of attracting, developing, and retaining high numbers of effective teachers. (SEED NFP)

Highly Effective Teacher means a teacher whose students achieve high rates (*e.g.,* one and one-half grade levels in an academic year) of Student Growth. Eligible applicants may include multiple measures, provided that teacher effectiveness is evaluated, in significant part, based on Student Growth. Supplemental measures may include, for example, multiple observation-based assessments of teacher performance or evidence of leadership roles (which may include mentoring or leading professional development learning communities) that increase effectiveness of other teachers in the school or LEA. (SEED NFP)

Large Sample means an analytic sample of 350 or more students (or other single analysis units), or 50 or more groups (such as classrooms or schools) that contain 10 or more students (or other single analysis units). (34 CFR 77.1)

Lowest-Performing Schools means—

For a State with an approved request for flexibility under the ESEA, Priority Schools or Tier I and Tier II Schools identified under the School Improvement Grants program.

For any other State, Tier I and Tier II Schools identified under the School Improvement Grants program. (Supplemental Priorities)

Note: ESEA flexibility ended on August 1, 2016. Consequently, the approved requests for flexibility referenced in the definition of ''Lowest-Performing Schools'' would have been granted prior to that date.

Moderate Evidence of Effectiveness means one of the following conditions is met:

(a) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards without reservations, found a statistically significant favorable impact on a Relevant Outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), and includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice.

(b) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards with reservations, found a statistically significant favorable impact on a Relevant Outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in

[1] For the purposes of this notice, STEM may include computer science.

other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations or settings proposed to receive the process, product, strategy, or practice, and includes a Large Sample and a Multi-site Sample. (Note: Multiple studies can cumulatively meet the large and Multi-site Sample requirements as long as each study meets the other requirements in this paragraph.) (34 CFR 77.1)

Multi-site Sample means more than one site, where site can be defined as an LEA, locality, or State. (34 CFR 77.1)

National Level describes the level of scope or effectiveness of a process, product, strategy, or practice that is able to be effective in a wide variety of communities, including rural and urban areas, as well as with different groups (*e.g.,* economically disadvantaged, racial and ethnic groups, migrant populations, individuals with disabilities, English learners, and individuals of each gender). (SEED NFP)

National Not-for-Profit Organization means an entity that meets the definition of ''nonprofit'' under 34 CFR 77.1(c) and is of national scope, meaning that the entity provides services in multiple States to a significant number or percentage of recipients and is supported by staff or affiliates in multiple States. (SEED NFP)

Open Educational Resources means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others. (SEED NFP)

Persistently Lowest Achieving School means, as determined by the State—

(a)(1) Any Title I school that has been identified for improvement, corrective action, or restructuring under section 1116 of the ESEA, and that—

(i) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate, as defined in 34 CFR 200.19(b), that is less than 60 percent over a number of years; and

(2) Any secondary school that is eligible for, but does not receive, Title I funds that—

(i) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate, as defined in 34 CFR 200.19(b), that is less than 60 percent over a number of years.

(b) To identify the lowest-achieving schools, a State must take into account both—

(i) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act, in reading/language arts and mathematics combined; and

(ii) The school's lack of progress on those assessments over a number of years in the ''all students'' group. (Supplemental Priorities)

Note: The Department will also consider any school a persistently lowest-achieving school that, at the time of submission of application under this competition, meets the definition of ''Lowest-Performing Schools'' set out in this Notice.

We are providing this flexibility because a State that received ESEA flexibility was not required to identify schools in corrective action or restructuring under the ESEA; but rather, the State identified priority and focus schools. Moreover, consistent with final regulations issued under the School Improvement Grants program (80 FR 7223), the definition of Tier I and Tier II Schools includes persistently lowest-achieving schools.

Priority Schools means schools that, based on the most recent data available, have been identified as among the Lowest-Performing Schools in the State. The total number of Priority Schools in a State must be at least five percent of the Title I schools in the State. A Priority School is—

(a) A school among the lowest five percent of Title I schools in the State based on the achievement of the ''all students'' group in terms of proficiency on the statewide assessments that are part of the SEA's differentiated recognition, accountability, and support system, combined, and has demonstrated a lack of progress on those assessments over a number of years in the ''all students'' group;

(b) A Title I-participating or Title I-eligible high school with a graduation rate that is less than 60 percent over a number of years; or

(c) A Tier I or Tier II school under the School Improvement Grant (SIG) program that is using SIG funds to implement a school intervention model. (Supplemental Priorities)

Quasi-experimental design study means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards with reservations (but not What Works Clearinghouse Evidence Standards without reservations). (34 CFR 77.1)

Relevant Outcome means the student outcome(s) (or the ultimate outcome if not related to students) the proposed process, product, strategy, or practice is designed to improve; consistent with the specific goals of a program. (34 CFR 77.1)

Regular High School Diploma means the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a General Education Development (GED) credential, certificate of attendance, or any alternative award. (Supplemental Priorities)

Rural Local Educational Agency means an LEA that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *www2.ed.gov/nclb/freedom/local/reap.html.* (Supplemental Priorities)

Strong Evidence of Effectiveness means one of the following conditions is met:

(a) There is at least one study of the effectiveness of the process, product, strategy, or practice being proposed that meets the What Works Clearinghouse Evidence Standards without reservations, found a statistically significant favorable impact on a Relevant Outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the study or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations and settings proposed to receive the process, product, strategy, or practice, and includes a Large Sample and a Multi-site Sample. (**Note:** Multiple studies can cumulatively meet the Large and Multi-site Sample requirements as long as each study meets the other requirements in this paragraph.)

(b) There are at least two studies of the effectiveness of the process, product,

strategy, or practice being proposed, each of which: Meets the What Works Clearinghouse Evidence Standards with reservations, found a statistically significant favorable impact on a Relevant Outcome (with no statistically significant and overriding unfavorable impacts on that outcome for relevant populations in the studies or in other studies of the intervention reviewed by and reported on by the What Works Clearinghouse), includes a sample that overlaps with the populations and settings proposed to receive the process, product, strategy, or practice, and includes a Large Sample and a Multi-site Sample. (34 CFR 77.1)

Student Achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of Student Achievement that are rigorous and comparable across schools. (SEED NFP)

Student Growth means the change in Student Achievement (as defined in this notice) for an individual student between two or more points in time. An applicant may also include other measures that are rigorous and comparable across classrooms. (SEED NFP)

Tier I School means—

(a) A Title I school that has been identified as in improvement, corrective action, or restructuring under section 1116 of the ESEA and that is identified by the SEA under paragraph (a)(1) of the definition of ''Persistently Lowest Achieving School.''

(b) An elementary school that is eligible for Title I, Part A funds that—

(1)(i) Has not made adequate yearly progress for at least two consecutive years; or

(ii) Is in the State's lowest quintile of performance based on proficiency rates on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (2) Is no higher achieving than the highest-achieving school identified by the SEA under paragraph (a)(1)(i) of the definition of ''Persistently Lowest Achieving School.'' (Supplemental Priorities)

Tier II School means—

(a) A secondary school that is eligible for, but does not receive, Title I, Part A funds and is identified by the State educational agency (SEA) under paragraph (a)(2) of the definition of ''Persistently Lowest Achieving Schools.''

(b) A secondary school that is eligible for Title I, Part A funds that—

(1)(i) Has not made adequate yearly progress for at least two consecutive years; or

(ii) Is in the State's lowest quintile of performance based on proficiency rates on the State's assessments under section 1111(b)(3) of the ESEA, in reading/language arts and mathematics combined; and

(2)(i) Is no higher achieving than the highest-achieving school identified by the SEA under paragraph (a)(2)(i) of the definition of ''Persistently Lowest Achieving school;'' or

(ii) Is a high school that has had a graduation rate, as defined in 34 CFR 200.19(b), that is less than 60 percent over a number of years. (Supplemental Priorities)

What Works Clearinghouse Evidence Standards means the standards set forth in the What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can be found at the following link: *http://ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.* (34 CFR 77.1)

Program Authority: Public Law 114–113, Division H, Title III.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474. (d) The SEED NFP (78 FR 9815). (e) The Supplemental Priorities (79 FR 73425).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $40,000,000.

Estimated Range of Awards: $8,000,000–$15,000,000.

Estimated Average Size of Awards: $12,000,000.

Estimated Number of Awards: 3–4 awards.

Note: The Department will provide each selected project with a single award for a multi-year grant period. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Note: In subsequent fiscal years, under 34 CFR 75.250(b), the Department may offer SEED grantees the option of extending their SEED-related data collection and evaluation activities beyond the 36-month project period, and could choose to provide additional funding, for the purposes of data collection, analysis, and reporting, pending Congressional appropriations. This flexibility is not guaranteed and is contingent on available funding in subsequent fiscal years. The Department has discretion in deciding which, if any, SEED projects will receive additional time and funding for the purposes of data collection, analysis, and reporting.

III. Eligibility Information

1. *Eligible Applicants:* As established in the SEED NFP (78 FR 9815), to be eligible for a SEED program grant, an entity must be a National Not-for-Profit Organization. Each applicant must provide in its application documentation that it is a National Not-for-Profit Organization.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Evidence Standards:* To meet *Absolute Priority 1: Supporting Practices and Strategies for Which There Is Moderate Evidence of Effectiveness,* each applicant must provide in its application documentation that its proposed project is supported by at least Moderate Evidence of Effectiveness. All applicants must respond to Absolute Priority 1, and one or more of Absolute Priorities 2 through 4, in order to be eligible to receive funding. An applicant that also responds to *Competitive Preference Priority 1: Supporting Practices and Strategies for Which There Is Strong Evidence of Effectiveness* must provide documentation that its proposed project is supported by Strong Evidence of Effectiveness. An applicant must ensure that all evidence is available to the Department from publically available sources and provide links or references to, or copies of, the evidence in the application. If the Department determines that an applicant has provided insufficient evidence that its proposed project meets the definition of ''Moderate Evidence of Effectiveness'' or ''Strong Evidence of Effectiveness,'' the applicant will not have an opportunity to provide additional evidence to support its application.

4. *Evaluations:* As established in the SEED NFP, an applicant receiving funds under this program must comply with the requirements of any evaluation of the program conducted by the Department. In addition, an applicant receiving funds under this program must make broadly available through formal (*e.g.,* peer-reviewed journals) or informal (*e.g.,* newsletters) mechanisms, in print or electronically, the results of any evaluations it conducts of its funded activities.

IV. Application and Submission Information

1. *Address To Request Application Package:* Margarita Meléndez, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W115, Washington, DC 20202–5960 or by email: *SEED@ed.gov.*

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

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2.a. *Content and Form of Application Submission:* Requirements concerning the content and form of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent To Apply: January 20, 2017. The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Department strongly encourages each potential applicant to notify the Department by sending a short email message indicating the applicant's intent to submit an application for funding. The email need not include information regarding the content of the proposed application, only the applicant's intent to submit it. The Department requests that this email notification be sent to the SEED program inbox at: *SEED@ed.gov.*

Eligible entities that fail to provide this email notification may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit the application narrative to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except for titles, headings, footnotes, quotations, references, captions, charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- *Use one of the following fonts:* Times New Roman, Courier, Courier New, or Arial.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, or letters of support. However, the page limit does apply to all of the application narrative section [Part III].

b. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the SEED program, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you feel is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: December 21, 2016.

Deadline for Notice of Intent To Apply: January 20, 2017.

Date of Informational Webinar: The SEED program intends to hold a Webinar designed to provide technical assistance to interested applicants. Detailed information regarding this Webinar will be provided on the SEED Web site at *http://innovation.ed.gov/what-we-do/teacher-quality/supporting-effective-educator-development-grant-program/.*

Deadline for Transmittal of Applications: March 7, 2017.

Applications for grants under this competition must be submitted electronically using the *Grants.gov* Apply site (*Grants.gov*). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to *Other Submission Requirements* in section IV of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: April 20, 2017.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet at the following Web site: http://fedgov.dnb.com/webform. A

DUNS number can be created within one to two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow two to five weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data you enter into the SAM database. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, it may be 24 to 48 hours before you can access the information in, and submit an application through, *Grants.gov.*

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via *Grants.gov*, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with *Grants.gov* as an AOR. Details on these steps are outlined at the following *Grants.gov* Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the SEED program, CFDA number 84.367D, must be submitted electronically using the Governmentwide *Grants.gov* Apply site at *www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the SEED program at *www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.367, not 84.367D).

Please note the following:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by *Grants.gov* are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the *Grants.gov* system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the *Grants.gov* system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from *Grants.gov*, we will notify you if we are rejecting your application because it was date and time stamped by the *Grants.gov* system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through *Grants.gov.*
- You should review and follow the Education Submission Procedures for submitting an application through *Grants.gov* that are included in the application package for this competition to ensure that you submit your application in a timely manner to the *Grants.gov* system. You can also find the Education Submission Procedures pertaining to *Grants.gov* under News and Events on the Department's G5 system home page at *www.G5.gov.* In addition, for specific guidance and procedures for submitting an application through *Grants.gov*, please refer to the *Grants.gov* Web site at: *www.grants.gov/web/grants/applicants/apply-for-grants.html.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- *You must submit all documents electronically, including all information you typically provide on the following forms:* the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a read-only Portable Document Format (PDF). Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only PDF (*e.g.,* Word, Excel, WordPerfect, etc.) or submit a password-protected file, we will not review that material. Please note that this could result in your application not being considered for funding because the material in question—for example, the application narrative—is critical to a meaningful review of your proposal. For that reason it is important to allow yourself adequate time to upload all material as PDF files. The Department will not convert material from other formats to PDF.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from *Grants.gov* an automatic notification of receipt that contains a *Grants.gov* tracking number. This notification indicates receipt by *Grants.gov* only, not receipt by the Department. *Grants.gov* will also notify you automatically by email if your application met all the *Grants.gov* validation requirements or if there were any errors (such as submission of your application by someone other than a registered

Authorized Organization Representative, or inclusion of an attachment with a file name that contains special characters). You will be given an opportunity to correct any errors and resubmit, but you must still meet the deadline for submission of applications.

Once your application is successfully validated by *Grants.gov*, the Department will retrieve your application from *Grants.gov* and send you an email with a unique PR/Award number for your application.

These emails do not mean that your application is without any disqualifying errors. While your application may have been successfully validated by *Grants.gov*, it must also meet the Department's application requirements as specified in this notice and in the application instructions. Disqualifying errors could include, for instance, failure to upload attachments in a read-only, non-modifiable PDF; failure to submit a required part of the application; or failure to meet applicant eligibility requirements. It is your responsibility to ensure that your submitted application has met all of the Department's requirements.

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the *Grants.gov System:* If you are experiencing problems submitting your application through *Grants.gov*, please contact the *Grants.gov* Support Desk, toll free, at 1–800–518–4726. You must obtain a *Grants.gov* Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the *Grants.gov* system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the *Grants.gov* system and that the problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. We will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the *Grants.gov* system. We will not grant you an extension if you failed to fully register to submit your application to *Grants.gov* before the application deadline date and time or if the technical problem you experienced is unrelated to the *Grants.gov* system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the *Grants.gov* system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the *Grants.gov* system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Margarita Meléndez, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W115, Washington, DC 20202–5960. FAX: (202) 401–4123.

Your paper application must be submitted in accordance with the mail or hand-delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.367D), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

We will not consider applications postmarked after the application deadline date.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.367D), 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application

deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from the SEED NFP and from 34 CFR 75.210, and are as follows:

The maximum score for all the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that reviewers will consider in determining the extent to which an applicant meets the criterion.

In addressing each criterion, applicants are encouraged to make explicit connections to relevant aspects of responses to other selection criteria.

A. *Significance (10 points).* The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers:

(1) The significance of the proposed project on a National Level. (SEED NFP)

(2) The potential contribution of the proposed project to the development and advancement of teacher and school leadership theory, knowledge, and practices. (SEED NFP)

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and Student Achievement. (SEED NFP)

B. *Quality of the Project Design and Services (35 points).* The Secretary considers the quality of the design and services of the proposed project. In determining the quality of the design and services of the proposed project, the Secretary considers:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified, aligned, and measurable. (SEED NFP)

(2) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students. (SEED NFP)

(3) The extent to which the training or professional development services to be provided by the proposed project will be of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services. (SEED NFP)

(4) The extent to which the proposed project will prepare personnel for fields in which shortages have been demonstrated. (34 CFR 75.210)

(5) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals. (34 CFR 75.210)

C. *Quality of the Management Plan and Personnel (20 points).* The Secretary considers the quality of the management plan for the proposed project and of the personnel who will carry out the proposed project. In determining the quality of the management plan and the project personnel, the Secretary considers:

(1) The qualifications, including relevant training and experience, of the project director, key project personnel, and project consultants or subcontractors. (SEED NFP)

(2) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (SEED NFP)

(3) The extent to which the proposed management plan includes sufficient and reasonable resources to effectively carry out the proposed project, including the project evaluation. (SEED NFP)

D. *Sustainability (15 points).* The Secretary considers the adequacy of resources to continue the proposed project after the grant period ends. In determining the adequacy of resources and the potential for utility of the proposed project's activities and products by other organizations, the Secretary considers:

(1) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance. (SEED NFP)

(2) The extent to which the proposed project is likely to yield findings and products (such as information, materials, processes, or techniques) that may be used by other agencies and organizations. (SEED NFP)

(3) The extent to which the applicant will disseminate information about results and outcomes of the proposed project in ways that will enable others, including the public, to use the information or strategies. (SEED NFP)

E. *Quality of the Project Evaluation (20 points).* The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (SEED NFP)

(2) The extent to which the evaluation includes the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data. (SEED NFP)

(3) The extent to which the evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (SEED NFP)

(4) The extent to which the methods of evaluation will, if well-implemented, produce evidence about the project's effectiveness that would meet What Works Clearinghouse Evidence Standards without reservations. (34 CFR 75.210)

Note: *We encourage applicants to review the following technical assistance resources on evaluation:* (1) WWC Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1*; and (2) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.* In addition, applicants may view two optional Webinar recordings that were hosted by the Institute of Education Sciences. The first Webinar discussed strategies for designing and executing well-designed Quasi-experimental design studies and is available at: *http://ies.ed.gov/ncee/wwc/Multimedia.aspx?sid=23.* The second Webinar focused on more rigorous evaluation designs and discussed strategies for designing and executing studies that meet WWC evidence standards without reservations. This Webinar is available at: *http://ies.ed.gov/ncee/wwc/Multimedia.aspx?sid=18.*

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Special Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under current 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a

grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through SAM. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* The overall purpose of the SEED program is to support projects by National Not-for-Profit organizations that are supported by at least Moderate Evidence of Effectiveness to recruit, select, and prepare or provide professional enhancement activities for teachers, principals, or both. We have established the following performance measures for the SEED program: (a) The percentage of teacher and principal participants who serve concentrations of High-Need Students; (b) the percentage of participants who serve concentrations of High-Need Students and are highly effective; (c) the percentage of participants who serve concentrations of High-Need Students, are highly effective, and serve for at least two years; and (d) the cost per such participant. Grantees will report annually on each measure.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Margarita Meléndez, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W115, Washington, DC 20202–5960. Telephone: (202) 260–3548, or by email: *SEED@ed.gov.*

If you use a TDD or TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

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

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.

Dated: December 16, 2016.

Nadya Chinoy Dabby,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2016–30751 Filed 12–20–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR17–12–001.

Applicants: Columbia Gas of Maryland, Inc..

Description: Tariff filing per 284.123(b),(e)/: CMD SOC effective 10–27–2016 Amendment to be effective 10/27/2016; Filing Type: 1000.

Filed Date: 12/13/2016.

Accession Number: 201612135028.

Comments/Protests Due: 5 p.m. ET 1/3/17.

Docket Number: PR17–13–000.

Applicants: Jefferson Island Storage & Hub, L.L.C.

Description: Market Power Study Reaffirming Market-Based Rates.

Filed Date: 12/8/2016.

Accession Number: 20161208–5175.

Comments/Protests Due: 5 p.m. ET 12/29/16.

Docket Numbers: RP17–253–000.

Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate PAL Agreement with MIECO INC. to be effective 12/10/2016.
Filed Date: 12/9/16.
Accession Number: 20161209–5191.
Comments Due: 5 p.m. ET 12/21/16.
Docket Numbers: RP17–255–000.
Applicants: Sea Robin Pipeline Company, LLC.
Description: Compliance filing Annual Flowthrough Crediting Mechanism Filing on 12/12/16.
Filed Date: 12/12/16.
Accession Number: 20161212–5058.
Comments Due: 5 p.m. ET 12/27/16.
Docket Numbers: RP17–256–000.
Applicants: Texas Eastern Transmission, LP.
Description: Compliance filing Gas Quality Settlement.
Filed Date: 12/13/16.
Accession Number: 20161213–5000.
Comments Due: 5 p.m. ET 12/27/16.
Docket Numbers: RP17–257–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: Neg Rate 2016–12–2 Capacity Enhancement Amend Many Ks to be effective 12/13/2016.
Filed Date: 12/13/16.
Accession Number: 20161213–5110.
Comments Due: 5 p.m. ET 12/27/16.
Docket Numbers: RP17–258–000.
Applicants: Gulf Shore Energy Partners, LP.
Description: Compliance filing Gulf Shore Energy Partners—Cost and Revenue Study.
Filed Date: 12/13/16.
Accession Number: 20161213–5113.
Comments Due: 5 p.m. ET 12/27/16.
Docket Numbers: RP17–259–000.
Applicants: Natural Gas Pipeline Company of America.
Description: § 4(d) Rate Filing: Negotiated Rate—Occidental Energy to be effective 1/1/2017.
Filed Date: 12/13/16.
Accession Number: 20161213–5148.
Comments Due: 5 p.m. ET 12/27/16.
Docket Numbers: RP17–260–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—Piedmont Release to Atmos—8944225 to be effective 12/9/2016.
Filed Date: 12/13/16.
Accession Number: 20161213–5237.
Comments Due: 5 p.m. ET 12/27/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP17–200–001.
Applicants: Guardian Pipeline, L.L.C.
Description: Tariff Amendment: Amendment to Docket No. RP17–200–000 to be effective 12/31/2016.
Filed Date: 12/12/16.
Accession Number: 20161212–5208.
Comments Due: 5 p.m. ET 12/27/16.
Docket Numbers: RP17–71–001.
Applicants: Algonquin Gas Transmission, LLC.
Description: Compliance filing AGT FRQ 2016 Compliance Filing.
Filed Date: 12/12/16.
Accession Number: 20161212–5084.
Comments Due: 5 p.m. ET 12/27/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–30677 Filed 12–20–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2015–0335; FRL–9956–93–OW]

Final EPA–USGS Technical Report: Protecting Aquatic Life from Effects of Hydrologic Alteration

AGENCY: Environmental Protection Agency (EPA) and United States Geological Survey (USGS).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) and the United States Geological Survey are releasing a technical report: *Final EPA–USGS Technical Report: Protecting Aquatic Life from Effects of Hydrologic Alteration.* Healthy aquatic ecosystems provide an array of services to individuals and society, including clean drinking water, irrigation supplies, and recreational opportunities. Sound and sustainable management of aquatic ecosystems is an integral part of managing water resources to meet the needs of society. Hydrologic alteration can be a contributor to the impairment of water bodies that are designated to support aquatic life. Stresses on aquatic life associated with hydrologic alteration may be further exacerbated by climate change.

This report provides States, Tribes and territories with scientific and technical information on the natural flow regime and potential effects of flow alteration on aquatic life, and a flexible, nonprescriptive framework that state water managers might consider if they are interested in developing narrative or numeric targets for flow regime components that are protective of aquatic life. The report also provides information about States and Tribes that have adopted narrative water quality standards to protect their waterbodies' flow regimes and on the potential impact of climate change on flow regimes.

FOR FURTHER INFORMATION CONTACT: Diana Eignor, Health and Ecological Criteria Division, Office of Water (Mail Code 4304T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566–1143; email address: *eignor.diana@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How can I get copies of this document and other related information?

1. 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 Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. For additional

information about EPA's public docket, visit EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

II. What is this document?

This document serves as a technical and informational resource for States, Tribes, territories, and other stakeholders that want to protect aquatic life from the adverse effects of flow alteration. To that end, this report provides technical information about the effect of altered flow regimes on aquatic life and a nonprescriptive framework that may be used to help quantify targets for flow regime components that are protective of aquatic life and their habitats. The report also provides examples of state and tribal water quality standards designed to protect such flow regimes and discusses the potential impact of climate change on flow regimes. This technical report is not a rule and it, therefore, does not impose any mandatory requirements. State and Tribal decision makers retain the discretion to adopt approaches or information presented in this report on a case-by-case basis that differ from the approaches described in this report.

III. Additional Information:

EPA and USGS each conducted internal peer reviews of the report, and EPA managed a contractor-led independent external peer review of the Draft EPA–USGS Technical Report: Protecting Aquatic Life from Effects of Hydrologic Alteration. EPA will make the external peer review comments and Agency responses to these comments available in the docket at *http://www.regulations.gov.*

Dated: December 14, 2016.

Joel Beauvais,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2016–30760 Filed 12–20–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1196; FRL–9956–89]

Recent Postings of Broadly Applicable Alternative Test Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the broadly applicable alternative test method approval decisions the Environmental Protection Agency (EPA) has made under and in support of New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) between January 1, 2016, and December 12, 2016.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each alternative test method approval document is available at *https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods.* For questions about this notice, contact Mrs. Lula H. Melton, Air Quality Assessment Division, Office of Air Quality Planning and Standards (E143–02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–2910; fax number: (919) 541–0516; email address: *melton.lula@epa.gov.* For technical questions about individual alternative test method decisions, refer to the contact person identified in the individual approval document(s).

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This notice will be of interest to entities regulated under 40 Code of Federal Regulations (CFR) parts 60, 61, and 63, state, local, and tribal agencies, and the EPA Regional offices responsible for implementation and enforcement of regulations under 40 CFR parts 60, 61, and 63.

B. How can I get copies of this information?

You may access copies of the broadly applicable alternative test method approval documents at *https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods.*

II. Background

Broadly applicable alternative test method approval decisions made by the EPA in 2016 under the NSPS, 40 CFR part 60 and the NESHAP, 40 CFR parts 61 and 63 are identified in this notice (see Table 1). Source owners and operators may voluntarily use these broadly applicable alternative test methods in lieu of otherwise specified reference test methods. Use of these broadly applicable alternative test methods does not change the applicable emission standards.

As explained in a previous **Federal Register** notice published at 72 FR 4257 (January 30, 2007) and located at *https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods,* the EPA Administrator has the authority to approve the use of alternative test methods to comply with requirements under 40 CFR parts 60, 61, and 63. This authority is found in sections 60.8(b)(3), 61.13(h)(1)(ii), and 63.7(e)(2)(ii). A similar authority is granted in 40 CFR part 65 under section 65.158(a)(2). In the past, we have performed thorough technical reviews of numerous source-specific requests for alternatives and modifications to test methods and procedures. Based on these reviews, we have often found that these changes or alternatives would be equally valid and appropriate to apply to other sources within a particular class, category, or subcategory. Consequently, we have concluded that, where a method modification or an alternative method is clearly broadly applicable to a class, category, or subcategory of sources, it is both more equitable and efficient to approve its use for all appropriate sources and situations at the same time.

It is important to clarify that alternative methods are not mandatory but permissive. Sources are not required to employ such a method but may choose to do so in appropriate circumstances. Source owners or operators should review the specific broadly applicable alternative method approval decision at *https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods* before electing to employ the alternative method. As per section 63.7(f)(5), a source owner or operator electing to use an alternative method for 40 CFR part 63 standards must continue to use the alternative method until otherwise authorized.

The criteria for approval and procedures for submission and review of broadly applicable alternative test methods are outlined at 72 FR 4257 (January 30, 2007). We will continue to announce approvals for broadly applicable alternative test methods at *https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods* and publish a notice annually that summarizes approvals for broadly applicable alternative test methods during the preceding year.

This notice comprises a summary of seven such approval documents posted to our Technology Transfer Network between January 1, 2016, and December 12, 2016. The alternative method decision letter/memo number, the reference method affected, sources allowed to use this alternative, and the modification or alternative method allowed are summarized in Table 1 of this notice. For more detailed information, please refer to the complete copies of these approval documents available at *https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods,* as Table 1 serves only as a brief summary of the

broadly applicable alternative test methods.

If you are aware of reasons why a particular alternative test method approval that we issued should not be broadly applicable or that its use should in some way be limited, we request that you make us aware of the reasons in writing, and we will revisit the broad approval. Any objection to a broadly applicable alternative test method, as well as the resolution of that objection, will be announced at *https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods* and in the subsequent **Federal Register** notice. If we decide to retract a broadly applicable test method, we will continue to grant case-by-case approvals, as appropriate, and will (as states, local and tribal agencies and the EPA Regional offices should) consider the need for an appropriate transition period for users either to request case-by-case approval or to transition to an approved method.

Dated: December 14, 2016.

Stephen Page,

Director, Office of Air Quality Planning and Standards.

TABLE 1—APPROVED ALTERNATIVE TEST METHODS AND MODIFICATIONS TO TEST METHODS REFERENCED IN OR PUBLISHED UNDER APPENDICES IN 40 CFR PARTS 60, 61, AND 63 POSTED BETWEEN JANUARY 2016 AND DECEMBER 2016

Alternative method decision letter/memo number	As an alternative or modification to . . .	For . . .	You may . . .
ALT–114	Performance Specification 18-Performance Specifications and Test Procedures for Gaseous Hydrogen Chloride (HCl) Continuous Emission Monitoring Systems at Stationary Sources and Procedure 6-Quality Assurance Requirements for Gaseous Hydrogen Chloride (HCl) Emission Monitoring Systems Used for Compliance Determination at Stationary Sources.	Sources subject to 40 CFR Part 63, subpart LLL-National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry Sources; 40 CFR Part 63, subpart UUUUU-National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units; 40 CFR Part 63, subpart DDDDD-National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; and 40 CFR Part 60, subparts CCCC and DDDD-Standards of Performance for Commercial and Industrial Solid Waste Incineration Units.	Use the alternative approach for preparation of gas standards as specified in the agency's approval letter dated February 22, 2016.
ALT–115	40 CFR 63.7525(a)(2)(vi).	Sources subject to 40 CFR Part 63, subpart DDDDD-National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters..	Use the alternative approach for moisture measurement as specified in the agency's approval letter dated March 2, 2016 (only when both CO and CO_2 are being measured on a wet basis).
ALT–116	Method 7E-Determination of Nitrogen Oxide Emissions From Stationary Sources (Instrumental Analyzer Procedure).	Sources subject to 40 CFR Parts 60, 61, and 63.	Use higher concentration NO_2 gases in conjunction with Method 205 for converter efficiency testing as specified in the agency's approval letter dated April 27, 2014.
ALT–117	Method 5-Determination of Particulate Matter Emissions From Stationary Sources.	Sources subject to 40 CFR Parts 60, 61, and 63.	Use single temperature DGM (dry gas meter) sensor in lieu of two sensors with the criteria specified in the agency's approval letter dated March 15, 2016.
ALT–118	Performance Specification 12A-Specifications and Test Procedures for Total Vapor Phase Mercury Continuous Emission Monitoring Systems in Stationary Sources and Procedure 5-Quality Assurance Requirements for Vapor Phase Mercury Continuous Emission Monitoring Systems and Sorbent Trap Monitoring Systems Used for Compliance Determination at Stationary Sources.	Sources subject to 40 CFR Part 63, subpart LLL-National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry; 40 CFR Part 63, subpart UUUUU-National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units; 40 CFR Part 63, subpart DDDDD-National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; and 40 CFR Part 60, subparts CCCC and DDDD-Standards of Performance for Commercial and Industrial Solid Waste Incineration Units.	Use a NIST-certified Vendor Prime elemental mercury gas generator for research gas mixtures (RGM) in the EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards with the provisions specified in the agency's approval letter dated May 24, 2016.

TABLE 1—APPROVED ALTERNATIVE TEST METHODS AND MODIFICATIONS TO TEST METHODS REFERENCED IN OR PUBLISHED UNDER APPENDICES IN 40 CFR PARTS 60, 61, AND 63 POSTED BETWEEN JANUARY 2016 AND DECEMBER 2016—Continued

Alternative method decision letter/memo number	As an alternative or modification to . . .	For . . .	You may . . .
ALT–119	Performance Specification 12B-Specifications and Test Procedures for Monitoring Total Vapor Phase Mercury Emissions From Stationary Sources Using a Sorbent Trap Monitoring System.	Sources subject to 40 CFR Part 63, subparts LLL-National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry and UUUUU-National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units.	Use the alternative analytical test procedure for low level measurements as specified in the agency's approval letter dated May 26, 2016.
ALT–120	40 CFR 63.1350(k)(2)(ii) and (iii)	Sources subject to 40 CFR Part 63, subparts LLL-National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry.	Use the alternative procedure for above span mercury calibrations through January 1, 2018, only as specified in the agency's approval letter dated June 28, 2016.

Source owners or operators should review the specific broadly applicable alternative method approval letter at *https://www.epa.gov/emc/broadly-applicable-approved-alternative-test-methods* before electing to employ it.

[FR Doc. 2016–30714 Filed 12–20–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Items From Sunshine Act Meeting

December 14, 2016.

The following Agenda items have been deleted from the list of items scheduled for consideration at the Thursday, December 15, 2016, Open Meeting and previously listed in the Commission's Notice of December 8, 2016. Items 3. 4, 5, 6, have been adopted by the Commission.

* * * * *

2	Public Safety & Homeland Security	*Title:* Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System (PS Docket No. 15–94). *Summary:* The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking to enhance the Emergency Alert System (EAS) as a tool for community emergency preparedness. The Report and Order improves alerting organization at the state and local levels, builds stronger community-based alerting exercise programs, and protects the EAS against accidental misuse and malicious intrusion. The Further Notice seeks comment on proposals to leverage technological advances to improve alerting and additional measures to preserve EAS security.
3	International	*Title:* Update to Parts 2 and 25 Concerning Non-geostationary, Fixed Satellite Service Systems and Related Matters. *Summary:* The Commission will consider a Notice of Proposed Rulemaking to update, clarify, and streamline the Commission's rules to facilitate the deployment of recently proposed non-geostationary-satellite orbit, fixed-satellite service satellite systems.
4	General Counsel	*Title:* Amendment of Part 0 of the Commission's Rules Regarding Public Information, the Inspection of Records, and Implementing the Freedom of Information Act. *Summary:* The Commission will consider an Order that updates its Freedom of Information Act (FOIA) regulations consistent with the FOIA Improvement Act of 2016.
5	Wireless Telecommunications	*Title:* Maritime Communications/Land Mobile, LLC, Order on Reconsideration and Memorandum Opinion and Order. *Summary:* The Commission will consider an Order on Reconsideration and Memorandum Opinion and Order regarding the assignment of licenses held by Maritime Communications/Land Mobile, LLC.
6	Public Safety & Homeland Security	*Title:* Improving the Resiliency of Mobile Wireless Communications Networks, (PS Docket 13–239); Reliability and Continuity of Communications Networks, Including Broadband Technologies (PS Docket No. 11–60). *Summary:* The Commission will consider an Order that evaluates the Wireless Network Resiliency Cooperative Framework submitted by members of the wireless industry.
7	Enforcement	*Title:* Preferred Long Distance, Inc., Memorandum Opinion & Order.

		Summary: The Commission will consider a Memorandum Opinion and Order that addresses a Petition for Reconsideration of a Forfeiture Order issued by the Commission for slamming and deceptive marketing.

The following Consent Agenda item has been deleted from the list of items scheduled for consideration at the Thursday, December 15, 2016, Open Meeting and previously listed in the Commission's Notice of December 8, 2016.

* * * * *

CONSENT AGENDA

5	Consumer & Governmental Affairs	*Title:* Ministry of Communications of the Archdiocese of Miami, FL; Closed Captioning Petitions for Waiver; Application for Review. *Summary:* The Commission will consider a Memorandum Opinion and Order addressing an Application for Review seeking review of the Bureau's dismissal of the Ministry's petition for exemption from the Commission's closed captioning requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–30900 Filed 12–19–16; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change The Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of License: CSSI Non-Profit Educational Broadcasting Corporation, Station KYQX, Facility ID 62040, BMPED–20161202ABT, From Weatherford, TX, To Mineral Wells, TX; Gois Broadcasting Boston, LLC, Station WLLH, Facility ID 24971, BP–20161110AAP, From Lowell, MA, To Lawrence, MA; Grace Baptist Church of Orangeburg, Station WWOS, Facility ID 38899, BP–20161020ABD, From St. George, SC, To Walterboro, SC; Great Northern Broadcasting System, Inc., Station WLDR–FM, Facility ID 24974, BPH–20161128AFR, From Traverse City, MI, To Beulah, MI; Northwest Georgia Broadcasting, Station WYXC, Facility ID 19541, BP–20161107ACA, From Cartersville, GA, To East Point, GA; Premiere Enterprises, LLC, Station WALI, Facility ID 25206, BPH–20161020ABE, From Walterboro, SC, To Burton, SC; Revival Christian Ministries, Inc., Station WSGG, Facility ID 92857, BPED–20161110ABC, From Norfolk, CT, To Canaan, CT; Roy E. Henderson, Station WOUF, Facility ID 14646, BPH–20161128AFT, From Beulah, MI, To Traverse City, MI.

DATES: The agency must receive comments on or before February 21, 2017.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2016–30678 Filed 12–20–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012309–001.

Title: WWL/EUKOR/ARC/GLOVIS Cooperative Working Agreement.

Parties: Wallenius Wilhelmsen Logistics AS; EUKOR Care Carriers Inc.; Hyundai Glovis Co. Ltd.; and American Roll-on Roll-off Carrier, LLC.

Filing Party: Wayne Rohde, Esq; Cozen O'Connor; 1200 19th Street NW.; Washington, DC 20036.

Synopsis: The amendment adds a new Article 5.2 which authorizes the parties or any two or more of them to solicit bids for contracts covering the provision of tug services at ports in the trade and/or to negotiate and enter into joint and/or individual contracts with respect to such services. The amendment makes corresponding changes to Article 2 and 5.3.

Agreement No.: 012448.

Title: ECUS/ECSA Slot Exchange Agreement.

Parties: Alianca Navegacao e Logistics Ltds.; Companhia Libra de Navegacao, Hapag-Lloyd AG; Hamburg Sud; and MSC Mediterranean Shipping Company S.A.

Filing Party: Wayne Rohde, Esq; Cozen O'Connor; 1200 19th Street NW.; Washington, DC 20036.

Synopsis: The Agreement authorizes the Parties to FMC Agreement No. 012297 on the one hand and MSC Mediterranean Shipping Company SA on the other hand to exchange space on their respective services in the trade between the U.S. Atlantic Coast and ports in the Bahamas, Dominican Republic, Panama, Brazil, Uruguay and Argentina during the slack season. The Parties request expedited review.

Agreement No.: 012449.

Title: Global Ports Group Agreement.

Parties: APM Terminals Management B.V.; DP World Limited; Hutchison Port Holdings Limited; Port of Rotterdam Authority; PSA International Pte. Ltd.; and Shanghai International Port (Group) Co. Ltd.

Filing Party: Michael Scanlon, Esq.; K & L Gates LLP; 1601 K Street NW.; Washington, DC 20006–1600.

Synopsis: The Agreement authorizes the Parties to discuss, exchange

information, and coordinate on issues affecting the efficiency and effectiveness of the container port industry.

Agreement No.: 012450.

Title: Hoegh Autoliners and NYK Space Charter Agreement.

Parties: Hoegh Autliners AS and Nippon Yusen Kaisha.

Filing Party: Kristen Chung, Esq.; NYK Line (North America) Inc.; 300 Lighting Way, 5th Floor; Secaucus, NJ 07094.

Synopsis: The Agreement authorizes Hoegh and NYK to share vessels and vessel space in the trade between ports and places in the U.S. and ports and places in a foreign country.

Agreement No.: 012451.

Title: Memorandum of Agreement of July 1, 2015 Concerning Assessments to Provide Los Angeles Crane Operator Make Whole Pay.

Parties: Pacific Maritime Association and International Longshore and Warehouse Union.

Filing Party: David F. Smith, Esq.; Cozen O'Connor; 1200 19th Street, NW.; Washington, DC 20036.

Synopsis: The Agreement provides for payments to be made to certain Crane Operators in Los Angeles at the equivalent Crane Operator prevailing daily rate of pay regardless of the job they work and establishes the particular conditions under which PMA shall assess its members to provide for these payments.

Agreement No.: 201103–011.

Title: Memorandum Agreement of the Pacific Maritime Association of December 14, 1983 Concerning Assessments to Pay ILWU–PMA Employee Benefit Costs, As Amended, Through May 12, 2011.

Parties: Pacific Maritime Association and International Longshore and Warehouse Union.

Filing Party: David F. Smith, Esq.; Cozen O'Connor; 1200 19th Street, NW.; Washington, DC 20036.

Synopsis: The amendment revises how the man-hour base assessment will be calculated.

By Order of the Federal Maritime Commission.

Dated: December 16, 2016.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2016–30752 Filed 12–20–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 9, 2017.

A. *Federal Reserve Bank of Atlanta* (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *James A. Hammack, Ann S. Hammack, Margaret A. Hammack 1998 Trust, Anne S. Hammack, Trustee, James A. Hammack, III Trust, Anne S. Hammack, Trustee; Margaret Hammack, Anne S. Hammack, guardian, Anne Singletary Hammack item IIIA 2 TR, all of Dalton, Georgia, and James A. Hammack, III, Atlanta, Georgia;* to retain voting shares of One South Financial, Inc., Blakely, Georgia, and its subsidiaries, Bank of Early, Blakely, Georgia, and One South Bank, Chipley, Florida.

B. *Federal Reserve Bank of Dallas* (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Atticus Franklin Miller,* individually, Reno, Texas, and as the Executor of the Frank H. Miller Estate; to acquire and retain voting shares of Cooper Lake Financial Corporation, Cooper, Texas, and thereby, indirectly own shares of The First National Bank in Cooper, Cooper, Texas.

Board of Governors of the Federal Reserve System, December 16, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–30754 Filed 12–20–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 18, 2017.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Community First Bancshares, MHC,* to become a mutual savings and loan holding company, and Community First Bancshares, Inc., to become a mid-tier stock savings and loan holding company; by acquiring 100 percent of Newton Federal Bank, all of Covington, Georgia.

Board of Governors of the Federal Reserve System, December 16, 2016.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2016–30753 Filed 12–20–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0090; Docket 2016–0053; Sequence 38]

Submission for OMB Review; Rights in Data and Copyrights

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning rights in data and copyrights. A notice published in the **Federal Register** at 81 FR 58940 on August 26, 2016. No comments were received.

DATES: Submit comments on or before January 20, 2017.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0090'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0090''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0090'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0090.

Instructions: Please submit comments only and cite Information Collection 9000–0090, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gray, Procurement Analyst, at 703–795–6328 or email *charles.gray@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Subpart 27.4, Rights in Data and Copyrights is a regulation which concerns the rights of the Government and contractors with whom the Government contracts, regarding the use, reproduction, and disclosure of information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data, and to insure that data developed with public funds is available to the public.

The information collection burdens and recordkeeping requirements included in this regulation fall into the following four categories:

(a) A provision which is to be included in solicitations where the offeror would identify any proprietary data it would use during contract performance, in order that the contracting officer might ascertain if such proprietary data should be delivered.

(b) Contract provisions which, in unusual circumstances, would be included in a contract and require a contractor to deliver proprietary data to the Government for use in evaluating work results, or is software to be used in a Government computer. These situations would arise only when the very nature of the contractor's work is comprised of limited rights data or restricted computer software and if the Government would need to see that data in order to determine the extent of the work.

(c) A technical data certification for major systems, which requires the contractor to certify that the data delivered under the contract is complete, accurate and compliant with the requirements of the contract. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts should require this certification.

(d) The Additional Data Requirements clause, which is to be included in all contracts for experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less). The clause requires that the contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. Much of this data will be in the form of deliverables provided to the Government under the contract (final report, drawings, specifications, etc.). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements is to insure that the Government can fully evaluate the research in order to ascertain future activities and to insure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information. All data covered by this clause is unlimited rights data paid for by the Government.

Paragraph (d) of the Rights in Data—General clause (52.227.14) outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered. Under civilian agency contracts, limited rights data or restricted computer software is rarely, if ever, delivered to the Government. Therefore, there may rarely be any challenges. Thus, there is no burden on the public.

B. Annual Reporting Burden

Respondents: 944.
Responses per Respondent: 2.43.
Annual Responses: 2294.
Hours per Response: 1.0.
Total Burden Hours: 2294.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0090, Rights in Data and Copyrights, in all correspondence.

Dated: December 16, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–30701 Filed 12–20–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0135; Docket 2016–0053; Sequence 40]

Information Collection; Prospective Subcontractor Requests for Bonds

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection concerning subcontractor requests for bonds.

DATES: Submit comments on or before February 21, 2017.

ADDRESSES: Submit comments identified by Information Collection 9000–0135 by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000–0135. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0135, Prospective Subcontractor Requests for Bond.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0135, Prospective Subcontractor Requests for Bond'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405–0001. ATTN: Ms. Flowers/IC 9000–0135.

Instructions: Please submit comments only and cite Information Collection 9000–0135, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia Davis, Procurement Analyst, Acquisition Policy Division, at 202–219–0202 or email *cecelia.davis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Part 28 of the Federal Acquisition Regulation (FAR) contains guidance related to insuring against damages under Federal contracts (*e.g.,* bonds, bid guarantees, etc.). Part 52 contains the corresponding provisions and clauses. These collectively implement the statutory requirement for Federal contractors to report payment bonds under construction contracts subject to 40 U.S.C. chapter 31, subchapter III, Bonds.

This information collection is mandated by Section 806 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Pub. L. 102–190), as amended by Section 2091 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–335). The clause at 52.228–12, Prospective Subcontractor Requests for Bonds, implements Section 806(a)(3) of Public Law 102–190, as amended, which states that, upon the request of a prospective subcontractor or supplier offering to furnish labor or material under a construction contract for which a payment bond has been furnished pursuant to 40 U.S.C. 31, the contractor shall promptly provide a copy of such payment bond to the requestor.

Given that payment bonds, in conjunction with performance bonds, are used to secure the contractor's obligations, thereby assuring that payments are made to subcontractors and vendors under the contract, the requester will use information on payment bonds to determine whether to engage in business with that prime contractor.

B. Annual Reporting Burden

Number of Respondents: 4,444.
Responses per Respondent: 2.5.
Total Annual Responses: 11,110.
Hours per Response: .34.
Total Burden Hours: 3,777.
Frequency: On occasion.
Affected Public: Construction prime contractors.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control Number 9000–0135, Prospective Subcontractor Requests for Bonds, in all correspondence.

Dated: December 16, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2016–30702 Filed 12–20–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0034; Docket 2016–0053; Sequence 39]

Submission for OMB Review; Examination of Records by Comptroller General and Contract Audit

AGENCY: Department of Defense (DOD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the examination of records by comptroller general and contract audit. A notice was published in the **Federal Register** at 81 FR 62502 on September 9, 2016. No comments were received.

DATES: Submit comments on or before January 20, 2017.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for OMB Control No. 9000–0034. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0034, Examination of Records by Comptroller General and Contract Audit.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0034, Examination of Records by Comptroller General and Contract Audit'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0034, Examination of Records by Comptroller General and Contract Audit.

Instructions: Please submit comments only and cite Information Collection 9000–0034, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, Contract Policy Branch, GSA, 202–208–4949 or email *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective of this information collection, for the examination of records by Comptroller General and contract audit, is to require contractors to maintain certain records and to ensure the Comptroller General and/or agency have access to, and the right to, examine and audit records, which includes: Books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, for a period of three years after final payment. This information is necessary for examination and audit of contract surveillance, verification of contract pricing, and to provide reimbursement of contractor costs, where applicable. The records retention period is required by the statutory authorities at 10 U.S.C. 2313, 41 U.S.C. 254, and 10 U.S.C. 2306, and are implemented through the following clauses: Audit and Records-Negotiation clause, 52.215–2; Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items clause, 52.212–5; and Audit and Records-Sealed Bidding clause, 52.214–26. This information collection does not require contractors to create or maintain any records that the contractor does not normally maintain in its usual course of business.

B. Annual Reporting Burden

Respondents: 20,646.
Responses per Respondent: 9.
Total Number of Responses: 185,814.
Hours per Response: 1.0.
Total Burden Hours: 185,814.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulation (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology and ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control Number 9000–0034, Examination of Records by Comptroller General and Contract Audit, in all correspondence.

Dated: December 16, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2016–30700 Filed 12–20–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0597]

Agency Information Collection Activities; Proposed Collection; Comment Request; Index of Legally Marketed Unapproved New Animal Drugs for Minor Species

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. 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 of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of FDA regulations related to public index listing of legally marketed unapproved new animal drugs for minor species of animals.

DATES: Submit either electronic or written comments on the collection of information by February 21, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- F*ederal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your

comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* 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–2010–N–0597 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Index of Legally Marketed Unapproved New Animal Drugs for Minor Species.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://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 *https://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 *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: 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. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Index of Legally Marketed Unapproved New Animal Drugs for Minor Species—21 CFR Part 516

OMB Control Number 0910–0620—Extension

The Minor Use and Minor Species Animal Health Act of 2004 (MUMS Act) amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to authorize FDA to establish new regulatory procedures intended to make more medications legally available to veterinarians and animal owners for the treatment of minor animal species (species other than cattle, horses, swine, chickens, turkeys, dogs, and cats), as well as uncommon diseases in major animal species.

Section 572 of the MUMS Act provided for a public index listing of legally marketed unapproved new animal drugs for minor species. FDA regulations in part 516 (21 CFR part 516) specify, among other things, the criteria and procedures for requesting eligibility for indexing and for requesting addition to the index as well as the annual reporting requirements for index holders.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR part	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
516.119	2	1	2	1	2
516.121	30	2	60	4	240
516.123	3	1	3	8	24
516.125	2	3	6	20	120
516.129	30	2	60	20	1,200
516.141	20	1	20	16	320
516.143	20	1	20	120	2,400
516.145	20	1	20	20	400
516.161	1	1	1	4	4
516.163	1	1	1	2	2
516.165	10	2	20	8	160
Total					4,872

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR part	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
516.141	30	2	60	0.5 (30 minutes)	30
516.165	10	2	20	1	20
Total					50

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: December 13, 2016.

Leslie Kux,

Associate Commission for Policy.

[FR Doc. 2016–30676 Filed 12–20–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy And Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: January 13, 2017.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Kelly Y. Poe, Scientific Review Program, Division of Extramural Activities, Room 3F40B, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5036, *poeky@mail.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: January 13, 2017.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Kelly Y. Poe, Scientific Review Program, Division of Extramural Activities, Room 3F40B, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5036, *poeky@mail.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: January 27, 2017.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Kelly Y. Poe, Scientific Review Program, Division of Extramural Activities, Room 3F40B, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5036, *poeky@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: *December 15, 2016.*

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–30691 Filed 12–20–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Applied Research Toward Zero Suicide Healthcare Systems.

Date: January 13, 2017.

Time: 2:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: December 15, 2016.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–30690 Filed 12–20–16; 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 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: Center for Scientific Review Special Emphasis Panel; Epilepsy and Alcohol Dependence.

Date: December 20, 2016.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: *December 15, 2016.*

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–30692 Filed 12–20–16; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Council.

Date: February 7, 2017.

Open: 8:00 a.m. to 1:00 p.m.

Agenda: To discuss program policies and issues.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A Convent Drive, Room 640, Bethesda, MD 20892.

Closed: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A Convent Drive, Room 640, Bethesda, MD 20892.

Contact Person: Valerie L. Prenger, Ph.D., MPH, Acting Division Director, Division of Extramural Research Activities, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7214, Bethesda, MD 20892–7924, 301–435–0270, *prengerv@nhlbi.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/nhlbac/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(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: December 14, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–30693 Filed 12–20–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc. as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of March 15, 2016.

DATES: The accreditation and approval of Intertek USA, Inc., as commercial

gauger and laboratory became effective on March 15, 2016. The next triennial inspection date will be scheduled for March 2019.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 109 Sutherland Dr., Chickasaw, AL 36611, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
3	Tank Gauging.
5	Metering.
7	Temperature Determination.
8	Sampling.
12	Calculations.
14	Natural Gas Fluids Measurements.
17	Maritime Measurement.

Intertek USA, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–02	D1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–03	D4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–07	D4807	Standard Test Method for Sediment in Crude Oil by Membrane Filtration.
27–08	D86	Standard Test Method for Distillation of Petroleum Products.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–14	D2622	Standard Test Method for Sulfur in Petroleum Products.
27–46	D5002	Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–53	D2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27–54	D1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: December 9, 2016.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2016–30726 Filed 12–20–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2016–0095]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Committee Management; Request for Applicants for Appointment to the DHS Data Privacy and Integrity Advisory Committee.

SUMMARY: The Department of Homeland Security Privacy Office seeks applicants for appointment to the DHS Data Privacy and Integrity Advisory Committee.

DATES: Applications for membership must reach the Department of Homeland Security Privacy Office at the address below on or before January 20, 2017.

ADDRESSES: If you wish to apply for membership, please submit the documents described below to Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, by *either* of the following methods:

- *E-mail: PrivacyCommittee@hq.dhs.gov.* Include the Docket Number (DHS–2016–0095) in the subject line of the message.
- *Fax:* (202) 343–4010

FOR FURTHER INFORMATION CONTACT: Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528, by telephone (202) 343–1717, by fax (202) 343–4010, or by email to *PrivacyCommittee@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: The DHS Data Privacy and Integrity Advisory Committee is an advisory committee established in accordance with the provisions of the *Federal Advisory Committee Act* (FACA), 5 U.S.C. Appendix. The Committee was established by the Secretary of Homeland Security under the authority of 6 U.S.C. 451 and provides advice at the request of the Secretary and the DHS Chief Privacy Officer on programmatic, policy, operational, administrative, and technological issues within DHS that relate to personally identifiable information (PII), as well as data integrity and other privacy-related matters. The duties of the Committee are

solely advisory in nature. In developing its advice and recommendations, the Committee may, consistent with the requirements of the FACA, conduct studies, inquiries, or briefings in consultation with individuals and groups in the private sector and/or other governmental entities. The Committee typically hosts two public meetings per calendar year.

Committee Membership: The DHS Privacy Office is seeking nine applicants for terms of three years from the date of appointment. Members are appointed by and serve at the pleasure of the Secretary of the Department of Homeland Security, and must be specially qualified to serve on the Committee by virtue of their education, training, and experience in the fields of data protection, privacy, and/or emerging technologies, including cybersecurity. Members are expected to actively participate in Committee and Subcommittee activities and to provide material input into Committee research and recommendations. Pursuant to the FACA, the Committee's Charter requires that Committee membership be balanced to include:

1. Individuals who are currently working in higher education, state or local government, or not-for-profit organizations;

2. Individuals currently working in for-profit organizations including at least one who shall be familiar with the data privacy-related issues addressed by small- to medium-sized enterprises; and

3. Other individuals, as determined appropriate by the Secretary.

Committee members serve as Special Government Employees (SGE) as defined in sect. 202(a) of title 18 U.S.C. As such, they are subject to Federal conflict of interest laws and government-wide standards of conduct regulations. Members must annually file Confidential Financial Disclosure Reports (OGE Form 450) for review and approval by Department ethics officials. DHS may not release these reports or the information in them to the public except under an order issued by a Federal court or as otherwise provided under the *Privacy Act* (5 U.S.C. 552a). Committee members are also required to obtain and retain at least a secret-level security clearance as a condition of their appointment. Members are not compensated for their service on the Committee; however, while attending meetings or otherwise engaged in Committee business, members may receive travel expenses and per diem in accordance with Federal regulations.

Committee History and Activities: All individuals interested in applying for Committee membership should review the history of the Committee's work. The Committee's charter and current membership, transcripts of Committee meetings, and all of the Committee's reports and recommendations to the Department are posted on the Committee's Web page on the DHS Privacy Office Web site (*www.dhs.gov/privacy*).

Applying for Membership: If you are interested in applying for membership on the DHS Data Privacy and Integrity Advisory Committee, please submit the following documents to Sandra Taylor, Designated Federal Officer, at the address provided below within 30 days of the date of this notice:

1. A current resume; and

2. A letter that explains your qualifications for service on the Committee and describes in detail how your experience is relevant to the Committee's work.

Your resume and your letter will be weighed equally in the application review process. Please note that by Administration policy, individuals who are registered as Federal lobbyists are not eligible to serve on Federal advisory committees. If you are registered as a Federal lobbyist and you have actively lobbied at any time within the past two years, you are not eligible to apply for membership on the DHS Data Integrity and Privacy Advisory Committee. Applicants selected for membership will be required to certify, pursuant to 28 U.S.C. 1746, that they are not registered as Federal lobbyists. Please send your documents to Sandra Taylor, Designated Federal Officer, DHS Data Privacy and Integrity Advisory Committee, by *either* of the following methods:

- *E-mail: PrivacyCommittee@hq.dhs.gov* or
- *Fax:* (202) 343–4010.

Privacy Act Statement: DHS's Use of Your Information

Authority: DHS requests that you voluntarily submit this information under its following authorities: the *Federal Records Act,* 44 U.S.C. 3101; the FACA, 5 U.S.C. appendix; and the *Privacy Act of 1974,* 5 U.S.C. 552a.

Principal Purposes: When you apply for appointment to the DHS Data Privacy and Integrity Advisory Committee, DHS collects your name, contact information, and any other personal information that you submit in conjunction with your application. We will use this information to evaluate your candidacy for Committee membership. If you are chosen to serve as a Committee member, your name will appear in publicly-available Committee documents, membership lists, and Committee reports.

Routine Uses and Sharing: In general, DHS will not use the information you provide for any purpose other than the Principal Purposes, and will not share this information within or outside the agency. In certain circumstances, DHS may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS/ALL–009 Department of Homeland Security Advisory Committees System of Records Notice (October 3, 2008, 73 FR 63181).

Effects of Not Providing Information: You may choose not to provide the requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to consider your application for appointment to the Data Privacy and Integrity Advisory Committee.

Accessing and Correcting Information: If you are unable to access or correct this information by using the method that you originally used to submit it, you may direct your request in writing to the DHS Chief FOIA Officer at *foia@hq.dhs.gov.* Additional instructions are available at *http://www.dhs.gov/foiaandintheDHS/ALL–002* Mailing and Other Lists System of Records referenced above.

Dated: December 16, 2016.

Jonathan R. Cantor,

Chief Privacy Officer (Acting). Department of Homeland Security.

[FR Doc. 2016–30737 Filed 12–20–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Approval From OMB of One New Public Collection of Information: Security Appointment Center (SAC) Visitor Request Form and Foreign National Vetting Request

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on a new Information Collection Request (ICR) abstracted below that we will submit to the Office of Management and Budget (OMB) for approval in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected

burden. The collection involves gathering information from individuals who plan to visit all TSA facilities in the National Capital Region.

DATES: Send your comments by February 21, 2017.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION: Christina A. Walsh at the above address, or by telephone (571) 227–2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

The Secretary of the Department of Homeland Security (DHS) is authorized to protect property owned, occupied, or secured by the Federal Government. *See* 40 U.S.C. 1315. *See also* 41 CFR 102–81.15 (requires Federal agencies to be responsible for maintaining security at their own or leased facilities). DHS Instruction Manual 121–01–011–01 (Visitor Management for DHS Headquarters and DHS Component Headquarters Facilities (April 19, 2014)) requires all DHS components to vet visitors using the National Crime Information Center (NCIC) Wants & Warrants/Criminal History checks before allowing them access to the building.

Purpose and Description of Data Collection

TSA has established a visitor management/vetting process that meets DHS requirements. This process allows TSA to conduct business with visitors and guest workers, while managing risks posed by individuals entering the building who have not been subject to a full employee security background check. Once vetted, TSA's Visitor Management System (VMS) generates temporary paper badges with photographs that visitors must wear when entering TSA facilities in the National Capital Region (NCR) [1] for the duration of their visit.

Under TSA's current visitor management/vetting process, visitors seeking to enter the TSA facilities must request access in person or through a current TSA employee by completing TSA Form 2802, Security Appointment Center (SAC) Visitor Request Form. TSA Form 2802 requires that visitors provide their first and last name, date and time of visit, visitor type (DHS or other government visitor), and whether they are a foreign or national visitor. In order to complete the new vetting process, TSA must collect Personally Identifiable Information (PII). The information collection includes the information TSA previously collected, and date of birth and social security number. TSA will use this information to vet visitors via the NCIC Wants & Warrants/Criminal History Checks and maintain records of access to TSA facilities.

TSA estimates the average annual number of visitors for 2016 through 2018 to be 42,843, with an annual time burden to the public of 714 hours.

Use of Results

TSA will use the results to determine the suitability of visitors to the TSA NCR locations. The collection would support the information needs of TSA to comply with security procedures to ensure a safe and secure work environment for TSA facilities' employees, contractors, and visitors.

Dated: December 15, 2016.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2016–30662 Filed 12–20–16; 8:45 am]

BILLING CODE 9110–05–P

[1] TSA facilities in the National Capital Region include TSA Headquarters, the Freedom Center, the Transportation Security Integration Facility (TSIF), the Metro Park office complex (Metro Park), and the Annapolis Junction facility (AJ).

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0025]

Agency Information Collection Activities: Waiver of Rights, Privileges, Exemptions and Immunities, Form I–508 & I–508F; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until February 21, 2017.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0025 in the body of the letter, the agency name and Docket ID USCIS–2008–0015. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2008–0015;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case

status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0015 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Waiver of Rights, Privileges, Exemptions and Immunities.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–508, I–508F; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form is used by the USCIS to determine eligibility of an applicant to retain the status of an alien lawfully admitted to the United States for permanent residence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–508 is 1,728 and the estimated hour burden per response is .33 hours. The estimated total number of respondents for the information collection Form I–508F is 200 and the estimated hour burden per response is .33 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 636 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $7,230.

Dated: December 15, 2016.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–30706 Filed 12–20–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0026]

Agency Information Collection Activities: Application To Adjust Status from Temporary to Permanent Resident, Form I–698; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on October 17, 2016, at 81 FR 71521, allowing for a 60-day public comment period. USCIS received one comment in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 20, 2017. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. (This is not a toll-free number.) All submissions received must include the agency name and the OMB Control Number 1615–0026.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions,

or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008 –0019 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application to Adjust Status from Temporary to Permanent Resident.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–698; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The data collected on Form I–698 is used by USCIS to determine the eligibility to adjust an applicant's residence status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection Form I–698 is 62 and the estimated hour burden per response is 1 hour and 15 minutes. There are 62 respondents requiring Biometric Processing at an estimated 1 hour and 10 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 150 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* There is an estimated $30,380 annual cost burden associated with this collection of information.

Dated: December 15, 2016.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–30707 Filed 12–20–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0106]

Agency Information Collection Activities: Petition for Qualifying Family Member of a U–1 Nonimmigrant, Form I–929; Extension, Without Change, of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until February 21, 2017.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0106 in the body of the letter, the agency name and Docket ID USCIS–2009–0010. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2009–0010;

(2) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2009–0010 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for Qualifying Family Member of a U–1 Nonimmigrant.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–929; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Section 245(m) of the Immigration and Nationality Act (Act) allows certain qualifying family members who have never held U nonimmigrant status to seek lawful permanent residence or apply for immigrant visas. Before such family members may apply for adjustment of status or seek immigrant visas, the U–1 nonimmigrant who has been granted adjustment of status must file an immigrant petition on behalf of the qualifying family member using Form I–929. Form I–929 is necessary for USCIS to make a determination that the eligibility requirements and conditions are met regarding the qualifying family member.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–929 is 1,244 and the estimated hour burden per response is 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,244 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $152,390.

Dated: December 15, 2016.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2016–30705 Filed 12–20–16; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5916–N–22]

60-Day Notice of Proposed Information Collection: Allocation of Operating Subsidies Under the Operating Fund Formula: Data Collection

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* February 21, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Allocation of Operating Subsidies Under the Operating Fund Formula: Data Collection.

OMB Approval Number: 2577–0029.

Type of Request: Extension of currently approved collections.

Form Number: HUD–52722 and HUD–52723.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) use this information in budget submissions which are reviewed and approved by HUD field offices as the basis for obligating operating subsidies. This information is necessary to calculate the eligibility for operating subsidies under the Operating Funding Program regulations, as amended. The Operating Fund is designed to provide the amount of operating subsidy needed for well-managed PHAs. PHAs submit the information electronically with these forms.

Total Estimated Burdens:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hours per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–52722	7,000	1	0.75	5,250	5,250	$30.98	162,645
HUD–52723	7,000	1	0.75	5,250	5,250	30.98	162,645
Total				10,500			325,290

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 14, 2016.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2016–30741 Filed 12–20–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5916–N–23]

60-Day Notice of Proposed Information Collection: Public Housing Contracting With Resident-Owned Business—Application Requirements

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* February 21, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5564 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Public Housing Contracting with Resident-Owned Businesses—Application Requirements.

OMB Approval Number: 2577–0161.

Type of Request: Reinstatement, with change, of a previously approved collection.

Form Numbers: N/A.

Description of the Need for the Information and Its Proposed Use: PHAs that enter into contracts with resident-owned businesses must comply with the requirements/procedures set forth in 24 CFR 963.10, 24 CFR 963.12, 24 CFR 85.36(h), 24 CFR 85.36(i) and other such contract terms that may be applicable to the procurement under the Department's regulations. These requirements include:

- Certified copies of any State, county, or municipal licenses that may be required of the business to engage in the type of business activity for which it was formed. Where applicable, the PHA must obtain a certified copy of its corporate charter or other organizational document that verifies that the business was properly formed in accordance with State law;
- Certification that shows the business is owned by residents, disclosure documents that indicate all owners of the business and each owner's percentage of the business along with sufficient evidence sufficient that demonstrates to the satisfaction of the PHA that the business has the ability to perform successfully under the terms and conditions of the proposed contract;
- Certification as to the number of contracts awarded, and the dollar amount of each contract award received, under the alternative procurement process; and
- Contract award documents, proof of bonding documents, independent cost estimates and comparable price analyses.

Members of Affected Public: Public Housing Agencies and Applicable Resident Entrepreneurs.

Total Estimated Burdens:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
2577–0161	81	1	81	24	1,944	$29.00	$56,376

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 14, 2016.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2016–30742 Filed 12–20–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5916–N–21]

60-Day Notice of Proposed Information Collection: Consolidated Public Housing Certification of Completion

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* February 21, 2017.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Consolidated Public Housing Certification of Completion.

OMB Approval Number: 2577–0021.

Type of Request: Extension of a currently approved collection.

Form Numbers: N/A.

Description of the need for the information and proposed use: Puplic Housing Agencies (PHAs) certify to HUD that contract requirements and standards have been satisfied in a project development and HUD may authorize payment of funds due the contractor/developer. The Certification is submitted by a Public Housing Agency (PHA) to indicate to HUD that contract requirements have been satisfied for a specific project.

TOTAL ESTIMATED BURDENS

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Certification	58	1	58	1.0	58	$30	$1,740
Total	58	1	58	1.0	58	30	1,740

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: December 14, 2016.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2016–30743 Filed 12–20–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5951–N–02]

Establishment of Tribal Intergovernmental Advisory Committee; Request for Nominations for Tribal Intergovernmental Membership

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: On June 23, 2016, HUD published a **Federal Register** notice announcing its intent to establish a HUD Tribal Intergovernmental Advisory Committee (TIAC), consisting of tribal governmental representatives, to assist HUD to further develop and improve its Indian housing programs. The TIAC is intended to further communications between HUD and Federally recognized Indian tribes on HUD programs, make recommendations to HUD regarding current program regulations, and provide advice in the development of HUD's American Indian and Alaska Native housing priorities. This notice also solicits nominations and explains how persons may be nominated for membership on the TIAC.

DATES: Nominations for Committee membership are due on or before: February 21, 2017.

ADDRESSES: Interested persons are invited to submit nominations for membership on the Tribal Intergovernmental Advisory Committee. There are two methods for submission of nominations as explained below. Additionally, all submissions must refer to the above docket number and title.

1. *Submission of Nominations by Mail.* Nominations may be submitted by mail to the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Nominations.* Interested persons may submit nominations electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages the electronic submission of nominations. Electronic submission allows the maximum time to prepare and submit a nomination, ensures timely receipt by HUD, and enables HUD to make the names immediately available to the public. Nominations submitted electronically through the *www.regulations.gov* Web site can be viewed by interested members of the public. Individuals should follow the instructions provided on that site to submit nominations electronically.

Note: To receive consideration, nominations must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice. Facsimile (FAX) nominations are not acceptable.

Public Inspection of Nominations. All properly submitted nominations and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the submissions must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of all submissions are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Heidi J. Frechette, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4126, Washington, DC 20410–5000, telephone, 202–401–7914 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Consistent with Executive Order 13175, HUD's Tribal Government-to-Government Consultation Policy recognizes the right of Indian tribes to self-governance, and supports tribal sovereignty and self-determination. The Consultation Policy provides that HUD will engage in regular and meaningful consultation and collaboration with Indian tribal officials in the development of federal policies that have tribal implications, and provides that HUD may establish a standing tribal advisory committee. Executive Orders 13175 and 13647 require Federal agencies to advance tribal self-governance and ensure that the rights of sovereign tribal governments are fully respected by conducting open and candid consultations. HUD establishes the TIAC to further enhance consultation and collaboration with tribal governments. Several Federal agencies have established similar tribal advisory committees, including the Environmental Protection Agency, the Department of Health and Human Services, and the Department of the Treasury. These advisory committees convene periodically during the year to exchange information with agency staff, to provide agencies with an opportunity to notify tribal leaders of activities or policies that could affect Indian tribes, and to provide guidance on consultation.

II. This Notice

This notice announces the establishment of the Tribal Intergovernmental Advisory Committee (TIAC) for HUD as part of its commitment to strengthen the unique government-to-government relationship between Federally-recognized American Indian tribes and Federal agencies.

A. Purpose and Role of the TIAC.

The purposes of the TIAC are:

(1) To further facilitate intergovernmental communication between HUD and tribal governments on all HUD programs;

(2) To make recommendations to HUD regarding current program regulations that may require revision, as well as suggest methods to develop such changes. The TIAC will not, however, negotiate any changes to regulations that are subject to negotiated rulemaking under Section 106 of the Native American Housing Assistance and Self-Determination Act (NAHASDA); and

(3) To advise on the development of HUD's American Indian and Alaska Native (AIAN) housing priorities.

The role of the TIAC is to provide recommendations and input to HUD, and to provide a vehicle for regular, meaningful consultation and collaboration with tribal governments. It will not replace other means of tribal consultations, but supplement them. HUD will maintain the responsibility to exercise program management, including the drafting of HUD notices and guidance.

For the purpose of the TIAC, the term ''tribal government'' means: Any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians as defined in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

B. Charter and Protocols

The TIAC will develop its own ruling charter and protocols. HUD will provide staff for the TIAC to act as liaisons between TIAC and HUD officials, manage meeting logistics, and provide general support for TIAC activities.

C. Meetings and Participation

The Committee will not convene before October 1, 2017. Subject to availability of federal funding, the TIAC will meet in-person at least once a year to discuss agency policies and activities with HUD, set shared priorities, and facilitate further consultation with tribal leaders. HUD may pay for these meetings, including the member's cost to travel to these meetings. The TIAC may meet on a more frequent basis by conference calls or other forms of communication. Additional in-person meetings may be scheduled at HUD's discretion.

Participation at TIAC meetings will be limited to TIAC members or their alternates. TIAC members must be elected or duly appointed officers of a tribal government, and alternates must be tribal employees with authority to act on behalf of the elected tribal government official. Alternates must be designated in writing by the member's tribal government or elected tribal government official. TIAC members may bring one technical advisor to the meeting at the tribe's expense.

Meeting minutes will be available on the HUD Web site.

D. TIAC Membership

The TIAC will be comprised of HUD representatives and tribal government officials from across the country. The TIAC will be composed of up to six HUD officials (including the Secretary or his or her designee, as well as the Assistant Secretaries for Public and Indian Housing, Policy Development and Research, and Community Planning and Development) and up to fifteen tribal representatives. Up to two tribal members will represent each of the six

HUD ONAP regions. Up to three remaining tribal members will serve at-large.

The Secretary will appoint the members of the TIAC. TIAC tribal delegates will serve a term of 2 years. To ensure continuity between tribal terms, delegates will have a staggered term of appointment. In order to establish a staggered term of appointment, half of the tribal members appointed in the inaugural year of the TIAC will serve 2 years and the other half will serve 3 years. Delegates must designate their preference to serve 2 or 3 years; however, HUD will make the final determination on which members will serve for 3 years. Once these members complete these initial terms, all future committee members will serve two-year terms. Should a member's tenure as a tribal leader come to an end during their appointment to the TIAC, the member's tribe may nominate a replacement.

E. Objective of the TIAC

The establishment of the TIAC is intended to enhance government-to-government relationships, communications, and mutual cooperation between HUD and tribal governments and is not intended to, and will not, create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other persons.

III. Request for Nominations

The Committee will be composed of up to six HUD officials and up to fifteen tribal representatives. Up to two tribal members will represent each of the six HUD ONAP regions. The three remaining tribal members will serve at-large. Only duly elected or appointed tribal leaders may serve as tribal members of the TIAC. Once appointed to the TIAC, tribal leaders may designate an alternate who is a tribal employee and has the authority to act on his or her behalf. One of the tribal members will be selected by the Committee to serve as the chairperson.

If you are interested in serving as a member of the Committee or in nominating another person to serve as a member of the Committee, you may submit a nomination to HUD in accordance with the **ADDRESSES** section of this notice. Your nomination for membership on the Committee must include:

1. The name of your nominee, a description of the interests the nominee would represent, and a description of the nominee's experience and interest in American Indian and Alaska Native housing and community development matters;

2. Evidence that your nominee is a duly elected or appointed tribal leader and is authorized to represent a tribal government;

3. A written commitment from the nominee that she or he will actively participate in good faith in the Committee meetings; and

4. A written preference for serving either a two- or a three-year term on the TIAC.

HUD will appoint the members of the TIAC from the pool of nominees requested by this notice. HUD will announce its final selections for TIAC membership in a future **Federal Register** notice. Members will be selected based on proven experience and interest in AIAN housing and community development matters, and whether the interest of the proposed member could be represented adequately by other members.

In addition to the criteria above, at-large members will be selected based on their ability to represent specific interests that might not be represented by the selected regional members.

Dated: *December 16, 2016.*

Julián Castro,

Secretary.

[FR Doc. 2016–30744 Filed 12–20–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. FWS–HQ–ES–2016–0004]

RIN 0648–XE423

Joint U.S. Fish and Wildlife Service and National Marine Fisheries Service Habitat Conservation Planning Handbook

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Services), announce the availability of the final revised Habitat Conservation Planning (HCP) Handbook, which describes requirements, procedures, and guidance for permit issuance and conservation plan development for incidental take permits under the Endangered Species Act. The purpose of the newly revised joint HCP Handbook is to instruct the Services on how to assist applicants to develop HCPs in an efficient and effective manner, while ensuring adequate conservation of listed species. Although the Handbook is designed for the Services, it also can be useful to other HCP practitioners, such as applicants, consultants, and partners.

FOR FURTHER INFORMATION CONTACT: Trish Adams, U.S. Fish and Wildlife Service (phone: 703–358–2120; email: *trish_adams@fws.gov*), or Maggie Miller, National Marine Fisheries Service (phone: 301–427–8457; email: *Margaret.h.miller@noaa.gov*). People who use a Telecommunications Device for the Deaf (TDD) may call the Federal Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Introduction

We, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (together, the Services), announce the availability of the final revised Habitat Conservation Planning (HCP) Handbook, a joint handbook that describes requirements, procedures, and guidance for permit issuance and conservation plan development for incidental take permits under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* ESA). The Services issue these ESA section 10(a)(1)(B) incidental take permits and help applicants develop conservation plans as a prerequisite to obtaining these permits.

The original HCP Handbook was made available via a **Federal Register** notice on December 2, 1996 (61 FR 63854), and was subsequently revised by addendum, effective July 3, 2000 (65 FR 35242; June 1, 2000). On June 28, 2016, we opened a 60-day comment period for a draft revised joint HCP Handbook, announcing it via the **Federal Register** (81 FR 41986). During that comment period, we received 54 public comments. We now announce the final revised joint HCP Handbook, which is intended to be more streamlined and user friendly than previous editions. It presents and provides guidance on the HCP process from start to finish.

Document Availability

The final joint HCP Handbook is available at: *https://www.fws.gov/*

endangered/esa-library/pdf/HCP_Handbook.pdf (FWS) and *http://www.nmfs.noaa.gov/pr/laws/esa/policies.htm* (NMFS).

Background

The purpose of the ESA is to protect and recover threatened and endangered species and the ecosystems on which they depend. Section 9 of the ESA prohibits ''take'' of any fish or wildlife species listed as endangered. In addition, take of many species listed as threatened is prohibited by regulation. ''Take'' is defined in ESA section 3 as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' Before 1982, the ESA had a mechanism for exempting Federal actions (section 7) from the prohibition on ''take''; however, it did not have one for non-Federal activities, except for permits to authorize ''take'' from scientific research or certain other conservation actions. Thus, non-Federal parties engaging in activities that might result in ''take'' of listed species risked violating ESA section 9 take prohibitions. Congress recognized the need for a process to reduce conflicts between protection of listed species and economic development, so it amended the ESA in 1982 to add an exemption for ''incidental take'' of listed species that would result from non-Federal activities (section 10(a)(1)(B)). ''Incidental take'' is that which is incidental to, and not the purpose of, carrying out an otherwise lawful activity. To obtain a permit under ESA section 10(a)(1)(B), applicants must develop a conservation plan that meets specific requirements identified in ESA section 10 and its regulations (50 CFR 17.22 and 17.32; 50 CFR 222.25, 222.27, and 222.31). Among other requirements, the plan must specify (1) the impacts that are likely to result from ''incidental take'' and (2) the measures that the permit applicant will undertake to minimize and mitigate such impacts. Conservation plans under section 10(a)(1)(B) have come to be known as habitat conservation plans (HCPs). ESA section 10(a)(2)(B) provides statutory criteria that must be satisfied before the Services can issue an incidental take permit.

HCP Handbook Purpose

The purpose of the joint HCP Handbook is to instruct the Services on how to assist applicants to develop HCPs in an efficient and effective manner while ensuring adequate conservation of listed species. The HCP Handbook guides Services staff, phase by phase, through development, implementation, and environmental compliance, using streamlined approaches whenever possible. It draws on past experience to help staff understand regulations and policy and navigate the various processes for completing an HCP and issuing a permit. Although the joint HCP Handbook is designed specifically for Services staff, it also can be helpful to other HCP practitioners, such as applicants, consultants, and partners.

Summary of Changes From the 1996 Version of the HCP Handbook

The final revised HCP Handbook reflects current FWS and NMFS HCP practices, guidance, and policies; incorporates lessons from implementing the HCP program over the past 30 years; and provides guidance to assist applicants and the Services to avoid common pitfalls that can delay HCP negotiations and development or processing of incidental take permits.

The goal is to provide a joint HCP Handbook that helps streamline the process and improve efficiency of the HCP program. To accomplish this, we reorganized the HCP Handbook so that it walks Services staff and stakeholders through each part of the HCP process, from the pre-application stage through incidental take permit issuance and HCP implementation through monitoring and compliance.

Some of the most significant changes we made include the following:

(1) Introduced the concept that applicants should ''go fast by starting slowly,'' which emphasizes the benefits to applicants of thorough pre-planning before jumping directly into HCP development, especially for landscape-level HCPs.

(2) Focused on the vital review and administrative steps without compromising legal integrity, in order to help streamline the process.

(3) Clarified the concept of minimizing and mitigating the impacts of taking ''to the maximum extent practicable.''

(4) Ensured consistency with the most recent policies, such as the revised FWS Mitigation Policy, which was announced via a **Federal Register** notice on November 21, 2016.

(5) Clarified the use of implementing agreements.

(6) Updated and clarified permit duration.

(7) Provided guidance on how to comply with section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*).

(8) Provided guidance on addressing climate change.

(9) Updated and clarified what should be addressed through adaptive management versus changed and unforeseen circumstances.

(10) Provided guidance on when to initiate the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) process and intra-Service ESA section 7 consultations, and when to seek assistance from the Solicitor or General Counsel.

(11) Updated and clarified information concerning take analysis, responding to public comments, public notices, permit decision documents, compliance monitoring, and incidental take permit suspension and revocation.

Final Revisions Made to Draft Handbook and Reponses to Comments

We published a notice of availability and request for public comment on our draft joint HCP Handbook in the **Federal Register** on June 28, 2016 (81 FR 41986). There was a 60-day comment period ending August 29, 2016, during which we received 54 comments. We received very complex, thoughtful, and often very detailed comments. Below are our responses to the most frequent comments and those that potentially could be controversial. After considering public comments, we clarified language in the Handbook based on the input we received.

Comment 1: We received several comments requesting an extension of the 60-day comment period.

Response 1: We believe that 60 days was sufficient to allow for public input by interested parties on the draft revised HCP Handbook, as the quantity and quality of the substantive comments the Services received attest. Another reason we think the comment period was of sufficient length is that we are developing a revision to an existing Handbook rather than an entirely new product; this revised Handbook largely provides additional information that clarifies the original Handbook.

Comment 2: The draft HCP Handbook is repetitive and too complex for an applicant or project proponent.

Response 2: We have taken steps in the final editing process to cut down on the repetitive nature of the HCP Handbook, and we have also cross-referenced sections. However, our target audience is internal Services HCP staff rather than the general public. We recommend that applicants coordinate with local field offices for more specific detail and advice or guidance on their specific project needs before developing their HCPs.

Comment 3: The Services have provided a new standard for minimization and mitigation that is

inconsistent with the requirements of the ESA.

Response 3: Some commenters took issue with the explanations in the Handbook, particularly in Chapter 9, of the ESA requirement that applicants must ''to the maximum extent practicable, minimize and mitigate the impacts of'' permitted taking. Some commenters interpreted these explanations and related discussions of the concept of ''fully offset,'' as creating an alternative or substitute for the ESA's statutory ''maximum extent practicable'' standard. However, the Handbook explains the ESA standard and clarifies the discussion that was in the 1996 Handbook. It does not establish a new or alternative standard for minimization and mitigation.

We acknowledge that the manner in which this topic was presented in the draft may be confusing. Therefore, we have modified the language to provide clearer guidance that is consistent with the ESA's ''maximum extent practicable'' standard. We have also revised the language to better explain how applicants can meet the ESA's ''maximum extent practicable'' standard.

Comment 4: The guidance on climate change in the Handbook goes too far. Applicants should not have to come up with complex models or complex global climate change scenarios.

Response 4: We have clarified that climate change effects that could impact the applicant's proposed conservation strategy and the durability of mitigation should be considered in the HCP. In addition, we changed all references of ''climate change'' to ''climate change effects,'' in order to reduce confusion. Furthermore, applicants are not responsible for addressing climate change at a global scale.

Regarding the comments concerning complex modeling, we suggest the use of various models to help applicants consider the effects of climate change while developing their conservation strategy. The Handbook does not impose a requirement to use specific models.

Comment 5: The draft HCP Handbook undermines the ''No Surprises'' rule.

Response 5: One of our main goals with this HCP Handbook revision was to incorporate lessons learned throughout our 30 years of program implementation in order to better address the possibility of changed or unforeseen circumstances by using tools such as adaptive management and better advance planning. With ''No Surprises,'' State and private landowners are assured that if ''unforeseen circumstances'' arise, the Services will not require the commitment of additional activities or additional restrictions beyond the level otherwise agreed to in the HCP without the consent of the permit holder.

The Handbook does not change or undermine the ''no surprises'' rule, but rather it encourages applicants to consider a robust list of potential changed and unforeseen circumstances that could arise during the permit term. This will ensure successful implementation of the HCP and help to ensure that the conservation strategy and mitigation plan will endure in perpetuity, as required by the incidental take permit issuance criteria. We have provided clarifying language regarding the ''No Surprises'' rule.

Comment 6: The term ''mitigation'' is used throughout the Handbook, and there is no clear description about what mitigation actually means.

Response 6: The Handbook treats mitigation in a manner consistent with the requirements and legal authorities provided by the ESA. We acknowledge that our use of the term ''mitigation'' in the draft was sometimes confusing. We have clarified our treatment of the ESA section 10 mitigation requirements and also provided additional background, including the definition of mitigation and general principles of Federal mitigation policy as described in the November 3, 2015, Presidential Memorandum on mitigation. These clarifications can be found primarily in Chapter 9.

Comment 7: Please clarify whether the HCP Handbook is guidance or policy.

Response 7: The HCP Handbook is a Services guidance document that includes reference to respective agency policies (and citations) where appropriate.

Comment 8: Contrary to the statements in the Handbook, the Services cannot require that all ESA-listed species that applicants expect they may take from proposed covered activities be covered by the HCP and incidental take permit. The Services should clarify that it is up to applicants to decide which species to include as covered species.

Comment 8: Ultimately, it is the Services who determine if the applicant's incidental take permit application is complete. If the application does not include all of the ESA-listed wildlife species that we are reasonably certain may be taken as a result of the covered activities, then the Services would consider the application incomplete. Therefore, to ensure the applicant provides a complete incidental take permit application, the revised final version of the Handbook states, ''The Services require applicants to include as HCP-covered species all ESA-listed wildlife species for which incidental take is reasonably certain to occur, unless take is addressed through a separate ESA mechanism (*e.g.,* section 7 consultation with another Federal agency, separate incidental take permit, etc.), or to explain or demonstrate in the HCP why the applicant does not anticipate take or will avoid take during implementation of covered activities (*e.g.,* inclusion of measures that will avoid potential for take).'' In the view of the Services, this best reflects the language, structure, and congressional purposes of ESA section 10 and the ESA as a whole. In addition, it is important to note that section 9 prohibitions make it illegal for any person subject to the jurisdiction of the United States to take any wildlife species listed as endangered (and threatened through FWS regulations), without written authorization.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 7, 2016.

James W. Kurth,

Acting Director, U.S. Fish and Wildlife Service.

Dated: December 8, 2016

Samuel D. Rauch, III,

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

[FR Doc. 2016–30673 Filed 12–20–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–R–2016–N214]; [FXGO1664091HCC0–FF09D00000–178]

Wildlife and Hunting Heritage Conservation Council; Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting of the Wildlife and Hunting Heritage Conservation Council (Council). The Council provides advice about wildlife and habitat conservation endeavors that benefit wildlife resources; encourage partnership among the public, sporting conservation organizations, States, Native American tribes, and the Federal Government; and benefit recreational hunting.

DATES: *Meeting:* Tuesday, February 7, 2017, from 10:30 a.m. to 5 p.m., and Wednesday, February 8, 2017, from 8 a.m. to 1 p.m. (Eastern Standard Time). For deadlines and directions on

registering to attend, submitting written material, and giving an oral presentation, please see Public Input under **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held in Room 5160 at the Main Interior Building, 1849 C Street NW., Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Joshua Winchell, Council Designated Federal Officer, by U.S. mail at the U.S. Fish and Wildlife Service, National Wildlife Refuge System, 5275 Leesburg Pike, Falls Church, VA 22041–3803; by telephone at (703) 358–2639; or by email at *joshua_winchell@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Wildlife and Hunting Heritage Conservation Council will hold a meeting.

Background

Formed in February 2010, the Council provides advice about wildlife and habitat conservation endeavors that:

1. Benefit wildlife resources;
2. Encourage partnership among the public, sporting conservation organizations, States, Native American tribes, and the Federal Government; and
3. Benefit recreational hunting.

The Council advises the Secretary of the Interior and the Secretary of Agriculture, reporting through the Director, U.S. Fish and Wildlife Service (Service), in consultation with the Director, Bureau of Land Management (BLM); Director, National Park Service (NPS); Chief, Forest Service (USFS); Chief, Natural Resources Conservation Service (NRCS); and Administrator, Farm Services Agency (FSA). The Council's duties are strictly advisory and consist of, but are not limited to, providing recommendations for:

1. Implementing the Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;
2. Increasing public awareness of and support for the Wildlife Restoration Program;
3. Fostering wildlife and habitat conservation and ethics in hunting and shooting sports recreation;
4. Stimulating sportsmen and women's participation in conservation and management of wildlife and habitat resources through outreach and education;
5. Fostering communication and coordination among State, tribal, and Federal governments; industry; hunting and shooting sportsmen and women; wildlife and habitat conservation and management organizations; and the public;
6. Providing appropriate access to Federal lands for recreational shooting and hunting;
7. Providing recommendations to improve implementation of Federal conservation programs that benefit wildlife, hunting, and outdoor recreation on private lands; and
8. When requested by the Designated Federal Officer in consultation with the Council Chairperson, performing a variety of assessments or reviews of policies, programs, and efforts through the Council's designated subcommittees or workgroups.

Background information on the Council is available at *http://www.fws.gov/whhcc.*

Meeting Agenda

The Council will convene to consider issues including:

1. Wildlife habitat and health;
2. Funding for public lands and wildlife management;
3. Endangered Species Act; and
4. Other Council business.

The final agenda will be posted on the Internet at *http://www.fws.gov/whhcc.*

Attendance

To attend this meeting, register by close of business on the dates listed in Public Input. Please submit your name, time of arrival, email address, and phone number to the Council Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**).

Public Input

If you wish to	You must contact the Council Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) no later than
Attend the meeting	January 26, 2017.
Submit written information or questions before the meeting for the council to consider during the meeting.	January 26, 2017.
Give an oral presentation during the meeting.	January 26, 2017.

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Council to consider during the public meeting. Written statements must be received by the date in Public Input, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements must be supplied to the Council Designated Federal Officer in both of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

Giving an Oral Presentation

Individuals or groups requesting to make an oral presentation at the meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact the Council Designated Federal Officer, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting. Nonregistered public speakers will not be considered during the meeting. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Council Designated Federal Officer up to 30 days subsequent to the meeting.

Meeting Minutes

Summary minutes of the conference will be maintained by the Council Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). They will be available for public inspection within 90 days of the meeting, and will be posted on the Council's Web site at *http://www.fws.gov/whhcc.*

Joshua Winchell,

Designated Federal Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2016–30749 Filed 12–20–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX.17.MR00.G74E4.00]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of revision of a currently approved information collection, (1028–0098).

SUMMARY: We (the U.S. Geological Survey) are notifying the public that we have submitted to the Office of Management and Budget (OMB) the information collection request (ICR) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent

burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR. This collection is scheduled to expire on January 31, 2017.

DATES: To ensure that your comments on this ICR are considered, OMB must receive them on or before January 20, 2017.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, via email: (*OIRA_SUBMISSION@omb.eop.gov*); or by fax (202) 395–5806; and identify your submission with 'OMB Control Number 1028–0098 Nonindigenous Aquatic Species Sighting Reporting Form and Alert Registration Form'. Please also forward a copy of your comments and suggestions on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7195 (fax); or *gs-info_collections@usgs.gov* (email). Please reference 'OMB Information Collection 1028–0098: Nonindigenous Aquatic Species Sighting Reporting Form and Alert Registration Form' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Pam Fuller at (352) 264–3481 (telephone); *pfuller@usgs.gov* (email); or by mail at U.S. Geological Survey, 7920 NW., 71st Street, Gainesville, Florida 32653. You may also find information about this ICR at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

America is under siege by many harmful non-native species of plants, animals, and microorganisms. More than 6,500 nonindigenous species are now established in the United States, posing risks to native species, valued ecosystems, and human and wildlife health. These invaders extract a huge cost, an estimated $120 billion per year, to mitigate their harmful impacts. The current annual environmental, economic, and health-related costs of invasive species exceed those of all other natural disasters combined.

Through its Invasive Species Program (*http://www.usgs.gov/ecosystems/invasive_species/*), the USGS plays an important role in federal efforts to combat invasive species in natural and semi-natural areas through early detection and assessment of newly established invaders; monitoring of invading populations; and improving understanding of the ecology of invaders and factors in the resistance of habitats to invasion. The USGS provides the tools, technology, and information supporting efforts to prevent, contain, control, and manage invasive species nationwide. To meet user needs, the USGS also develops methods for compiling and synthesizing accurate and reliable data and information on invasive species for inclusion in a distributed and integrated web-based information system.

As part of the USGS Invasive Species Program, the Nonindigenous Aquatic Species (NAS) database (*http://nas.er.usgs.gov/*) functions as a repository and clearinghouse for occurrence information on nonindigenous aquatic species from across the United States. It contains locality information on more than 1,900 species of vertebrates, invertebrates, and vascular plants introduced since 1765. Taxa include foreign species as well as those native to North America that have been transported outside of their natural range. The NAS Web site provides immediate access to new occurrence records through a real-time interface with the NAS database. Visitors to the Web site can use a set of predefined queries to obtain lists of species according to state or hydrologic basin of interest. Fact sheets, distribution maps, and information on new occurrences are continually posted and updated. Dynamically generated species distribution maps show the spatial accuracy of the locations reported, population status, and links to more information about each report.

Information is collected from the public regarding the local occurrences of nonindigenous aquatic species, primarily fish, in open waters of the United States. This is vital information for early detection and rapid response for the possible eradication of organisms that may be considered invasive in a natural environment such as a lake, river, stream, or pond. Because it is not possible for USGS scientists to monitor all open waters for harmful nonindigenous organisms, the public can help by serving as the ''eyes and ears'' for the USGS's Nonindigenous Aquatic Species Program.

Members of the public who wish to report the occurrence of a suspected nonindigenous aquatic species, usually encountered through fishing or some other outdoor recreational activity, may fill out and submit a form (*http://nas.er.usgs.gov/SightingReport.aspx*) posted on our Web site. The information requested includes type of organism, date and location of sighting, photograph(s) if available, and basic observer contact information (to allow the USGS to contact the observer in the event additional information, such as Photos or more specific location details are needed).

NAS program staff maintains an alert system that contacts individuals via email when species occurrences are new to a county, drainage (HUC 8), or state. The alerts contain information on the specimen occurrence, such as the date and location of the occurrence, where the species is newly introduced, and any comments included by the reporter. In order for individuals (private or public citizens) to receive these alerts, they must register their first and last name (fictitious or real), email address, and a password on our alert registration form (*https://nas.er.usgs.gov/AlertSystem/Register.aspx*). Custom alerts are sent via email to individuals based on the alert types they chose in the alert sign-up page, and these custom alerts can be altered by the registered individual by logging in to the alert login page (*https://nas.er.usgs.gov/AlertSystem/AlertLogin.aspx*).

The USGS does not actively solicit or require observation or contact information from the public. Participation in the reporting process and the alert system is completely voluntary. The personally identifiable information given by individuals in these forms is stored internally in our sighting report and alert system databases, with all passwords encrypted to protect users' security.

II. Data

OMB Control Number: 1028–0098.

Form Number: Various (12 forms).

Title: Nonindigenous Aquatic Species Sighting Reporting Form and Alert Registration Form.

Type of Request: Revision of a currently approved information collection.

Respondent Obligation: Participation is voluntary.

Frequency of Collection: Occasional.

Description of Respondents: General public, State and Local governments, Tribal nations.

Estimated Total Number of Annual Responses: We estimate 600 users (400 individuals and 200 state/local/tribal governments) per year for the sighting report form, and 80 users (50 individuals and 30 state/local/tribal governments) per year for the alert registration form.

Estimated Time per Response: We estimate that it will take 3 minutes per person to complete the sighting report form and 1 minute per person to complete the alert registration form.

Estimated Annual Burden Hours: We estimate 30 hours for the sighting report form, and 2 hours for the alert registration form; a total of 32 hours for the two forms.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. Until the OMB approves a collection of information, you are not obliged to respond.

Comments: On October 5, 2016, we published a **Federal Register** notice (81 FR 69074) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on December 5, 2016. We received one comment. The commenter asked how the Department of the Interior (DOI) is coordinating with U.S. Department of Agriculture (USDA) to halt importation of invasive species that are currently represented in our NAS database. Our response indicated that the U.S. Fish and Wildlife Service (USFWS) under the DOI, and the Animal and Plant Health Inspection Service (APHIS) under the USDA are both authorized to regulate plant and animal species imported into and within the U.S. We provided Web site URLs for further reference to the agencies' policies and prohibited species lists.

III. Request for Comments

We again invite comments concerning this ICR as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us and the OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Kenneth Rice,

Center Director, Wetland and Aquatic Research Center, U.S. Geological Survey.

[FR Doc. 2016–30697 Filed 12–20–16; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[17X L1109AF LLUTC03000. L16100000.DR0000.LXSS004J0000 24–1A]

Notice of Availability of the Record of Decision and the Approved Resource Management Plans for the Beaver Dam Wash and Red Cliffs National Conservation Areas; and Approved Amendment to the St. George Field Office Resource Management Plan in Washington County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Records of Decision (RODs) and the Approved Resource Management Plans (RMPs) for the Beaver Dam Wash and Red Cliffs National Conservation Areas (NCA RMPs); and Approved Amendment to the St. George Field Office RMP (RMP Amendment) located in Washington County, Utah. The Utah State Director signed the RODs on December 21, 2016, which constitutes the final decision of the BLM and makes the Approved NCA RMPs and RMP Amendment effective.

ADDRESSES: Copies of the RODs and Approved NCA RMPs/RMP Amendment are available upon request from Interagency Public Information Center, 345 East Riverside Drive, St. George, UT 84790, or via the Internet at *http://bit.ly/2fhtN3P.* Copies of the RODs and Approved NCA RMPs/RMP Amendment are available for public inspection at the BLM Utah State Office Public Room, 440 West 200 South, Suite 500, Salt Lake City, UT 84101, during normal business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Keith Rigtrup, RMP Planner, telephone 435–865–3000; address 345 East Riverside Drive, St. George, UT 84790; email *krigtrup@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Approved NCA RMPs provide comprehensive management plans for the long-term conservation and management of the Beaver Dam Wash NCA (63,480 acres of public land) and the Red Cliffs NCA (44,859 acres of public land). The NCA RMPs prescribe appropriate uses and conservation measures and are consistent with the planning process and other provisions directed by the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11, at Title 1, Subtitle O, hereinafter OPLMA). The need to amend the St. George Field Office RMP (approved in 1999) is also derived from OPLMA. Section 1977(b)(1) of OPLMA, directed the BLM to develop a comprehensive travel management plan for public lands in Washington County. The 1999 St. George Field Office RMP needed to be amended to modify certain existing off-highway vehicle (OHV) area designations (open, limited or closed) before this comprehensive travel management plan could be developed. The decisions contained in the Approved NCA RMPs and RMP Amendment do not apply to private and State lands within the boundaries of the NCAs or the St. George Field Office planning area.

The Approved NCA RMPs and RMP Amendment were developed from the Proposed NCA RMPs and RMP Amendment that were released, along with the Final Environmental Impact Statement (EIS), on September 2, 2016. The Proposed RMPs and RMP Amendment combined components of the four alternatives that were presented in the Draft NCA RMPs and RMP Amendment, and associated Draft EIS, released for public review on July 17, 2015. The NCA RMPs address the long-term management of public land resources and land uses, while fulfilling the conservation purpose of the NCAs for which the public lands received Congressional designation through OPLMA.

There were 41 protests of the Proposed NCA RMPs and RMP Amendment. All valid protests were resolved during the BLM Director's Plan Protest Resolution Process, prior to the signing of the RODs. The Governor's Consistency Review, which also took place after the release of the proposed plans, identified three concerns. The

BLM provided the Utah Governor with a detailed response and made editorial modifications in preparing the Approved NCA RMPs and RMP Amendment to address issues raised by the Governor. The NCA RMPs are the culmination of a significant effort by the BLM and interested members of the public, community stakeholders, and other local, state and federal partners to provide long-term management direction for the first NCAs designated by Congress in Utah.

Certain decisions in the Approved NCA RMPs are implementation decisions and are appealable to the Interior Board of Land Appeals. These implementation level decisions are noted in the RODs for the Beaver Dam Wash and Red Cliffs NCAs (under livestock grazing and recreation) and are appealable under 43 CFR part 4. Any party adversely affected by the implementation level decisions may appeal within 30 days of publication of this Notice of Availability in accordance with the provisions of 43 CFR, part 4, subpart E. The appeal should state the specific numbered decision and the rationale for the appeal. Within 30 days of the posting of this decision (''date of service''), a Notice of Appeal must be filed in writing to: State Director-BLM Utah State Office 440 West 200 South, Suite 500 Salt Lake City, Utah 84101–1345. At the same time, a copy of the Notice of Appeal must also be sent to: Regional Solicitor—U.S. Department of the Interior, 6201 Federal Building, 1235 South State Street, Salt Lake City, Utah 84138–1180.

Please consult the appropriate regulations (43 CFR, part 4, subpart E) for further appeal requirements.

Authority: 40 CFR 1506.6.

Edwin L. Roberson,

State Director.

[FR Doc. 2016–30755 Filed 12–20–16; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 17XR0680A1, RX.31580001.0090104]

Agency Information Collection; Renewal of a Currently Approved Information Collection (OMB Control Number 1006–0005)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: We, the Bureau of Reclamation, intend to submit a request for renewal of an existing approved information collection to the Office of Management and Budget (OMB) titled, Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428, OMB Control Number 1006–0005.

DATES: Submit written comments on this information collection request on or before February 21, 2017.

ADDRESSES: Send written comments or requests for copies of the proposed forms to Stephanie McPhee, Bureau of Reclamation, Office of Policy and Administration, 84–55000, P.O. Box 25007, Denver, CO 80225–0007; or via email to *smcphee@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Stephanie McPhee at (303) 445–2897.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is required under the Reclamation Reform Act of 1982 (RRA), Acreage Limitation Rules and Regulations, 43 CFR part 426, and Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land, 43 CFR part 428. This information collection requires certain landholders (direct or indirect landowners or lessees) and farm operators to complete forms demonstrating their compliance with the acreage limitation provisions of Federal reclamation law. The forms in this information collection are submitted to districts that use the information to establish each landholder's status with respect to landownership limitations, full-cost pricing thresholds, lease requirements, and other provisions of Federal reclamation law. In addition, forms are submitted by certain farm operators to provide information concerning the services they provide and the nature of their farm operating arrangements. All landholders whose entire westwide landholdings total 40 acres or less are exempt from the requirement to submit RRA forms. Landholders who are ''qualified recipients'' have RRA forms submittal thresholds of 80 acres or 240 acres depending on the district's RRA forms submittal threshold category where the land is held. Only farm operators who provide multiple services to more than 960 acres held in trusts or by legal entities are required to submit forms.

II. Changes to the RRA Forms and Their Instructions

No changes have been made to the currently approved RRA forms and the corresponding instructions to generate the proposed RRA forms that will be effective in the 2018 water year.

III. Data

OMB Control Number: 1006–0005.

Title: Individual Landholder's and Farm Operator's Certification and Reporting Forms for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

Form Number: Form 7–2180, Form 7–2180EZ, Form 7–2181, Form 7–2184, Form 7–2190, Form 7–2190EZ, Form 7–2191, Form 7–2194, Form 7–21TRUST, Form 7–21PE, Form 7–21PE–IND, Form 7–21FARMOP, Form 7–21VERIFY, Form 7–21FC, Form 7–21XS, Form 7–21XSINAQ, Form 7–21CONT–I, Form 7–21CONT–L, Form 7–21CONT–O, and Form 7–21INFO.

Frequency: Annually.

Respondents: Landholders and farm operators of certain lands in our projects, whose landholdings exceed specified RRA forms submittal thresholds.

Estimated Annual Total Number of Respondents: 13,960.

Estimated Number of Responses per Respondent: 1.02.

Estimated Total Number of Annual Responses: 14,239.

Estimated Total Annual Burden on Respondents: 10,432 hours.

Estimated Completion Time per Respondent: See table below.

Form No.	Burden estimate per form (in minutes)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
Form 7–2180	60	3,595	3,667	3,667
Form 7–2180EZ	45	373	380	285

Form No.	Burden estimate per form (in minutes)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
Form 7–2181	78	1,050	1,071	1,392
Form 7–2184	45	32	33	24
Form 7–2190	60	1,601	1,633	1,633
Form 7–2190EZ	45	96	98	73
Form 7–2191	78	777	793	1,030
Form 7–2194	45	4	4	3
Form 7–21PE	75	135	138	172
Form 7–21PE–IND	12	4	4	1
Form 7–21TRUST	60	694	708	708
Form 7–21VERIFY	12	5,069	5,170	1,034
Form 7–21FC	30	214	218	109
Form 7–21XS	30	144	147	73
Form 7–21FARMOP	78	172	175	228
Totals	.....	13,960	14,239	10,432

IV. Request for Comments

We invite your comments on:

(a) whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) the accuracy of our estimated time and cost burden of the collection of information, including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including increased use of automated collection techniques or other forms of information technology.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

V. Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 14, 2016.

Roseann Gonzales,

Director, Policy and Administration.

[FR Doc. 2016–30720 Filed 12–20–16; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 17XR0680A1, RX.31580001.0090104]

Agency Information Collection; Renewal of a Currently Approved Information Collection (OMB Control Number 1006–0023)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: We, the Bureau of Reclamation, intend to submit a request for the renewal of an existing approved information collection to the Office of Management and Budget (OMB) titled, Forms to Determine Compliance by Certain Landholders, 43 CFR part 426, OMB Control Number 1006–0023.

DATES: Submit written comments on the information collection request on or before February 21, 2017.

ADDRESSES: Send written comments or requests for copies of the proposed forms to Stephanie McPhee, Bureau of Reclamation, Office of Policy and Administration, 84–55000, P.O. Box 25007, Denver, CO 80225–0007; or via email to *smcphee@usbr.gov*.

FOR FURTHER INFORMATION CONTACT: Stephanie McPhee at (303) 445–2897.

SUPPLEMENTARY INFORMATION:

I. Abstract

Identification of limited recipients—Some entities that receive Reclamation irrigation water may believe that they are under the Reclamation Reform Act of 1982 (RRA) forms submittal threshold and, consequently, may not submit the appropriate RRA form(s). However, some of these entities may in fact have a different RRA forms submittal threshold than what they believe it to be due to the number of natural persons benefiting from each entity and the location of the land held by each entity. In addition, some entities that are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land) may in fact be receiving Reclamation irrigation water for which the full-cost rate must be paid because the start of Reclamation irrigation water deliveries occurred after October 1, 1981 [43 CFR 426.6(b)(2)]. The information obtained through completion of the Limited Recipient Identification Sheet (Form 7–2536) allows us to establish entities' compliance with Federal reclamation law. The Limited Recipient Identification Sheet is disbursed at our discretion.

Trust review—In order to administer section 214 of the RRA and 43 CFR 426.7, we are required to review and approve all trusts. Land held in trust generally will be attributed to the beneficiaries of the trust rather than the trustee if the criteria specified in the RRA and 43 CFR 426.7 are met. We may extend the option to complete and submit for our review the Trust Information Sheet (Form 7–2537) instead of actual trust documents when we become aware of trusts with a relatively small landholding (40 acres or less in districts subject to the prior law provisions of Federal reclamation law, 240 acres or less in districts subject to the discretionary provisions of Federal reclamation law). If we find nothing on the completed Trust Information Sheet that would warrant the further investigation of a particular trust, that trustee will not be burdened with submitting trust documents to us for in-depth review. The Trust Information Sheet is disbursed at our discretion.

Acreage limitation provisions applicable to public entities—Land farmed by a public entity can be considered exempt from the application of the acreage limitation provisions provided the public entity meets certain criteria pertaining to the revenue generated through the entity's farming activities (43 CFR 426.10 and the Act of July 7, 1970, Public Law 91–310). We are required to ascertain whether or not public entities that receive Reclamation irrigation water meet such revenue criteria regardless of how much land the public entities hold (directly or indirectly own or lease) [43 CFR 426.10(a)]. In order to minimize the burden on public entities, standard RRA forms are submitted by a public entity only when the public entity holds more than 40 acres subject to the acreage limitation provisions westwide, which makes it difficult to apply the revenue criteria as required to those public entities that hold less than 40 acres. When we become aware of such public entities, we request those public entities complete and submit for our review the Public Entity Information Sheet (Form 7–2565), which allows us to establish compliance with Federal reclamation law for those public entities that hold 40 acres or less and, thus, do not submit a standard RRA form because they are below the RRA forms submittal threshold. In addition, for those public entities that do not meet the exemption criteria, we must determine the proper rate to charge for Reclamation irrigation water deliveries. The Public Entity Information Sheet is disbursed at our discretion.

Acreage limitation provisions applicable to religious or charitable organizations—Some religious or charitable organizations that receive Reclamation irrigation water may believe that they are under the RRA forms submittal threshold and, consequently, may not submit the appropriate RRA form(s). However, some of these organizations may in fact have a different RRA forms submittal threshold than what they believe it to be depending on whether these organizations meet all of the required criteria for full special application of the acreage limitations provisions to religious or charitable organizations [43 CFR 426.9(b)]. In addition, some organizations that (1) do not meet the criteria to be treated as a religious or charitable organization under the acreage limitation provisions, and (2) are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land), may in fact be receiving Reclamation irrigation water for which the full-cost rate must be paid because the start of Reclamation irrigation water deliveries occurred after October 1, 1981 [43 CFR 426.6(b)(2)]. The Religious or Charitable Organization Identification Sheet (Form 7–2578) allows us to establish certain religious or charitable organizations' compliance with Federal reclamation law. The Religious or Charitable Organization Identification Sheet is disbursed at our discretion.

II. Changes to the RRA Forms and Their Instructions

No changes have been made to the currently approved RRA forms and the corresponding instructions to generate the proposed RRA forms that will be effective in the 2018 water year.

III. Data

OMB Control Number: 1006–0023.

Title: Forms to Determine Compliance by Certain Landholders, 43 CFR part 426.

Form Number: Form 7–2536, Form 7–2537, Form 7–2565, and Form 7–2578.

Frequency: Generally, these forms will be submitted only once per identified entity, trust, public entity, or religious or charitable organization. Each year, we expect new responses in accordance with the following numbers.

Respondents: Entity landholders, trusts, public entities, and religious or charitable organizations identified by Reclamation that are subject to the acreage limitation provisions of Federal reclamation law.

Estimated Annual Total Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.0.

Estimated Total Number of Annual Responses: 500.

Estimated Total Annual Burden on Respondents: 72 hours.

Estimated Completion Time per Respondent: See table below.

Form No.	Burden estimate per form (in minutes)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
Limited recipient identification sheet	5	175	175	15
Trust Information Sheet	5	150	150	13
Public Entity Information Sheet	15	100	100	25
Religious or Charitable Identification Sheet	15	75	75	19
Totals		500	500	72

IV. Request for Comments

We invite your comments on:

(a) Whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) the accuracy of our estimated time and cost burden of the collection of information, including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including increased use of automated collection techniques or other forms of information technology.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

V. Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 14, 2016.

Roseann Gonzales,

Director, Policy and Administration.

[FR Doc. 2016–30718 Filed 12–20–16; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 17XR0680A1, RX.31580001.0090104]

Agency Information Collection; Renewal of a Currently Approved Information Collection (OMB Control Number 1006–0006)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice and request for comments.

SUMMARY: We, the Bureau of Reclamation, intend to submit a request for renewal of an existing approved information collection to the Office of Management and Budget (OMB) titled, Certification Summary Form, Reporting Summary Form for Acreage Limitation,.

DATES: Submit written comments on this information collection request on or before February 21, 2017.

ADDRESSES: Send written comments or requests for copies of the proposed forms to Stephanie McPhee, Bureau of Reclamation, Office of Policy and Administration, 84–55000, P.O. Box 25007, Denver, CO 80225–0007; or via email to *smcphee@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Stephanie McPhee at (303) 445–2897.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is required under the Reclamation Reform Act of 1982 (RRA), Acreage Limitation Rules and Regulations, 43 CFR part 426, and Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land, 43 CFR part 428. The forms in this information collection are to be used by district offices to summarize individual landholder (direct or indirect landowner or lessee) and farm operator certification and reporting forms. This information allows us to establish water user compliance with Federal reclamation law.

II. Changes to the RRA Forms and Their Instructions

No changes have been made to the currently approved RRA forms and the corresponding instructions to generate the proposed RRA forms that will be effective in the 2018 water year.

III. Data

OMB Control Number: 1006–0006.

Title: Certification Summary Form, Reporting Summary Form for Acreage Limitation, 43 CFR part 426 and 43 CFR part 428.

Form Number: Form 7–21SUMM–C and Form 7–21SUMM–R.

Frequency: Annually.

Respondents: Contracting entities that are subject to the acreage limitation provisions of Federal reclamation law.

Estimated Annual Total Number of Respondents: 177.

Estimated Number of Responses per Respondent: 1.25.

Estimated Total Number of Annual Responses: 221.

Estimated Total Annual Burden on Respondents: 8,870 hours.

Estimated Completion Time per Respondent: See table below.

Form Number	Burden estimate per form (in hours)	Number of respondents	Annual number of responses	Annual burden on respondents (in hours)
7–21SUMM–C and associated tabulation sheets	40	169	211	8,450
7–21SUMM–R and associated tabulation sheets	40	8	10	420
Totals		177	221	8,870

IV. Request for Comments

We invite your comments on:

(a) Whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) the accuracy of our estimated time and cost burden of the collection of information, including the validity of the methodology and assumptions used;

(c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information on respondents, including increased use of automated collection techniques or other forms of information technology.

We will summarize all comments received regarding this notice. We will publish that summary in the **Federal Register** when the information collection request is submitted to OMB for review and approval.

V. Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 14, 2016.

Roseann Gonzales,

Director, Policy and Administration.

[FR Doc. 2016–30719 Filed 12–20–16; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modification to Consent Decree Under the Clean Water Act

On December 15, 2016, the Department of Justice lodged a proposed Stipulation to Modify Consent Decree with the United States District Court for the District of Connecticut in the lawsuit entitled *United States, et al.* v. *City of West Haven, Connecticut,* Civil Action No. 3:13–cv–01883 (JCH).

In a supplemental complaint, the United States, on behalf of the U.S. Environmental Protection Agency, and the State of Connecticut, on behalf of the Connecticut Department of Energy and Environmental Protection, allege that the City of West Haven violated the Clean Water Act, 33 U.S.C. 1251, *et seq.,* by failing to comply with Sections 5(b) and 6 of the Small Municipal Separate Storm Water System (''MS4'') General Permit, which requires the City to develop, implement, and enforce a Surface Water Monitoring Plan (''SWMP'') designed to reduce to the maximum extent practicable the discharge of pollutants from its Small MS4. The proposed stipulation in this case, among other things, requires that the City update its illicit discharge ordinance; update its SWMP by submitting revised MS4 outfall maps

and its Construction and Post-Construction Site Stormwater Runoff Control Programs; and develop and implement an operation and maintenance program that includes a training component.

The publication of this notice opens a period for public comment on the stipulation. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al.* v. *City of West Haven, Connecticut,* D.J. Ref. No. 90–5–1–1–10543. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed stipulation may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed stipulation upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $3.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2016–30709 Filed 12–20–16; 8:45 am]

BILLING CODE 4410–15–P

OFFICE OF MANAGEMENT AND BUDGET

Discount Rates for Cost-Effectiveness Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to Appendix C of OMB Circular A–94.

SUMMARY: The Office of Management and Budget revised Circular A–94 in 1992. The revised Circular specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the Budget of the United States Government were changed. These discount rates are found in Appendix C of the revised Circular. The updated discount rates are shown below. The discount rates in Appendix C are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. They do not apply to regulatory analysis.

DATES: The revised discount rates will be in effect through December 2017.

FOR FURTHER INFORMATION CONTACT: Gideon Lukens, Office of Economic Policy, Office of Management and Budget, (202) 395–3316.

Devin O'Connor,

Associate Director for Economic Policy, Office of Management and Budget.

[FR Doc. 2016–30736 Filed 12–20–16; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 16–088]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Frances Teel, National Aeronautics and Space Administration, Mail Code JF–000, Washington DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF0000, Washington, DC 20546.

SUPPLEMENTARY INFORMATION:

Authority: Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

I. Abstract

Contractors performing research and development are required by statutes, NASA implementing regulations, and OMB policy to submit reports of inventions, patents, data, and copyrights, including the utilization and disposition of same. The NASA New Technology Summary Report reporting form is being used for this purpose.

II. Method of Collection

NASA FAR Supplement clauses for patent rights and new technology encourage the contractor to use an electronic form and provide a hyperlink to the electronic New Technology Reporting Web (eNTRe) site *http://invention.nasa.gov.* This Web site has been set up to help NASA employees and parties under NASA funding agreements (*i.e.,* contracts, grants, cooperative agreements, and subcontracts) to report new technology information directly, via a secure Internet connection, to NASA.

III. Data

Title: NFS 1827—Patents, Data, and Copyrights.

OMB Number: 2700–0052.

Type of review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 2,240.

Estimated Time per Response: 5 hours average.

Estimated Total Annual Burden Hours: 11,200.

Estimated Total Annual Cost: $94,093.

IV. Request for Comments

Comments are invited on—(1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2016–30357 Filed 12–20–16; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0260]

Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the Electric Power Research Institute

AGENCY: Nuclear Regulatory Commission.

ACTION: Memorandum of understanding; renewal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) and the Electric Power Research Institute (EPRI) renewed a Memorandum of Understanding (MOU) supporting cooperative nuclear safety research. Current cooperative research technical areas include spent fuel neutron absorber performance, cable aging, external flooding hazards, digital I&C and human factors, fire risk, long-term operation, nondestructive examination, probabilistic fracture mechanics, primary water stress corrosion cracking, probabilistic risk assessment, seismic risk, and steam generator tube research. The NRC and EPRI first signed an MOU in 1997 to encourage cooperation in nuclear safety research. The MOU renewal extends cooperation between NRC and EPRI from September 30, 2016 to September 30, 2021.

DATES: The MOU was effective September 30, 2016.

ADDRESSES: Please refer to Docket ID NRC–2016–0260 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–2016–0260. 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 (if it is available in ADAMS) is provided the first time that it is mentioned in this document. The MOU and technical addenda are available in ADAMS under Accession No. ML16223A495.
- *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: Nicholas DiFrancesco, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1115, email: *Nicholas.DiFrancesco@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC and EPRI each conduct research on nuclear reactor safety. The NRC's Office of Nuclear Regulatory Research conducts independent research in all areas regulated by the NRC including ongoing and potential safety issues, risk-informed and performance-based regulation, and operating experience analysis. The EPRI is engaged in research and development in the public interest and on behalf of Industry with respect to the production, transmission, distribution, and utilization of electric power including research designed to improve the safety, reliability, and economy of nuclear power plants. While the research efforts of the NRC and EPRI may be conducted for different purposes, the underlying data and the results obtained have common value to both the NRC and EPRI. Accordingly, to conserve resources and to avoid unnecessary duplication of effort, both the NRC and EPRI agreed to cooperate in selected research efforts and to share information and/or costs related to such research whenever such cooperation and cost sharing is appropriate and mutually beneficial.

The MOU is authorized pursuant to Section 31 of the Atomic Energy Act of 1954, as amended, and Section 205 of the Energy Reorganization Act of 1974, as amended. The roles, responsibilities, terms, and conditions of the MOU should not be interpreted in a manner inconsistent with, and shall not supersede, applicable federal laws and regulations, as well as EPRI's status as a 501(c)(3) scientific research organization for the public benefit and the NRC's status as an independent regulatory agency.

The MOU describes the parameters within which cooperative research programs between the NRC and EPRI will be considered and conducted. Individual cooperative research programs are described in addenda to the MOU (''Cooperative Research Programs'').

The MOU was signed by the NRC on September 28, 2016, and by EPRI on September 30, 2016 (ADAMS Accession No. ML16223A497).

Dated at Rockville, Maryland, this 14th day of December, 2016.

For the Nuclear Regulatory Commission.

Edwin M. Hackett,

Acting Director, Office of Nuclear Regulatory Research.

[FR Doc. 2016–30739 Filed 12–20–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2017–49 and CP2017–75; MC2017–50 and CP2017–76; MC2017–51 and CP2017–77; MC2017–52 and CP2017–78; MC2017–53 and CP2017–79]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 22, 2016 (Comment due date applies to Docket Nos. MC2017–49 and CP2017–75; Docket Nos. MC2017–50 and CP2017–76; Docket Nos. MC2017–51 and CP2017–77); and December 23, 2016 (Comment due date applies to Docket Nos. MC2017–52 and CP2017–78; Docket Nos. MC2017–53 and CP2017–79).

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related

to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2017–49 and CP2017–75; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Express Contract 44 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* December 14, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Max E. Schnidman; *Comments Due:* December 22, 2016.

2. *Docket No(s).:* MC2017–50 and CP2017–76; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 273 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* December 14, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Max E. Schnidman; *Comments Due:* December 22, 2016.

3. *Docket No(s).:* MC2017–51 and CP2017–77; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 274 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* December 14, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Gregory Stanton; *Comments Due:* December 22, 2016.

4. *Docket No(s).:* MC2017–52 and CP2017–78; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 275 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* December 14, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Gregory Stanton; *Comments Due:* December 23, 2016.

5. *Docket No(s).:* MC2017–53 and CP2017–79; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 276 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* December 14, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Curtis E. Kidd; *Comments Due:* December 23, 2016.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–30664 Filed 12–20–16; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 21, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 14, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 273 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–50, CP2017–76.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–30682 Filed 12–20–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 21, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 14, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 276 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–53, CP2017–79.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–30685 Filed 12–20–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal

Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 21, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 14, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express Contract 44 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–49, CP2017–75.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–30681 Filed 12–20–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 21, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 14, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 274 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–51, CP2017–77.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–30683 Filed 12–20–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* December 21, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 14, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 275 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–52, CP2017–78.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–30684 Filed 12–20–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79561; SR–NYSEMKT–2016–58]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Withdrawal of a Proposed Rule Change, as Modified by Amendments No. 1 and 2 Thereto, Relating to Amendments to NYSE MKT Rules 1600 et seq. and the Listing Rules Applicable to the Shares of the Nuveen Diversified Commodity Fund and the Nuveen Long/Short Commodity Total Return Fund

December 15, 2016.

On May 24, 2016, NYSE MKT LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to among other things, amend NYSE MKT Rules 1600 *et seq.* and to amend the listing rules applicable to the shares of the Nuveen Diversified Commodity Fund and the Nuveen Long/Short Commodity Total Return Fund, which the Exchange currently lists and trades. The proposed rule change was published for comment in the **Federal Register** on June 13, 2016.[3] On July 28, 2016, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 2, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] On September 9, 2016, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act,[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] On November 10, 2016, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment No. 1 thereto its entirety.[9] On December 8, 2016, pursuant to Section 19(b)(2) of the Act,[10] the Commission designated February 8, 2017 as the date by which the Commission would either approve or disapprove the proposed rule change, as modified by Amendments No. 1 and 2.[11] The Commission has received two comments on the proposal.[12]

On December 9, 2016, the Exchange withdrew the proposed rule change, as modified by Amendments No. 1 and 2 (SR–NYSEMKT–2016–58).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 78000 (June 7, 2016), 81 FR 38232.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 78432, 81 FR 51248 (August 3, 2016). The Commission designated September 9, 2016, as the date by which the Commission would either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] Amendment No. 1 is available at *https://www.sec.gov/comments/sr-nysemkt-2016-58/nysemkt201658-2.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 78804 (September 9, 2016), 81 FR 63543 (September 15, 2016).

[9] Amendment No. 2 is available at *https://www.sec.gov/comments/sr-nysemkt-2016-58/nysemkt201658-4.pdf.*

[10] 15 U.S.C. 78s(b)(2).

[11] *See* Securities Exchange Act Release No. 79510 (December 8, 2016), 81 FR 90402 (December 14, 2016).

[12] *See* letter dated July 4, 2016, to Division of Trading and Markets, Commission (''Anonymous Letter''); and letter from Michael Szkodzinski, Associate General Counsel, Weiss Asset Management LP, to Brent J. Fields, Secretary, Commission, dated October 6, 2016. The comments regarding the proposed rule change are available at: *https://www.sec.gov/comments/sr-nysemkt-2016-58/nysemkt201658.shtml.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–30694 Filed 12–20–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79564; File No. SR–NYSEMKT–2016–116]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending Its Program That Allows Transactions to Take Place at a Price That Is Below $1 Per Option Contract Until July 5, 2017

December 15, 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 December 7, 2016, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its program that allows transactions to take place at a price that is below $1 per option contract until July 5, 2017. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the Pilot Program[4] under Rule 968NY to allow accommodation transactions (''Cabinet Trades'') to take place at a price that is below $1 per option contract for one additional year [sic]. The Exchange proposes to extend the program, which is due to expire on January 5, 2017, until July 5, 2017. The proposed extension of the Pilot Program will provide the Exchange additional time to submit a separate proposed rule change under Section 19(b)(2) of the Securities Exchange Act of 1934 (the ''Act'') to make the program permanent (''Permanent Filing''). In support of making the Pilot Program permanent, the Exchange represents that, in the Permanent Filing, it would provide statistics related to Cabinet Trades that were executed in calendar year 2016 and describe the manner in which Cabinet Trades are cleared and processed.

An ''accommodation'' or ''cabinet'' trade refers to trades in listed options on the Exchange that are worthless and typically not actively traded. Cabinet trading is generally conducted in accordance with Exchange Rules, except as provided in Exchange Rule 968NY, Accommodation Transactions (Cabinet Trades), which sets forth specific procedures for engaging in cabinet trades. Rule 968NY currently provides for cabinet transactions to occur via open outcry at a cabinet price of a $1 per option contract in any options series open for trading on the Exchange, except that the Rule is not applicable to trading in option classes participating in the Penny Pilot Program. Under the procedures, bids and offers (whether opening or closing a position) at a price of $1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market Maker or provided in response to a request by a Trading Official, a Floor Broker or a Market Maker, but must yield priority to all resting orders in the Cabinet (those orders held by the Trading Official, and which resting cabinet orders may be closing only). Provided that the buyer and the seller yield to orders resting in the cabinet book, opening cabinet bids can trade with opening cabinet offers at $1 per option contract.

The Exchange has temporarily amended the procedures through January 5, 2017 to allow transactions to take place in open outcry at a price of at least $0 but less than $1 per option contract. These lower-priced transactions are permitted to be traded pursuant to the same procedures applicable to $1 cabinet trades, except that (i) bids and offers for opening transactions are only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures are also made available for trading in option classes participating in the Penny Pilot Program.[5] The Exchange believes that allowing a price of at least $0 but less than $1 better accommodates the closing of options positions in series that are worthless or not actively traded, particularly in the event where there has been a significant move in the price of the underlying security that results in a large number of series being out-of-the-money. For example, a market participant might have a long position in a put series with a strike price of $30 and the underlying stock might be trading at $100. In such an instance, there might not otherwise be a market for that person to close-out the position even at the $1 cabinet price (*e.g.,* the series might be quoted no bid).

As with other accommodation liquidations under Rule 968NY, transactions that occur for less than $1 will not be disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 968NY, the transactions will be exempt from the Consolidated Options Audit Trail (''COATS'') requirements of Exchange Rule 955NY, Order Format and System Entry Requirements. However, the Exchange will maintain quotation, order and transaction information for the transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than $1 must be reported to the Exchange

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 63475 (December 8, 2010), 75 FR 77932 (December 14, 2010) (SR–NYSE Amex–2010–114).

[5] Currently, the $1 cabinet trading procedures are limited to options classes traded in $0.05 or $0.10 standard increment. The $1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as $0.01 per share (or $1.00 per option contract with a 100 share multiplier). Because the temporary procedures allow trading below $0.01 per share (or $1.00 per option contract with a 100 share multiplier), the procedures are available for all classes, including those classes participating in the Penny Pilot Program.

following the close of each business day.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5)[7] of the Act in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that allowing for liquidations at a price less than $1 per option contract will better facilitate the closing of options positions that are worthless or not actively trading, especially in Penny Pilot issues where Cabinet Trades are not otherwise permitted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is to extend an established pilot program for an additional six months and continue to facilitate ATP Holders ability to close positions in worthless or not actively traded series.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Pilot Program may continue without interruption. The Commission believes that the proposed rule change is consistent with the protection of investors and the public interest because it will allow the pilot to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the pilot and allowing members to continue to benefit from the Pilot Program. Based on the foregoing, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2016–116 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2016–116. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–NYSEMKT–2016–116 and should be submitted on or before January 11, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–30687 Filed 12–20–16; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79563; File No. SR–ISE–2016–28]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove Direct Debit for Market Data Products

December 15, 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 December 1, 2016, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to remove direct debit for market data products, as described in more detail below.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to remove direct debit for market data products. Today, the Exchange requires all of its members to provide a clearing account number at the National Securities Clearing Corporation (''NSCC'') for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange.[3] Specifically, Rule 213 currently requires members, and all applicants for registration as such to provide a clearing account number for an account at NSCC for purposes of permitting the Exchange to debit any undisputed or final fees,[4] fines, charges and/or other monetary sanctions or monies due and owing to the Exchange [5] or other charges related to Rules 205, 206, 207, 208, 209, and 210.[6] The proposed amendment would exclude from Rule 213 the fees set forth in Chapter VIII (Market Data) of the Exchange's Schedule of Fees [7] to harmonize the direct debit process across all Nasdaq Exchanges.[8]

The Exchange proposes that this rule change become operative on December 1, 2016. On November 23, 2016, the Exchange applied direct debit to its members for October 2016 billing [9] pursuant to the process currently in place. Under the proposed amendment and starting December 2016, the Exchange will bill the market data fees separately and will continue to direct debit its members for all of the other fees that are covered under Rule 213, in each case for the previous month's billing.

2. Statutory Basis

The Exchange believes that its proposal 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 promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by providing members with a harmonized process to pay undisputed or final fees, fines, charges and/or monetary sanctions or monies due and owing to the Exchange.

The Exchange believes that its proposal to remove the fees for market data products from the direct debit process is reasonable because it will not place any administrative burden on its members who are already subject to the same billing process on all other Nasdaq exchanges.[12]

The Exchange believes that its proposal to remove the market data fees as described above from the direct debit process is equitable and not unfairly discriminatory because it will apply to all members in a uniform manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. With this proposal, the amended debit process would apply uniformly to all ISE members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79014 (September 30, 2016), 81 FR 69560 (October 6, 2016) (SR–ISE–2016–24).

[4] Exchange fees are noted on the Exchange Schedule of Fees, available at: *http://www.ise.com/fees*.

[5] This includes, among other things, fines which result from the imposition of fines pursuant to Rules 1611, Judgment and Sanction; and 1614, Imposition of Fines for Minor Rules Violations. With respect to disciplinary sanctions that are imposed by either the Business Conduct Committee or a Hearing Panel, the Exchange would not debit any monies until such action is final. The Exchange would not consider an action final until all appeal periods have run and/or all appeal timeframes are exhausted. With respect to non-disciplinary actions, the Exchange would similarly not take action to debit a Member account until all appeal periods have run and/or all appeal timeframes are exhausted. Any uncontested disciplinary or non-disciplinary actions will be debited, and the amount due will appear on the Member's invoice prior to the actual NSCC debit.

[6] *See* ISE Rules 205 (Access Fees), 206 (Transaction Fees), 207 (Communication Fees), 208 (Regulatory Fees or Charges), 209 (Transfer Fees) and 210 (Liability for Payment of Fees).

[7] *See* note 4.

[8] The NASDAQ Stock Market LLC, The NASDAQ Options Market LLC, NASDAQ PHLX LLC, and NASDAQ BX, Inc. (the ''Nasdaq Exchanges'') do not direct debit any fees for market data products.

[9] The debit for October 2016 billing included all outstanding fees, including the fees for market data, through October 1, 2016.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* NASDAQ Phlx LLC Rule 909, The NASDAQ Stock Market LLC Rule 7007, NASDAQ Options Market LLC Rules at Chapter XV, Section 1, NASDAQ BX, Inc. Rule 7011 and BX Option Rules at Chapter XV, Section 1.

burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange requests that the Commission waive the 30-day operative delay. The Exchange proposes that the new billing process become operative on December 1, 2016. Starting December 1, 2016, the Exchange will bill the market data fees separately and will continue to direct debit its members for all of the other fees that are covered under Rule 213, in each case for the previous month's billing. The Exchange represents that waiver of the 30-day operative delay would allow it to conform its billing process similar to the process in place at the Nasdaq exchanges.[16] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *See* NASDAQ Phlx LLC Rule 909, The NASDAQ Stock Market LLC Rule 7007, NASDAQ Options Market LLC Rules at Chapter XV, Section 1, NASDAQ BX, Inc. Rule 7011 and BX Option Rules at Chapter XV, Section 1.

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–ISE–2016–28 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–ISE–2016–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2016–28 and should be submitted on or before January 11, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–30686 Filed 12–20–16; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79586; File No. SR–NYSEArca–2013–107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Liquidity Program Until June 30, 2017

December 16, 2016.

On December 23, 2013, the Securities and Exchange Commission (''Commission'') issued an order pursuant to its authority under Rule 612(c) of Regulation NMS (''Sub-Penny Rule'') [1] that granted NYSE Arca, Inc. (''Exchange'') a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Liquidity Program (''Program'').[2] The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt the Program for a one-year pilot term.[3] The exemption was granted coterminous with the effectiveness of the pilot Program; both the pilot Program and exemption are scheduled to expire on December 31, 2016.[4]

[1] 17 CFR 242.612(c).

[2] *See* Securities Exchange Act Release No. 71176 (Dec. 23, 2013), 78 FR 79524 (Dec. 30, 2013) (SR–NYSEArca–2013–107) (''Order'').

[3] *See id.*

[4] The pilot term of the Program was originally scheduled to end on April 14, 2015, but the Exchange initially extended the term through September 30, 2015, *see* Securities Exchange Act Release No. 74572 (Mar. 24, 2015), 80 FR 16705 (Mar. 30, 2015) (NYSEArca–2015–22), and then, through various extensions, through December 31, 2016. *See* Securities Exchange Act Release Nos. 75994 (Sept. 28, 2015), 80 FR 59834 (Oct. 2, 2015) (SR–NYSEArca–2015–84), 77236 (Feb. 25, 2016), 81 FR 10943 (Mar. 2, 2016) (SR–NYSEArca–2016–30), 77425 (Mar. 23, 2016), 81 FR 17523 (Mar. 29, 2016) (SR–NYSEArca–2016–47), and 78601 (Aug. 17, 2016), 81 FR 57632 (Aug. 23, 2016) (SR–NYSEArca–2016–113). Each time the pilot term of the Program was extended, the Commission also granted the Exchange's request to extend the Sub-Penny exemption. *See* Securities Exchange Act Release Nos. 74609 (Mar. 30, 2015), 80 FR 18272 (Apr. 3, 2015); 76021 (Sept. 29, 2015), 80 FR 60207 (Oct. 5, 2015); 77437 (Mar. 24, 2016), 81 FR 17752 (Mar. 30, 2016); and 78677 (Aug. 25, 2016), 81 FR 60037 (Aug. 31, 2016). The current exemption expires December 31, 2016.

The Exchange now seeks to extend the exemption until June 30, 2017.[5] The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the Program through the same date.[6] In its request to extend the exemption, the Exchange notes that the participation in the Program has increased more recently. Accordingly, the Exchange has asked for additional time to allow itself and the Commission to analyze more robust data concerning the Program, which the Exchange committed to provide to the Commission.[7] For this reason and the reasons stated in the Order originally granting the limited exemption, the Commission finds that extending the exemption, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

Therefore, it is hereby ordered that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted a limited exemption from Rule 612 of Regulation NMS that allows it to accept and rank orders priced equal to or greater than $1.00 per share in increments of $0.001, in connection with the operation of its Retail Liquidity Program, until June 30, 2017.

The limited and temporary exemption extended by this Order is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the Federal securities laws must rest with the persons relying on the exemption that is the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Brent J. Fields,

Secretary.

[FR Doc. 2016–30814 Filed 12–20–16; 8:45 am]

BILLING CODE 8011–01–P

[5] *See* Letter from Martha Redding, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated November 28, 2016.

[6] *See* Securities Exchange Act Release No. 79495 (Dec. 7, 2016), 81 FR 90033 (Dec. 13, 2016) (SR–NYSEArca–2016–157).

[7] *See* Order, *supra* note 2, 78 FR at 79529.

[8] 17 CFR 200.30–3(a)(83).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79570; File No. SR–FINRA–2016–045]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rule 4554 Reporting Requirements for Alternative Trading Systems

December 15, 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 December 8, 2016, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to amend Rule 4554 to require alternative trading systems (''ATSs'') to submit additional order information to FINRA.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend Rule 4554 (Alternative Trading Systems—Recording and Reporting Requirements of Order and Execution Information for NMS Stocks) to require ATSs to provide additional order sequence information on reports submitted to the Order Audit Trail System (''OATS''). In May 2016, the SEC approved Rule 4554 to further enhance FINRA's ability to reconstruct an ATS's order book and better perform its order-based surveillance, which includes surveillance for layering, quote spoofing and mid-point pricing manipulation. To accomplish this, Rule 4554 requires ATSs to report order information for each order they receive in an NMS stock beyond that set forth in the OATS rules, such as order re-pricing events (*e.g.,* changes to an order that is pegged to the National Best Bid or Offer (''NBBO'')) and order display and reserve size information.[4] Rule 4554 sets forth four categories of reporting requirements: (1) Data to be reported by all ATSs at the time of order receipt; (2) data to be reported by all ATSs at the time of order execution; (3) data to be reported by ATSs that display subscriber orders; and (4) data specific to ATSs that are registered as ADF Trading Centers.

Rule 4554(b) requires that all ATSs report eight categories of information at the time of order receipt, including the sequence number assigned to the order event by the ATS's matching engine.[5]

[4] *See* Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395 (May 16, 2016) (SR–FINRA–2016–010). With the exception of the requirement for ATSs to report sequence numbers, Rule 4554 was implemented on November 7, 2016. *See Regulatory Notice* 16–28 (August 2016). FINRA delayed the implementation for the requirement to report sequence numbers until the requirement could be extended to apply to all OATS reports. *See* Securities Exchange Act Release No. 79289 (November 10, 2016), 81 FR 81202 (November 17, 2016) (Notice of Filing and Immediate Effectiveness of SR–FINRA–2016–041).

[5] Rule 4554(b)(8). Rule 4554(b) also requires all ATSs, at the time of order receipt, to report: (1) Whether the ATS displays subscriber orders outside of the ATS and, if the ATS displays subscriber orders outside of the ATS, whether subscriber orders are displayed to subscribers only, or are distributed for publication in the consolidated quotation data; (2) whether the ATS is an ADF Trading Center as defined in FINRA Rule 6220; (3) whether the order can be routed away from the ATS for execution; (4) whether there are any counter-party restrictions on the order; (5) a unique identifier representing the specific order type other than market and limit orders that have no other special handling instructions; (6) the NBBO (or relevant reference price) in effect at the time of order receipt and the timestamp of when the ATS captured the effective NBBO (or relevant reference

After further evaluation of the need for the sequence number in other order events, FINRA proposes to amend this requirement to require ATSs to report a sequence number for all OATS event types, not just for order receipt, including reports for the execution of an order or the routing of an order away from the ATS.[6] FINRA is proposing to extend the requirement to report a sequence number beyond order receipt because, without a sequence number on all order events, FINRA is unable to properly sequence events when a single ATS MPID reports order events in the same symbol with identical timestamps.[7] Requiring ATSs to report a sequence number for all OATS order events, rather than just order receipt, will further enable FINRA to properly sequence order events within an ATS, which will allow FINRA to more fully reconstruct an ATS's order book and better perform order-based surveillance, including surveillance for layering, quote spoofing and mid-point pricing manipulation.

FINRA notes that the expansion of the requirement to report a sequence number with all order events mirrors the proposed requirement from *Regulatory Notice* 14–51. As discussed in the filing for SR–FINRA–2016–010, FINRA initially solicited comment on the proposal for ATSs to report order information to OATS in *Regulatory Notice* 14–51.[8] As part of the proposal set forth in the *Regulatory Notice,* ATSs exceeding the proposed volume threshold would have been required to report certain order information and ''would provide, for every order, the ATS book sequence identifier and the associated OATS identifier, which would link information about that order to the related information and full lifecycle reported to OATS.'' [9] None of the commenters on that proposal specifically addressed the provision of sequence numbers on order reports.

In response to a comment on the proposed rule change filed with the Commission, FINRA clarified that it was not mandating a particular or uniform format by which ATSs must report sequence numbers and that reporting sequence numbers as they currently exist in an ATS will satisfy the requirement.[10] The same clarification is true with the expansion of the requirement beyond reporting order receipt (*i.e.,* an ATS may report all sequence numbers as they currently exist in the ATS rather than in a particular or uniform format).

FINRA has filed the proposed rule change for immediate effectiveness. FINRA will announce the implementation date of the proposed rule change no later than 30 days following Commission notice of the filing of the proposed rule change for immediate effectiveness. The implementation date will be no later than 145 days after the date of the filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(9) of the Act,[12] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate. FINRA believes that this proposed rule change is consistent with the Act because requiring sequence numbers on all OATS reports will further enhance FINRA's ability to surveil activity occurring within an ATS by providing FINRA with additional information that can be integrated into FINRA's surveillance patterns to support alert generation and analysis.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will apply equally to all similarly situated ATSs. FINRA also notes that the proposed rule change is designed to assist FINRA in meeting its regulatory obligations by enhancing its ability to efficiently surveil activity occurring within ATSs and across markets. FINRA believes that, because ATSs are already required to include sequence numbers on new order reports pursuant to Rule 4554 as approved by the Commission, including sequence numbers on additional order events will not be overly burdensome.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2016–045 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–045. This file

price); and (7) the market data feed the ATS used to obtain the NBBO (or relevant reference price).

[6] FINRA is proposing to move the provision into a separate paragraph to reflect this change.

[7] The occurrence of identical timestamps in these circumstances is not infrequent. For example, on a recent reporting day, over 13% of ATS order events within a single ATS MPID and symbol contained an identical timestamp.

[8] *See* Securities Exchange Act Release No. 77269 (March 1, 2016), 81 FR 11851, 11854–55 (March 7, 2016).

[9] *Regulatory Notice* 14–51. The volume threshold proposed in the *Regulatory Notice* was removed as part of the proposed rule change approved by the Commission. *See* Securities Exchange Act Release No. 77269 (March 1, 2016), 81 FR 11851, 11854–55 (March 7, 2016).

[10] *See* Securities Exchange Act Release No. 77798 (May 10, 2016), 81 FR 30395, 30397 (May 16, 2016).

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78*o*–3(b)(9).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–045, and should be submitted on or before January 11, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–30689 Filed 12–20–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79562; File No. SR–ISEGemini–2016–20]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove Direct Debit for Market Data Products

December 15, 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 December 1, 2016, ISE Gemini, LLC (''ISE Gemini'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to remove direct debit for market data products, as described in more detail below.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to remove direct debit for market data products. Today, the Exchange requires all of its members to provide a clearing account number at the National Securities Clearing Corporation (''NSCC'') for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or monies due and owing to the Exchange.[3] Specifically, Rule 209 currently requires members, and all applicants for registration as such to provide a clearing account number for an account at NSCC for purposes of permitting the Exchange to debit any undisputed or final fees,[4] fines, charges and/or other monetary sanctions or monies due and owing to the Exchange[5] or other charges related to Rules 205 and 206.[6] The proposed amendment would exclude from Rule 209 the fees set forth in Chapter V (Market Data) of the Exchange's Schedule of Fees[7] to harmonize the direct debit process across all Nasdaq Exchanges.[8]

The Exchange proposes that this rule change become operative on December 1, 2016. On November 23, 2016, the Exchange applied direct debit to its members for October 2016 billing[9] pursuant to the process currently in place. Under the proposed amendment and starting December 2016, the Exchange will bill the market data fees separately and will continue to direct debit its members for all of the other fees that are covered under Rule 209, in each case for the previous month's billing.

2. Statutory Basis

The Exchange believes that its proposal 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 promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by providing members with a harmonized process to pay undisputed or final fees, fines, charges and/or monetary sanctions or monies due and owing to the Exchange.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79013 (September 30, 2016), 81 FR 69556 (October 6, 2016) (SR–ISEGemini–2016–12).

[4] Exchange fees are noted on the Exchange Schedule of Fees, available at: *http://www.ise.com/geminifees.*

[5] This includes, among other things, fines which result from the imposition of fines pursuant to Rules 1611, Judgment and Sanction; and 1614, Imposition of Fines for Minor Rules Violations. With respect to disciplinary sanctions that are imposed by either the Business Conduct Committee or a Hearing Panel, the Exchange would not debit any monies until such action is final. The Exchange would not consider an action final until all appeal periods have run and/or all appeal timeframes are exhausted. With respect to non-disciplinary actions, the Exchange would similarly not take action to debit a Member account until all appeal periods have run and/or all appeal timeframes are exhausted. Any uncontested disciplinary or non-disciplinary actions will be debited, and the amount due will appear on the Member's invoice prior to the actual NSCC debit.

[6] *See* ISE Gemini Rules 205 (Participant Fees) and 206 (Liability for Payment of Fees).

[7] *See* note 4.

[8] The NASDAQ Stock Market LLC, The NASDAQ Options Market LLC, NASDAQ PHLX LLC, and NASDAQ BX, Inc. (the ''Nasdaq Exchanges'') do not direct debit any fees for market data products.

[9] The debit for October 2016 billing included all outstanding fees, including the fees for market data, through October 1, 2016.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

The Exchange believes that its proposal to remove the fees for market data products from the direct debit process is reasonable because it will not place any administrative burden on its members who are already subject to the same billing process on all other Nasdaq exchanges.[12]

The Exchange believes that its proposal to remove the market data fees as described above from the direct debit process is equitable and not unfairly discriminatory because it will apply to all members in a uniform manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. With this proposal, the amended debit process would apply uniformly to all ISE Gemini members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange requests that the Commission waive the 30-day operative delay. The Exchange proposes that the new billing process become operative on December 1, 2016. Starting December 1, 2016, the Exchange will bill the market data fees separately and will continue to direct debit its members for all of the other fees that are covered under Rule 213, in each case for the previous month's billing. The Exchange represents that waiver of the 30-day operative delay would allow it to conform its billing process similar to the process in place at the Nasdaq exchanges.[16] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISEGemini–2016–20 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–ISEGemini–2016–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISEGemini–2016–20 and should be submitted on or before January 11, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–30695 Filed 12–20–16; 8:45 am]

BILLING CODE 8011–01–P

[12] *See* NASDAQ Phlx LLC Rule 909, The NASDAQ Stock Market LLC Rule 7007, NASDAQ Options Market LLC Rules at Chapter XV, Section 1, NASDAQ BX, Inc. Rule 7011 and BX Option Rules at Chapter XV, Section 1.

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *See* NASDAQ Phlx LLC Rule 909, The NASDAQ Stock Market LLC Rule 7007, NASDAQ Options Market LLC Rules at Chapter XV, Section 1, NASDAQ BX, Inc. Rule 7011 and BX Option Rules at Chapter XV, Section 1.

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–79565; File No. SR–NYSEARCA–2016–163]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending Its Program That Allows Transactions To Take Place at a Price That Is Below $1 Per Option Contract Until July 5, 2017

December 15, 2016.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3]

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

notice is hereby given that, on December 7, 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 extend its program that allows transactions to take place at a price that is below $1 per option contract until July 5, 2017. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the Pilot Program [4] under Rule 6.80 to allow accommodation transactions (''Cabinet Trades'') to take place at a price that is below $1 per option contract for one additional year [sic]. The Exchange proposes to extend the program, which is due to expire on January 5, 2017 until July 5, 2017. The proposed extension of the Pilot Program will provide the Exchange additional time to submit a separate proposed rule change under Section 19(b)(2) of the Securities Exchange Act of 1934 (the ''Act'') to make the program permanent (''Permanent Filing''). In support of making the Pilot Program permanent, the Exchange represents that, in the Permanent Filing, it would provide statistics related to Cabinet Trades that were executed in calendar year 2016 and describe the manner in which Cabinet Trades are cleared and processed.

An ''accommodation'' or ''cabinet'' trade refers to trades in listed options on the Exchange that are worthless or not actively traded. Cabinet trading is generally conducted in accordance with Exchange Rules, except as provided in Exchange Rule 6.80, Accommodation Transactions (Cabinet Trades), which sets forth specific procedures for engaging in cabinet trades. Rule 6.80 currently provides for cabinet transactions to occur via open outcry at a cabinet price of a $1 per option contract in any options series open for trading on the Exchange, except that the Rule is not applicable to trading in option classes participating in the Penny Pilot Program. Under the procedures, bids and offers (whether opening or closing a position) at a price of $1 per option contract may be represented in the trading crowd by a Floor Broker or by a Market Maker or provided in response to a request by a Trading Official, a Floor Broker or a Market Maker, but must yield priority to all resting orders in the Cabinet (those orders held by the Trading Official, and which resting cabinet orders may be closing only). Provided that both the buyer and the seller yield to orders resting in the cabinet book, opening cabinet bids can trade with opening cabinet offers at $1 per option contract.

The Exchange has temporarily amended the procedures through January 5, 2017 to allow transactions to take place in open outcry at a price of at least $0 but less than $1 per option contract. These lower-priced transactions are permitted to be traded pursuant to the same procedures applicable to $1 cabinet trades, except that (i) bids and offers for opening transactions are only permitted to accommodate closing transactions in order to limit use of the procedure to liquidations of existing positions, and (ii) the procedures are also made available for trading in option classes participating in the Penny Pilot Program.[5] The Exchange believes that allowing a price of at least $0 but less than $1 better accommodates the closing of options positions in series that are worthless or not actively traded, particularly in the event where there has been a significant movement in the price of the underlying security that results in a large number of series being out-of-the-money. For example, a market participant might have a long position in a put series with a strike price of $30 and the underlying stock might be trading at $100. In such an instance, there might not otherwise be a market for that person to close-out the position even at the $1 cabinet price (*e.g.,* the series might be quoted no bid).

As with other accommodation liquidations under Rule 6.80, transactions that occur for less than $1 will not be disseminated to the public on the consolidated tape. In addition, as with other accommodation liquidations under Rule 6.80, the transactions will be exempt from the Consolidated Options Audit Trail (''COATS'') requirements of Exchange Rule 6.67 Order Format and System Entry Requirements. However, the Exchange will maintain quotation, order and transaction information for the transactions in the same format as the COATS data is maintained. In this regard, all transactions for less than $1 must be reported to the Exchange following the close of each business day.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Act, [6] in general, and furthers the objectives of Section 6(b)(5) of the Act [7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that allowing for liquidations at a price less than $1 per option contract will better facilitate the closing of options positions that are worthless or not actively trading, especially in Penny Pilot issues where Cabinet Trades are not otherwise permitted.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[4] *See* Securities Exchange Act Release No. 63476 (December 8, 2010), 75 FR 77930 (December 14, 2010) (SR–NYSE Arca–2010–109).

[5] Currently, the $1 cabinet trading procedures are limited to options classes traded in $0.05 or $0.10 standard increment. The $1 cabinet trading procedures are not available in Penny Pilot Program classes because in those classes an option series can trade in a standard increment as low as $0.01 per share (or $1.00 per option contract with a 100 share multiplier). Because the temporary procedures allow trading below $0.01 per share (or $1.00 per option contract with a 100 share multiplier), the procedures are available for all classes, including those classes participating in the Penny Pilot Program.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is to extend an established pilot program for an additional six months and continue to facilitate OTP Holders ability to close positions in worthless or not actively traded series.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Pilot Program may continue without interruption. The Commission believes that the proposed rule change is consistent with the protection of investors and the public interest because it will allow the pilot to continue uninterrupted, thereby avoiding any potential investor confusion that could result from a temporary interruption in the pilot and allowing members to continue to benefit from the Pilot Program. Based on the foregoing, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2016–163 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–2016–163. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2016–163 and should be submitted on or before January 11, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2016–30688 Filed 12–20–16; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2016–0002–N–26]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: On October 18, 2016, under its emergency processing procedures, the Office of Management and Budget (OMB) approved the information collection activities associated with FRA's Railworthiness Directive No. 2016–01. This 6-month approval expires on April 30, 2017. Since OMB's approval of the information collection activities associated with Railworthiness Directive No. 2016–01, on November 18, 2016, FRA issued a revised Railworthiness Directive which supersedes the original Directive. FRA is now seeking approval for the revised information collection activities and associated burden listed below. Before submitting this information collection request (ICR) to OMB for approval, FRA is soliciting public comment on specific

aspects of the activities, which are identified in this notice.

DATES: Comments must be received no later than February 21, 2017.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590; or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB Control Number 2130–0616.'' Alternatively, comments may be faxed to (202) 493–6216 or (202) 493–6497, or emailed to Mr. Brogan at *Robert.Brogan@dot.gov,* or Ms. Toone at *Kim.Toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Safety Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60 days' notice to the public to allow comment on information collection activities before seeking OMB approval to implement them. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Accordingly, FRA invites interested persons to comment on the following summary of proposed information collection activities regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques and other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv).

FRA believes soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information that its actions mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: RAIL WORTHINESS DIRECTIVE (RWD) RWD No. 2016–01 [REVISED] (previously approved by OMB under the title Railworthiness Directive for Certain Tank Cars Equipped with Bottom Outlet Valve Assembly and Constructed by American Railcar Industries and ACF Industries).

OMB Control Number: 2130–0616.

Abstract: An FRA investigation identified a certain design of specification DOT–111 tank cars that American Railcar Industries, Inc. (ARI) and ACF Industries, LLC (ACF) manufactured using welding practices not in conformance with Federal regulations and Association of American Railroads' welding specifications. The cars are built to the ARI and ACF 300 stub sill design and are equipped with a two-piece cast sump and bottom outlet valve (BOV) skid. As a result of the nonconforming welding practices, these cars may have substantial weld defects at the sump and BOV skid groove attachment welds, potentially affecting each tank car tank's ability to retain its contents during transportation. On September 30, 2016, FRA issued Railworthiness Directive No. 2016–01. On November 18, 2016, FRA issued a revised Railworthiness Directive (Revised Directive) on its Web site to all owners of ARI or ACF general purpose tank cars in the United States manufactured to this design. This ICR applies to the Revised Directive. The Revised Directive generally requires owners to: (1) Identify tank cars in their fleet covered by this Revised Directive; and (2) ensure appropriate inspection and testing of each tank car's sump and BOV skid attachment welds to ensure no flaw exists that could result in the loss of tank integrity.

Form Number(s): N/A.

Affected Public: Businesses (tank car owners, shippers, and tank car facilities).

Respondent Universe: 100 tank car owners.

Frequency of Submission: One-time; on occasion.

Affected Public: Businesses.

Reporting Burden:

Section of RWD No. 2016–01 [REVISED]	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Identification of tank cars covered by the directive for certain railroad tank cars equipped with bottom outlet valve assembly and constructed by American Railcar Industries and ACF Industries (14,800 cars).	20 tank car owners (100 lessees/sub-lessees).	20 ID reports	4 hours	80
Visual inspection of sump weld area of all tank cars identified under this directive (performed prior to each loaded trip)	20 tank car owners (100 lessees/sub-lessees).	88,800 inspections/ records.	5 min	7,400
Inspect and test sump and BOV skid groove as stipulated in directive and maintain record results.	20 tank car owners (100 lessees/sub-lessees).	2,200 records	3 hours	6,600

Section of RWD No. 2016–01 [REVISED]	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Personnel qualification and certification check (100 tank car mechanics).	10 tank car facility operators.	100 checks	15 min	25
Train and test tank car mechanics who are ''not qualified'' on NDT procedures and record qualification (⅓ of the 100 tank car mechanics).	10 tank car facility operators.	33 trained and tested mechanics.	4 hours	132
Tank car owner notification to all parties under contract to car owner, including lessees and/or sub-lessees, using cars subject to directive of terms of this directive and inspection/testing schedule.	20 tank car owners (100 lessees/sub-lessees).	100 notices	1 hour	100
Report of inspection, test, and repair information stipulated in paragraph 2(g) of directive to FRA.	20 tank car owners (100 lessees/sub-lessees).	2,200 reports	90 min. per car/report	3,300
Repairs: 15 percent of relevant tank fleet of 14,800 cars—record and report of repairs to tank car owners.	10 tank car facility operators.	330 car reports/records	16 hours	5,280
Tank car facility request to tank car owner for written permission and approval of qualification and maintenance program it will use consistent with Appendices D, R, and W of the Tank Car Manual and 49 CFR 180.513 prior to initiating any repairs.	10 tank car facility operators.	20 requests + 20 written permissions.	10 min. + 10 min	7
Tank car facility report of all work performed to tank car owner	10 tank car facility operators.	Burden included directly above.	N/A	N/A

Total Estimated Annual Responses: 93,823.

Total Estimated Annual Burden: 22,924 hours.

Type of Request: Regular clearance of an information collection previously approved under emergency processing procedures.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on December 8, 2016.

Patrick T. Warren,

Acting Executive Director.

[FR Doc. 2016–30740 Filed 12–20–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Project

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for a project in Chapel Hill and Durham, NC. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject project and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before May 22, 2017.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–2577 or Meghan Kelley, Environmental Protection Specialist, Office of Environmental Programs, (202) 366–6098. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation project listed below. The actions on the project, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the project. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at *https://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed project as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The project and actions that are the subject of this notice are:

Project name and location: Durham-Orange Light Rail Transit Project North Carolina Central University Station Refinement, Chapel Hill and Durham, NC. *Project sponsor:* Research Triangle Regional Public Transportation Authority d/b/a Triangle Transit Authority d/b/a GoTriangle. *Project description:* The proposed project evaluates the inclusion of the North Carolina Central University Station Refinement into the Durham-Orange Light Rail Transit (D–O LRT) Project. The D–O LRT Project was originally evaluated in a combined Final Environmental Impact Statement/Record of Decision, dated February 11, 2016. The proposed project would extend the alignment of the D–O LRT Project 0.7 miles south of a reconfigured Alston Avenue Station, over Durham Freeway/North Carolina Highway 147,

and within the Alston Avenue median to a new station that would become the eastern terminus. The new station would be located just north of Lawson Street near the northeast corner of the North Carolina Central University campus. Nothing in this notice affects FTA's previous decisions, or notice thereof, for the D–O LRT Project. More specifically, the statute of limitations for the approvals documented in the D–O LRT Project's February 11, 2016 combined Final Environmental Impact Statement/Record of Decision expired on August 1, 2016, as noticed in the **Federal Register** on March 2, 2016 (81 FR 10952). This notice only applies to the discrete actions taken by FTA at this time, as described below. *Final agency actions:* No use determination of Section 4(f) resources; Section 106 finding of no adverse effect; and an amended Record of Decision, dated December 14, 2016. *Supporting Documentation:* Supplemental Environmental Assessment, dated November 2016.

Lucy Garliauskas,

Associate Administrator Planning and Environment.

[FR Doc. 2016–30703 Filed 12–20–16; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0123]

Reports, Forms, and Recordkeeping Requirements: Agency Information Collection Activity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before February 21, 2017.

ADDRESSES: Refer to the docket notice number cited at the beginning of this notice and send your comments by any of the following methods:

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

Instructions: All submissions must include the agency name and docket number. 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 discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: (202) 366–9826.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at 1200 New Jersey Ave. SE., Washington, DC 20590. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

FOR FURTHER INFORMATION CONTACT: John Kindelberger, Office of Regulatory Analysis and Evaluation, National Highway Traffic Safety Administration, 1200 New Jersey Ave. SE., NSA–310, Washington, DC 20590. Mr. Kindelberger's phone number is 202–366–4696 and his email address is *john.kindelberger@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (i) 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; (ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) How to enhance the quality, utility, and clarity of the information to be collected; and (iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses. In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Title: Tire Pressure Monitoring System—Outage Rates and Repair Costs Study (TPMS–ORRC)

Type of Request: Revision of a currently approved collection.

OMB Clearance Number: 2127–0626

Form Number: Previously approved survey forms NHTSA 1273/1274/1275/1276. NHTSA 1273 and 1274 will be modified under this revised request.

Required Expiration Date of Approval: Three years from the date of approval by OMB.

Abstract. Improperly inflated tires pose a safety risk, increasing the chance of skidding, hydroplaning, longer stopping distances, and crashes due to flat tires and blowouts. Section 13 of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, which Congress passed on November 1, 2000, directed NHTSA to conduct rulemaking actions to revise and update the Federal motor vehicle safety standards for tires, to improve labeling on tires, and to require a system in new motor vehicles that warns the operator when a tire is significantly underinflated.

Tire Pressure Monitoring Systems (TPMS) were mandated in Federal Motor Vehicle Safety Standard (FMVSS) No. 138, so that drivers are warned when the pressure in one or more of the vehicle's tires has fallen to 25 percent or more below the placard pressure, or a minimum level of pressure specified in the standard, whichever pressure is higher, and may be informed about which of the four tires is underinflated. As of September 1, 2007, after a phase-in period beginning on October 5, 2005, TPMS was required on all new light vehicles (*i.e.,* passenger cars, trucks, multipurpose passenger vehicles, and buses with a gross vehicle weight rating of 10,000 pounds or less, except those vehicles with dual wheels on an axle).

Executive Order 12866 requires Federal agencies to evaluate their existing regulations and programs and measure their effectiveness in achieving their objectives. Since the phase-in of TPMS, there has been only one evaluation of TPMS. The TPMS–SS (OMB #2127–0626) was conducted in 2011, as a special study through the infrastructure of the National Automotive Sampling System (NASS), to collect nationally representative data on how effective TPMS was in reducing underinflation in the on-road fleet of passenger vehicles. Analysis of the survey results indicated that direct TPMS is 55.6-percent effective at preventing severe underinflation as defined in FMVSS No. 138. However, effectiveness was substantially lower in vehicles that were 6–7 years old at the time of the survey. One explanation as to why this is true was the possibility that the drivers of these older vehicles were not taking all the maintenance actions (*e.g.,* adding TPMS sensors to new replacement tires, replacing non-functioning sensors on current tires, having the system properly re-set when needed) that were needed to insure the vehicles had functioning TPMS. Relevant data are needed to examine why the effectiveness of TPMSs in older vehicles is reduced and what can be done to increase it. This was the original goal of the TPMS–ORRC and is still a goal.

Additionally, on December 4, 2015, President Obama signed the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94) into law. An amendment (Section 24115) directs the Secretary of Transportation to update the standard on tire pressure monitoring systems, FMVSS No. 138, to ensure that they cannot be overridden, reset or recalibrated in a way that will prevent the system from identifying a tire that is significantly underinflated. The Act also states that the revised requirements shall not contain any provision that has the effect of prohibiting the availability of direct or indirect tire pressure monitoring systems. Data are needed to help inform the required rulemaking. For this purpose, the design of the TPMS–ORRC field survey has been changed from a convenience sample to a probability sample, allowing nationally representative estimates; this revision also adds a module for indirect TPMS.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

This information collection seeks revision of the following survey component:

Field Survey of Drivers and Vehicles.

The previously approved Field Survey component of the TPMS–ORRC has not yet been conducted. In this revision, we add a module to check tire pressure for vehicles with indirect TPMS (about five percent of the relevant fleet), change to a probability sample, and reduce the overall sample to 6300 to keep the burden similar. A survey of a probability sample, conducted in twenty-four nationwide geographic primary sampling units that were previously selected and weighted for national representation in NHTSA's Crash Investigation Sampling System, will collect 6,300 inspections of eligible passenger vehicles, and interview drivers of these vehicles. Focus will be on assessing the operating status of the TPMS in these vehicles and interviewing drivers with and without operating TPMSs, regarding their knowledge about, and habits related to, the TPMS in their vehicle. Also, drivers of vehicles with indirect TPMS (expected to be about five percent of surveyed drivers) will be interviewed with a brief set of questions and recording of tire pressures. We also plan to offer a voluntary check for outstanding recalls to increase participation. The overall sample has been reduced from 7,000 to 6,300 to keep the burden essentially the same in light of the added module and also to adhere to the survey budget. The change from convenience sample to probability sample, using the 24 Primary Sampling Units of NHTSA's Crash Investigation Sampling System, will allow statistically nationally representative estimates, which were not possible under the convenience sample. Data collection is expected to take place beginning in June, 2017, and last five months, at fueling stations (individual stations will only be visited for a short time as the survey moves from site to site).

The two following survey components of this survey have previously been approved and conducted:

Suppliers Survey. In the previously approved information collection, major suppliers of TPMS sensors and systems were voluntarily surveyed in 2016 with a focus on TPMS repair and maintenance issues, as well as cost factors. Results will be reported with the results of the driver survey.

Repair Facilities Survey. In the previously approved information collection, a sample of repair/maintenance facilities (*e.g.,* automobile dealerships, tire chain stores, small service stations with attached repair shops) was surveyed with 100 completed respondents in 2016 in a Computer-Assisted Telephone Interview (CATI), with the option of responding by mail. Focus was on assessing the lifespan of TPMS, common sources of TPMS malfunction, typical costs to repair/replace malfunctioning systems, and the factors considered by customers when deciding whether to repair or replace TPMSs that are not working. Results will be reported with the results of the driver survey.

Estimate of the Total Reporting and Recordkeeping Burden Resulting from the Collection of Information: The total revised reporting and recordkeeping burden resulting from this collection of information is estimated to be 1,352 hours, as outlined below.

Field Survey of Drivers and Vehicles. NHTSA estimates that the time to collect vehicle and driver data will be about 10 minutes, on average, for each interview for the 6,300 survey respondents. Some additional time was spent on a previous pilot study under the current approval, and some time will be needed to conduct a new pilot study on the revised survey, and to describe the study to drivers who are approached but are either ineligible or prefer not to become participants in the study. Consequently, the total

respondent burden hours is estimated to be 1,300 hours. The respondents would not incur any reporting or record keeping costs from the information collection. For the driver survey, respondents will be asked questions regarding their TPMS, and all responses will be provided spontaneously. For the vehicle inspection, data will be obtained via observation.

Suppliers Survey. NHTSA estimates the average time to collect data (previously approved and completed) on the cost of TPMS parts and systems from suppliers (respondents and non-respondents) as about 6 hours total. The respondents did not incur any reporting or record keeping costs from the information collection. Information was only requested about records that the respondents already were keeping for their own purposes.

Repair Facilities Survey. NHTSA estimates the average time to collect data (previously approved and completed) on the types and costs of repairing TPMS as about 20 minutes for each interview for each of 100 completed respondents or 33 hours. Time spent on explaining the survey to telephone respondents who were either not eligible or preferred not to participate is estimated at 13 hours. Consequently, the total respondent burden hours is estimated to be 46 hours. The respondents did not incur any reporting or record keeping costs from the information collection. Information was only requested about records that the respondents already were keeping for their own purposes.

Authority: The Paperwork Reduction Act, 44 U.S.C. chap. 35, as amended; and 49 CFR 1.95

Steven K. Smith,

Acting Associate Administrator, National Center for Statistics and Analysis.

[FR Doc. 2016–30756 Filed 12–20–16; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee Charter Renewals

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Advisory Committee Charter renewals.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee ACT (FACA), 5 U.S.C. App. 2, and after consultation with the General Services Administration, the Secretary of Veterans Affairs has determined that the following Federal advisory committee is vital to the mission of the Department of Veterans Affairs (VA) and renewing its charter would be in the public interest. Consequently, the charter for the following Federal advisory committee is renewed for a two-year period, beginning on the dates listed below:

Committee name	Committee description	Charter renewed on
MyVA Advisory Committee	Provides advice on matters affecting the MyVA Initiative and VA's ability to rebuild trust with Veterans and other stakeholders, improve service delivery with a focus on Veteran outcomes, and set the course for longer-term excellence and reform of VA.	October 31, 2016.

The Secretary has also renewed the charters for the following statutorily authorized Federal advisory committees for a two-year period, beginning on the dates listed below:

Committee name	Committee description	Charter renewed on
Veterans' Advisory Committee on Education.	Authorized by 38 U.S.C. § 3692. Provides advice on the administration of education and training programs for Veterans and Servicepersons, Reservists, and dependents of Veterans under Chapters 30, 32, 35, and 36 of Title 38, and Chapter 1606 of Title 10, United States Code.	September 25, 2016.
Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities.	Authorized by 38 U.S.C. § 545. Provides advice on structural safety in the construction and remodeling of VA facilities, and to recommend standards for use by VA in the construction and alteration of facilities.	December 14, 2016.

FOR FURTHER INFORMATION CONTACT: Jeffrey Moragne, Committee Management Office, Department of Veterans Affairs, Advisory Committee Management Office (00AC), 810 Vermont Avenue NW., Washington, DC 20420; telephone (202) 266–4660; or email at *Jeffrey.Moragne@va.gov.* To view a copy of a VA Federal advisory committee charter, visit *http://www.va.gov/advisory.*

Dated: December 16, 2016.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–30698 Filed 12–20–16; 8:45 am]

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Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 375 and 388
Regulations Implementing FAST Act Section 61003—Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information; Availability of Certain North American Electric Reliability Corporation Databases to the Commission; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 375 and 388

[Docket Nos. RM16–15–000 and RM15–25–001; Order No. 833]

Regulations Implementing FAST Act Section 61003—Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information; Availability of Certain North American Electric Reliability Corporation Databases to the Commission

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) amends its regulations to implement provisions of the Fixing America's Surface Transportation Act that pertain to the designation, protection and sharing of Critical Electric Infrastructure Information. Additionally, the Commission amends its regulations addressing Critical Energy Infrastructure Information.

DATES: This rule will become effective February 21, 2017.

FOR FURTHER INFORMATION CONTACT:

Nneka Frye, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6029, *Nneka.frye@ferc.gov.*

Christopher MacFarlane, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6761, *Christopher.macfarlane@ferc.gov.*

Mark Hershfield, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8597, *Mark.hershfield@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. The Commission amends 18 CFR 375.309, 375.313, 388.112 and 388.113 of its regulations to implement the requirements of the Fixing America's Surface Transportation (FAST) Act as set forth in section 215A(d)(2) of the Federal Power Act (FPA).[1] The Commission also amends its existing Critical Energy Infrastructure Information procedures. These changes are intended to comply with the FAST Act as well as improve the overall efficiency of the Commission's procedures for certain infrastructure information that is submitted to, or generated by, the Commission. The amended procedures will be referred to as the Critical Energy/Electric Infrastructure Information (CEII) procedures.

I. Background

A. Critical Energy Infrastructure Information Regulations

2. Shortly after September 11, 2001, the Commission took steps to protect information that it considered Critical Energy Infrastructure Information.[2] As a preliminary step, the Commission removed documents from its public files and eLibrary database that were likely to contain detailed specifications about critical infrastructure. The Commission directed the public to use the Freedom of Information Act (FOIA) request process to obtain such information.[3] Given that such information would typically be exempt from mandatory disclosure pursuant to FOIA, the Commission determined that it was important to have a process for individuals with a valid or legitimate need to access certain sensitive energy infrastructure information. Thus, in 2003, the Commission issued a final rule establishing Critical Energy Infrastructure Information regulations.[4]

3. Each year, over 7,000 documents are submitted to the Commission's eLibrary system as Critical Energy Infrastructure Information. The Commission also receives approximately 200 requests for Critical Energy Infrastructure Information each year. Requests for Critical Energy Infrastructure Information are submitted by, among others, public utilities, gas pipelines, Liquefied Natural Gas (LNG) facilities, hydroelectric developers, academics, landowners, public interest groups, researchers, renewable energy organizations, consultants, and federal agencies.

4. The Commission's current Critical Energy Infrastructure Information process is designed to limit the distribution of sensitive infrastructure information to those individuals with a need to know in order to avoid having sensitive information fall into the hands of those who may use it to attack the Nation's infrastructure.

B. FAST Act

5. On December 4, 2015, the President signed the FAST Act into law. The FAST Act, *inter alia,* added section 215A to the Federal Power Act to improve the security and resilience of energy infrastructure in the face of emergencies. The FAST Act directs the Commission to issue regulations aimed at securing and sharing sensitive infrastructure information. Specifically, FPA section 215A(d)(2) (Designation and Sharing of Critical Electric Infrastructure Information) requires the Commission to promulgate regulations on the following. First, the statute requires the Commission to establish criteria and procedures to designate information as critical electric infrastructure information. Second, the statute requires the Commission to prohibit the unauthorized disclosure of critical electric infrastructure information. Third, the statute requires the Commission to ensure there are appropriate sanctions in place for Commissioners, officers, employees, or agents of the Commission or the Department of Energy [DOE] who knowingly and willfully disclose critical electric infrastructure information in a manner that is not authorized by the statute. Fourth, FPA section 215A(d)(2)(D) requires the Commission, taking into account standards of the Electric Reliability Organization, to facilitate voluntary sharing of critical electric infrastructure information. The statute, specifically, directs the Commission to facilitate voluntary sharing with, between, and by Federal, State, political subdivision, and tribal authorities; the Electric Reliability Organization; regional entities; information sharing and analysis centers established pursuant to Presidential Decision Directive 63; owners, operators, and users of critical electric infrastructure in the United States; and other entities determined appropriate by the Commission.[5]

C. Notice of Proposed Rulemaking

6. On June 16, 2016, the Commission issued a Notice of Proposed Rulemaking (NOPR) to amend its regulations to implement the provisions of the FAST Act pertaining to the designation, protection and sharing of CEII.[6] The

[1] Fixing America's Surface Transportation Act, Public Law 114–94, 61,003, 129 Stat. 1312, 1773–1779 (2015) (to be codified at 16 U.S.C. 824 *et seq.*) (FAST Act).

[2] *See Statement of Policy on Treatment of Previously Public Documents,* 97 FERC ¶ 61,030 (2001).

[3] 5 U.S.C. 552 *as amended by* the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538 (2016); 18 CFR 388.108 (Requests for Commission records not available through the Public Reference Room (FOIA Requests)).

[4] *Critical Energy Infrastructure Information,* Order No. 630, FERC Stats. & Regs. ¶ 31,140, *order on reh'g,* Order No. 630–A, FERC Stats. & Regs. ¶ 31,147 (2003).

[5] FAST Act, Public Law 114–94, section 61,003, 129 Stat. 1312, 1776.

[6] *Regulations Implementing FAST Act Section 61003—Critical Infrastructure Security and*

proposed amendments included, among other things, the creation of criteria and procedures for designating information as CEII; a specific prohibition on unauthorized disclosure of that information; sanctions for knowing and willful wrongful disclosure of CEII by certain federal personnel; a process for voluntary sharing of CEII; and changes to the existing process for requesting CEII. In response to the NOPR, nineteen entities filed comments and two entities filed reply comments. The Appendix to this Final Rule lists the entities that submitted comments in response to the NOPR.

II. Discussion

7. The Commission adopts the majority of amendments proposed in the NOPR. The Commission determines that the amendments comply with the requirements of the FAST Act and better ensure the secure treatment of CEII. In addition, as discussed below, the Commission modifies or otherwise clarifies certain proposals made in the NOPR based on our review of the comments. In the discussion below, we address the following issues regarding the CEII amendments: (A) Scope, purpose, and definitions; (B) criteria and procedures for determining what constitutes CEII; (C) duty to protect CEII; (D) sanctions for unauthorized disclosure of CEII; (E) voluntary sharing of CEII; and (F) requests for access to CEII.

A. Scope, Purpose, and Definitions

NOPR

8. In the NOPR, the Commission proposed to amend section 388.113 to include procedures for submitting, designating, handling, sharing and disseminating Critical Electric Infrastructure Information submitted to or generated by the Commission.[7] The Commission proposed to define the term ''Critical Electric Infrastructure Information'' [8] to include ''Critical Energy Infrastructure Information'' as defined under the Commission's current regulations and to refer to both types of information, collectively, as CEII.[9] The Commission also proposed to delete references to CEII in section 388.112 so that section 388.112 would only address privileged material and all procedures regarding CEII would be in section 388.113.

Comments

9. APPA and MISO maintain that CEII should not include all Critical Energy Infrastructure Information.[10] APPA contends that Congress intended for the Commission to develop a separate process for Critical Electric Infrastructure Information regarding the bulk-power system and that the amended regulations fall ''short'' of Congress's intent under the FAST Act because the amended regulations include the voluntary disclosure provisions found in the Commission's current regulations.[11] APPA also asserts that the proposed definition of ''critical electric infrastructure'' ''does not comport well'' with section 215A(d)(10) of the FPA, which provides DOE and the Commission with the authority to remove the CEII designation from information regarding the bulk-power system or distribution facilities.[12] MISO contends that the Commission misinterpreted the definition of Critical Electric Infrastructure Information and that not all ''Critical Energy Infrastructure Information under the Commission's regulations is included'' in the definition of Critical Electric Infrastructure Information.[13]

10. TAPS and APPA maintain that the Commission should revise the CEII definition to include additional language from the FAST Act. Specifically, TAPS and APPA recommend that the proposed definition of CEII incorporate section 215A(d)(1)(B), which provides that CEII ''shall not be made available by any Federal, State, political subdivision or tribal authority pursuant to any Federal, State, political subdivision or tribal law requiring public disclosure of information or records.'' [14] APPA requests that, if the Commission includes Critical Energy Infrastructure Information in CEII, then the Commission should interpret section 215A(d)(1)(B) to apply to all forms of CEII, including Critical Energy Infrastructure Information.[15] TAPS and APPA also request that the Commission define the term ''political subdivision,'' as used in section 215A(d)(1)(B), to have the same meaning as the term ''political subdivision'' in section 201(f) of the FPA, such that the term in section 215A(d)(1)(B) would include any agency, authority or instrumentality of any political subdivision or owned by a political subdivision.[16] TAPS and APPA contend that, absent the clarification, these additional entities may not be considered a ''political subdivision'' under State laws.[17]

11. TAPS recommends that the Commission delete from the definition of Critical Energy Infrastructure Information the requirement that such information be exempt from FOIA.[18] TAPS contends that the existing exemption clause is unnecessary because any materials will be exempt from FOIA pursuant to section 215A(d)(1)(A).[19]

12. Other commenters seek clarification on the scope of the CEII definition. Specifically, the Trade Associations request that the Commission clarify whether the name or location of an electric system, asset, owner or operator could be protected under the proposed CEII definition.[20] NRECA, similarly, urges the Commission to clarify that material considered Critical Energy Infrastructure Information, such as electric generation, and non-bulk electric system transmission and distribution facilities, would still qualify as CEII under the revised definition in the amended regulations.[21]

13. Powerex requests that the Commission specify whether the new definition of CEII expands the scope of information currently defined as Critical Energy Infrastructure Information.[22] Powerex contends that the scope of this proceeding should remain limited to CEII regulations and procedures discussed in the NOPR and, thus, the scope of this proceeding should not extend to other forms of sensitive data.[23] Powerex, further, explains that there

Amending Critical Energy Information, 81 FR 43,557 (July 5, 2016), 155 FERC ¶ 61,278 (2016) (NOPR).

[7] NOPR, 155 FERC ¶ 61,278 at P 10.

[8] *Id.* P 11 (noting that Section 215A(a)(3) of the FAST Act defines Critical Electric Infrastructure Information to include information that qualifies as critical energy infrastructure information under the Commission's regulations).

[9] NOPR, 155 FERC ¶ 61,278 at P 13.

[10] *See* APPA Comments at 5–11; MISO Comments at 5.

[11] APPA Comments at 5, 9, 13.

[12] Section 215A(d)(10) of the FPA provides that when ''the Commission or the [DOE] Secretary, as appropriate, determines that the unauthorized disclosure of such information could no longer be used to impair the security or reliability of the bulk-power system or distribution facilities'' the designation shall be removed.

[13] MISO Comments at 4–6.

[14] TAPS Comments at 8; APPA Comments at 21–22.

[15] APPA Comments at 23.

[16] TAPS Comments at 8; APPA Comments at 22 (citing Section 201(f), which indicates that provisions of that subchapter are not applicable to, among others, the United States, a State or any political subdivision of a State, certain electric cooperatives or any agency, authority, or instrumentality of any one or more of those entities or any corporation wholly owned, directly or indirectly, by any one or more of those entities).

16 U.S.C. 824(f)

[17] TAPS Comments at 8–9; APPA Comments at 22–23.

[18] TAPS Comments at 4–5.

[19] *Id.* at 4.

[20] Trade Associations Comments at 16.

[21] NRECA Comments at 7.

[22] Powerex Comments at 11.

[23] *Id.* at 15.

may be a tendency to over-designate information as CEII and, therefore, the Commission should recognize that transparency is needed to balance CEII protection against the due process rights of parties participating in Commission proceedings.[24]

14. TAPS, APPA and the Trade Associations recommend revisions to the CEII Non-Disclosure Agreements (NDA).[25] Specifically, TAPS, APPA, and the Trade Associations state that the Commission should expressly incorporate the language from section 215A(d)(1)(B), exempting CEII from public disclosure, into the NDA.[26] TAPS requests that the Commission eliminate the State Agency NDA. TAPS contends that ''[p]rior to the FAST Act's express preemption of Sunshine Laws requiring disclosure,'' the State Agency NDA was an attempt to impose a contractual nondisclosure requirement for critical energy infrastructure information provided to a State agency. TAPS maintains that, once section 215A(d)(1)(B) is included in the general NDA, the State Agency NDA should be eliminated because it is now unnecessary.[27]

15. With respect to the proposed edits to sections 388.112 and 388.113 to separate the Commission's treatment of privileged material from the Commission's treatment of CEII, MISO suggests that the title for section 388.112 be changed to ''Submission and treatment of privileged information'' and section 388.113 be changed to ''Submission and treatment of Critical Electric Infrastructure Information (CEII).'' [28]

16. The Trade Associations request that the Commission expressly state in the amended regulations that the CEII process is not intended to, and should not be interpreted to, supersede or otherwise affect existing laws, regulations, and agency rules that separately safeguard such data.[29]

Commission Determination

17. As discussed below, the Commission, with limited modifications, adopts the amendments proposed in the NOPR addressing the scope, purpose and definitions in the CEII regulations. The Commission determines that the amendments are consistent with the requirements of the FAST Act and will result in more secure treatment of CEII.

18. The Commission disagrees with APPA and MISO that the CEII definition should not include Critical Energy Infrastructure Information and that there should be separate processes for electric and non-electric CEII. Our determination is based on the plain language of the FAST Act. Section 215A(a)(3) defines Critical Electric Infrastructure Information to ''include information that qualifies as critical energy infrastructure information under the Commission's regulations.'' [30] In subsuming the Commission's existing Critical Energy Infrastructure Information within section 215A's CEII definition, Congress expressly stated that the definition of CEII includes Critical Energy Infrastructure Information. There is no indication in the language of the FAST Act that Congress intended to limit the types of Critical Energy Infrastructure Information to only electric infrastructure information.[31]

19. Including Critical Energy Infrastructure Information within the definition of CEII is not inconsistent with the provisions of section 215A(d)(10), as APPA maintains. First, section 215A(d)(10) states that removal of a CEII designation may be appropriate when the disclosure of such information ''could no longer be used to impair the security or reliability of the bulk-power system *or distribution facilities.*'' (Emphasis supplied.) Thus, it is clear that Congress did not intend for the new Critical Electric Infrastructure Information designation to apply only to the bulk-power system. Second, Critical Energy Infrastructure Information includes information that ''relates details about the production, generation, transportation, transmission, or distribution of energy.'' [32] Such information, even if it concerns non-electric infrastructure, could be used to impair the security or reliability of the bulk-power system, for example by severing gas pipeline connections to electric generation facilities.

20. Moreover, the Commission determines that a single CEII process for Critical Energy/Electric Infrastructure Information is the most efficient way to fulfill the statutory mandate of the FAST Act and to avoid any confusion that could result from different processes for different types of critical infrastructure information.[33] Absent contrary language in the FAST Act, the Commission has discretion in how it administers statutory mandates by regulation.[34]

21. APPA's assertion that the Commission is ''falling short'' of meeting Congress's intent is without merit. In the proposed regulations, the Commission complies with each provision in section 215A(d)(2) with regard to designating and handling Critical Electric Infrastructure Information. The fact that those rules also apply to Critical Energy Infrastructure Information does not diminish the Commission's compliance under the FAST Act. Rather, in this regard, the Commission's determination meets Congress's intent. Moreover, APPA's argument that ''information related to cyber threats and defensive measures should not be 'protected' under a designation regime that also provides for potentially involuntary access by any federal employee . . ., landowners [or]any person who is a participant in a Commission proceeding . . .'' and others has no basis in the text of the FAST Act. APPA notably cites to nothing in the FAST Act to support that argument.[35] On the contrary, Congress explicitly directed the Commission to include voluntary sharing in the regulations that the Commission is required to promulgate under the FAST Act.[36] Further, the implication of APPA's argument—that cyber information is different from other types of infrastructure information and therefore warrants different rules—fails to take into consideration that the Commission will evaluate each request for CEII, and each decision to voluntarily share CEII, on a case-by-case basis. For example, a person seeking cyber threat information would have to show a different need for the information than a person seeking information for a pipeline facility for a certificate proceeding.

22. The Commission agrees with TAPS and APPA that the Commission's regulations should incorporate the

[24] *Id.* at 12.

[25] APPA Comments at 23; TAPS Comments at 9–10; Trade Associations Comments at 32.

[26] *See id.*

[27] TAPS Comments at 10; *see also* Critical Energy Infrastructure Information State Agency Employee Non-Disclosure Agreement, *http://www.ferc.gov/legal/ceii-foia/ceii/state-agen-nda.pdf.*

[28] MISO Comments at 3.

[29] *See* Trade Associations Comments at 26.

[30] FAST Act, Public Law 114–94, section 61,003, 129 Stat. 1312, 1776.

[31] For the same reason, we reject MISO's recommendation that the title for section 388.112 should be changed to ''Submission and treatment of privileged information'' and that the title for section 388.113 should be changed to ''Submission and treatment of Critical Energy Infrastructure Information (CEII).'' MISO Comments at 3.

[32] 18 CFR 388.113(c)(1)(i)).

[33] NOPR, 155 FERC ¶ 61,278 at P 14.

[34] *See Anna Jacques Hosp.* v. *Burwell,* 797 F.3d 1155, 1165 (D.C. Cir. 2015) (holding that ''interstitial question[s] of implementation'' are left to the discretion of the implementing agency).

[35] *See* APPA Comments at 15.

[36] Section 215A(d)(2)(D) states that the Commission ''shall promulgate such regulations as necessary to . . . facilitate voluntary sharing of critical electric infrastructure information . . .'' FAST Act, Public Law 114–94, section 61,003, 129 Stat. 1312, 1776.

provision in section 215A(d)(1)(B) that CEII ''shall not be made available by any Federal, State, political subdivision or tribal authority pursuant to any Federal, State, political subdivision or tribal law requiring public disclosure of information or records.'' [37] As to TAPS's and APPA's request that the Commission define the term ''political subdivision,'' in section 215A(d)(1)(B) of the FAST Act to be consistent with the definition of that term in FPA section 201(f), Congress did not adopt the definition of ''political subdivision'' in section 201(f) for the purposes of the FAST Act. However, the Commission believes that the broad language of section 215A(d)(1)(B), as it applies to ''any Federal, State, political subdivision or tribal authority,'' should encompass the instrumentalities and components of States. Section 215A(d)(1)(B) was included to protect CEII from mandatory disclosure. It would be illogical to provide such protection to States, but not their instrumentalities and components.

23. The Commission disagrees with TAPS that the Commission should delete from the definition of Critical Energy Infrastructure Information the provision that states that Critical Energy Infrastructure Information ''[i]s exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552.'' [38] As we have discussed above, Congress incorporated Critical Energy Infrastructure Information within section 215A's definition of Critical Electric Infrastructure Information without revision.[39] Accordingly, the Commission will retain its current definition of Critical Energy Infrastructure Information.

24. In response to the Trade Associations' comments seeking clarification if a name or location of a facility should be protected as CEII, the Commission's current practice is that information that ''simply give[s] the general location of the critical infrastructure'' or simply provides the name of the facility is not CEII.[40] However, under certain circumstances, information regarding the location of infrastructure or its name that is not already publicly known could be CEII.[41] Therefore, we clarify that, while as a general matter the location or name of infrastructure is not CEII, a submitter of information to the Commission may ask that non-public information about the location, or the name, of critical infrastructure be treated as CEII. The submitter would have to provide a justification for the request and explain why the information is not already publicly known.

25. In response to NRECA's request that the Commission clarify that material treated as Critical Energy Infrastructure Information under the Commission's current regulations would, in most circumstances, be treated as CEII under the amended regulations, we note that such information should continue to qualify as CEII. We also note, however, in response to Powerex's comment, that it is conceivable that Critical Electric Infrastructure Information may include information that would not fall within the existing definition of Critical Energy Infrastructure Information.[42]

26. We agree with Powerex's comment that the Final Rule should only address CEII and not other types of information. In response to Powerex's concerns about a party's due process rights, under the amended CEII regulations the Commission will balance the need to protect critical information with the potential need of parties participating in Commission proceedings to access CEII. For example, the Commission's regulations include a process for parties to access information directly from other parties in a Commission proceeding.[43]

27. In response to comments from TAPS, APPA, and the Trade Associations, the Commission agrees that the CEII NDA should reference the provision in section 215A(d)(1) that CEII is exempt from disclosure under any Federal, State, political subdivision or tribal law requiring public disclosure. We disagree that the State Agency NDA should be eliminated because it reinforces the minimum protections applicable to CEII that the Commission may provide to states as well as provides for additional protections beyond the exemptions in State public disclosure laws.[44]

28. Finally, the Commission declines to adopt the revision suggested by the Trade Associations to expressly state that the CEII regulations are not intended to supersede other laws, regulations, and agency rules that separately safeguard such data.[45] This Final Rule and adopted CEII amendments do not purport to supersede any other legal authorities other than the regulations and associated materials specifically amended in this Final Rule.

B. Criteria and Procedures for Determining What Constitutes CEII

1. General Criteria and Procedures

NOPR

29. Section 215A(d)(2)(A) requires the Commission to ''establish criteria and procedures to designate information as critical electric infrastructure information.'' In the NOPR, the Commission proposed criteria and procedures for the handling of CEII consistent with section 215A(d)(2)(A).[46]

Comments

30. Commenters request that the Commission provide more detail on what qualifies as CEII.[47] The Public Interest Organizations, for example, ask the Commission to publish guidelines and criteria for designating information as CEII.[48] The Public Interest Organizations further recommend that the Commission publish ''data tables that provide suggested classifications for common data types.'' [49] HRC asks that the Commission require entities filing CEII to include a public cover letter providing a description of the facility the information relates to and describing the nature of the submission. HRC also contends that information submitted as CEII should include a more detailed description in eLibrary.[50] HRC contends that this information will better allow the public to understand the basis for

[37] APPA states that there may be instances where an entity could provide CEII to NERC who, in turn, may submit that entity's information to the Commission or DOE as CEII without notifying the entity. Thus, APPA is concerned the entity may not be aware that the information has been submitted to the Commission and designated as CEII. As a result, APPA suggests that the Commission establish notification procedures so that entities are aware that their information was designated as CEII. APPA Comments at 21–22. We see no need to adopt such a notification process. Section 1505 of NERC's Rules of Procedure already requires NERC, unless otherwise directed by the Commission or its staff, to notify submitting entities of requests made by the Commission to NERC for the submitting entities' information.

[38] 18 CFR 388.113(c)(2)(iii).

[39] *See Stone* v. *INS,* 514 U.S. 386, 397 (1995) (holding that ''[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect'').

[40] 18 CFR 388.113(c)(1)(iv).

[41] For example, the location of an operating transformer is likely publicly known. However, the location of a spare transformer housed in a central location may not be publicly known and, therefore, may qualify as CEII.

[42] For example, while Critical Energy Infrastructure Information must satisfy the four-part definition in amended section 388.113(c)(1), Critical Electric Infrastructure Information must meet the definition in amended section 388.113(c)(2).

[43] *See* 18 CFR 388.112(b)(2) and 388.113(g)(4).

[44] *See supra* note 27.

[45] *See* Trade Associations Comments at 26.

[46] NOPR, 155 FERC ¶ 61,278 at P 16.

[47] Peak Comments at 8–10; Powerex Comments at 12; APS Comments at 5; APPA Comments at 17; WIRAB Comments at 5.

[48] Public Interest Organizations Comments at 4.

[49] *Id.* at 5.

[50] HRC Comments at 2–3.

the CEII classification.[51] HRC also requests that the Commission develop a procedure whereby the public can request that the Commission review information at the time of submission to ensure that it was properly submitted as CEII.[52] HRC contends that filing a CEII or FOIA request as a means of triggering the review of CEII classification is burdensome.[53]

31. WIRAB and APS commented that additional designation guidance is needed in order to avoid submitters' over-designation of documents as CEII. Specifically, WIRAB and APS recommend that the Commission establish separate criteria for determining when information qualifies as CEII on the basis of national security, economic security or public health or safety.[54]

32. The Trade Associations maintain that the Commission's regulations should explicitly designate as CEII information ''related to compliance with the Reliability Standards as critical electric infrastructure information and exempt it from disclosure under 388.113(f).'' [55] The Trade Associations assert that a blanket presumption that information regarding Reliability Standards compliance is CEII is necessary because it ''may . . . be difficult for a submitter to present, *ex ante,* a clear justification for meeting the critical electric infrastructure information definition for a particular system or asset, especially if the potential for negative effect could also arise from the disclosure of a combination of sets of information that alone may not meet the CEII definition.''[56]

33. APPA and the Trade Associations raise concerns about how the designation criteria will apply to DOE.[57] Specifically, they assert that the Commission failed to provide criteria and procedures that would apply to DOE.[58] Additionally, Peak, Public Interest Organizations, and APPA request that the Commission hold a technical conference on the implementation of the new CEII rules as part of the ''consultation with the Secretary'' required by FPA section 215A(d)(2).[59]

34. Finally, NRC requests that the Commission establish a generic CEII designation that other federal agencies can use to designate information.[60] NRC also recommends that the Commission clarify in the Final Rule that other federal agencies ''are to establish their own procedures for identifying CEII on an information-specific basis utilizing the FERC's generic CEII standard.'' [61]

Commission Determination

35. The Commission is not persuaded that more detailed guidance or additional designation criteria in the CEII regulations are necessary. FPA section 215A(a)(2) defines Critical Electric Infrastructure as ''a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters.'' FPA section 215A(a)(3) includes Critical Energy Infrastructure Information within CEII. We believe that the regulations, as proposed, provide adequate guidance for a submitter or Commission staff to determine whether information is CEII and for the CEII Coordinator to make a determination. In addition, the criteria and designation procedures adopted herein are informed by the Commission's experience of implementing and administering the Critical Energy Infrastructure Information regulations over the past fifteen years.

36. The Commission does not agree that the scope of CEII should be modified, as suggested by the Trade Associations, to encompass information ''related to compliance with the Reliability Standards.'' The Trade Associations' proposal is unduly broad and inconsistent with the FAST Act because it could lead to all infrastructure information, whether critical or not, being treated as CEII. For the same reason, we do not agree that the blanket presumption that information relating to compliance with Reliability Standards is CEII, proposed by the Trade Associations, is appropriate. Like other forms of CEII, however, information on compliance with Reliability Standards may be treated as CEII if the submitter justifies its treatment as CEII under the Commission's regulations.

37. In response to HRC's comments that documents listed as CEII could be better described in eLibrary, the level of detail needed for a document description in eLibrary is better addressed in our submission guidelines rather than in our regulations.[62]

38. In response to HRC's request for an additional process to obtain a ruling on CEII when it is filed, we believe that such a process is unnecessary, as entities seeking access to information filed as CEII may submit a FOIA or CEII request at any time, including promptly after that information is filed with the Commission. We further conclude that the proposed procedures are adequate for the Commission to process information submitted to the Commission, or generated by the Commission, as CEII.[63] As previously noted, the Commission receives over 7,000 CEII submissions a year; reviewing the information at the time of submission, in the absence of a specific request for that information, would be overly burdensome on the Commission's resources. In response to a CEII request, the CEII Coordinator will review the information to determine whether to designate it as CEII. Further, proposed section 388.113(d)(1)(iv) specifically states that the Commission retains the right to make determinations with regard to any claim of CEII status, at any time.

39. In response to the comments from APPA and the Trade Associations, the Commission declines to revise the regulations to identify specific designation criteria and CEII procedures for DOE. Section 215A(d)(3) of the FAST Act provides that information ''may be designated'' by the Commission and DOE pursuant to the criteria and procedures that the Commission establishes.[64] The FAST Act, however, does not compel DOE to make any changes to its regulations in this regard, and as noted in the NOPR, nothing within the Commission's regulations would limit DOE's ability to designate CEII in accordance with the FAST Act.[65] Furthermore, we do not believe a technical conference is necessary to satisfy the requirement for consultation with DOE in the FAST Act.

40. Although the Commission recognizes that other agencies have an obligation to protect certain information in their custody, the FAST Act does not grant other federal agencies the authority to designate information as

[51] *Id.* at 2.

[52] *Id.* at 3.

[53] *Id.*

[54] WIRAB Comments at 5; APS Comments at 5.

[55] Trade Associations Comments at 12.

[56] *Id.* at 11.

[57] APPA Comments at 24–25; Trade Associations Comments at 23.

[58] *Id.*

[59] Peak Comments at 6–7; Public Interest Organizations Comments at 5; APPA Comments at 25. WIRAB also requests a technical conference to discuss implementation of the FAST Act. WIRAB Comments at 11.

[60] NRC Comments at 1–2.

[61] *Id.* at 2.

[62] *See* CEII Filing Guide, *https://www.ferc.gov/resources/guides/filing-guide/file-ceii/ceii-guidelines.asp.* The Commission will update the CEII Filing Guide when the proposed regulations become effective.

[63] *See* amended sections 388.113(c) and (d).

[64] FAST Act, Pub. L. 114–94, section 61,003, 129 Stat. 1312, 1776.

[65] NOPR, 155 FERC ¶ 61,278 at P 16 n.12.

CEII. Critical Electric Infrastructure Information is specifically defined as information ''designated as critical electric infrastructure information by the Commission or the Secretary of the Department of Energy pursuant to subsection (d).'' [66] Congress's intent to limit the designation authority to the Commission and DOE is reinforced by the fact that only the staff of the Commission and DOE are subject to sanctions for unauthorized release under section 215A(d)(2)(C).[67] However, because NRC has raised valid concerns about the protection of sensitive information of the electric grid in its custody, the Commission revises the amended scope of section 388.113 to state that nothing in this section limits any other Federal agency's ability to take all necessary steps to protect information within its custody or control that is necessary to ensure the safety and security of the electric grid. Further, the section is revised to state that, to the extent necessary, such agency may consult with the CEII Coordinator regarding the treatment or designation of such information (see the last two sentences of paragraph (a) in the regulatory text of section 388.113 in this rule). Nothing in this section limits the ability of any other Federal agency to take all necessary steps to protect information within its custody or control that is necessary to ensure the safety and security of the electric grid. To the extent necessary, such agency may consult with the CEII Coordinator regarding the treatment or designation of such information.

41. By this change, the Commission does not limit the discretion of other federal agencies to protect sensitive information in their custody but provides a mechanism for agencies to consult with the Commission's CEII Coordinator regarding the treatment or designation of such information as CEII.[68] We believe this change strikes a reasonable balance by recognizing other federal agencies' discretion to protect their information, while adhering to the statutory framework that limits CEII designation authority to the Commission and DOE.

2. Designation of Submissions to the Commission

NOPR

42. The Commission proposed to treat information submitted with a justification for CEII treatment as CEII, unless the submitter is otherwise notified by the Commission.[69]

Comments

43. APS asks that the Commission ''deem'' information as CEII at the time an entity submits the information to the Commission.[70] HRC and Tacoma Power are concerned that ''treating'' a submission as CEII is not a designation and, as a result, submitting entities may not be able to assert the FOIA exemption when faced with a records request unless and until the Commission makes a CEII designation determination.[71] Tacoma Power further requests that the Commission develop a process for state entities to receive a CEII designation determination so that state entities may assert any FOIA exemption with certainty.[72]

44. INGAA, NERC, and the Trade Associations request that the Commission change the comment period afforded to submitters of CEII to respond to a request for CEII from five calendar days to five business days, ten working days, or at least 30 calendar days, respectively.[73] APS and CEA comment that if the Commission determines that particular information is not CEII, the Commission should provide the submitter with an explanation of why the information does not meet the criteria for designation as CEII.[74] The Trade Associations also request that the Commission provide a more detailed explanation in instances when CEII is released over an objection from the submitter of the material.[75]

45. MISO, Trade Associations, CEA, and HRC submitted comments recommending changes to the Commission's processing and evaluation of justification statements that must accompany a submitter's request for CEII treatment. MISO is concerned that the Commission may automatically make information public if the submission fails to meet the Commission's regulations. Thus, MISO recommends that amended section 388.113(d)(1) be revised to make clear that failure to provide the justification or other required information will be considered in the determination of whether the information will be maintained as CEII by the Commission, but it will not result in automatic disclosure of the information.[76]

46. The Trade Associations maintain information submitted to the Commission for designation as CEII that ultimately is determined not to be CEII should not automatically be disclosed to the public because such information may be subject to other laws and regulations restricting disclosure of the information.[77]

47. CEA recommends that the Commission provide the submitter with an opportunity to retract a submission and re-submit it with the appropriate justification.[78]

Commission Determination

48. As an initial matter, we correct the statement in the NOPR erroneously stating that under our current practice, ''the Commission deems the designation on a submission accepted as submitted.'' [79] Our current practice is to *treat* information as CEII, and maintain it in our non-public files, when it is submitted with a request for CEII treatment. That practice is reflected in the current and proposed regulations.[80] Under the regulations adopted in this Final Rule information that is submitted will not be *designated* CEII until the CEII Coordinator makes such a determination.

49. As to the comments submitted by Tacoma Power, the Commission is not persuaded that a special expedited process for designations in the event a State entity is facing a public records request is needed, because State and local entities may consult with the CEII Coordinator as to whether information that is subject to a State, local, or other type of records request is CEII under the Commission's regulations.[81]

50. In response to the comments from APS and CEA about the procedures for informing a submitter of a potential release or re-designation of CEII, the Commission's current practices are sufficient to comply with the FAST Act

[66] FAST Act, Pub. L. 114–94, section 61,003, 129 Stat. 1312, 1776.

[67] *Id.*

[68] For example, the Commission could establish the parameters of the Commission's role with regard to CEII with another federal agency through a Memorandum of Understanding with that agency.

[69] NOPR, 155 FERC ¶ 61,278 at P 19.

[70] APS Comments at 6.

[71] HRC Comments at 2; Tacoma Power Comments at 4.

[72] Tacoma Power Comments at 4.

[73] INGAA Comments at 4; NERC Comments at 15; Trade Associations Comments at 19.

[74] APS Comments at 6; CEA Comments at 6–7.

[75] Trade Associations Comments at 19–20.

[76] MISO Comments at 7.

[77] Trade Associations Comments at 25–26.

[78] CEA Comments at 6–7.

[79] NOPR, 155 FERC ¶ 61,278 at P 19.

[80] *See* amended section 388.113(d)(1)(vi).

[81] Section 215A(d)(1)(B) states that Critical Electric Infrastructure Information ''shall not be made available by any Federal, State, political subdivision or tribal authority pursuant to any Federal, State, political subdivision or tribal law requiring public disclosure of information or records.'' FAST Act, Pub. L. 114–94, section 61,003, 129 Stat. 1312, 1776.

and we maintain those practices under the adopted regulations. The current practice is to provide notice to the submitter if a proposed CEII designation will be rejected or if CEII will be released over an objection. The notification will include an explanation as to why the information does not meet the criteria and the submitter will have an opportunity to comment or seek appropriate relief under amended section 388.113(e)(4).

51. The Commission is not persuaded that it is necessary to make the changes proposed by MISO and CEA regarding treatment of information that is filed in a manner that does not meet our regulations. The amended regulations do not mandate automatic disclosure of the information. Furthermore, even if the Commission were to make information public, the Commission will provide notice to the submitter prior to any determination.[82]

52. The Commission adopts INGAA's proposal to change the comment period from five calendar days to five business days, and will change all references in section 388.113 from ''calendar'' days to ''business'' days. Allowing more time is not warranted because the issue of whether to release CEII is relatively limited and, as a general matter, the Commission endeavors to respond to requests for CEII as soon as possible. In addition, the Commission notes that submitters can request an extension of that time-period to submit comments to the Commission.

3. Information Included in NERC Databases

NOPR

53. The Commission proposed that information downloaded by Commission staff from private databases that are accessed pursuant to Commission order or regulation will be maintained as non-public information consistent with the Commission's internal controls.[83] The Commission noted that in response to an information request, it will evaluate whether the information is CEII, proprietary information, or otherwise privileged or non-public and will provide the owner of the database or information (as appropriate) with an opportunity to comment on the request.[84]

Comments

54. Most commenters support treating data downloaded from the NERC databases as non-public. NERC agrees with the proposal to treat information downloaded from its databases as non-public, but it seeks clarification as to whether the Commission intends to designate the information as privileged and CEII.[85] TAPS requests that if the Commission determines to release database information, the manager of the database and the entity whose data would be released should receive notice and an opportunity to comment.[86]

55. The Trade Associations recommend that the Commission treat the NERC databases information that Commission staff does not download as inextricably intertwined with downloaded information and thereby treat all of the information on each database as CEII.[87] TAPS raises concerns that information that is contained in a database may not be adequately protected from disclosure, because the data ''is not being submitted to the Commission, but rather accessed by the Commission.'' [88]

CEA requests that the Commission respect Canadian information that may be accessed through any private databases accessible to the Commission.[89] CEA further comments that the Commission's information gathering through other databases be restricted to U.S. facility information only.[90]

Commission Determination

56. The Commission adopts the NOPR proposal to treat information *downloaded* from NERC databases as non-public [91] and to evaluate whether it should be designated as CEII in response to a request for the information or if the Commission determines such information should be disclosed.[92] In addition, because the CEII designation only applies to information that is submitted to or generated by the Commission, information that Commission staff accesses and reviews, but never takes custody of, cannot be designated as CEII. Therefore, the Commission disagrees with the proposal to treat all of the information in an accessed database as inextricably intertwined CEII.[93]

57. The Commission clarifies that information downloaded by the Commission or its staff from a non-public NERC database will be treated as non-public information and will be afforded the same treatment as CEII. Thus, in the event the Commission receives a request for the information or the Commission determines such information should be disclosed, the Commission will ''provide the owner of the database or information (as appropriate) with an opportunity to comment on the request.'' [94] In response to TAPS's comments, we clarify that, where practicable, we will notify the database owner and the information owner.[95]

58. Finally, as to CEA's comment regarding Canadian information on other databases, we believe that CEA's request goes beyond the scope of this rulemaking proceeding, which is limited to amending the Commission's regulations regarding CEII.[96]

4. Designation of Commission-Generated Information

NOPR

59. For Commission-generated information, the NOPR explained that the CEII Coordinator, after consultation with the appropriate Commission Office Director, will determine whether the information meets the definition of CEII.[97] The CEII Coordinator will then determine how long the CEII designation should last and, as appropriate, whether to make any re-designation.[98]

Comments

60. The Trade Associations request that the Commission establish a process in which appropriate stakeholders may

[82] *See* amended sections 388.113(d)(1)(iv) and 388.113(e)(3)–(4).

[83] NOPR, 155 FERC ¶ 61,278 at P 17 n.13(citing *Availability of Certain North American Electric Reliability Corporation Databases to the Commission,* Order No. 824, 155 FERC ¶ 61,275 (2016)).

[84] *Id.*

[85] NERC Comments at 19.

[86] TAPS Comments at 5–7.

[87] Trade Associations Comments at 15.

[88] TAPS Comments at 6.

[89] CEA Comments at 4.

[90] *Id.*

[91] This is consistent with the statement in Order No. 824 that the Commission ''will take appropriate steps, as provided for in our governing statutes and regulations, in handling such information.'' Order No. 824, 152 FERC ¶ 61,208 at P 22.

[92] The discussion above and our determination address the Trade Associations' request for clarification of Order No. 824 in Docket No. RM15–25–001.

[93] By the same token, information that is not downloaded cannot be disclosed under a FOIA request as the Commission would not possess the information.

[94] NOPR, 155 FERC ¶ 61,278 at P 17 n.13.

[95] We note that section 1505 of NERC's Rules of Procedure requires NERC, unless otherwise directed by the Commission or its staff, to provide notice to submitting entities in response to requests for the submitting entities' information by the Commission.

[96] The Commission has addressed the scope of information covered by specific data collection requirements in individual proceedings. For example, in Order No. 824, concerning Commission access to certain NERC databases that include data about both U.S. and Canadian facilities, the Commission revised its regulations to indicate that ''Commission access will be limited to data regarding U.S. facilities.'' Order No. 824, 155 FERC ¶ 61,275 at P 38.

[97] NOPR, 155 FERC ¶ 61,278 at P 21.

[98] *Id.*

participate in the Commission's CEII designation determinations for Commission-generated information.[99] The Trade Associations assert that whether the information is submitted to the Commission or not, ''owners and operators of that critical infrastructure who will be faced with defending such a potential attack deserve to have input into the determination of whether or not such information should be disclosed.'' [100]

Commission Determination

61. The Commission determines that there is no need for stakeholder participation in the designation of Commission-generated information. The Commission has the expertise and experience to make determinations about whether Commission-generated information is CEII. And as a practical matter, it would not be appropriate in some circumstances for stakeholders to be privy to Commission-generated information that qualifies as CEII. For example, Commission-generated CEII may contain information that is otherwise non-public or privileged. To the extent that an entity believes that a Commission-generated document contains CEII about its facility, the entity is not precluded from raising that concern with the CEII Coordinator.

5. Segregable Information

NOPR

62. The NOPR recognized that information submitted to the Commission may contain parts that are CEII and parts that may not be CEII. As a result, the NOPR proposed to require entities submitting CEII and Commission staff who generate CEII, to the extent feasible, to segregate the CEII (or information that reasonably could be expected to lead to the disclosure of the CEII) from non-CEII at the time of submission or staff's generation, respectively.[101]

Comments

63. HRC and Powerex support the requirement to segregate CEII from non-CEII and encourage efforts to prevent the over-classification of information.[102] TAPS asks the Commission to confirm that submitting a redacted public version of a filing satisfies the requirement to segregate CEII.[103] Powerex asks the Commission to clarify that derivative analyses performed by governmental entities or their contractors that use or rely on CEII, without more detail, should not be designated as CEII solely based on the fact the analysis relies on or uses CEII.[104]

Commission Determination

64. The Commission clarifies that submitting a properly redacted public version of information submitted as CEII meets the requirement established in section 215A(d)(8). Moreover, derivative analyses that use or rely on CEII, without actually containing or disclosing CEII, do not automatically qualify as CEII unless the information provided could reasonably be expected to lead to the disclosure of CEII.

6. Duration of Designation

NOPR

65. Section 215A(d)(9) provides that information ''may not be designated as critical electric infrastructure information for longer than 5 years, unless specifically re-designated by the Commission or the Secretary, as appropriate.''[105] The NOPR stated that the five-year designation period will commence upon submission, and the expiration of the five-year period will not automatically trigger the public release of the information unless the Commission determines it is appropriate to do so.[106] The NOPR also stated that the Commission will make a re-designation determination when an entity requests the information; when staff determines a need to remove the designation; or when a submitter requests that the information no longer be treated as CEII.[107] Consistent with current practice, the NOPR proposed that a NDA will require protection of CEII past the expiration of the CEII designation marked on the information and that the recipient of CEII from the Commission must receive prior authorization from the Commission before making any disclosure.[108]

66. In the NOPR, the Commission proposed removing the CEII designation when the information no longer could impair the security or reliability of not only the bulk-power system or distribution facilities but also other forms of energy infrastructure.[109] The Commission stated that the Commission would provide notice to the submitter ''in the instance where the Commission takes the affirmative step to rescind the designation.'' [110]

Comments

67. Several commenters support the proposal to maintain information as non-public after CEII designations marked on the information expire.[111] However, Peak requests that the Commission determine at the time of the designation whether the data will lose its protection after the five-year term ends and recommends creating designation categories that include designation timeframes.[112] The Trade Associations and APPA ask the Commission to automatically re-designate information, absent objection.[113] Tallgrass requests that a designation remain for the life of a pipeline facility.[114] INGAA requests that the Commission never un-designate CEII related to pipeline facilities on its own initiative or unilaterally as long as the facility is in operation.[115]

68. APS requests clarification on whether the criteria for re-designating CEII are the same as the criteria used for the initial CEII designation.[116]

69. NRECA and ITC assert that the NOPR is unclear with respect to the notice and comment provisions pertaining to a determination to remove CEII designations. In particular, they urge the Commission to clarify that submitters will receive notice, an opportunity to comment, and appeals rights prior to any determination to remove a CEII designation and prior to any disclosure of the information.[117] ITC also states that the NOPR proposal to ''notify the person who submitted the document and give the person an opportunity (at least five calendar days) in which to comment in writing prior to the removal of the designation'' is insufficient notice. ITC asks the Commission to provide notice and an opportunity to comment not only to the ''person who submitted the document'' but also to the organization on whose

[99] Trade Associations Comments at 24.

[100] *Id.*

[101] NOPR, 155 FERC ¶ 61,278 at P 22.

[102] HRC Comments at 3; Powerex Comments at 16–17.

[103] TAPS Comments at 14.

[104] Powerex Comments at 16.

[105] FAST Act, Pub. L. 114–94, section 61,003, 129 Stat. 1312, 1776.

[106] NOPR, 155 FERC ¶ 61,278 at P 18 n.14 and P 24.

[107] *Id.*

[108] *Id.* P 26.

[109] *Id.* P 27.

[110] *Id.*

[111] *See, e.g.,* ITC Comments at 2–3; INGAA Comments at 3; NRECA Comments at 9.

[112] Peak Comments at 10–11 (recommending categories such as ''transmission and generation outage data, generator-specific forecast data, transmission facility and load status and measurements, specific facility modeling data, and device lists'').

[113] Trade Associations Comments at 21–22; APPA Comments at 20.

[114] Tallgrass Comments at 3.

[115] INGAA Comments at 3.

[116] APS Comments at 12.

[117] NRECA Comments at 11; ITC Comments at 3–4.

behalf the person submitted the document.[118]

70. APPA requests that the Commission revise the language in amended section 388.113(e) to ensure that designations made by DOE cannot be removed by the Commission.[119]

Commission Determination

71. The Commission adopts the NOPR proposal to treat expired CEII as non-public until a re-designation determination is made. Such a process is supported by the majority of commenters and is reasonable given the large volume of CEII presently in the Commission's files and anticipated to be filed. Consistent with the NOPR's intent, the Commission will modify the regulatory language in amended section 388.113(e) to indicate that the Commission will treat information as non-public after the CEII designation has lapsed; that no information will be released as non-CEII unless the Commission decides to release the information; and that notice and opportunity for comment will be provided to the submitter prior to any determination that the CEII designation of a submitted document should be removed.

72. We do not adopt the recommendations to automatically re-designate information, designate by category, or designate for the lifetime of a facility. Blanket designations are inconsistent with FPA section 215A(d)(9), which requires the Commission to specifically re-designate information.[120]

73. In response to ITC's comments that providing notice to the person who submitted the document is insufficient, we clarify that the Commission will provide the person and/or the organization identified on the submission notice an opportunity to comment as well as appeal rights prior to any determination to rescind a CEII designation or release the information.[121]

74. With respect to APPA's comments regarding the Commission's ability to remove a DOE designation, we clarify that the Commission does not intend to remove any designations that DOE may make. With respect to APS's request for clarification regarding re-designations, we clarify that the regulations adopted herein do not differentiate between the processes for designating or re-designating information as CEII.

7. Judicial Review of Designation

NOPR

75. The Commission proposed to require a person seeking to challenge a Commission designation determination to file an administrative appeal with the Commission's General Counsel prior to seeking judicial review in federal district court under section 215A(d)(11).[122]

Comments

76. HRC contends that the Commission's administrative appeal requirement should not be mandatory.[123] NRECA asserts that the Commission does not have a legal basis for the administrative appeal requirement.[124] NRECA also recommends that the regulations specify the timeframes in which appeals can be pursued; a timeframe for when a decision on the appeal should be rendered; and that the designation will remain in place until legal challenges have been exhausted.[125]

77. NRECA contends that the Commission must revise the delegation authority provisions in section 375.313 to allow the General Counsel to hear and decide an administrative appeal.[126]

Commission Determination

78. With respect to NRECA and HRC's comment, Congress directed the Commission to establish criteria and procedures to designate information as CEII, and the mandatory appeal to the Commission's General Counsel is a procedure that will assist in proper designation of such information. Requiring a party to exhaust administrative remedies prior to taking a matter to court is a standard and basic function of administrative law.[127] The administrative appeal process gives the Commission an opportunity to correct any error and to ensure that Commission policy has been properly complied with. This process creates efficiency in the administrative process and promotes judicial economy. In addition, the current FOIA and CEII process provides for administrative appeal.[128]

79. In response to NRECA's suggestion regarding appeal timeframes, the Commission will revise the amended regulations at section 388.113(j) to provide more specificity about the process for submitting an administrative appeal. After receiving a determination that information no longer qualifies as CEII, a submitter may appeal that determination. To make an appeal, the submitter must file a notice of appeal to the General Counsel, copying the CEII Coordinator, within 5 business days of the date of the determination.[129] A statement in support of the appeal (a statement providing applicable facts and legal authority) must be submitted to the General Counsel within 20 business days of the date of the determination. The appeal will be considered received upon receipt of the statement in support of the appeal. A determination denying a request for disclosure or denying a request to designate a document as public may also be appealed. A notice of appeal is not required for these determinations because information would not be disclosed under the challenged decision. However, the requester must submit an appeal within 20 business days of the date of the determination by submitting its statement in support of its appeal to the Commission's General Counsel.[130] The General Counsel or the General Counsel's designee will make a determination with respect to any appeal within 20 business days after the receipt of the appeal, unless extended pursuant to section 388.110(b)(1), which will equally apply to CEII for purposes of appeals.

80. To avoid any uncertainty, the Commission will amend section 375.309 to include a provision to make clear that the Commission has delegated to the General Counsel authority to make determinations on behalf of the

[118] ITC Comments at 3.

[119] APPA Comments at 26.

[120] Section 215A(d)(9) states that information ''may not be designated as critical electric infrastructure information for longer than 5 years, unless specifically re-designated by the Commission or the Secretary, as appropriate.'' FAST Act, Public Law 114–94, section 61,003, 129 Stat. 1312, 1776.

[121] The Commission will use the relevant service list, where appropriate, to determine the appropriate recipient.

[122] NOPR, 155 FERC ¶ 61,278 at P 28.

[123] HRC Comments at 3.

[124] NRECA Comments at 11; HRC Comments at 3–4.

[125] *Id.*

[126] NRECA Comments at 12.

[127] *See Hidalgo* v. *FBI,* 344 F.3d 1256, 1258–59 (D.C. Cir. 2003) (holding that ''exhaustion of administrative remedies is generally required before filing suit in federal court so that the agency has an opportunity to exercise its discretion and expertise on the matter and to make a factual record to support its decision'').

[128] NOPR, 155 FERC ¶ 61,278 at P 28.

[129] Requiring the submitter to inform the Commission of its intent to appeal within 5 business days will allow the Commission to know sooner than later whether the submitter plans to challenge the decision and, if not, allow the Commission to disclose the information sooner.

[130] The Trade Associations suggest that the Commission should issue an order on appeal of any denial of an information owner's objections to disclosure of CEII pursuant to a NDA. Trade Association Comments at 20. Under our current practice, the decision to disclose CEII pursuant to a NDA is appealable directly to a district court under 5 U.S.C. 552(a)(4)(B). There is no need to establish an additional procedure under the amended regulations that requires the Commission to issue an order on appeal.

Commission on appeals of designations and determinations regarding CEII.

C. Duty to Protect CEII

NOPR

81. The Commission proposed revisions to strengthen the handling requirements for Commission employees and external recipients of CEII. With respect to Commission staff, the Commission proposed to add section 388.113(h) to require Commissioners, Commission staff, and Commission contractors to comply with the Commission's internal controls.[131] For external recipients of CEII, the Commission proposed requiring requesters to provide specific information to demonstrate a legitimate need for the information and to include a signed statement attesting to the accuracy of the information provided in any CEII request.[132] The Commission also proposed that all NDAs minimally require that CEII: (1) will only be used for the purpose it was requested; (2) may only be discussed with authorized recipients; (3) must be kept in a secure place in a manner that would prevent unauthorized access; and (4) must be destroyed or returned to the Commission upon request. The Commission also proposed that the NDA make clear that the Commission may audit compliance with the NDA.

Comments

82. The Trade Associations request that the Commission provide further details of the content and nature of the internal controls and include them in the Commission's regulations.[133] MISO agrees that the Commission should have internal controls and notes that the internal controls should be enforced.[134]

83. Several commenters request that the Commission expand the list of minimum requirements for a NDA. MISO and NRECA note that the NOPR recognizes the need for requesters to protect CEII after the designation has lapsed and recommend that the duty to protect expired CEII be included in the minimum NDA requirements.[135] MISO, the Trade Associations and APS recommend that the Commission require recipients to report all unauthorized disclosures.[136] NERC recommends adding to the NDA a requirement that a recipient must destroy or return CEII by specific deadlines.[137] NERC and the Trade Associations request that submitters be able to enforce the terms of a NDA that covers the submitter's CEII.[138]

84. In addition to the NDA recommendations stated above, the Trade Associations request that the Commission add the following clauses to the NDA: (1) Recipients of CEII shall have information protection policies and procedures to protect the CEII; and (2) an officer of the recipient's organization, on behalf of the organization, as well as all individuals who will have access to the CEII, shall execute the NDA, which shall specify that the individuals and organization face sanctions for failure to honor the terms of the NDA.[139]

85. APS encourages the Commission to review the current NDA for potential gaps, such as the lack of an obligation to treat CEII with the same degree of care as a requester would treat its own confidential or proprietary information.[140] NRECA asks the Commission to clarify that a NDA is required when an entity receives CEII after the designation expires.[141]

86. Peak seeks clarification regarding the requirements for keeping CEII in a secure place and manner.[142] Peak explains that recipients of CEII may have different views of what constitutes a ''secure place.''[143]

87. The Trade Associations recommend that the Commission adopt a monitoring and enforcement process to discourage unauthorized disclosures and ask for additional language clarifying that ''any person or entity found to have used or disclosed CEII in a manner inconsistent with the NDA will lose its access to CEII for an extended period of time.'' [144] The Trade Associations and NRECA suggest that the Commission determine that noncompliance with the NDA would subject an individual to penalties of up to $1 million per violation per day.[145]

88. NERC requests that the Commission ensure that requesters have not been convicted of criminal activity by performing background checks, reviewing watch lists, and verifying security clearances to prevent inadvertent disclosures of CEII to a person with a criminal record or who is under investigation or on a terrorist watch list.[146]

89. NERC also proposes that the Commission include evidentiary criteria to determine whether a requester of CEII is legitimate, and the Trade Associations ask the Commission to conduct risk assessments on all requesters.[147]

90. APS urges the Commission to require all requests to include at least two business references and the submission of documentation of authority for organizational requesters.[148] Peak requests that if a CEII request is not for participation in a specific proceeding, the requester should be required to include in its statement of need a ''reliability or societal benefit.'' [149]

Commission Determination

91. We disagree with the Trade Associations' recommendation that we provide additional details regarding internal controls and that we include internal controls in the Commission's regulations. The NOPR stated that the internal controls will address ''how sensitive information, including CEII, should be handled, marked, and kept.''[150] We find that this statement provides sufficient details regarding the nature of the internal controls. We also conclude that internal controls should not be specified in the Commission's regulations to allow Commission staff the flexibility to revise such controls as needed.[151]

92. Amended section 388.113(h)(2) only includes ''minimum'' requirements

[131] NOPR, 155 FERC ¶ 61,278 at P 30.

[132] *Id.* PP 33–34. Specifically, the Commission proposed to require a requester to demonstrate: (1) the extent to which a particular function is dependent upon access to the information; (2) why the function cannot be achieved or performed without access to the information; (3) whether other information is available to the requester that could facilitate the same objective; (4) how long the information will be needed; (5) whether or not the information is needed to participate in a specific proceeding (with that proceeding identified); and (6) whether the information is needed expeditiously. *Id.*

[133] Trade Associations Comments at P 36–37. The Trade Associations also state that the Commission should consider expounding on recommendations from the DOE IG.

[134] MISO Comments at 8.

[135] MISO Comments at 8; NRECA Comments at 10.

[136] MISO Comments at 9; Trade Associations Comments at 26; APS Comments at 10.

[137] NERC Comments at 14.

[138] NERC Comments at 14; Trade Associations Comments at 26.

[139] Trade Associations Comments at 26.

[140] APS Comments at 9–10.

[141] NRECA Comments at 10.

[142] Peak Comments at 14–15.

[143] *Id.*

[144] Trade Associations Comments at 34.

[145] Trade Associations Comments at 35; NRECA Comments at 16–17.

[146] NERC Comments at 13–14.

[147] NERC Comments at 12–14; Trade Associations Comments at 33.

[148] APS Comments at 7–8.

[149] Peak Comments at 14.

[150] NOPR, 155 FERC ¶ 61,278 at P 30.

[151] In developing this Final Rule and the internal controls, the Commission has been cognizant of the recommendations of the DOE Inspector General Report from January 30, 2015 as well as the Commission's earlier response thereto, which are a matter of public record. *See* Department of Energy, Office of Inspector General, Inspection Report, Review of Controls for Protecting Nonpublic Information at the Federal Energy Regulatory Commission, DOE/IG–0933 (January 2015), *http://energy.gov/ig/downloads/inspection-report-doeig-0933.*

for a NDA and is not intended to be exhaustive or preclude other requirements. Under certain circumstances the Commission may add additional provisions to the NDA and submitters may request that additional provisions be added to the NDA.

93. In response to MISO's and NRECA's comments, the Commission will amend section 388.113(h)(2) to require a recipient of CEII under a NDA to protect the CEII after a designation lapses as part of the list of minimum requirements of a NDA. In response to the comments by MISO, the Trade Associations and APS, we will also amend section 388.113(h)(2) to add an obligation to require CEII recipients to promptly report all unauthorized disclosures of CEII to the Commission.

94. In response to NRECA's concern, the Commission clarifies that a requester seeking information past the expiration of the CEII designation marked on the information must still pursue the information through the CEII or FOIA processes. We read NRECA's comments to apply to situations where an entity requests information that has been submitted to the Commission more than five years prior to the request and the Commission has not made a determination to re-designate the information. In these situations, the CEII Coordinator will make a re-designation determination as part of the response to a request seeking access to information that has a designation determination older than five years. If the information is re-designated as CEII, then it will be processed pursuant to the Commission's requirements for CEII.

95. The Commission is not persuaded by Peak's comments that there is a need to clarify what constitutes maintaining CEII in a secure place. We believe that a ''secure place,'' as articulated in the NDA, has a well-understood meaning, *i.e.* safe or free from unauthorized access or a risk of loss.

96. The Commission believes that it has sufficient authority to enforce the terms of the NDA and, as a result, it is unnecessary to confer on NERC or others authority to enforce the terms of a NDA.

97. In response to the comments of the Trade Associations and NRECA, the Commission notes that the FAST Act does not require the Commission to develop sanctions for external recipients of CEII. In any event, the general CEII NDA already states that a violation of the NDA may result in civil sanctions for an external recipient of CEII, and it will continue to do so. It is not necessary to list all the various civil sanctions that may apply, as each matter would be reviewed on its own facts. For these reasons, we also decline to adopt the Trade Associations' recommendation that we add to the minimum requirements of a NDA a provision that CEII recipients may be sanctioned by losing access to CEII for an extended period of time.

98. The Commission agrees that it is important to ensure that requesters of CEII do not pose security risks. CEII requesters have historically fallen into different categories, including individuals known to the Commission with no known risk.[152] The Commission will continue the practice of requiring information needed to verify the legitimacy of a requester on an as-needed basis. As such, there is no need for a CEII requester to demonstrate that there is a ''reliability or social benefit'' to the request. We believe that our procedures have adequately assessed whether requestors should receive CEII. In addition, we propose additional requirements for a requester to obtain CEII information. Thus, given these procedures, it is not necessary to mandate specific background check criteria in the regulations. Moreover, while the current request form asks for a business reference, we are not persuaded that such a submission is necessary in all instances or that two references are necessary.[153]

D. Sanctions

NOPR

99. Section 215A(d)(2)(C) of the FPA requires the Commission to ''ensure there are appropriate sanctions in place for Commissioners, officers, employees, or agents of the Commission or DOE who knowingly and willfully disclose critical electric infrastructure information in a manner that is not authorized under this section.'' [154] The Commission proposed sanctioning unauthorized disclosures of CEII by Commission personnel and further noted that DOE will have responsibility for sanctions for unauthorized disclosures by its officers and employees.[155] The Commission also proposed to refer any misconduct by the Chairman or Commissioners to the DOE Inspector General (DOE IG).[156]

Comments

100. Several commenters, including APPA and the Trade Associations, point to the absence of stated sanctions for Commissioners in the NOPR and request that the Commission consider whether to impose civil sanctions under section 316A of the FPA and criminal penalties under section 316(b) of the FPA.[157] APPA also recommends that the Commission consider referring unauthorized CEII disclosures by Commissioners to the Department of Justice (DOJ) and that the Commission coordinate with DOE to outline a new or cite an existing procedure that DOE can utilize to sanction its employees.[158] MISO suggests that the Commission's General Counsel be tasked with referring any willful, unauthorized disclosures to the DOE IG.[159] NRECA asks that a mechanism be put in place for the public to make a referral to the DOE IG if they are aware of any misconduct.[160] MISO and NRECA recommend that the Commission revise its proposed rule to make clear that the Commission ''shall'' refer any misconduct to the DOE IG and to allow the public to refer matters to the DOE IG.[161]

Commission Determination

101. As discussed below, we conclude that the sanctions adopted in this Final Rule, as well as other reforms adopted prior to the passage of the FAST Act, provide sufficient deterrents to the unauthorized disclosure of CEII.

102. First, we note that, in addition to the changes adopted in this Final Rule, the Commission has recently made a number of changes to its internal procedures to ensure the protection and security of CEII.

103. The Commission has revised its security classification and ethics training to ensure that Commission employees are aware of their responsibility to protect sensitive

[152] Requests are typically received from public utilities, gas pipelines, hydro developers, academics, landowners, public interest groups, researchers, renewable energy organizations, and consultants.

[153] Electronic CEII Request Form, *http://www.ferc.gov/resources/guides/filing-guide/ceii-request.asp*.

[154] FAST Act, Public Law 114–94, section 61,003, 129 Stat. 1312, 1776.

[155] NOPR, 155 FERC ¶ 61,278 at P 36.

[156] *Id.*

[157] *See* Trade Associations Comments at 40 (noting that CEII protections adopted in the FAST Act were adopted in the context of what many considered to be an inappropriate disclosure of CEII by a former FERC Commissioner); *see also* APPA Comments at 28. APPA states that the Commission has authority to impose civil penalties against ''any person'' who violates any provision of any Commission rule and may use criminal penalties under FPA section 316(b) for knowing and willful violations, by ''any person'' of Commission rules or regulations under the FPA.

[158] APPA Comments at 27, 29. APPA also asserts that a DOE employee sanctioned for unauthorized disclosure may be able to challenge their sanction ''on grounds that it was not promulgated by the Commission, as directed by Congress.''

[159] MISO Comments at 10.

[160] NRECA Comments at 16.

[161] MISO Comments at 10; NRECA Comments at 16.

nonpublic information. The Commission also has strengthened its protection of CEII and other sensitive, non-public information. For example, the Commission conducted a comprehensive review of its internal information governance procedures, which informed the development of the internal controls referenced in this Final Rule. We believe that these reforms should help protect against unauthorized disclosure of CEII.

104. The Commission has also taken steps to ensure that there are appropriate sanctions in place for certain persons who knowingly and willfully disclose CEII without authorization. With respect to former employees and Commissioners, the Commission has strengthened certain requirements applicable to departing employees and Commissioners by requiring them to certify that they are not unlawfully removing records from the agency. This certification form also identifies and requires a departing employee or Commissioner to acknowledge the potential criminal penalties associated with the unlawful removal or destruction of federal records. While these changes pre-date the passage of the FAST Act, they are an important component of the Commission's ongoing efforts to protect against improper disclosure of CEII.

105. As to existing Commission officers, employees, and agents, we conclude that the sanctions adopted in this Final Rule are appropriate, as they provide for possible dismissal from federal service and criminal prosecution for improper disclosure of CEII. These sanctions should serve as a deterrent to, and punishment for, improper activity.

106. With respect to Commissioners, we believe it is appropriate that violations be referred to the DOE IG, as that office is equipped to investigate a Commissioner's actions and impose sanctions on a Commissioner through an independent process outside of the Commission's enforcement process.[162] For example, it is within the DOE IG's discretion after concluding its investigation to refer a matter to the DOJ for criminal prosecution. Upon becoming aware of a potentially improper disclosure of CEII, the Designated Agency Ethics Official (DAEO) will oversee an examination of those circumstances. If there is reason to believe that an improper disclosure has occurred, the DAEO will refer the matter to the DOE IG.

107. Finally we conclude that there is no need to add a mechanism to our regulations for the public to make a referral to the DOE IG, as the DOE IG has an existing hotline in place for the public.[163] The Commission will also continue to defer to DOE as to what sanctions would be appropriate for DOE officers and employees.

E. Voluntary Sharing of CEII

NOPR

108. Section 215A(d)(2)(D) of the FPA requires the Commission, taking into account standards of the Electric Reliability Organization, to facilitate voluntary sharing of critical electric infrastructure information. The statute, specifically, directs the Commission to facilitate voluntary sharing with, between, and by Federal, State, political subdivision, and tribal authorities; the Electric Reliability Organization; regional entities; information sharing and analysis centers established pursuant to Presidential Decision Directive 63; owners, operators, and users of critical electric infrastructure in the United States; and other entities determined appropriate by the Commission.[164]

109. The Commission proposed that it would voluntarily share Commission-generated CEII and CEII submitted to the Commission with individuals or organizations when there is a need to ensure that energy infrastructure is protected.[165] Under this proposal, the Commission may voluntarily share CEII without receiving a request for the CEII.[166] However, the NOPR proposed that all voluntarily shared CEII would be shared subject to an appropriate NDA or Acknowledgement and Agreement.[167] Additionally, the NOPR proposed to require an Office Director or his designee to consult with the CEII Coordinator before voluntarily sharing CEII.[168]

110. In the NOPR, the Commission also noted that it retains the discretion to release information as necessary for other federal agencies to carry out their jurisdictional responsibilities.[169]

111. The NOPR also proposed that the Commission may impose additional restrictions on how voluntarily shared CEII may be used and maintained.[170] Where practicable, the Commission proposed providing notice of its voluntary sharing of CEII to the submitter of the CEII.[171]

Comments

112. Several commenters observe that the NOPR only addressed the Commission's voluntary sharing of CEII and did not establish guidelines for the voluntary sharing of CEII ''with, between, and by'' other entities.[172] Powerex requests that the Commission facilitate the sharing of CEII between and by owners, operators, and users of the critical electric infrastructure, while still adequately safeguarding CEII.[173] The Public Interest Organizations and WIRAB recommend that the Commission adopt a ''white list'' of CEII requesters that the Commission determines do not pose a risk of unauthorized disclosure.[174] They also contend that the Commission should adopt a universal NDA to encourage more sharing between and by non-Commission entities.[175] WIRAB also seeks standardization of NDAs used by NERC, regional entities, and the owners and operators of Critical Electric Infrastructure in the United States.[176]

113. The Joint RTOs (ISO New England, Inc. and Southwest Power Pool, Inc.) suggest that the Commission facilitate the sharing of CEII by permitting regional transmission organizations (RTOs), independent system operators (ISOs), and other entities with FERC-approved tariffs or similar agreements to share CEII ''between the entities relying on their tariff information-handling commitments.'' [177] In response, PJM states that the Commission should reject the Joint RTOs' proposal, arguing that it is incomplete and overbroad and fails to acknowledge results achieved through the current sharing of CEII.[178] The Joint RTOs, in reply comments, state that their proposal would simply allow ISOs, RTOs, and other entities with

[162] We note that no commenter has indicated that the DOE IG has insufficient tools to investigate and, as appropriate, pursue sanctions for a Commissioner.

[163] *See* DOE IG Hotline, *http://www.energy.gov/ig/services*.

[164] FAST Act, Public Law 114–94, section 61,003, 129 Stat. 1312, 1776.

[165] NOPR, 155 FERC ¶ 61,278 at PP 37–38, 40.

[166] *Id.* P 38.

[167] *Id.* P 40.

[168] *Id.* P 39.

[169] *Id.*

[170] *Id.* P 41.

[171] *Id.* P 42. The Commission noted that it may not be practicable to provide notice to the submitter in instances where voluntary sharing is necessary to maintain infrastructure security, to address a potential threat, or in other exigent circumstances.

[172] *See, e.g.,* Peak Comments at 5–6; Powerex Comments at 13–14; APPA Comments at 31; NRECA Comments at 13.

[173] Powerex Comments at 13–15.

[174] Public Interest Organizations Comments at 8–9; WIRAB Comments at 9.

[175] *Id.*

[176] WIRAB Comments at 10.

[177] Joint RTOs Comments at 4. MISO also suggests the Commission encourage sharing between planning authorities and transmission planners. *See* MISO Comments at 10.

[178] PJM Reply Comments at 2.

Commission-approved tariffs that have planning and operations responsibilities to use those tariffs to facilitate information-sharing.[179]

114. NERC generally supports the Commission's proposal to facilitate voluntary information sharing with NERC, regional entities and information sharing and analysis centers. NERC, nonetheless, requests that the Commission, under appropriate circumstances, share CEII with the Electricity Information Sharing & Analysis Center (E–ISAC) when voluntarily sharing CEII with a governmental entity.[180] NERC asks that the voluntary sharing process include coordination between the CEII Coordinator and certain Commission office staff prior to any disclosure.[181]

115. APS, the Trade Associations and CEA ask for additional criteria as to how and when the Commission will voluntarily share information.[182]

116. APPA asserts that FPA 215A(d)(2)(D) directs the Commission only to facilitate voluntary sharing of CEII among electricity subsector stakeholders—not to preemptively share CEII with interested parties.[183] APPA asserts that when the Commission voluntarily shares submitted information, it effectively forces the entity that submitted the information as CEII to share its information with others, which may reduce the incentive for the entity to voluntarily share CEII with the Commission.[184] APPA recommends that the Commission designate E–ISAC and any other appropriate Information Sharing and Analysis Organizations (ISAOs) as forums through which CEII can be shared under FPA 215A, and to apply the liability protections of FPA section 215A(f)(3) to those entities.[185] APPA also recommends that the Commission provide protections like those that are utilized by other federal agencies to facilitate information sharing activity.[186]

117. The Trade Associations request that the regulations explicitly state that the voluntary sharing of CEII is limited to instances where the Commission has determined that there is a need to ''ensure that energy infrastructure is protected.'' [187]

118. CEA requests that the Commission include language clarifying that the Commission will make every reasonable effort to provide advance notice before sharing CEII and will provide after-the-fact notice if prior notice is not practical.[188] MISO recommends that the Commission adopt regulatory language indicating that ''when prior notice is not given, submitters of CEII shall receive notice of a limited release of CEII as soon as practicable.'' [189] NRECA requests that the Commission clarify that any disclosure by the Commission on the basis of ''voluntary sharing'' must be subject to the same notice, comment, and appeal rights provisions that are afforded to submitters in response to CEII requests.[190]

119. The Trade Associations state that the proposed regulations could be strengthened by: (1) Limiting and defining the circumstances where notice would ''not be practicable''; and (2) allowing the submitters an opportunity to provide comments protesting the release of information the Commission proposes to voluntarily share.[191]

120. Finally, TAPS requests that the Commission revise its delegations to reflect the NOPR's proposal that Office Directors will engage in voluntary sharing.[192]

Commission Determination

121. Many of the commenters misapprehend how CEII may be voluntarily shared under the FAST Act or otherwise seek to expand the Commission's CEII sharing program in ways that neither the FAST Act nor the NOPR contemplated. Under FPA section 215A(a)(3), CEII is limited to information that is submitted to, or generated by, the Commission and designated as such by the Commission (or information submitted to, or generated by DOE, and designated as such by DOE).[193] In voluntarily releasing CEII to a person, the Commission imposes obligations on that person through a NDA. However, the Commission's CEII rules do not, and are not intended to, address information that an entity has unilaterally determined to be CEII and never submitted to the Commission.[194] In addition, the Commission's regulations do not cover an entity that has submitted CEII to the Commission but intends to share the same information with others outside of the Commission's processes. To be clear, an entity that receives CEII from the Commission is subject to the restrictions in the applicable NDA, including restrictions on use and disclosure. However, an entity that submitted the information to the Commission is not subject to a NDA and, as a result, the Commission's rules do not apply to how that entity may want to share its information.[195] Moreover, an entity may have information that could qualify as CEII, but such information is not CEII under the Commission's regulations unless it has been submitted to the Commission pursuant to the Commission's CEII regulations and the Commission has determined it to be CEII.

122. The Final Rule facilitates voluntary sharing by allowing the public to request CEII and by adding to the Commission's regulations a process whereby staff may share CEII in a proactive manner with a variety of entities. The Commission agrees with PJM's comments that existing non-public voluntary sharing mechanisms within the energy industry are sufficient to encourage sharing information among the different groups and therefore there is no need for the Commission to establish requirements for sharing within the industry through tariff revisions or otherwise.[196] It is also unnecessary to adopt Public Interest Organizations' and WIRAB's recommendation that the Commission establish ''whitelists'' for third parties to use or to require entities sharing information outside of the Commission's CEII process to adopt a particular NDA.

[179] Joint RTOs Reply Comments at 2.

[180] NERC Comments at 9.

[181] *Id.*

[182] APS Comments at 13; Trade Associations Comments at 27; CEA Comments at 5.

[183] APPA Comments at 30.

[184] *Id.*

[185] APPA Comments at 31–32.

[186] *Id.* at 31–32. For example, APPA proposes that the Commission allow for ''source anonymizing'' shared CEII or to adopt DHS's Traffic Light Protocol to ensure information is shared with the correct audience.

[187] Trade Associations Comments at 27–28.

[188] CEA Comments at 6. NRECA also references the need to provide notice as soon as possible, even if such notice is after the disclosure. *See* NRECA Comments at 12.

[189] MISO Comments at 11.

[190] NRECA Comments at 12–13.

[191] Trade Associations Comments at 30.

[192] TAPS Comments at 12–13.

[193] FAST Act, Public Law 114–94, section 61,003, 129 Stat. 1312, 1773 (''critical electric infrastructure information means information . . . generated by or provided to the Commission or other Federal agency . . . that is designated as critical electric infrastructure information by the Commission or the Secretary pursuant to subsection (d)'').

[194] As CEII information has to be designated by the CEII Coordinator or DOE Secretary, information that an entity creates and maintains without providing to the Commission has not been formally designated as CEII.

[195] However, other concerns may influence how the entity shares its own information with others.

[196] Section 215A(d) requires the Commission ''to promulgate [–] regulations as necessary'' to, *inter alia,* ''facilitate voluntary sharing of critical electric infrastructure information.'' FAST Act, Public Law 114–94, section 61,003, 129 Stat. 1312, 1776. The FAST Act, therefore, affords the Commission with discretion in this regard and, at least implicitly, recognizes that the Commission may, identify, encourage and support existing processes to facilitate the voluntary sharing of CEII.

123. The Commission agrees with NERC and APPA that the plain language of the statute expressly provides for the voluntary sharing of information with entities like E–ISAC and other ISAOs. Section 215A(d)(2)(iv) concerns the voluntary sharing of CEII with, between, and by ''information sharing and analysis centers established pursuant to Presidential Decision Directive 63.'' Pursuant to that provision, the Commission anticipates voluntary sharing of information with, between and by E–ISAC and other ISAOs under the appropriate circumstances. Under our current NDAs, CEII recipients may share CEII with other individuals covered by a NDA for the same information.[197] When information is provided in accordance with section 215A(d) the provisions for release from liability in section 215A(f)(3) would apply.

124. The Commission disagrees with APPA that E–ISAC or another ISAO should be designated as a forum to share CEII. The FAST Act does not specify that the Commission should designate E–ISAC, another ISAO, or any other entity as a forum through which CEII can be shared under section 215A. In fact, a plain reading of the statute indicates that Congress designated the Commission as the entity to facilitate this sharing. As such, the Commission declines to take the recommendation of APPA.

125. We disagree with APPA's assertions that the voluntary sharing provision in the Commission's regulations effectively requires entities to share CEII with another entity or the Commission.[198] Section 215A(d)(6) explicitly states that an entity is not required to share CEII with the Commission or another entity or person.[199] The voluntary sharing provision does not impose a sharing requirement on entities; instead, it allows the Commission discretion to share, in certain circumstances, CEII that has already been submitted to, or generated by, the Commission.

126. Even if the Commission's voluntary sharing of information were viewed as the same as a third-party sharing it, the Commission must balance its obligation to disclose information as necessary to carry out its jurisdictional responsibilities against an entity's possible preference not to have such information disclosed.[200] The regulations adopted here achieve that balance. Furthermore, the FAST Act does not place limits on the Commission's ability to share information in its possession when authorized and necessary to carry out the requirements of the FAST Act or the Commission's other jurisdictional responsibilities.

127. As noted in the NOPR, in some circumstances, providing notice to a submitter of CEII that its information will be shared under section 215A could hamper the ability of the Commission to act in a timely way.[201] The Commission, therefore, disagrees with the comments by APPA and NRECA that prior notice must be provided in each instance where the Commissions uses the voluntary sharing provisions of section 215A. However, in response to the comments, the Commission clarifies in amended section 388.113(f) that the Commission will not provide advanced notice only in situations where there is an urgent need to disseminate the information. The Commission will also adopt MISO's and CEA's proposal that when prior notice is not given, the Commission will provide submitters of CEII whose information was shared with notice as soon as practicable.

128. The NOPR proposed to require that a consultation between the CEII Coordinator and the appropriate Office Director take place prior to any voluntary sharing of CEII. We disagree with NERC's proposal to add a requirement that staff from the Commission's Office of Electric Reliability (OER) and Office of Energy Infrastructure Security (OEIS) be involved in all voluntary sharing consultations because the information in question may not involve OEIS or OER subject matter. However, we note that the CEII Coordinator will consult with Commission staff as appropriate, which could include OER and OEIS staff. The Commission is also not persuaded that it is necessary to provide additional details regarding the factors the Commission will use to determine when voluntary sharing is appropriate. The NOPR specifically proposed that the Commission will voluntarily share ''CEII with individuals and organizations that the Commission has determined need the information to ensure that energy infrastructure is protected.'' [202] Thus, the NOPR provided sufficient details on the circumstances in which the Commission will voluntarily share CEII. Providing more details may unnecessarily restrict the Commission's ability to voluntarily share needed information.

129. The Commission disagrees with APPA's suggestion that the regulations should include more developed protections to facilitate information sharing.[203] The Commission believes that procedures outlined in the NOPR are sufficient to protect CEII that the Commission shares. When the Commission voluntarily shares information, CEII will be shared subject to an appropriate NDA or Acknowledgement and Agreement.[204] Moreover, under section 388.113(f), the Commission may impose additional conditions on how the information may be used and maintained that the Commission voluntarily shares.

130. In response to TAPS's comment, the Commission finds that the CEII Coordinator delegation in section 375.313 is sufficient and does not require separate delegations for Office Directors to voluntarily share CEII. Moreover, existing section 388.113(d)(1) has allowed Commission staff to share Critical Energy Infrastructure Information with facility owners and operators. No such delegated authority has been used for such sharing.

F. Request for Access to CEII

NOPR

131. The Commission proposed to maintain special access procedures for owner-operators of facilities, federal agencies, and intervening parties.[205] For intervenors, the Commission proposed to move the existing procedures in section 388.112 to section 388.113 and to eliminate the exemption for certain LNG materials.[206] For general requesters, the Commission added a one-year time limit for organizational requests and added back a time requirement for the Commission to process CEII requests.[207] The Commission also proposed adding a provision to clarify that the Commission's CEII regulations should

[197] *See, e.g.,* Critical Energy Infrastructure Information General Non-Disclosure Agreement, *https://www.ferc.gov/legal/ceii-foia/ceii/gen-nda.pdf* (''A Recipient may only discuss CEII with another Recipient of the identical CEII. A Recipient may check with the CEII Coordinator to determine whether another individual is a Recipient of the identical CEII.'').

[198] FAST Act, Public Law 114–94, 61,003, 129 Stat. 1312, 1777.

[199] *Id.*

[200] The FAST Act does not prohibit the Commission from disclosing any information, nor does it require an entity to produce any information. FAST Act, Public Law 114–94, section 61,003, 129 Stat. 1312, 1777.

[201] NOPR, 155 FERC ¶ 61,278 at P 38.

[202] NOPR, 155 FERC ¶ 61,278 at P 37.

[203] *Id.* PP 31–32

[204] As noted below, to obtain CEII federal agencies execute an Acknowledgement and Agreement, as opposed to a NDA. *See* Federal Agency Acknowledgement and Agreement, *http://www.ferc.gov/legal/ceii-foia/ceii/fed-agen-acknow-agree.pdf.*

[205] NOPR, 155 FERC ¶ 61,278 at PP 43–49.

[206] *Id.* P 49.

[207] *Id.* PP 50–51.

not be construed to require the release of certain non-CEII.[208]

Comments

132. APPA recommends that the Commission adopt a tiered system with varying levels of access restrictions.[209] APPA and the Trade Associations suggest that the Commission create a distinct ''need to know'' standard to access information related to the bulk-power system.[210] Under this suggested standard, CEII would only be disclosed when the person or entity seeking the information has a direct ''need to know'' in order to maintain reliability, safety, or security.[211]

133. The Trade Associations recommend that if an academic institution or other members of the public request CEII, the Commission should deny the request and refer the request to the information owner.[212] Peak, on the other hand, supports data sharing with researchers and asks the Commission to permit researchers to access CEII data.[213] Peak also suggests that the Commission consider whether ''research institutions with defined cyber security and employee background checks'' should have a specific process for obtaining CEII.[214] WIRAB supports the Commission's balancing approach for determining who should receive CEII, but WIRAB recommends that the Commission delete the portion of proposed section 388.113(g)(iv) that states that the Commission can deny a request for ''other reasons.'' [215]

134. Peak recommends that the Commission's sharing of CEII with owners and operators should not be limited to information related to ''its own facility.'' [216]

135. Public Interest Organizations support the NOPR's proposed revisions allowing certain LNG materials to be accessible in proceedings in which there is a right to intervention.[217] Public Interest Organizations suggest that ''the Commission streamline the release of CEII data for intervenors by allowing one request to trigger release of all of an entity's CEII data.'' [218]

136. MISO notes that for purposes of consistency, the Commission should add language already in section 388.112(b)(iv) to amended section 388.113(g)(4) to ensure that, if an objection to a request for disclosure is filed, whether the information is privileged or CEII, ''the filer shall not provide the non-public document to the person or class of persons identified in the objection until ordered by the Commission or a decisional authority.'' [219]

137. Peak asks the Commission to clarify whether the protections proposed in section 388.113(g)(2) regarding the obligation of federal agency recipients to protect CEII in the same manner as the Commission extends to data generated by a federal agency through an analysis of CEII.[220]

138. APS requests that the Commission revise amended section 388.113(g)(5)(vi) to require organizational requesters to promptly update/remove individuals from their list of approved individuals.[221]

139. The Trade Associations and APS state that they are concerned that amended section 388.113(g)(5)(v), which allows an individual under an organizational request to have access to CEII for the remainder of a calendar year, may result in a less robust verification system.[222] WIRAB supports allowing requesters to maintain their validity for the duration of the calendar year.[223]

140. INGAA asks for acknowledgment that the Commission approves of entities providing requested information directly to CEII requesters.[224] INGAA also requests that proposed section 388.113(g)(5)(ix) be modified to add ''information on rare species of plants and animals'' to the list of items not required to be released through the CEII process.[225]

141. Public Interest Organizations ask the Commission to establish a reasonable timeline for the review of and response to CEII requests.[226] APS requests that the Commission add a default twenty-day time period to respond to CEII requests unless the information is needed in fewer than twenty days.[227] NERC suggests that the Commission add a provision indicating that the Commission may toll the response time when there is a need to gather further information from the requester.[228]

142. NERC requests that the appeal rights available to requesters be made available to submitting entities to avoid disclosures that might place CEII at risk.[229] TAPS asks for clarification that when conditions are imposed on a receipt of CEII, appeal rights will be granted.[230]

Commission Determination

143. APPA and the Trade Associations have not demonstrated a need for the Commission to change its practices and use a tiered system of categories of CEII or a heightened ''need to know'' standard for bulk-power system information. The Commission will continue to ''balance the requestor's need for the information against the sensitivity of the information.'' [231] The Commission has utilized this balancing approach effectively in response to Critical Energy Infrastructure Information requests for almost fifteen years. The balancing approach has provided to individuals with a demonstrated need access to information subject to a NDA. However, in some instances, the Commission has balanced a requester's asserted need for the information against its sensitivity and has determined not to produce certain types of CEII to the requester. The Commission will continue this balancing approach under the Final Rule.

144. As noted above, the FAST Act does not require changes to the Commission's existing process for accessing information. The CEII Coordinator will continue to evaluate each request individually. In response to Peak's comments, the Commission notes that the current procedures allow academics to obtain CEII, and that the Commission does, as appropriate in individual rulemakings, consider whether certain categories of information should generally be made available for research.[232] The Commission is not persuaded that any

[208] *Id.* P 52.

[209] APPA Comments at 19.

[210] APPA Comments at 18; Trade Associations Comments at 27.

[211] APPA Comments at 9; Trade Associations Comments at 27.

[212] Trade Associations Comments at 32.

[213] Peak Comments at 7–8.

[214] *Id.* at 14.

[215] WIRAB Comments at 8.

[216] Peak Comments at 13.

[217] Public Interest Organizations Comments at 9.

[218] *Id.* at 9–10.

[219] MISO Comments at 4.

[220] Peak Comments at 13.

[221] APS Comments at 11; *see also* Trade Associations Comments at 35.

[222] Trade Associations Comments at 35; APS Comments at 10–11.

[223] WIRAB Comments at 9.

[224] INGAA Comments at 4.

[225] *Id.*

[226] Public Interest Organizations Comments at 10 (noting that it often takes 4–6 months to get access to Form No. 715 information through the existing Critical Energy Infrastructure Information process).

[227] APS Comments at 8.

[228] NERC Comments at 16 (citing 5 U.S.C. 552(a)(6)(B)(ii)).

[229] *Id.* at 18.

[230] TAPS Comments at 14.

[231] Section 388.113(g)(5)(iii).

[232] *See, e.g., Reliability Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events,* 156 FERC ¶ 61,215, at PP 93–95 (2016) (determining that geomagnetically induced current monitoring and magnetometer data will help facilitate geomagnetic disturbance research and concluding that such data typically should not be treated as confidential).

changes should be made to restrict or expand access to CEII by academics.

145. The Commission also disagrees with deleting the term ''other reasons'' from proposed section 388.113(g)(5)(iv) as there may be other legitimate reasons why the Commission would not permit access to certain CEII in particular situations.

146. The Commission is not persuaded that it needs to adopt Peak's proposed changes to the owner-operator provision. An owner-operator has a need to obtain CEII about its own facility. To the extent the owner-operator needs other CEII, it can pursue additional information through the regular CEII request process.

147. As to the comment by Public Interest Organizations, the Final Rule maintains the mechanism for interveners to request CEII outside of the CEII process.[233]

148. The Commission agrees with MISO's change to proposed section 388.113(g)(4), and amends that provision to include all of the language that currently exists in section 388.112(b)(2)(iv) to ensure that if an objection to the disclosure of CEII is filed, the information will not be disclosed until directed by the Commission or a decisional authority.

149. In response to Peak's comments, the Commission clarifies that a federal agency in receipt of CEII from the Commission must protect that information in the same manner as the Commission. That agency will be required to execute an appropriate Agency Acknowledgment and Agreement. We clarify that derivative analyses that use or rely on CEII, without actually disclosing CEII, do not automatically qualify as CEII unless the information provided could reasonably be expected to lead to the disclosure of CEII.[234]

150. Recognizing that the employment status and circumstances surrounding an individual or organization can change, in response to APS's comment, the Commission will modify the NDAs to indicate that a recipient of CEII must promptly notify the Commission if any changed conditions, such as a change in employment, occur.

151. Amended section 388.113(g)(5)(v) recognizes that in some instances a requester may request CEII multiple times during a calendar year. In response to comments by APS and Trade Associations regarding the robustness of the requester verifications, the Commission clarifies that each request will be reviewed by balancing the needs of the requester against the sensitivity of the requested information.

152. In response to INGAA's request, the Commission notes that under the current CEII rules, entities may share information that they submitted to the Commission with a request for CEII treatment (as opposed to CEII that they received from the Commission) directly with other entities, and the Commission will continue to encourage and support such a practice. The Commission adopts INGAA's recommendation that ''information about rare species of plants and animals'' be added to the section 388.113(g)(5)(ix) list of items that are not required to be released when the information is inextricably intertwined with CEII.

153. In response to comments by Public Interest Organizations, the Commission is not persuaded that additional clarifications regarding timing are necessary. Section 388.113(g)(5)(vii) of the amended regulations indicates that the time period for responding to CEII requests should mirror the period for responding to FOIA requests. In response to APS's suggestion of a default time period for the Commission to respond to a request for CEII unless the information is needed sooner, expedited treatment is not needed, as a requester may include a timeframe in which it needs the information, and the Commission will endeavor to respond in that period. The Commission believes that NERC's recommendation to place language concerning tolling in the CEII regulation is not necessary, as the time requirement for responses to requesters is not binding and the Commission's practice is to always toll the response period when further information is needed.

154. In response to NERC's comment regarding appeal rights, the Commission notes that the existing CEII appeals process, which provides appeal rights to the requester, has been effective and there is no compelling need to extend a right to appeal to anyone other than the individual requester. If a submitter believes that its objection to disclosure of its CEII under a NDA has not been fully addressed, the submitter may raise that issue in district court.[235]

155. In response to TAPS's comment, the Commission clarifies that appeal rights apply when it imposes any conditions on receipt of CEII.

III. Information Collection Statement

156. The Paperwork Reduction Act and Office of Management and Budget's (OMB) implementing regulations require OMB to review and approve certain information collection requirements imposed by agency rule.[236] This Final Rule does not impose any additional information collection requirements.[237] Therefore, the information collection regulations do not apply to this Final Rule.

IV. Environmental Analysis

157. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[238]

158. The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of the regulations being amended.[239] The actions here fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act Certification

159. The Regulatory Flexibility Act of 1980 (RFA) requires rulemakings to contain either a description and analysis of the effect that the rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities.[240] Rules that are exempt from the notice and comment requirements of section 553(b) of the Administrative Procedure Act are exempt from the RFA requirements. The Final Rule concerns rules of agency procedure and, therefore, an analysis under the RFA is not required.[241]

VI. Document Availability

160. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to

[233] *See* section 388.113(g)(4).

[234] *See supra* P 64.

[235] Because the challenge does not relate to the designation of the information, the action would not be under FPA section 215A(d)(11). *See supra* note 130; *see also Cortez III Serv. Corp* v. *NASA,* 921 F.Supp. 8, 11 (D.D.C. 1996) (holding, in a ''reverse FOIA'' action, that courts have jurisdiction over claims from parties that a release of their information would adversely affect them.'')

[236] 5 CFR part 1320.

[237] The current information collection requirements related to requesting access to CEII material are approved by OMB under FERC–603 (OMB Control No. 1902–0197).

[238] *Regulations Implementing National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[239] 18 CFR 380.4(a)(2)(ii).

[240] 5 U.S.C. 603 (2012).

[241] 5 U.S.C. 553(b).

view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

161. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number of this document, excluding the last three digits, in the docket number field.

162. User assistance is available for eLibrary and the Commission Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

VII. Effective Date and Congressional Notification

163. These regulations are effective February 21, 2017. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission will submit the Final Rule to both houses of Congress and to the General Accountability Office.

List of Subjects

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 388

Confidential business information, Freedom of information.

By the Commission.

Issued: November 17, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends Parts 375 and 388, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 375— THE COMMISSION

■ 1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. In § 375.309, paragraph (h) is added as follows:

§ 375.309 Delegations to the General Counsel

* * * * *

(h) Deny or grant, in whole or in part, an appeal of a determination by the CEII Coordinator.

■ 3. In § 375.313:

■ a. Revise the section heading and paragraphs (a) and (b);

■ b. Redesignate paragraphs (c) through (e) as paragraphs (d) through (f) and revising newly redesignated paragraphs (d) through (f); and

■ c. Add a new paragraph (c).

The revisions and addition read as follows:

§ 375.313 Delegations to the Critical Energy/Electric Infrastructure Information (CEII) Coordinator

* * * * *

(a) Receive and review all requests for CEII as defined in § 388.113(c) of this chapter.

(b) Make determinations as to whether particular information fits within the definition of CEII found at § 388.113(c) of this chapter, including designating information, as appropriate.

(c) Make determinations that information designated as CEII should no longer be so designated when the unauthorized disclosure of the information could no longer be used to impair the security or reliability of the bulk-power system or distribution facilities or any other form of energy infrastructure.

(d) Make determinations as to whether a particular requester's need for and ability and willingness to protect CEII warrants limited disclosure of the information to the requester.

(e) Establish reasonable conditions on the release of CEII.

(f) Release CEII to requesters who satisfy the requirements in paragraph (d) of this section and agree in writing to abide by any conditions set forth by the Coordinator pursuant to paragraph (e) of this section.

PART 388—INFORMATION AND REQUESTS

■ 4. The authority citation for part 388 is revised to read as follows:

Authority: 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352; 16 U.S.C. 824(o–l).

■ 5. In § 388.112, the section heading, paragraph (a), the heading of paragraph (b), and paragraphs (b)(1), (b)(2)(i), (b)(2)(vi), (c)(1), (d), and (e) are revised to read as follows:

§ 388.112 Requests for privileged treatment for documents submitted to the Commission

(a) *Scope.* By following the procedures specified in this section, any person submitting a document to the Commission may request privileged treatment for some or all of the information contained in a particular document that it claims is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552 (FOIA), and should be withheld from public disclosure. For the purposes of the Commission's filing requirements, non-CEII subject to an outstanding claim of exemption from disclosure under FOIA will be referred to as privileged material. The rules governing CEII are contained in § 388.113.

(b) *Procedures for filing and obtaining privileged material.* (1) General Procedures. A person requesting that material be treated as privileged information must include in its filing a justification for such treatment in accordance with the filing procedures posted on the Commission's Web site at *http://www.ferc.gov.* A person requesting that a document filed with the Commission be treated as privileged in whole or in part must designate the document as privileged in making an electronic filing or clearly indicate a request for such treatment on a paper filing. The cover page and pages or portions of the document containing material for which privileged treatment is claimed should be clearly labeled in bold, capital lettering, indicating that it contains privileged or confidential information, as appropriate, and marked ''DO NOT RELEASE.'' The filer also must submit to the Commission a public version with the information that is claimed to be privileged material redacted, to the extent practicable.

(2) * * *

(i) If a person files material as privileged material in a complaint proceeding or other proceeding to which a right to intervention exists, that person must include a proposed form of protective agreement with the filing, or identify a protective agreement that has already been filed in the proceeding that applies to the filed material. This requirement does not apply to material submitted in hearing or settlement proceedings, or if the only material for which privileged treatment is claimed consists of landowner lists or privileged information filed under §§ 380.12(f) and 380.16(f) of this chapter.

* * * * *

(vi) For landowner lists, information filed as privileged under §§ 380.12(f) and 380.16(f) of this chapter, forms filed with the Commission, and other documents not covered above, access to this material can be sought pursuant to a FOIA request under § 388.108. Applicants are not required under paragraph (b)(2)(iv) of this section to provide intervenors with landowner lists and the other materials identified in the previous sentence.

(c) * * * (1) For documents filed with the Commission:

(i) The documents for which privileged treatment is claimed will be maintained in the Commission's document repositories as non-public until such time as the Commission may determine that the document is not entitled to the treatment sought and is subject to disclosure consistent with § 388.108. By treating the documents as nonpublic, the Commission is not making a determination on any claim of privilege status. The Commission retains the right to make determinations with regard to any claim of privilege status, and the discretion to release information as necessary to carry out its jurisdictional responsibilities.

(ii) The request for privileged treatment and the public version of the document will be made available while the request is pending.

* * * * *

(d) *Notification of request and opportunity to comment.* When a FOIA requester seeks a document for which privilege status has been claimed, or when the Commission itself is considering release of such information, the Commission official who will decide whether to release the information or any other appropriate Commission official will notify the person who submitted the document and give the person an opportunity (at least five calendar days) in which to comment in writing on the request. A copy of this notice will be sent to the requester.

(e) *Notification before release.* Notice of a decision by the Commission, the Chairman of the Commission, the Director, Office of External Affairs, the General Counsel or General Counsel's designee, a presiding officer in a proceeding under part 385 of this chapter, or any other appropriate official to deny a claim of privilege, in whole or in part, will be given to any person claiming that the information is privileged no less than 5 calendar days before disclosure. The notice will briefly explain why the person's objections to disclosure are not sustained by the Commission. A copy of this notice will be sent to the FOIA requester.

* * * * *

■ 6. Revise § 388.113 to read as follows:

§ 388.113 Critical Energy/Electric Infrastructure Information (CEII)

(a) *Scope.* This section governs the procedures for submitting, designating, handling, sharing, and disseminating Critical Energy/Electric Infrastructure Information (CEII) submitted to or generated by the Commission. The Commission reserves the right to restrict access to previously filed information as well as Commission-generated information containing CEII. Nothing in this section limits the ability of any other Federal agency to take all necessary steps to protect information within its custody or control that is necessary to ensure the safety and security of the electric grid. To the extent necessary, such agency may consult with the CEII Coordinator regarding the treatment or designation of such information.

(b) *Purpose.* The procedures in this section implement section 215A of the Federal Power Act, and provide a comprehensive overview of the manner in which the Commission will implement the CEII program.

(c) *Definitions.* For purposes of this section:

(1) *Critical electric infrastructure information* means information related to critical electric infrastructure, or proposed critical electrical infrastructure, generated by or provided to the Commission or other Federal agency other than classified national security information, that is designated as critical electric infrastructure information by the Commission or the Secretary of the Department of Energy pursuant to section 215A(d) of the Federal Power Act. Such term includes information that qualifies as critical energy infrastructure information under the Commission's regulations. Critical Electric Infrastructure Information is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(3) and shall not be made available by any Federal, State, political subdivision or tribal authority pursuant to any Federal, State, political subdivision or tribal law requiring public disclosure of information or records pursuant to section 215A(d)(1)(A) and (B) of the Federal Power Act.

(2) *Critical energy infrastructure information* means specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that:

(i) Relates details about the production, generation, transportation, transmission, or distribution of energy;

(ii) Could be useful to a person in planning an attack on critical infrastructure;

(iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and

(iv) Does not simply give the general location of the critical infrastructure.

(3) *Critical electric infrastructure* means a system or asset of the bulk-power system, whether physical or virtual, the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters.

(4) *Critical infrastructure* means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.

(d) *Criteria and procedures for determining what constitutes CEII.* The following criteria and procedures apply to information labeled as CEII:

(1) For information submitted to the Commission:

(i) A person requesting that information submitted to the Commission be treated as CEII must include with its submission a justification for such treatment in accordance with the filing procedures posted on the Commission's Web site at *http://www.ferc.gov.* The justification must provide how the information, or any portion of the information, qualifies as CEII, as the terms are defined in paragraphs (c)(1) and (2) of this section. The submission must also include a clear statement of the date the information was submitted to the Commission, how long the CEII designation should apply to the information and support for the period proposed. Failure to provide the justification or other required information could result in denial of the designation and release of the information to the public.

(ii) In addition to the justification required by paragraph (d)(1)(i) of this section, a person requesting that information submitted to the Commission be treated as CEII must clearly label the cover page and pages or portions of the information for which CEII treatment is claimed in bold, capital lettering, indicating that it contains CEII, as appropriate, and marked ''DO NOT RELEASE.'' The submitter must also segregate those portions of the information that contain

CEII (or information that reasonably could be expected to lead to the disclosure of the CEII) wherever feasible. The submitter must also submit to the Commission a public version with the information where CEII is redacted, to the extent practicable.

(iii) If a person files material as CEII in a complaint proceeding or other proceeding to which a right to intervention exists, that person must include a proposed form of protective agreement with the filing, or identify a protective agreement that has already been filed in the proceeding that applies to the filed material.

(iv) The information for which CEII treatment is claimed will be maintained in the Commission's files as non-public until such time as the Commission may determine that the information is not entitled to the treatment sought. By treating the information as CEII, the Commission is not making a determination on any claim of CEII status. The Commission retains the right to make determinations with regard to any claim of CEII status at any time, and the discretion to release information as necessary to carry out its jurisdictional responsibilities. Although unmarked information may be eligible for CEII treatment, the Commission will treat unmarked information as CEII only if it is properly designated as CEII pursuant to Commission regulations.

(v) The CEII Coordinator will evaluate whether the submitted information or portions of the information are covered by the definitions in paragraphs (c)(1) and (2) of this section prior to making a designation as CEII.

(vi) Subject to the exceptions set forth in paragraph (f)(5) of this section, when a CEII requester seeks information for which CEII status has been claimed, or when the Commission itself is considering release of such information, the CEII Coordinator or any other appropriate Commission official will notify the person who submitted the information and give the person an opportunity (at least five business days) in which to comment in writing on the request. A copy of this notice will be sent to the requester. Notice of a decision by the Commission, or the CEII Coordinator to make a release of CEII, will be given to any person claiming that the information is CEII no less than five business days before disclosure. The notice will respond to any objections to disclosure from the submitter that are not sustained. Where applicable, a copy of this notice will be sent to the CEII requester.

(2) For Commission-generated information:

(i) After consultation with the Office Director for the office that created the information, or the Office Director's designee, the CEII Coordinator will designate Commission-generated information as CEII after determining that the information or portions of the information are covered by the definitions in paragraphs (c)(1) and (2) of this section. Commission-generated CEII shall include clear markings to indicate the information is CEII and the date of the designation.

(ii) The Commission will segregate non-CEII from Commission-generated CEII or information that reasonably could be expected to lead to the disclosure of CEII wherever feasible.

(e) *Duration of the CEII designation.* All CEII designations will be subject to the following conditions:

(1) A designation may last for up to a five-year period, unless re-designated. In making a determination as to whether the designation should be extended, the CEII Coordinator will take into account information provided in response to paragraph (d)(1)(i) of this section, and any other information, as appropriate.

(2) A designation may be removed at any time, in whole or in part, if the Commission determines that the unauthorized disclosure of CEII could no longer be used to impair the security or reliability of the bulk-power system or distribution facilities or any other form of energy infrastructure.

(3) The Commission will treat CEII or documents marked as CEII as non-public after the designation has lapsed until the CEII Coordinator determines to un-designate the information.

(4) If a CEII designation is removed, the submitter will receive notice and an opportunity to comment. The CEII Coordinator will notify the submitter of the information and give the submitter an opportunity (at least five business days) in which to comment in writing prior to the removal of the designation. Notice of a removal decision will be given to any submitter claiming that the information is CEII no less than five business days before disclosure. The notice will briefly explain why the submitter's objections to the removal of the designation are not sustained by the Commission

(f) *Voluntary sharing of CEII.* The Commission, taking into account standards of the Electric Reliability Organization, will facilitate voluntary sharing of CEII with, between, and by Federal, state, political subdivision, and tribal authorities; the Electric Reliability Organization; regional entities; information sharing and analysis centers established pursuant to Presidential Decision Directive 63; owners, operators, and users of critical electric infrastructure in the United States; and other entities determined appropriate by the Commission. The process will be as follows:

(1) The Director of any Office of the Commission or his designee that wishes to voluntarily share CEII shall consult with the CEII Coordinator prior to the Office Director or his designee making a determination on whether to voluntarily share the CEII.

(2) Consistent with paragraph (d) of this section, the Commission retains the discretion to release information as necessary to carry out its jurisdictional responsibilities in facilitating voluntary sharing or, in the case of information provided to other federal agencies, the Commission retains the discretion to release information as necessary for those agencies to carry out their jurisdictional responsibilities.

(3) All entities receiving CEII must execute either a non-disclosure agreement or an acknowledgement and agreement. A copy of each agreement will be maintained by the Office Director with a copy to the CEII Coordinator.

(4) When the Commission voluntarily shares CEII pursuant to this subsection, the Commission may impose additional restrictions on how the information may be used and maintained.

(5) Submitters of CEII shall receive notification of a limited release of CEII no less than five business days before disclosure, except in instances where voluntary sharing is necessary for law enforcement purposes, to maintain infrastructure security, to address potential threats, when notice would not be practicable, and where there is an urgent need to quickly disseminate the information. When prior notice is not given, the Commission will provide submitters of CEII notice of a limited release of the CEII as soon as practicable.

(g) *Accessing CEII.* (1) An owner/operator of a facility, including employees and officers of the owner/operator, may obtain CEII relating to its own facility, excluding Commission-generated information except inspection reports/operation reports and any information directed to the owner-operators, directly from Commission staff without going through the procedures outlined in paragraph (g)(5) of this section. Non-employee agents of an owner/operator of such facility may obtain CEII relating to the owner/operator's facility in the same manner as owner/operators as long as they present written authorization from the owner/operator to obtain such information. Notice of such requests must be given to

the CEII Coordinator, who shall track this information.

(2) An employee of a federal agency acting within the scope of his or her federal employment may obtain CEII directly from Commission staff without following the procedures outlined in paragraph (g)(5) of this section. Any Commission employee at or above the level of division director or its equivalent may rule on requests for access to CEII by a representative of a federal agency. To obtain access to CEII, an agency employee must sign an acknowledgement and agreement, which states that the agency will protect the CEII in the same manner as the Commission and will refer any requests for the information to the Commission. Notice of each such request also must be given to the CEII Coordinator, who shall track this information.

(3) A landowner whose property is crossed by or in the vicinity of a project may receive detailed alignment sheets containing CEII directly from Commission staff without submitting a non-disclosure agreement as outlined in paragraph (g)(5) of this section. A landowner must provide Commission staff with proof of his or her property interest in the vicinity of a project.

(4) Any person who is a participant in a proceeding or has filed a motion to intervene or notice of intervention in a proceeding may make a written request to the filer for a copy of the complete CEII version of the document without following the procedures outlined in paragraph (g)(5) of this section. The request must include an executed copy of the applicable protective agreement and a statement of the person's right to party or participant status or a copy of the person's motion to intervene or notice of intervention. Any person may file an objection to the proposed form of protective agreement. A filer, or any other person, may file an objection to disclosure, generally or to a particular person or persons who have sought intervention. If no objection to disclosure is filed, the filer must provide a copy of the complete, non-public document to the requesting person within five business days after receipt of the written request that is accompanied by an executed copy of the protective agreement. If an objection to disclosure is filed, the filer shall not provide the non-public document to the person or class of persons identified in the objection until ordered by the Commission or a decisional authority.

(5) If any requester not described above in paragraphs (g)(1) through (4) of this section has a particular need for information designated as CEII, the requester may request the information using the following procedures:

(i) File a signed, written request with the Commission's CEII Coordinator. The request must contain the following:

(A) Requester's name (including any other name(s) which the requester has used and the dates the requester used such name(s)), title, address, and telephone number; and the name, address, and telephone number of the person or entity on whose behalf the information is requested;

(B) A detailed Statement of Need, which must state: The extent to which a particular function is dependent upon access to the information; why the function cannot be achieved or performed without access to the information; an explanation of whether other information is available to the requester that could facilitate the same objective; how long the information will be needed; whether or not the information is needed to participate in a specific proceeding (with that proceeding identified); and an explanation of whether the information is needed expeditiously.

(C) An executed non-disclosure agreement as described in paragraph (h)(2) of this section;

(D) A signed statement attesting to the accuracy of the information provided in the request; and

(E) A requester shall provide his or her date and place of birth upon request, if it is determined by the CEII Coordinator that this information is necessary to process the request.

(ii) A requester who seeks the information on behalf of all employees of an organization should clearly state that the information is sought for the organization, that the requester is authorized to seek the information on behalf of the organization, and that all individuals in the organization that have access to the CEII will agree to be bound by a non-disclosure agreement that must be executed.

(iii) After the request is received, the CEII Coordinator will determine if the information is CEII, and, if it is, whether to release the CEII to the requester. The CEII Coordinator will balance the requester's need for the information against the sensitivity of the information. If the requester is determined to be eligible to receive the information requested, the CEII Coordinator will determine what conditions, if any, to place on release of the information.

(iv) If the CEII Coordinator determines that the CEII requester has not demonstrated a valid or legitimate need for the CEII or that access to the CEII should be denied for other reasons, this determination may be appealed to the General Counsel pursuant to § 388.110. The General Counsel will decide whether the information is properly classified as CEII, which by definition is exempt from release under FOIA, and whether the Commission should in its discretion make such CEII available to the CEII requester in view of the requester's asserted legitimacy and need.

(v) Once a CEII requester has been verified by Commission staff as a legitimate requester who does not pose a security risk, his or her verification will be valid for the remainder of that calendar year. Such a requester is not required to provide detailed information about himself or herself with subsequent requests during the calendar year. He or she is also not required to file a non-disclosure agreement with subsequent requests during the calendar year because the original non-disclosure agreement will apply to all subsequent releases of CEII.

(vi) An organization that is granted access to CEII pursuant to paragraph (g)(5)(ii) of this section may seek to add additional individuals to the non-disclosure agreement within one (1) year of the date of the initial CEII request. Such an organization must provide the names of the added individuals to the CEII Coordinator and certify that notice of each added individual has been given to the submitter. Any newly added individuals must execute a supplement to the original non-disclosure agreement indicating their acceptance of its terms. If there is no written opposition within five business days of notifying the CEII Coordinator and the submitter concerning the addition of any newly added individuals, the CEII Coordinator will issue a standard notice accepting the addition of these names to the non-disclosure agreement. If the submitter files a timely opposition with the CEII Coordinator, the CEII Coordinator will issue a formal determination addressing the merits of such opposition. If an organization that is granted access to CEII pursuant to paragraph (g)(5)(ii) of this section wants to add new individuals to its non-disclosure agreement more than one year after the date of its initial CEII request, the organization must submit a new CEII request pursuant to paragraph (g)(5)(ii) of this section and a new non-disclosure agreement for each new individual added.

(vii) The CEII Coordinator will attempt to respond to the requester under this section according to the timing required for responses under the FOIA in § 388.108(c).

(viii) Fees for processing CEII requests will be determined in accordance with § 388.109.

(ix) Nothing in this section should be construed as requiring the release of proprietary information, personally identifiable information, cultural resource information, information on rare species of plants and animals, and other comparable data protected by statute or any privileged information, including information protected by the deliberative process privilege.

(h) *Duty to protect CEII.* Unauthorized disclosure of CEII is prohibited.

(1) To ensure that the Commissioners, Commission employees, and Commission contractors protect CEII from unauthorized disclosure, internal controls will describe the handling, marking, and security controls for CEII.

(2) Any individual who requests information pursuant to paragraph (g)(5) of this section must sign and execute a non-disclosure agreement, which indicates the individual's willingness to adhere to limitations on the use and disclosure of the information requested. The non-disclosure agreement will, at a minimum, require the following: CEII will only be used for the purpose for which it was requested; CEII may only be discussed with authorized recipients; CEII must be kept in a secure place in a manner that would prevent unauthorized access; CEII must be destroyed or returned to the Commission upon request; the Commission may audit the recipient's compliance with the non-disclosure agreement; CEII provided pursuant to the agreement is not subject to release under either FOIA or Sunshine Laws; a recipient is obligated to protect the CEII even after a designation has lapsed until the CEII Coordinator determines the information should no longer be designated as CEII under paragraph (e)(2) of this section; and a recipient is required to promptly report all unauthorized disclosures of CEII to the Commission.

(i) *Sanctions.* Any officers, employees, or agents of the Commission who knowingly and willfully disclose CEII in a manner that is not authorized under this section will be subject to appropriate sanctions, such as removal from the federal service, or possible referral for criminal prosecution. Commissioners who knowingly and willfully disclose CEII without authorization may be referred to the Department of Energy Inspector General. The Commission will take responsibility for investigating and, as necessary, imposing sanctions on its employees and agents.

(j) *Administrative appeals of CEII determinations.* (1) Submitters who receive a determination that the Commission intends to remove a CEII designation may appeal that determination. The submitter must file notice of its intent to appeal that determination within five business days of the determination. The notice of intent to file an appeal must be sent to the General Counsel, with a copy to the CEII Coordinator. A statement in support of the notice of appeal must be submitted to the General Counsel within 20 business days of the date of the determination. The appeal will be considered received upon receipt of the statement in support of the notice of appeal.

(2) Individuals who receive a determination denying a request for the release of CEII, in whole or in part, or a determination denying a request to change the designation of CEII may appeal such determinations. Such appeals must be submitted to the General Counsel within 20 business days of the date of the determination.

(3) The Commission's General Counsel or the General Counsel's designee will make a determination with respect to any appeal within 20 business days after the receipt of the appeal. If, on appeal, the General Counsel or the General Counsel's designee upholds the determination in whole or in part, then the General Counsel or the General Counsel's designee will notify the person submitting the appeal of the availability of judicial review.

(4) The time limits prescribed for the General Counsel or his designee to act on an appeal may be extended pursuant to § 388.110(b)(1).

(5) Prior to seeking judicial review in federal district court pursuant to section 215A(d)(11) of the Federal Power Act, a person who received a determination from the Commission concerning a CEII designation must first appeal the determination to the Commission's General Counsel.

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX

Abbreviation	Commenter
Initial Comments:	
APPA	American Public Power Association.
CEA	Canadian Electricity Association.
HRC	Hydropower Reform Coalition.
INGAA	Interstate Natural Gas Association of America.
ITC	International Transmission Company d/b/a ITC*Transmission,* Michigan Electric Company, LLC, ITC Midwest LLC, and ITC Great Plains LLC.
Joint RTOs	ISO New England, Inc. and Southwest Power Pool, Inc.
MISO	Midcontinent Independent System Operator, Inc.
NRECA	National Rural Electric Cooperative Association.
NERC	North American Electric Reliability Corporation.
NRC	Nuclear Regulatory Commission.
Peak	Peak Reliability.
Powerex	Powerex Corp.
Public Interest Organizations	Alliance for Affordable Energy, Citizens Action Coalition of Indiana, Inc., Citizens Utility Board, Fresh Energy, Great Plains Institute, Natural Resources Defense Council, Sierra Club Environmental Law Program, Southern Environmental Law Center, Sustainable FERC Project, Union of Concerned Scientists, Utah Clean Energy, VoeSolar, Western Grid Group, Western Resource Advocates, and Wind on the Wires.
Tacoma Power	City of Tacoma, Department of Public Utilities, Light Division d.b.a. Tacoma Power (Tacoma Power).
Tallgrass Pipelines	Rockies Express Pipeline LLC, Tallgrass Interstate Gas, Transmission, LLC, and Trailblazer Pipeline Company LLC.
TAPS	Transmission Access Policy Study Group.
Trade Associations	Edison Electric Institute, Electric Power Supply Association, and Electricity Consumers Resource Council.
WIRAB	Western Interconnection Regional Advisory Board.

APPENDIX—Continued

Abbreviation	Commenter
Reply Comments:	
PJM	PJM Interconnection, LLC.
Joint RTOs	ISO New England, Inc. and Southwest Power Pool, Inc.

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Part III

Department of the Treasury

31 CFR Part 50
Terrorism Risk Insurance Program; Final Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AC53

Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this final rule as part of its implementation of changes to the Terrorism Risk Insurance Program (TRIP or Program) required by the Terrorism Risk Insurance Program Reauthorization Act of 2015 (2015 Reauthorization Act), as published in proposed form on April 1, 2016, for public comment. Treasury previously issued an interim final rule addressing the process for certification of an act of terrorism, as published in proposed form on April 1, 2016. This final rule addresses the balance of the other proposed rules published on April 1, 2016, and adopts the general renumbering of sections as proposed on April 1, 2016. Some clarifying changes have been made in this final rule in response to comments, and certain other wording changes have also been added which do not change the meaning of the rule as originally proposed.

DATES: This rule is effective January 17, 2017.

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202–622–2922 (not a toll free number) or Kevin Meehan, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202–622–7009 (not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Terrorism Risk Insurance Act of 2002 (the Act or TRIA) [1] was enacted on November 26, 2002, following the attacks of September 11, 2001, to address disruptions in the market for terrorism risk insurance, to help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private markets to stabilize and build insurance capacity to absorb any future losses for terrorism events. TRIA requires insurers to ''make available'' terrorism risk insurance for commercial property and casualty losses resulting from certified acts of terrorism (insured losses), and provides for shared public and private compensation for such insured losses. The Secretary of the Treasury (Secretary) administers the Program, including the issuance of regulations and procedures. Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Federal Insurance Office assists the Secretary in administering the Program.[2]

The Program has been reauthorized three times.[3] Most recently, on January 12, 2015, the President signed into law the Terrorism Risk Insurance Program Reauthorization Act of 2015 (2015 Reauthorization Act),[4] reauthorizing the Program until December 31, 2020. The 2015 Reauthorization Act reformed various operational matters respecting the Program. Among other changes, the 2015 Reauthorization Act mandates that Treasury issue final rules governing the certification process,[5] and that Treasury collect from participating insurers information and data considered by the Secretary to be appropriate to analyze the effectiveness of the Program.[6]

II. Previous Rulemaking

To date, rules establishing general provisions implementing the Program, including key definitions, and requirements for policy disclosures and mandatory availability, are found in Subparts A, B, and C of 31 CFR part 50.[7] Treasury's rules applying provisions of the Act to state residual market insurance entities and state workers' compensation funds are set forth in Subpart D of 31 CFR part 50.[8] Rules concerning claims procedures governing payment of the Federal share of compensation for insured losses are currently found at Subpart F of 31 CFR part 50.[9] Subpart G of 31 CFR part 50 currently contains rules on audit and recordkeeping requirements for insurers,[10] while Subpart H of 31 CFR part 50 currently addresses recoupment and surcharge procedures.[11] Subpart I of 31 CFR part 50 currently contains rules implementing the litigation management provisions of TRIA,[12] and Subpart J of 31 CFR part 50 currently addresses rules concerning the cap on annual liability established under TRIA.[13] Finally, Subpart K of 31 CFR part 50 currently addresses rules concerning the certification process under TRIA.[14] To assist insurers, policyholders, and other interested parties in complying with immediately applicable requirements of the Act, Treasury has also at times issued interim guidance to be relied upon by insurers until superseded by regulations.

III. The Proposed Rule

The proposed rule on which this final rule is based was published in the **Federal Register** at 81 FR 18950 on April 1, 2016.[15] The proposed rule would strike existing 31 CFR part 50 in

[1] Public Law 107–297, 116 Stat. 2322, codified at 15 U.S.C. 6701, note. Because the provisions of TRIA (as amended) appear in a note, instead of particular sections, of the United States Code, the provisions of TRIA are identified by the sections of the law.

[2] 31 U.S.C. 313(c)(1)(D).

[3] Terrorism Risk Insurance Extension Act of 2005, Public Law 109–444, 119 Stat. 2660; Terrorism Risk Insurance Program Reauthorization Act of 2007, Public Law 110–160, 121 Stat. 1839; Terrorism Risk Insurance Program Reauthorization Act of 2015, Public Law 114–1, 129 Stat. 3.

[4] Public Law 114–1, 129 Stat. 3.

[5] TRIA, section 102(1)(D).

[6] TRIA, section 104(h).

[7] *See* 68 FR 9804 (Feb. 28, 2003) (Program definitions (Interim Final Rule)); 68 FR 19302 (April 18, 2003) (disclosure and mandatory availability requirements (Interim Final Rule)); 68 FR 41250 (July 11, 2003) (Program definitions (Final Rule)); 68 FR 48280 (Aug. 13, 2003) (''direct earned premium'' definition (Final Rule)).

[8] *See* 68 FR 19309 (Apr. 18, 2003) (residual market entities and state compensation funds (Notice of Proposed Rulemaking)); 68 FR 59715 (Oct. 17, 2003) (residual market entities and state compensation funds (Final Rule)).

[9] *See* 68 FR 67100 (Dec. 1, 2003) (claims procedures (Notice of Proposed Rulemaking)); 69 FR 39296 (June 29, 2004) (claims procedures (Final Rule)); 70 FR 2830 (Jan. 18, 2005 (timing of affiliation for purposes of claims payments (Notice of Proposed Rulemaking)); 70 FR 34348 (June 14, 2005) (timing of affiliation for purposes of claims payments (Final Rule)).

[10] *See* 68 FR 67100 (Dec. 1, 2003) (audit and investigative procedures (Notice of Proposed Rulemaking)); 69 FR 39296 (audit and investigative procedures (Final Rule)).

[11] *See* 73 FR 53798 (Sept. 17, 2008) (recoupment and surcharge procedures (Notice of Proposed Rulemaking)); 74 FR 66051 (Dec. 14, 2009) (recoupment and surcharge procedures (Final Rule)).

[12] *See* 69 FR 25341 (May 6, 2004) (Federal cause of action and settlement approval provisions (Notice of Proposed Rulemaking)); 69 FR 44932 (July 28, 2004) (Federal cause of action and settlement approval provisions (Final Rule)).

[13] *See* 73 FR 56767 (Sept. 30, 2008) (cap on annual liability (Notice of Proposed Rulemaking)); 74 FR 66061 (Dec. 14, 2009) (cap on annual liability (Final Rule)).

[14] *See* 81 FR 18950 (Apr. 1, 2016) (certification process (Notice of Proposed Rulemaking)); 81 FR 88592 (Dec. 7, 2016) (certification process (Interim Final Rule)). In order to avoid a temporary duplication of sections, the certification rules (initially proposed as Subpart G, Sections 50.60 to 50.63) were issued as Subpart K, Sections 50.100 to 50.103. With this final rule, those sections (which remain as interim final rules pending evaluation of any further comments received) are renumbered as originally proposed on April 1, 2016.

[15] In the April 1, 2016 Notice of Proposed Rulemaking, Treasury also sought comments concerning the participation of captive insurers and other self-insurance arrangements in the Program, in anticipation of the development of rules concerning the participation of captive insurers and, potentially, other self-insurance arrangements in the Program. 81 FR 18950, 18956–57 (April 1, 2016). Treasury is presently evaluating the comments received concerning captive insurers and self-insurance arrangements generally to determine whether additional rules should be proposed concerning the participation of these entities in the Program.

its entirety and would replace it with revised Program rules incorporating new Program financial and operational provisions contained in the 2015 Reauthorization Act. The proposed rule included several new subparts to 31 CFR part 50. Subpart F—Data Collection addressed the collection of Program data by Treasury, as required under the 2015 Reauthorization Act, is adopted in this final rule. Subpart G to Part 50, which comprised Treasury's regulations concerning the certification process, was adopted as an interim final rule on December 7, 2016. In addition to these new subparts, the proposal also incorporated a Civil Penalties rule under the Program, pursuant to authority granted by Congress in TRIA,[16] and proposed the adoption, with certain minor changes, of a previously proposed rule addressing the Final Netting of Payments. Finally, the proposal reordered the existing rules to incorporate the new subparts, and made other changes providing further clarification to existing rules and eliminating redundancies.

IV. Summary of Comments and Final Rule

Treasury is issuing this final rule after careful consideration of all comments received on the proposed rule. While this final rule largely reflects the proposed rule, Treasury has made several revisions based on the comments received.

Seventeen commenters submitted comments in response to the general proposal relating to 31 CFR part 50.[17] The 17 commenters included: Insurance industry trade associations; trade associations representing consumers of terrorism risk insurance; insurance companies; Lloyd's (an insurance and reinsurance market); and individuals.[18] The comments received and Treasury's revisions to the proposed rule are summarized below.

1. Subpart A—General Provisions

The proposed changes to Subpart A principally addressed changes to definitional provisions, many of which were required by the 2015 Reauthorization Act, or which were otherwise required by the passage of time or to provide greater clarity to existing provisions. Treasury did not receive comments respecting many of these proposed changes, which are adopted as originally proposed. Treasury received comments concerning four of the definitions within Subpart A: (1) The proposed change to the definition of ''affiliate'' in § 50.4(c)(2), as it relates to the rule of construction in Section 106 of the 2015 Reauthorization Act, which provides that control for purposes of determining if an insurer is an ''affiliate'' under TRIA is not established solely because an entity acts as an attorney-in-fact for another entity that is a reciprocal insurer; (2) the proposed change in § 50.4(g) defining ''captive insurer'' for purposes of implementing TRIA, and the related exclusion of captive insurers from the definition of ''small insurer'' in proposed § 50.4(z); (3) the proposed change in § 50.4(m) as it relates to the manner in which Treasury proposes to determine the insurance marketplace aggregate retention amount for any calendar year beginning with 2020, in accordance with the requirement in Section 104 of the 2015 Reauthorization Act to issue rules for determining this amount; and (4) the definition proposed in § 50.4(z) of ''small insurer'' as required under Section 112 of the 2015 Reauthorization Act for purposes of conducting a study of small insurers participating in the Program, and as it might relate to the scope of data to be collected from such entities.

One comment was received concerning the proposed revision to the ''affiliate'' definition, which suggested that the proposed language would nonetheless permit the Secretary to find control by an entity based solely upon its attorney-in fact relationship with a reciprocal insurer, contrary to the intention of the rule of construction contained in Section 106 of TRIA.[19] Treasury did not intend to suggest that a control determination could be made based solely upon an attorney-in-fact relationship, and will accordingly modify the proposed rule consistent with the comment (by eliminating the cross-reference to the attorney-in-fact rule of construction), to confirm that the ability of the Secretary to determine that control exists, notwithstanding the non-applicability of the specific factors identified in § 50.4(c)(2)(i), cannot be based upon the attorney-in-fact relationship addressed in § 50.4(c)(2)(ii).

The comments received concerning the definition of captive insurer in proposed § 50.4(g) (which simply references how captives are identified by relevant state law) were principally based upon reference to the term in proposed § 50.4(z), which excludes captive insurers from the definition of ''small insurer'' regardless of their size. Most comments questioned the basis for excluding all captives from the ''small insurer'' definition, regardless of the size of the captive insurer or its sponsoring parent organization. Other comments suggested that exclusion of captive insurers from the definition of small insurers should not be made before further evaluation of the issue.[20]

The ''small insurer'' definition has only two consequences under the proposed Program rules: (1) It will define those insurers that will be considered in the studies Treasury shall conduct and resulting reports it will prepare pursuant to the 2015 Reauthorization Act; [21] and (2) it will identify those insurers which may be subject to exemption from modified

[16] The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, modified the procedure for amending civil penalty amounts for inflation, and called for the amounts to be adjusted by interim final rule to take effect not later than August 1, 2016 (with readjustment not later than January 15 of each year after 2016). Accordingly, Treasury has issued separately an interim final rule, adopting new 31 CFR 50.86, Adjustment of civil monetary penalty amount, which identifies the new penalty amount as mandated by statute effective August 1, 2016, and provides for its adjustment by January 15 of each year thereafter. *See* 81 FR 88600 (Dec. 7, 2016). As reflected below, in light of the general reordering of the Program rules provided for in the proposal, that provision shall be identified as 31 CFR 50.83 with the adoption of these final rules.

[17] Ten commenters (who are also among the 17 commenters that have submitted comments generally in connection with the proposed rules) submitted comments directed to the proposed rule concerning the certification process, which Treasury has already addressed. *See* 81 FR 88592 (Dec. 7, 2016).

[18] Comments addressing the proposed rules in some fashion were submitted by the American Bankers Association (ABA Comments); the American Insurance Association (AIA Comments); The Council of Insurance Agents & Brokers (CIAB Comments); The Coalition to Insure Against Terrorism (CIAT Comments); Exchange Indemnity Company (Exchange Indemnity Comments); Farmers Insurance Group (Farmers Insurance Comments); the International Underwriting Association of London (IUAL Comments); Jason M. Schupp (Jason Schupp Comments); Lloyd's of London (Lloyd's Comments); M. Mohiuddin (Mohiuddin Comments); Marsh Captive Solutions (Marsh Captive Solutions Comments); Mortgage Bankers Association (MBA Comments); the National Association of Mutual Insurance Companies (NAMIC Comments); the Property Casualty Insurers Association of America (PCIAA Comments); the Reinsurance Association of America (RAA Comments); RIMS, the Risk Management Society (RIMS Comments); and the Vermont Captive Insurance Association (VCIA Comments). In addition, a number of additional comments were received generally addressing the Program, but not providing any specific comments concerning the proposed rules. All of the comments received in connection with the proposed rules published on April 1, 2016 are *available at https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=TREAS-TRIP-2016-0005.*

[19] Farmers Insurance Comments at 1–3.

[20] ABA Comments at 1–2; AIA Comments at 2–3, CIAB Comments at 3; Jason Schupp Comments at 3–4; M. Mohiuddin Comments at 1; Marsh Captive Solutions Comments at 2; RIMS Comments at 1–2; VCIA Comments at 2.

[21] TRIA, section 108(h).

annual data calls under proposed § 50.51. See proposed § 50.51(e).[22]

Regarding the first point, the principal purpose of the ''small insurer'' studies and reports mandated by the 2015 Reauthorization Act is ''to identify any competitive challenges small insurers face in the terrorism risk insurance marketplace,'' based upon a number of identified factors, including changes in market share, premium volume, and policyholder surplus vis-à-vis large insurers, and the impact on such insurers of the mandatory availability requirement.[23] This report requirement was originally proposed in conjunction with a provision under consideration prior to the 2015 reauthorization of TRIA (which ultimately was not adopted) that would have permitted Treasury to develop an ''opt out process'' from TRIA for small insurers ''if they can demonstrate financial hardship or financial infeasibility of providing coverage for insured losses.'' H. Rept. 113–523, 20.

As Treasury has recently observed, ''captive insurers may issue policies for terrorism risk subject to the Program that provide coverage that might not be readily available otherwise, such as for NBCR [nuclear, biological, chemical, and radiological] risks, or for 'trophy' properties.'' [24] As a result, captive insurers may play an important role in the provision of terrorism risk insurance, and Treasury is currently reviewing other comments received concerning their participation in the Program. That participation, however, is subject to issues very different from those faced by small conventional insurers that must make available terrorism risk insurance generally in the insurance marketplace:

The potential exposure associated with terrorism risk insurance written by captive insurers for parent or other affiliated entities differs from that of conventional commercial insurers that must ''make available'' terrorism risk insurance coverage to all potential, unrelated policyholders in the TRIP-eligible lines of insurance. For captive insurers, the offer and acceptance of terrorism risk insurance under the Program is essentially controlled by the insured.[25]

Although captive insurers are mandatory participants in the Program, and may be an important resource in the terrorism risk insurance marketplace, the potentially unique issues such captives face are not on account of ''competitive challenges'' vis-à-vis other insurers as contemplated by the 2015 Reauthorization Act, and accordingly they do not present the concerns (regardless of their size) that led to the requirement for the study in question. For these reasons, the ''small insurer'' studies should not and will not address captive insurers, regardless of their size. Treasury has reserved Subpart E of the Program rules to address captive insurers and other self-insurance mechanisms, and development of these regulations in the future will allow Treasury to address any issues particular to captive insurers that might justify individualized treatment under the Program rules.

The other concern identified in the comments—that captive insurers will not be excused from annual data calls (or potentially subject to different data calls) under proposed § 50.51(e)—should be obviated by other changes to the proposed rules that have been made in connection with the final rules as adopted. Based upon Treasury's experience with its recent collection of data on a voluntary basis, a request that may make sense in connection with one type of insurer may be unnecessary or overly burdensome when directed to another. Treasury accordingly has modified § 50.51 as adopted in final form to contain a provision confirming that Treasury may modify data requests by type of insurer to which the requests are directed. Treasury intends to develop data requests for participating captive insurers that will be tailored to the manner in which these entities participate in the Program, which will allow such insurers to provide necessary information in an efficient fashion.

Accordingly, the fact that the definition of ''small insurers'' excludes captive insurers does not have any significant consequences for captive insurers, and Treasury will adopt § 50.4(g) and § 50.5(z) as originally proposed.

Treasury received two comments concerning proposed § 50.4(m), which addressed, as required by the 2015 Reauthorization, the manner of calculation and publication of the insurance marketplace aggregate retention amount beginning in calendar year 2020.[26] One comment ''finds the process outlined in Section 50.4(m) to be adequate and aligned with the requirements under the statute.'' [27] The other comment did not identify any proposed changes to the rule, but suggested that the final rule should be deferred given that it is based upon data collection that has not yet occurred, and that Treasury may benefit from future data collection experience before finalizing the rule.[28]

Treasury will issue § 50.4(m) as originally proposed at this time. Given the deadline for the issuance of this rule, no data that will be used to calculate the insurance marketplace aggregate retention amount for 2020 will be collected before the rule must be issued,[29] and therefore there is no benefit in waiting to finalize the rule. Between the issuance of the present rule and the time when a final rule concerning the methodology for the collection must be issued in January 2018, Treasury would gain only one further year of data collection (in 2017, for information relating to calendar year 2016). While further experience over time will no doubt continue to allow Treasury to improve and refine the data collection process, Treasury remains able to modify collection requests made on an annual basis to address any lessons learned over time (see proposed § 50.51(c)(2)). By the time data is collected that will factor into the calculation of the insurance marketplace aggregate retention amount for 2020, the collected data to date will provide an appropriate basis for making the calculation as set forth in the proposed rule.

Treasury received very few comments concerning the proposed definition of ''small insurer'' proposed in § 50.4(z), aside from the exclusion of captive insurers from the definition, which is addressed above. One comment offered ''no view'' as to whether the proposed definition ''is suitable for Treasury's purposes,'' but identified a number of factors for consideration in identifying a small insurer, principally relating to

[22] Many of the comments suggesting that captive insurers should not necessarily be excluded from the definition of ''small insurer'' focused upon the potentially lessened data production obligations for such small insurers under the proposed rules. *See, e.g.,* CIAB Comments at 4.

[23] TRIA, section 108(h)(1).

[24] U.S. Department of the Treasury, Federal Insurance Office, Report on the Overall Effectiveness of the Terrorism Risk Insurance Program (June 2016) (2016 Effectiveness Report), at 19, *available at https://www.treasury.gov/initiatives/fio/reports-and-notices/Documents/2016_TRIP_Effectiveness_%20Report_FINAL.pdf.*

[25] *Id.*

[26] Prior to 2020, the insurance marketplace aggregate retention amount is defined by statute. TRIA, section 103(e)(6).

[27] CIAT Comments, at 4.

[28] Jason Schupp Comments, at 4. Among possible issues identified in the comment is the manner in which the calculation will be made if data is not collected from certain insurers. *Id.* Under the 2015 Reauthorization Act, a final rule must be issued concerning the calculation and its publication by January 12, 2018. TRIA, section 103(e)(6)(C).

[29] By statute, the calculation of the insurance marketplace aggregate retention amount for 2020 will be based upon data for calendar years 2017 to 2019; however, none of this data will be available for collection prior to the deadline for publishing the final rule by January 2018.

whether the policyholder surplus element of the definition was set at an appropriate level.[30] Another comment questioned the use of a policyholder surplus element in the definition at all, stating that Treasury's preamble to the proposed rule ''offers no explanation for the inclusion of the policyholder surplus as a 'second prong' of the definition,'' and ''question[ing] its appropriateness'' as a part of the definition.[31] Neither comment offered alternative suggestions for measuring a ''small insurer'' under the 2015 Reauthorization Act.

Treasury will issue § 50.4(z) as originally proposed, with the clarifying modification that ''policyholder surplus'' will be evaluated as it is reported by a participating insurer for state regulatory purposes on its Annual Statement at Page 3, Line 37, Column 1.[32] Treasury explained in its preamble to the rule as originally proposed that some consideration of an insurer's policyholder surplus was required because the impact of a loss that exceeded an insurer's deductible but which did not reach the Program Trigger ''would be lessened to the extent the insurer's policyholder surplus was sufficient to satisfy any amounts that would not be reimbursed in such a scenario under the Program.'' [33] Given the limited purposes of the ''small insurer'' definition—to define the scope of certain studies concerning competitive challenges faced by participating insurers, and to define the scope of potential modifications to the requirement to provide data—some consideration of the claims-paying ability of insurers, as measured by policyholder surplus, is clearly appropriate. Another comment suggested that there is some ''imbalance'' which supports elimination of policyholder surplus as a consideration because the TRIP-eligible direct earned premium (DEP) component of the definition is not calculated on the same basis as policyholder surplus (which extends to all lines of insurance).[34] This suggestion ignores the fact that both measures address the same consideration: The impact upon a participating insurer of policyholder claims for certified acts of terrorism, whether the reimbursement for the claims can be obtained through insurer reimbursement under the Program (as measured by the first component of the definition), or if the participant's policyholder surplus is sufficient to pay claims in the absence of Program support (as measured by the second component of the definition).

Treasury also received comments concerning two provisions within proposed Subpart A to which Treasury did not propose any modifications. The first of these is with respect to proposed § 50.1(c), which one commenter suggested should be modified to confirm that the Program rules also apply to claimants against participating insurers and their policyholders, given that certain provisions of TRIA and the implementing regulations (for example, matters concerning Subpart K, the Federal Cause of Action, and Subpart L, the Cap on Annual Liability) also have an impact upon such claimants.[35] The observation of this commenter is correct; although many of the proposed rules do not have any direct or indirect impact upon third-party claimants, there are provisions that do have such an effect. Accordingly, Treasury will modify proposed § 50.1(c) as suggested.

The second comment referred to proposed § 50.5, the Rule of Construction for Dates, which provides that ''any date in these regulations is intended to be applied so that the day begins at 12:01 a.m. and ends at midnight on that date.'' Two commenters have observed that this language presents a potential and unintended gap of 59 seconds, if ''midnight'' means 12:00:00 a.m., and not 12:00:59 a.m.[36] Treasury does not believe that any modification to the rule as stated (which has been in place since the inception of the Program) is necessary. It is Treasury's intention and understanding that in this context 12:01 a.m. means, if necessary, 12:01:00 a.m., and that ''midnight'' should be read to mean 12:00:59 a.m., such that there is no unintended gap between the dates as expressed within the rule.

Treasury did not receive comments respecting the remaining proposed changes to Subpart A. Treasury therefore adopts as the final rule Subpart A as it was proposed, subject to the modifications identified above.

2. Subpart B—Disclosures as Conditions for Federal Payment

Subpart B addressed the TRIA disclosure requirements, which must be satisfied in order for a participating insurer to qualify for Federal payments. Treasury proposed a clarifying change to § 50.12(b), addressing the manner in which the portion or percentage of the premium attributable to terrorism risk insurance should be disclosed to policyholders or potential policyholders, and also proposed changes to the existing rules to implement changes to the disclosure requirements contained in the 2015 Reauthorization Act. Treasury received comments concerning both of these changes, as well as other suggestions concerning the provisions of Subpart B.

The clarifying change to § 50.12(b) proposed to add the phrase ''and provided that the amount of annual premium or the method of determining the annual premium is also stated.'' The intent behind the change, as explained in the proposal, was ''to ensure that the actual dollar value of the premium is evident.'' [37] Treasury received a number of comments concerning this provision, suggesting that it imposes some new or different requirement respecting disclosure of the terrorism risk premium being charged.[38]

It appears from the comments that the principal concern is that while the rule originally stated that an insurer ''*may* describe the premium charged for insured losses covered by the Program as a portion or percentage of an annual premium'' (emphasis added), the added proviso potentially purports to require as a matter of disclosure the ''annual'' premium for terrorism risk insurance, even in situations where policy coverage is not provided on an annual basis, leading to confusion for insurers and policyholders alike.[39] This was not the intention, and given that the proviso modifies language stating that the insurer ''may'' provide the information in this fashion, the concerns expressed are not required by the language as proposed. Nonetheless, the comments highlight the fact that the rule raises a potential ambiguity in situations where coverage is not provided on an annual basis. To avoid the issue, Treasury will substitute the term ''policy'' for ''annual'' where it appears in proposed § 50.12(b).

Treasury's intention remains to ensure that the actual dollar value of the premium is evident from the disclosure. As stated in the rule, there may be a number of ways for an insurer to accomplish this disclosure, and Treasury is not requiring by rule any

[30] Jason Schupp Comments, at 2–3.

[31] PCIAA Comments, at 3.

[32] This was the definition used by Treasury in its 2016 data collection. Treasury is not aware of any questions that any responding insurers had as to what was meant by policyholder surplus as defined in this fashion.

[33] 81 FR 18950, 18953 (Apr. 1, 2016).

[34] *See* PCIAA Comments, at 3.

[35] *See* Jason Schupp Comments, at 1.

[36] *See* Jason Schupp Comments, at 4–5; AIA Comments, at 5.

[37] 81 FR 18950, 18953 (April 1, 2016).

[38] *See* PCIAA Comments, at 3–4; AIA Comments, at 5; Jason Schupp Comments, at 5–7.

[39] *Id.*

particular method.[40] Nor does this revision require an insurer to charge for terrorism risk insurance if the insurer did not otherwise intend to make such a charge.[41] If a charge is being made, however, the intention of the rule is that the disclosure be made to the policyholder in such a way that the policyholder can actually determine the amount that it is being charged by the insurer for the terrorism risk insurance. None of these changes modify the manner in which the Program operates. From the inception, TRIA has required that ''the insurer provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program,'' [42] which requirement has been memorialized in the Program rules as well (see existing 31 CFR 50.10(a)(1)).

Treasury received an additional comment concerning portions of proposed § 50.12 that Treasury did not propose to modify from the prior version.[43] The commenter suggested that proposed § 50.12(d) and (e) be combined into a single § 50.12(d), which would provide that an insurer could demonstrate compliance with disclosure requirements through use of appropriate systems and business practices, ''including where an insurer normally communicates with a policyholder through an insurance producer or other intermediary.'' [44]

Treasury declines to make the suggested change. The comment would eliminate the language in proposed § 50.12(d) (which has previously been in the existing rule) that ''[i]f an insurer elects to make the disclosures through an insurance producer or other intermediary, the insurer remains responsible for ensuring that the disclosures are provided by the insurance producer or other intermediary to policyholders in accordance with the Act.'' This language is consistent with industry practice generally—*i.e.,* while insurers may rely upon intermediaries to perform actions that are the responsibility of the insurer, it is the insurer that remains ultimately responsible for ensuring that the actions are performed.

When coupled with existing § 50.12(e), an insurer may demonstrate compliance with disclosure requirements ''through use of appropriate systems and normal business practices that demonstrate a practice of compliance,'' and this would extend to the use of such systems and normal business practices by an intermediary on behalf of a participating insurer. However, it is the participating insurer that will remain responsible for demonstrating, if an issue of compliance is raised, that appropriate systems and normal business practices were employed by the intermediary on behalf of the insurer. The use of an intermediary, in and of itself, does not demonstrate compliance, or otherwise excuse an insurer from demonstrating compliance. Treasury will adopt as the final rule § 50.12(d) and § 50.12(e) as originally proposed.

Treasury made a number of changes to Subpart B to implement provisions of the 2015 Reauthorization Act which modified the timing of the general disclosure requirements. In the 2015 Reauthorization Act, however, no change was made to the timing of the disclosure requirements applicable to the cap disclosure. A number of commenters have suggested that this was an unintentional oversight on the part of Congress, and that Treasury should implement similar revisions to its rules respecting the cap disclosure.[45]

Treasury understands the position of the commenters. However, while it is possible that the different treatment in the 2015 Reauthorization Act of the various requirements respecting disclosure is the result of an oversight, it is equally possible that the differing treatment reflects a conscious determination that a different approach be taken. See, *e.g., Loughrin* v. *United States*, 573 U.S. ____, 134 S. Ct. 2384, 2390 (2014) (''We have often noted that when 'Congress includes particular language in one section of a statute but omits it in another'—let alone in the very next provision—this Court presume[s] that Congress intended a difference in meaning.'' (quoting *Russello* v. *United States*, 464 U.S. 16, 23 (1983)). Treasury declines to provide for the modification sought by the commenters, where it is at best unclear that Congress intended to make such a change.

Treasury adopts as the final rule Subpart B as it was proposed, subject to the modifications identified above.

3. Subpart C—Mandatory Availability

The proposed changes to Subpart C involved changes seeking to delete provisions that are redundant or unnecessary on account of the passage of time, substitute language to clarify Treasury's intent, or implement other minor changes that conform the existing regulations to the requirements of the 2015 Reauthorization Act. No comments were received concerning these proposed changes.

Treasury adopts as the final rule Subpart C as it was proposed.

4. Subpart D—State Residual Market Insurance Entities; Workers' Compensation Funds

No substantive changes were proposed by Treasury to Subpart D, nor did Treasury receive any comments concerning this Subpart.

Treasury adopts as the final rule Subpart D as it was proposed.

5. Subpart E—Self-Insurance Arrangements; Captives [Reserved]

Treasury continues to reserve Subpart E for future additional rules addressing the participation in TRIP of self-insurance arrangements and captive insurers.

6. Subpart F—Data Collection

Subpart F is new; the proposed rules establish procedures for collection of data as mandated by Section 111 of the 2015 Reauthorization Act, and also address the collection of data by Treasury in other contexts, including in the event that an act of terrorism has

[40] Treasury understands that that some premiums may develop over time in a way that it is not possible to disclose a particular amount of terrorism risk premium at the time a policy is offered. To the extent such a situation cannot be addressed by the application of a percentage for purposes of the calculation, which has always been an option under the Program rules, the insurer remains in a position to make a disclosure which explains to the policyholder how the amount is being calculated, so that the policyholder can assess what the charge will be. As otherwise provided in the rules in this regard, ''whether a disclosure is clear and conspicuous depends on the totality of the facts and circumstances of the disclosure.'' 31 CFR 50.12(a) (2016).

[41] While neither TRIA nor the Program Rules have ever required an insurer to charge any particular sum for terrorism risk insurance, or charge any amount at all, neither TRIA nor the Program Rules have ever allowed an insurer to make a charge for terrorism risk insurance, and then not to disclose that amount to the policyholder for some reason. Accordingly, and contrary to the suggestion by one commenter, there has never been any ''existing Treasury policy'' that would permit an insurer to reflect that it is not charging a premium for terrorism risk insurance when it is charging such a premium. *See* PCIAA Comments, at 4. If a charge is being made, both TRIA and the Program Rules have always required that such charge be disclosed to the policyholder.

[42] TRIA, section 103(b)(2).

[43] Changes were proposed by Treasury to § 50.12(e); however, those changes deleted provisions addressing disclosure requirements during earlier years which have been rendered redundant by the passage of time, and the comment did not address these changes.

[44] AIA Comments, at 5–6.

[45] PCIAA Comments, at 5–6; AIA Comments, at 5 n.5. Treasury has proposed a change to § 50.15, providing expanded guidance for ensuring compliance with the requirement that the cap disclosure be provided at the time of offer, purchase, and renewal. It did not, however, seek to remove entirely the disclosure requirement at the time of purchase, as the commenters have suggested Treasury should do.

been certified. Treasury received a number of comments concerning each of these provisions, which it will address on a section-by-section basis.

General (§ 50.50)

Proposed § 50.50 states that Treasury may generally request information from insurers in connection with the Program, as part of its administration and implementation of the program. This provision is not related specifically to any of the authorities provided under Section 111 of the 2015 Reauthorization Act, and, if exercised, would be based upon Treasury's general authority to seek information in support of the operation of programs that it administers.

Treasury only received one comment specifically directed to proposed § 50.50, and it appears that this comment actually meant to address proposed § 50.51, as the comment actually addresses the annual data collection in aid of Treasury's reporting requirements.[46] Treasury will accordingly address that comment in the context of proposed § 50.51, and will adopt proposed § 50.50 as originally proposed.

Annual Data Reporting (§ 50.51)

Proposed § 50.51 establishes rules concerning the annual collection of data by Treasury from participating insurers concerning the effectiveness of the Program, as mandated by Section 111 of the 2015 Reauthorization Act. The comments concerning proposed § 50.51 fall into four general categories: (1) Comments suggesting that provisions should be included memorializing that Treasury should collect data from other sources, if available, in lieu of any annual data collection by Treasury directly from participating insurers; [47] (2) comments suggesting a later collection date than the March 1 date originally proposed by Treasury; [48] (3) comments suggesting the need for participating insurers to review and comment upon the scope and nature of future annual data collections, and seeking additional time beyond the 90 days specified in the proposed rule before requiring collection of any newly-specified data or information; [49] and (4) comments suggesting (either directly or indirectly) that annual data requests should be adjusted by industry group or size of insurer, observing that this is not an area in which ''one size fits all.'' [50] Treasury will address these comments in turn.

Under the 2015 Reauthorization Act, the Secretary ''shall'' collect data from participating insurers annually ''regarding insurance coverage for terrorism losses of such insurers as the Secretary considers appropriate to analyze the effectiveness of the Program.'' [51] The data collected is to form the basis for various reports that the 2015 Reauthorization Act requires the Secretary to submit to Congress.[52] Before such collection is made, Treasury shall ''coordinate with the appropriate State insurance regulatory authorities and any relevant government agency or publicly available sources to determine if the information to be collected is available from, and may be obtained in a timely manner by, individually or collectively, such entities.'' [53] If the information required by the Secretary can be obtained from these other sources, in a timely fashion, Treasury is to collect the information in this manner. If not, Treasury may collect the information directly from participating insurers.[54]

In advance of the recent voluntary data collection, Treasury did coordinate with other sources, including state insurance regulatory authorities, and determined that the data it sought was not available from other sources.[55] In fact, Treasury determined that comprehensive data concerning the participation of insurers in the Program had never been collected previously. Treasury will continue to evaluate in the coming years what data it requires to perform the analyses that it must make, and whether that data can be obtained from other sources in lieu of direct collection from participating insurers. Because this evaluation will necessarily vary from year to year, depending upon the data that Treasury needs, the timing of any reports that must be submitted, and the availability of data from other sources, it is not practical to attempt to codify a uniform process. However, Treasury has added language to § 50.51(b) to reflect the possibility that Treasury may be able to obtain some or all of the information from publicly available or other third-party sources. Treasury thus recognizes the provisions of the 2015 Reauthorization Act concerning the potential collection of information from sources other than participating insurers, and will continue to evaluate the availability of such information in future years.

In terms of the timing of annual data collections from participating insurers, Treasury proposed a March 1 deadline because it is consistent with the date of other industry reporting requirements, and it would provide Treasury with the data in sufficient time to complete required reports.[56] Most of the commenters addressing this issue suggested that a March 1 date was problematic precisely because participating insurers had other reporting obligations falling due that day, such that adding an additional obligation at the same time would be burdensome.[57]

Treasury does not wish to pose any unnecessary burdens upon participating insurers on account of required data collection. It will accordingly modify the data collection response date from March 1 to May 15, which will provide participating insurers the additional time sought but should still provide Treasury with sufficient time to analyze the data for the required reports.

Regarding the nature and scope of the annual data collection, future data collections will be based upon proposed collection templates which will be published for comment in the calendar year prior to the actual collection of

[46] NAMIC Comments, at 2–3.

[47] PCIAA Comments, at 2; NAMIC Comments at 2–3

[48] PCIAA Comments, at 2–3 (suggesting an April 1 reporting deadline); AIA Comments, at 6 (suggesting ''mid-April or to later in the year (October/November)''; CIAB Comments at 4 (suggesting ''a later deadline'' than March 1); Exchange Indemnity Comments at 2 (suggesting a deadline of May 31); Lloyd's Comments at 3 (suggesting May 15 deadline); M. Mohiuddin Comments at 1–2 (suggesting ''a date later in year'' than March 1); NAMIC Comments at 3 (suggesting that ''a deadline in mid or late May would be necessary in future years to ensure that the data submitted are accurate and complete''); IUAL Comments at 1–3 (suggesting a date ''shortly after'' May 15).

[49] CIAB Comments at 4 (suggesting an increase from 90 days to 180 days in the notice period); Exchange Indemnity at 2 (180 day implementation period, following prior publication and comment period).

[50] RAA Comments at 1 (''Private market participants' approach to these risks vary and there is no ''one size fits all'' approach.''); *see also* AIA Comments at 6 (suggesting ''a more focused data collection effort'' based upon character of insurer involved); IUAL Comments at 4 (suggesting reporting mechanism for alien surplus lines insurers consistent with existing financial reporting form generated by such entities); CIAB Comments at 4 (suggesting that ''to protect the confidentiality of captive insurer information'' such insurers be allowed ''to report less robust data''); Exchange Indemnity Comments at 1 (suggesting a narrower collection of data from captive insurers given the nature of risks they write).

[51] TRIA, section 104(h)(1).

[52] TRIA, section 104(h)(2).

[53] TRIA, section 104(h)(4).

[54] *Id.*

[55] 2016 Effectiveness Report at 7.

[56] The reports and studies based upon annual data required under the 2015 Reauthorization Act must be completed by not later than June 30 of each year under which they are required. TRIA, sections 104(h)(2), 108(h)(1).

[57] *See, e.g.,* AIA Comments at 6; PCIAA Comments at 2–3; Exchange Indemnity Comments at 2.

information.[58] See proposed § 50.51(c)(2). Participating insurers will be in a position to comment upon future data collection templates through this mechanism. Furthermore, given that Treasury has moved the collection date to May 15, and new data collection templates will be published during the prior calendar year, participating insurers will now have a period of time of at least 120 days, and likely more, to evaluate changes to data collection protocols and prepare for responding to any modified requests. Accordingly, only one clarifying change to proposed § 50.51 is required in light of these issues, as the rule (as modified) effectively addresses these comments.[59]

Finally, a number of comments were received that suggested that annual data collection requests should be adjusted depending upon the nature of the reporting insurer's participation in the Program. The rule as originally proposed recognized this to some extent, in the provision suggesting that ''small insurers,'' as otherwise defined, might be exempted from annual data collection, or subject to modified requests. Based upon Treasury's experience in the recent collection of data, however, it is also the case that modified requests may be used to provide a more efficient collection mechanism for different types of participants in the terrorism risk insurance marketplace, such as captive insurers and alien surplus lines insurers. Accordingly, Treasury will modify subsection (c) of proposed § 50.51 to confirm that the forms for data collection may vary depending upon the type of insurer participating in the Program. As noted above, these proposed forms will be published in advance of their approval and use, such that interested parties are in a position to comment upon the information requested.

Treasury will accordingly adopt as the final rule § 50.51 as originally proposed, subject to the modifications addressed above.

Small Insurer Data (§ 50.52)

Proposed § 50.52 addresses the collection of data relating to small insurers, as defined in proposed § 50.4(z), in support of the studies of small insurers mandated by the 2015 Reauthorization Act. The data elements specified in proposed § 50.52 are those specified in Section 112 of the 2015 Reauthorization Act. Apart from the comments concerning whether captive insurers should be considered ''small insurers'' for these purposes, addressed above, Treasury did not receive any comments concerning proposed § 50.52. Treasury accordingly adopts as the final rule § 50.52 as originally proposed.

Collection of Claims Data (§ 50.53)

Proposed § 50.53 establishes rules for the collection of data by Treasury once an act has been certified as an act of terrorism. As explained in the preamble to the proposed rule, Treasury proposed this provision, which accelerates the time that participating insurers would otherwise be required to report claims to Treasury, because in the absence of such information Treasury could be unaware that the Program Trigger threshold has been breached, which would thus delay its response to legitimate claims for payment of the Federal share of compensation.[60] Treasury received two comments concerning this proposed rule which suggested, respectively, that no rationale was offered and that the proposal should be withdrawn pending further study, and the existing requirement (which limits claims reporting to situations where 50 percent of a particular insurer's deductible has been eroded) is sufficient.[61]

Having this requirement in the rules serves an important purpose—to alert Treasury to the need to make payments to an insurer that has satisfied its deductible, but as to which it is unclear, based upon that particular insurer's experience alone, that the Program Trigger has been met. While the proposed rule may not provide any particular benefit to a large insurer, whose claims may alone demonstrate that the Program Trigger has been reached, it could be critical to a smaller insurer that cannot make this demonstration on its own, when other insurers have not met the current 50 percent threshold for reporting claim information and have no reporting obligation. Treasury interprets both comments as implying that the monthly reporting requirement would pose an increased burden on insurers. Treasury believes that the information that will be required from an insurer under this provision will be generated by the insurer in the ordinary course of its business. As a result, Treasury does not believe that this provision imposes a significant additional burden on a participating insurer, any more than an insurer would be burdened if it received such a request from its reinsurer.

Under these circumstances, Treasury believes that the proposed rule serves an important purpose, and provides an important safeguard to insurers that may be most at risk when faced with a disproportionate number of terrorism risk claims. Accordingly, Treasury will adopt as the final rule § 50.53 as proposed.

Handling of Data (§ 50.54)

Finally, proposed § 50.54 implements the requirements found in Section 111 of the 2015 Reauthorization Act, which recognize that the data Treasury will need to collect from participating insurers may constitute proprietary information that is highly sensitive to the individual companies (and, potentially, underlying policyholders and claimants) from which it is obtained. Treasury received one comment concerning the proposed rule, which is generally in favor of the provision but which suggests that the rule fails to address potential confidentiality issues presented by the use of a third-party vendor by Treasury, such as an insurance statistical aggregator, to collect confidential data.[62]

The 2015 Reauthorization Act expressly provides that Treasury—''to the extent possible''—shall contract with an insurance statistical aggregator to collect data and obtain it in aggregated form, precisely to address confidentiality issues identified in the

[58] The 2016 data collection was based upon a collection template for which Treasury obtained emergency approval for a voluntary collection from the Office of Management and Budget, in light of timing considerations, and was thus not subject to public comment (although Treasury conducted substantial interaction with stakeholders during the development of that template). *See* 81 FR 11649 (March 4, 2016).

[59] A number of comments were received from captive insurers, or groups associated with captive insurers, suggesting that data collection from captive insurers should be accomplished through the state regulators of their various domiciliary states, on grounds that data could be provided in this fashion on an anonymous basis and not reveal confidential, proprietary information respecting the insureds of participating captive insurers. *See, e.g.,* CIAB Comments at 4; Exchange Indemnity Comments at 1. Treasury notes that the 2015 Reauthorization Act provides for, to the extent possible, the collection of data on a confidential, aggregated basis through an insurance statistical aggregator, and that this was the approach taken in connection with the 2016 data collection. The suggested approach would require the collection of information through many more separate state insurance departments, for which there is no current mechanism for such reporting. In any event, these comments can and will be considered in connection with the development of future data collection protocols for captive insurance companies.

[60] *See* 81 FR 18950, 18954 (April 1, 2016).

[61] AIA Comments, at 7; Jason Schupp Comments at 7–8.

[62] NAMIC Comments at 4. In addition to this comment, Treasury received a number of comments that mentioned the confidentiality provisions of proposed § 50.54, but only in the context of suggesting that lesser data production requirements should be adopted for captive insurers. *See* Exchange Indemnity Comments at 2; Marsh Captive Solutions Comments at 1–2. Treasury will address such comments in connection with future data collection protocols.

2015 Reauthorization Act and the proposed rule. Such insurance statistical aggregators are subject to confidentiality requirements in their ordinary business activities, and the 2015 Reauthorization Act directs that any such entity with which Treasury might contract ''shall keep any nonpublic information confidential . . . .'' Although the statutory language effectively addresses the concern identified by the commenter, Treasury will modify the proposed rule to provide that, to the extent Treasury utilizes an insurance statistical aggregator to assist in the collection of data, such insurance statistical aggregator will be subject to the requirement to keep nonpublic information confidential, as required by the 2015 Reauthorization Act.

Treasury adopts as the final rule Subpart F as it was proposed, subject to the modifications identified above.

7. Subpart G—Certification

Subpart G, §§ 50–60 to 50.63, as modified, was previously adopted by Treasury as an interim final rule, although was initially adopted as Subpart K, §§ 50.100 to 50.103, in order to avoid reduplication of Subparts and section numbers in light of the existing rules. It is adopted here as Subpart G, §§ 50.60 to 50.63, as an interim final rule pending receipt and consideration of additional comments concerning the certification process as identified in the interim final rule. In this version of the interim final rule concerning certification, Treasury has also modified the internal citations within Subpart G to conform to the relevant sections that now apply with the issuance of these additional rules.

8. Subpart H—Claims Procedures

Most of the proposed changes to Subpart H addressed modifications required by the 2015 Reauthorization Act. In addition, Treasury proposed new § 50.76, addressing the final netting of claims. Treasury previously received comments on this provision after it was originally proposed in August 2010, and made certain changes to the draft rule as currently proposed in response to those comments.[63] Only one additional comment was received in response to the present April 2016 proposed rule, which incorporated comments previously provided in connection with the earlier August 2010 proposed rule. The comment received suggests the proposed rule (at § 50.76(e)) should be modified to provide that if a participating insurer meets a 20 percent threshold of additional claims within a year after the Final Netting Date—notwithstanding the final netting and an associated communication—Treasury ''shall'' reopen the claim.[64] As currently proposed, the rule provides only that Treasury may permit the claim to be reopened. In addition, the same commenter suggests that, when a commutation is being considered, Treasury should provide the insurer in question no less than 180 days within which to submit the information required by Treasury to consider the proposed commutation, as opposed to ''no less than 90 days'' in proposed § 50.76(d)(2).[65]

As Treasury explained in its preamble to this proposed rule, section 103(e)(4) of TRIA provides the Secretary with the sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall be considered final. Based on that authority, the final netting rule provides the mechanism for the Secretary to determine when claims for the Federal share of compensation shall be considered final, and accordingly that final payments shall be made by Treasury to insurers, or by insurers to Treasury, such that Treasury can close out its claims operation for insured losses for a given calendar year. By contrast, the comment proposes that Treasury leave open the final netting process for further extended periods of time.

Treasury declines to make the proposed change obligating Treasury to necessarily reopen the claims process if an insurer is able to satisfy the 20 percent threshold. As proposed, Treasury will be able to determine that the additional claims experience satisfying the 20 percent threshold arose in an unexpected fashion, such that it could not have been accounted for in any prior commutation process. If it does not appear that the claims in question were otherwise expected—at a time when the likelihood of further claim activity should be quite remote—Treasury would be able to allow for a reopening, assuming no other considerations militate against doing so. However, because the Secretary has sole discretion in determining the time at which claims must be considered to be final, there should not be any mandatory obligation upon the Secretary to further extend the claims process.

Similarly, allowing for a period of not less than 6 months for the provision of requested data would necessarily extend out any commutation process for a period far longer than the time that would reasonably be required. As the commenter acknowledges, ''not less than 90 days'' means that Treasury may still provide longer than 90 days to the insurer in question, if the insurer shows that a longer period is reasonably required to generate the information called for by Treasury. Imposing a far lengthier default period upon the process, regardless of the time actually necessary to respond to the inquiries, does not strike the appropriate balance in a situation where the statutory goal is to bring to a close Treasury's involvement in the claims process.

Treasury adopts as the final rule Subpart H as it was proposed.

9. Subpart I—Audit and Investigative Procedures

The only substantive change to Subpart I (formerly Subpart G) was new § 50.82, addressing civil penalties in connection with TRIA. The proposed rule tracked the statutory language as to the situations in which a civil penalty may be assessed, and provided (as required by the Act) for any penalty to be assessed only after proceedings on the record and after an opportunity for a hearing is extended to the insurer in question. The proposed rule also identified a proposed increase for inflation, as required by Federal law, although more recent statutory authority now requires an increase in the maximum penalty amount from $1,000,000 to $1,311,850, as distinguished from the $1,325,000 as originally proposed. Treasury has already issued an interim final rule increasing the maximum penalty amount and providing for its annual adjustment, as required by statute.[66]

Treasury received a number of comments in response to the proposed rule. None of the comments challenged the authority for the issuance of the rule, or the fact that the amount of the maximum penalty must be increased for inflation on account of Federal law requirements. A number of commenters

[63] 81 FR 18950, 18955 (April 1, 2016); see also 75 FR 45563 (August 2, 2010) (final netting rule as originally proposed in 2010).

[64] NAMIC Comments at 5.

[65] NAMIC Comments at 5–6.

[66] The amount of the civil penalty and its annual readjustment, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, was previously adopted by Treasury. *See* 81 FR 88600 (Dec. 7, 2016) (adopting by interim final rule 31 CFR 50.87). That rule was identified as 31 CFR 50.87 in order to avoid reduplication of existing rule numbers; as part of this final rule, that provision is renumbered as 31 CFR 50.83. For purposes of the final rule, proposed § 50.82 has also been revised to now cross-reference the civil penalty amount now set forth in 31 CFR 50.83.

proposed, however, that proposed § 50.82 should be amended to include language requiring that the conduct giving rise to the potential imposition of penalties be subject to increased levels of culpability (*e.g.,* ''intentionally'', in ''gross disregard'', ''knowingly'')[67] where proposed § 50.82 as published does not already require ''intentional'' or ''fraudulent'' conduct as a basis for a claim of violation justifying the imposition of civil penalties.[68] In addition, one commenter suggested inclusion of a provision that would permit relief for insurers that ''upon notification of a potential violation, take steps to correct it.''[69]

Proposed § 50.82 is based upon the provisions of section 104(e) of TRIA. The violations specified in the proposed regulation are those identified in the statute, which does not prescribe (with the exception of the violations identified in proposed § 50.82(a)(2) and (3)) any heightened standard of conduct or culpability in connection with a violation. At least one of the violations which is not subject to any higher standard—the collection of recoupment amounts, under proposed § 50.82(a)(1)—implicates matters central to the financial mechanisms under which the Program is based. Furthermore, because the maximum penalty amount is either the statutory figure or, if greater, the amount in dispute in cases of a ''failure to pay, charge, collect, or remit amounts in accordance with'' the Act, modification of the proposed rule as suggested would impose a greater burden on the government to prove a violation than contemplated by the statute, in a situation where the violation has resulted in a failure to pay, charge, collect, or remit amounts even greater than the statutory figure that could be essential to the integrity of the Program.

For these reasons, Treasury declines to modify proposed § 50.82 to include higher standards of culpable conduct than were identified by Congress in TRIA when establishing a civil penalty in the first place. Of course, the culpability of an insurer's conduct in responding to a claim that it is subject to a civil penalty may be relevant to the amount of any penalty that is ultimately imposed, when a violation is identified. Treasury believes, however, that this is best accomplished through the individual adjudication process, and does not warrant a modification to the scope of the civil penalty provision as enacted in TRIA.

Similarly, while Treasury agrees with the comment that, in the event of a claimed violation, Treasury should take into account situations where an insurer takes steps to cure an innocent violation upon notification, Treasury will not modify the rule as proposed. The nature of any claimed violation could clearly have an effect on the amount of any civil penalty assessed, or whether any penalty should be assessed at all. The situation identified by the commenter is one of any number of circumstances that might arise reflecting reduced culpability that could be found by Treasury to justify either a reduction or elimination of any civil penalty assessed. However, because such circumstances are fact dependent and case specific, this is something best addressed on a case-by-case basis rather than through a revision to the rule as originally proposed.

Because of the recent inclusion of a new rule addressing the amount of the civil penalty and its adjustment over time, proposed § 50.82 is also being modified to reference § 50.87—which is renumbered in this Final Rule as § 50.83—as the source of the amount of the civil penalty.

Treasury adopts as the final rule Subpart I as it was proposed, subject to the modification identified above.

10. Subpart J—Recoupment and Surcharge Procedures

The principal changes proposed to Subpart J were in connection with proposed § 50.90 (formerly § 50.70), and were based upon changes to the Program adopted in the 2015 Reauthorization Act—*i.e.,* the increase, from 133 percent to 140 percent, in the amount of terrorism loss risk-spreading premiums to be applied to any mandatory recoupment amount, and the revised schedule for the collection of terrorism loss risk-spreading premiums, depending upon the timing of any certified act of terrorism. The balance of the proposed changes to Subpart J were in the nature of clarifying and conforming changes in light of the 2015 Reauthorization Act, and did not seek to establish any further substantive changes. Treasury did not receive any comments concerning the proposed revisions to this Subpart.

Treasury adopts as the final rule Subpart J as it was proposed.

11. Subpart K—Federal Cause of Action; Approval of Settlements

The proposed Rule incorporated certain changes and clarifications to Subpart K, involving the Federal Cause of Action and Approval of Settlements by Treasury. These changes are designed to enhance Treasury's ability to evaluate and manage significant claims that could have a material impact upon Treasury's payment of the Federal share of compensation. The balance of the proposed changes to Subpart K made certain clarifying changes or deleted material that is now redundant or unnecessary, and did not seek to establish any substantive changes. Treasury did not receive any comments concerning the proposed revisions to this Subpart.

Treasury adopts as the final rule Subpart K as it was proposed.

12. Subpart L—Cap on Annual Liability

The proposed changes in Subpart L incorporated language required by the 2015 Reauthorization Act, or conformed the provisions to Treasury's other data collection authorities under Part 50. Treasury did not receive any comments concerning the proposed revisions to this Subpart.

Treasury adopts as the final rule Subpart L as it was proposed.

V. Procedural Requirements

Executive Order 12866, ''*Regulatory Planning and Review.*'' Executive Order 12866, as supplemented by Executive Order 13563, establishes a program to reform and make more efficient the regulatory process of the Federal Government. In accordance with such Executive Orders, this rule is a significant regulatory action, and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act. In general, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), which applies to any rule subject to notice and comment rulemaking under the Administrative Procedure Act or any other law, requires a federal agency to conduct a full regulatory flexibility analysis unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. (5 U.S.C. 605(b)). In the preamble to the proposed rule, Treasury certified that the rule, if promulgated, would not have

[67] *See* NAMIC Comments, at 6 (suggesting inclusion of ''intentionally or with gross disregard'' standard in proposed § 50.82(a)(1) and (4), and ''intentional or grossly negligent'' standard in proposed § 50.82(a)(5)); Lloyd's Comments, at 2–3 (suggesting inclusion of a ''knowingly'' standard in proposed § 50.82(a)(5)).

[68] As proposed, § 50.82 identifies five categories of conduct (§ 50.82(a)(1)–(5)) that could potentially justify the imposition of a civil penalty; subsections (a)(2) (intentional provision of erroneous information) and (a)(3) (submission of fraudulent claims to the Program) already contain heightened culpability standards. Subsections (a)(1) (failure to collect recoupment surcharges), (a)(4) (failure to provide disclosures or other required information), and (a)(5) (other failures to comply with TRIA or the regulations) as proposed do not require ''intentional'' or ''knowing'' violations, or conduct in ''gross disregard'' for imposition of a civil penalty.

[69] Lloyd's Comments, at 3.

a significant economic impact on a substantial number of small entities. Treasury did not receive any comments in response to the proposed rule on the impact to small entities or insurers, and the final rule has not been revised in any way that warrants a change to this certification. As discussed in the preamble to the proposed rule, some small entities—as defined by the regulations of the SBA (see 13 CFR 121. 201)—and small insurers—as defined by the proposed rules—are affected by the statutory obligation that they submit data to aid the Secretary in analyzing the effectiveness of the Program.[70] Treasury has estimated that approximately 500 insurers will have lesser reporting burdens because they are ''small insurers'' as now defined in Treasury's regulations, either because of the lesser amount of data that they have, or on account of being excused from the most detailed reporting requirements. See 81 FR 18950, 18957 (April 1, 2016).

Although a substantial number of small entities may be affected, any economic impact will not be significant. Treasury crafted these regulations in a manner that most insurers, including small insurers, should already be collecting and maintaining the data in question as part of their ordinary course of business, such that any additional costs will be occasioned by some reprogramming costs to permit the more efficient reporting of the requested data. Given the character of the information that is sought, Treasury believes that any such costs should be nominal, in light of existing obligations all insurers have to record and retain the information sought by Treasury. Nonetheless, and recognizing that the provisions of the regulations respecting data collection may impose some additional costs and burdens on small insurers, the regulations provide Treasury with the authority to excuse or modify the data collection requirements as applicable to small insurers.

Treasury did receive a number of comments, as addressed above, which questioned the general exclusion of captive insurance companies from Treasury's proposed definition of ''small insurers'' for purposes of the Program. As explained above, the only consequences of this exclusion are that (1) captive insurers (regardless of their size) will not be evaluated by Treasury in a study of small insurers mandated under the 2015 Reauthorization Act (which Treasury has determined was not meant to address any issues that captive insurers might face); and (2) captive insurers, regardless of their size, will not be subject to data collection requirements instituted for ''small insurers''—although, as also explained above, data collection from captive insurers will be addressed separately by Treasury in data collection requests directed specifically to captive insurers in light of the nature of captive insurer operations. Accordingly, Treasury finds that the rule as adopted will not have a significant economic impact on a substantial number of small entities that might also be captive insurers.

Paperwork Reduction Act. The proposed collection of information as contained in the proposed rule was submitted to the Office of Management and Budget (OMB) for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d). In response to its solicitation for comments addressing various factors, Treasury received two comments from the public concerning the necessity of the collection of information with respect to claims data, which Treasury has addressed above in the section entitled ''Collection of Claims Data'' under proposed § 50.53.[71] In addition, Treasury received a number of comments which provided (or could be read to provide) suggestions for minimization of the burden of the annual data requests,[72] which Treasury addressed above in the section entitled ''Annual data reporting'' under proposed § 50.51, and in response to which it has made certain modifications to the rules adopted as final that will govern annual data collection. Treasury also received a comment concerning data that might be collected in support of a commutation under the Final Netting Rule,[73] which Treasury has addressed above in the section entitled ''Claims Procedures'' under proposed § 50.76. Although solicited, Treasury did not receive any comments from the public concerning the accuracy of Treasury's burden estimates; suggestions for enhancement of the quality, utility, and clarity of the information collection; or estimates of capital or start-up costs that would be necessary for compliance with the information collection. The final rule does not contain any new collections of information. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control number. Treasury will obtain final OMB approval for the collection of information concerning Annual Data Requests, Claims Data, or Final Netting-Commutation prior to any collection of such information.

[70] TRIA, section 104(h).

[71] *See* AIA Comments at 7; Jason Schupp Comments at 7–8.

[72] *See generally* above, addressing comments in connection with proposed § 50.51.

[73] *See* NAMIC Comments at 5–6.

List of Subjects in 31 CFR Part 50

Insurance, Terrorism.

Authority and Issuance

For the reasons stated in the preamble, 31 CFR part 50 is revised to read as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

Subpart A—General Provisions

Sec.

Subpart B—Disclosures as Conditions for Federal Payment

Subpart C—Mandatory Availability

Subpart D—State Residual Market Insurance Entities; Workers' Compensation Funds

Subpart E—[Reserved]

Subpart F—Data Collection

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322, as amended by Pub. L. 109–144, 119 Stat. 2660, Pub. L. 110–160, 121 Stat. 1839 and Pub. L. 114–1, 129 Stat. 3 (15 U.S.C. 6701 note); Pub. L. 114–74, 129 Stat. 601, Title VII (28 U.S.C. 2461 note).

Subpart A—General Provisions

§ 50.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to authority in Title I of the Terrorism Risk Insurance Act of 2002, Public Law 107–297, 116 Stat. 2322, as amended by the Terrorism Risk Insurance Extension Act of 2005, Public Law 109–144, 119 Stat. 2660, the Terrorism Risk Insurance Program Reauthorization Act of 2007, Public Law 110–160, 121 Stat. 1839, and the Terrorism Risk Insurance Program Reauthorization Act of 2015, Public Law 114–1, 129 Stat. 3.

(b) *Purpose.* This part contains rules prescribed by the Department of the Treasury to implement and administer the Terrorism Risk Insurance Program.

(c) *Scope.* This part applies to insurers subject to the Act and their policyholders and claimants.

§ 50.2 Responsible office.

The office responsible for the administration of the Terrorism Risk Insurance Act in the Department of the Treasury is the Terrorism Risk Insurance Program Office within the Federal Insurance Office. The Treasury Assistant Secretary for Financial Institutions prescribes the regulations under the Act.

§ 50.3 Mandatory participation in program.

Any entity that meets the definition of an insurer under the Act is required to participate in the Program.

§ 50.4 Definitions.

For purposes of this part:

(a) *Act* means the Terrorism Risk Insurance Act of 2002 (as amended).

(b) *Act of terrorism*—(1) *In general.* The term *act of terrorism* means any act that is certified by the Secretary, in consultation with the Attorney General of the United States and the Secretary of Homeland Security:

(i) To be an act of terrorism;

(ii) To be a violent act or an act that is dangerous to human life, property, or infrastructure;

(iii) To have resulted in damage within the United States, or outside of the United States in the case of:

(A) An air carrier (as defined in 49 U.S.C. 40102) or a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States); or

(B) The premises of a United States mission; and

(iv) To have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(2) *Limitations.* The Secretary is not authorized to certify an act as an act of terrorism if:

(i) The act is committed as part of the course of a war declared by the Congress (except with respect to any coverage for workers' compensation); or

(ii) Property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.

(3) *Judicial review precluded.* The Secretary's certification of an act of terrorism, or determination not to certify an act as an act of terrorism, is final and is not subject to judicial review.

(c)(1) *Affiliate* means, with respect to an insurer, any entity that controls, is controlled by, or is under common control with the insurer. An affiliate must itself meet the definition of insurer to participate in the Program.

(2)(i) For purposes of paragraph (c)(1) of this section, an insurer has control over another insurer for purposes of the Program if:

(A) The insurer directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other insurer;

(B) The insurer controls in any manner the election of a majority of the directors or trustees of the other insurer; or

(C) The Secretary determines, after notice and opportunity for hearing, that an insurer directly or indirectly exercises a controlling influence over the management or policies of the other insurer, even if there is no control as defined in paragraph (c)(2)(i)(A) or (c)(2)(i)(B) of this section.

(ii) An entity, including any affiliate thereof, does not have control or exercise controlling influence over a reciprocal insurer under this section if, as of January 12, 2015, the entity, including any affiliate thereof, was acting as an attorney-in-fact for the reciprocal insurer, provided that the entity does not, for reasons other than activities it may perform under the attorney-in-fact relationship, have control over the reciprocal insurer as otherwise defined under this section.

(3) An insurer described in paragraph (c)(2)(i)(A) or (B) of this section is conclusively deemed to have control.

(4) For purposes of a determination of controlling influence under paragraph (c)(2)(i)(C) of this section, if an insurer is not described in paragraph (c)(2)(i)(A) or (B) of this section, the following rebuttable presumptions will apply:

(i) If an insurer controls another insurer under the laws of a state, and at least one of the factors listed in paragraph (c)(4)(iv) of this section applies, there is a rebuttable presumption that the insurer that has control under state law exercises a controlling influence over the management or policies of the other insurer for purposes of paragraph (c)(2)(i)(C) of this section.

(ii) If an insurer provides 25 percent or more of another insurer's capital (in the case of a stock insurer), policyholder surplus (in the case of a mutual insurer),

or corporate capital (in the case of other entities that qualify as insurers), and at least one of the factors listed in paragraph (c)(4)(iv) of this section applies, there is a rebuttable presumption that the insurer providing such capital, policyholder surplus, or corporate capital exercises a controlling influence over the management or policies of the receiving insurer for purposes of paragraph (c)(2)(i)(C) of this section.

(iii) If an insurer, at any time during a calendar year, supplies 25 percent or more of the underwriting capacity for that year to an insurer that is a syndicate consisting of one or more incorporated or individual unincorporated underwriters, and at least one of the factors in paragraph (c)(4)(iv) of this section applies, there is a rebuttable presumption that the insurer exercises a controlling influence over the syndicate for purposes of paragraph (c)(2)(i)(C) of this section.

(iv) If paragraphs (c)(4)(i) through (iii) of this section are not applicable, but two or more of the following factors apply to an insurer, with respect to another insurer, there is a rebuttable presumption that the insurer exercises a controlling influence over the management or policies of the other insurer for purposes of paragraph (c)(2)(i)(C) of this section:

(A) The insurer is one of the two largest shareholders of any class of voting stock;

(B) The insurer holds more than 35 percent of the combined debt securities and equity of the other insurer;

(C) The insurer is party to an agreement pursuant to which the insurer possesses a material economic stake in the other insurer resulting from a profit-sharing arrangement, use of common names, facilities or personnel, or the provision of essential services to the other insurer;

(D) The insurer is party to an agreement that enables the insurer to influence a material aspect of the management or policies of the other insurer;

(E) The insurer would have the ability, other than through the holding of revocable proxies, to direct the votes of more than 25 percent of the other insurer's voting stock in the future upon the occurrence of an event;

(F) The insurer has the power to direct the disposition of more than 25 percent of a class of voting stock of the other insurer in a manner other than a widely dispersed or public offering;

(G) The insurer and/or the insurer's representative or nominee constitute more than one member of the other insurer's board of directors; or

(H) The insurer or its nominee or an officer of the insurer serves as the chairman of the board, chairman of the executive committee, chief executive officer, chief operating officer, chief financial officer or in any position with similar policymaking authority in the other insurer.

(5) An insurer that is not described in paragraph (c)(2)(i) or (ii) of this section may request a hearing in which the insurer may rebut a presumption of controlling influence under paragraph (c)(4)(i) through (iv) of this section or otherwise request a determination of controlling influence by presenting and supporting its position through written submissions to Treasury, and in Treasury's discretion, through informal oral presentations, in accordance with the procedure in § 50.7.

(6) An insurer's affiliates for a calendar year, for purposes of subpart H of this part, shall be determined in accordance with the timing requirements laid out in § 50.75 of this part.

(d) *Aggregate Federal share of compensation* means the aggregate amount paid by Treasury for the Federal share of compensation for insured losses in a calendar year.

(e) *Assessment period* means a period, established by Treasury, during which policyholders of property and casualty insurance policies must pay, and insurers must collect, the Federal terrorism policy surcharge for remittance to Treasury.

(f) *Attorney-in-fact* means a person or entity appointed by the subscribers or members of a reciprocal insurer to act for and bind the reciprocal insurer under relevant state law for the benefit of its subscribers or members.

(g) *Captive insurer* means an insurer licensed under the captive insurance laws or regulations of any state.

(h) *Direct earned premium* means direct earned premium for all property and casualty insurance issued by any insurer for insurance against all losses, including losses from an act of terrorism, occurring at the locations described in section 102(5)(A) and (B) of the Act.

(1) *State-licensed or admitted insurers.* For a state licensed or admitted insurer that reports to the NAIC, direct earned premium is the premium information for property and casualty insurance reported by the insurer on column 2 of the Exhibit of Premiums and Losses of the NAIC Annual Statement (commonly known as Statutory Page 14).

(i) Premium information as reported to state regulators through the NAIC should be included in the calculation of direct earned premiums for purposes of the Program only to the extent it reflects premiums for property and casualty insurance issued by the insurer against losses occurring at the locations described in section 102(5)(A) and (B) of the Act.

(ii) Premiums for personal property and casualty lines of insurance (insurance primarily designed to cover personal, family or household risk exposures, with the exception of insurance written to insure 1 to 4 family rental dwellings owned for the business purpose of generating income for the property owner), or premiums for any other insurance coverage that does not meet the definition of property and casualty insurance, should be excluded in the calculation of direct earned premiums for purposes of the Program.

(iii) Personal property and casualty lines of insurance coverage that includes incidental coverage for commercial purposes are primarily personal coverage, and therefore premiums may be fully excluded by an insurer from the calculation of direct earned premium. For purposes of this section, commercial coverage is incidental if less than 25 percent of the total direct earned premium is attributable to commercial coverage. Property and casualty insurance against losses occurring at locations other than the locations described in section 102(5)(A) and (B) of the Act, or other insurance coverage that does not meet the definition of property and casualty insurance, but that includes incidental coverage for commercial risk exposures at such locations, is primarily not commercial, and therefore premiums for such insurance may also be fully excluded by an insurer from the calculation of direct earned premium. For purposes of this section, property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act is incidental if less than 25 percent of the total direct earned premium for the insurance policy is attributable to coverage at such locations. Also for purposes of this section, coverage for commercial risk exposures is incidental if it is combined with coverages that otherwise do not meet the definition of property and casualty insurance and less than 25 percent of the total direct earned premium for the insurance policy is attributable to the coverage for commercial risk exposures.

(iv) If an insurance policy covers both commercial and personal property and casualty exposures, insurers may allocate the premiums in accordance with the proportion of risk between commercial and personal components

in order to ascertain direct earned premium. If a policy includes insurance coverage that meets the definition of property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act, but also includes other coverage, insurers may allocate the premiums in accordance with the proportion of risk attributable to the components in order to ascertain direct earned premium.

(2) *Insurers that do not report to NAIC.* An insurer that does not report to the NAIC, but that is licensed or admitted by any state (such as certain farm or county mutual insurers), should use the guidance provided in paragraph (h)(1) of this section to assist in ascertaining its direct earned premium.

(i) Direct earned premium may be ascertained by adjusting data maintained by such insurer or reported by such insurer to its state regulator to reflect a breakdown of premiums for commercial and personal property and casualty exposure risk as described in paragraph (h)(1) of this section and, if necessary, re-stated to reflect the accrual method of determining direct earned premium versus direct premium.

(ii) Such an insurer should consider other types of payments that compensate the insurer for risk of loss (contributions, assessments, etc.) as part of its direct earned premium.

(3) *Certain eligible surplus line carrier insurers.* An eligible surplus line carrier insurer listed on the NAIC Quarterly Listing of Alien Insurers must ascertain its direct earned premium by pricing separately its premium for insurance that meets the definition of property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act.

(4) *Federally approved insurers.* A federally approved insurer, defined under section 102(6)(A)(iii) of the Act, should use a methodology similar to that specified for eligible surplus line carrier insurers in paragraph (h)(3) of this section to calculate its direct earned premium. Such calculation should be adjusted to reflect the limitations on scope of insurance coverage under the Program (*i.e.,* to the extent of Federal approval of property and casualty insurance in connection with maritime, energy or aviation activities).

(i) *Direct written premium* means the premium information for property and casualty insurance that is included by an insurer in column 1 of the Exhibit of Premiums and Losses of the NAIC Annual Statement or in an equivalent reporting requirement. The Federal terrorism policy surcharge is not included in amounts reported as direct written premium.

(j) *Discretionary recoupment amount* means such amount of the aggregate Federal share of compensation in excess of the mandatory recoupment amount that the Secretary has determined will be recouped pursuant to section 103(e)(7)(D) of the Act.

(k) *Federal Insurance Office* means the Federal Insurance Office within the U.S. Department of the Treasury.

(l) *Federal terrorism policy surcharge* means the amount established by Treasury under Subpart J of this Part that is imposed as a policy surcharge on property and casualty insurance policies, expressed as a percentage of the written premium.

(m) *Insurance marketplace aggregate retention amount* means an amount for a calendar year as calculated under section 103(e)(6) of the Act.

(1) For calendar years beginning with 2015 through 2019, such amount is the lesser of the aggregate amount, for all insurers, of insured losses once there has been a Program Trigger Event during the calendar year and:

(i) For calendar year 2015: $29,500,000,000;

(ii) For calendar year 2016: $31,500,000,000;

(iii) For calendar year 2017: $33,500,000,000;

(iv) For calendar year 2018: $35,500,000,000; and

(v) For calendar year 2019: $37,500,000,000.

(2) For calendar years beginning with 2020 and any calendar year thereafter as may be necessary, such amount is the lesser of the aggregate amount, for all insurers, of insured losses once there has been a Program Trigger Event during the calendar year and the annual average of the sum of insurer deductibles for all insurers for the prior 3 years, to be calculated by taking

(i) the total amount of direct earned premium reported by insurers to Treasury pursuant to section 50.51 for the three calendar years prior to the calendar year in question, and then dividing that figure by three; and

(ii) Multiplying the resulting three-year average figure by 20%.

(3) Beginning in 2020, Treasury shall publish in the **Federal Register** the insurance marketplace aggregate retention amount for that calendar year no later than April 30, 2020, and by every April 30 thereafter for any subsequent calendar years as necessary. To the extent the Secretary certifies an act as an act of terrorism prior to April 30 of any calendar year after 2019, Treasury will publish the relevant insurance marketplace aggregate retention amount as soon as practicable thereafter.

(n) *Insured loss.* (1) The term insured loss means any loss resulting from an act of terrorism (including an act of war, in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss:

(i) Occurs within the United States;

(ii) Occurs to an air carrier (as defined in 49 U.S.C. 40102), or to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs; however, to the extent a loss occurs to such an air carrier or vessel outside the United States, the insured loss does not include losses covered by third party insurance contracts that are separate from the insurance coverage provided to the air carrier or vessel; or

(iii) Occurs at the premises of any United States mission.

(2) The term insured loss includes reasonable loss adjustment expenses, incurred by an insurer in connection with insured losses, that are allocated and identified by claim file in insurer records, including expenses incurred in the investigation, adjustment, and defense of claims, but excluding staff salaries, overhead, and other insurer expenses that would have been incurred notwithstanding the insured loss.

(3) The term insured loss does not include:

(i) Punitive or exemplary damages awarded or paid in connection with the Federal cause of action specified in section 107(a)(1) of the Act. The term ''punitive or exemplary damages'' means damages that are not compensatory but are an award of money made to a claimant solely to punish or deter; or

(ii) Extra-contractual damages awarded against, or paid by, an insurer; or

(iii) Payments by an insurer in excess of policy limits.

(o) *Insurer* means any entity, including any affiliate of the entity, that meets the following requirements:

(1)(i) The entity must fall within at least one of the following categories:

(A) It is licensed or admitted to engage in the business of providing primary or excess insurance in any state (including, but not limited to, state licensed captive insurance companies, state licensed or admitted risk retention groups, and state licensed or admitted farm and county mutuals) and, if a joint underwriting association, pooling

arrangement, or other similar entity, then the entity must:

(*1*) Have gone through a process of being licensed or admitted to engage in the business of providing primary or excess insurance that is administered by the state's insurance regulator, which process generally applies to insurance companies or is similar in scope and content to the process applicable to insurance companies;

(*2*) Be generally subject to State insurance regulation, including financial reporting requirements, applicable to insurance companies within the State; and

(*3*) Be managed independently from other insurers participating in the program;

(B) It is not licensed or admitted to engage in the business of providing primary or excess insurance in any state, but is an eligible surplus line carrier listed on the NAIC Quarterly Listing of Alien Insurers;

(C) It is approved or accepted for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity, but only to the extent of such Federal approval of property and casualty insurance coverage offered by the insurer in connection with maritime, energy, or aviation activity;

(D) It is a state residual market insurance entity or state workers' compensation fund; or

(E) As determined by the Secretary, it falls within any of the classes or types of captive insurers or other self-insurance arrangements by municipalities and other entities.

(ii) If an entity falls within more than one category described in paragraph (o)(1)(i) of this section, the entity is considered to fall within the first category within which it falls for purposes of the program.

(2) The entity must receive direct earned premium, except in the case of:

(i) State residual market insurance entities and state workers' compensation funds, to the extent provided in subpart D of this part; and

(ii) Other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities to the extent provided for in subpart E of this part.

(3) The entity must meet any other criteria as prescribed by Treasury.

(p) *Insurer deductible* means:

(1) For an insurer that has had a full year of operations during the calendar year immediately preceding the applicable calendar year, the value of an insurer's direct earned premiums during the immediately preceding calendar year, multiplied by 20 percent; and

(2) For an insurer that has not had a full year of operations during the immediately preceding calendar year, the insurer deductible will be based on data for direct earned premiums for the applicable calendar year multiplied by 20 percent. If the insurer does not have a full year of operations during the applicable calendar year, the direct earned premiums for the applicable calendar year will be annualized to determine the insurer deductible.

(q) *Mandatory recoupment amount* means the difference between the insurance marketplace aggregate retention amount for a calendar year and the uncompensated insured losses during such calendar year.

(r) *NAIC* means the National Association of Insurance Commissioners.

(s) *Person* means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a state or other governmental unit.

(t) *Professional liability insurance* means insurance coverage for liability arising out of the performance of professional or business duties related to a specific occupation, with coverage being tailored to the needs of the specific occupation. Examples include abstracters, accountants, insurance adjusters, architects, engineers, insurance agents and brokers, lawyers, real estate agents, stockbrokers, and veterinarians. For purposes of this definition, professional liability insurance does not include directors and officers liability insurance.

(u) *Program* means the Terrorism Risk Insurance Program established by the Act.

(v) *Program Trigger Event* means a certified act of terrorism within a calendar year that results in aggregate industry insured losses, either on its own or in combination with any other certified act(s) of terrorism having previously taken place in the same calendar year, exceeding:

(1) $100,000,000 with respect to calendar year 2015 insured losses;

(2) $120,000,000 with respect to calendar year 2016 insured losses;

(3) $140,000,000 with respect to calendar year 2017 insured losses;

(4) $160,000,000 with respect to calendar year 2018 insured losses;

(5) $180,000,000 with respect to calendar year 2019 insured losses; or

(6) $200,000,000 with respect to calendar year 2020 insured losses and with respect to any calendar year thereafter.

(w) *Property and casualty insurance* means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and directors and officers liability insurance, and:

(1) Means commercial lines within only the following lines of insurance from the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14): Line 1—Fire; Line 2.1—Allied Lines; Line 5.1—Commercial Multiple Peril (non-liability portion); Line 5.2—Commercial Multiple Peril (liability portion); Line 8—Ocean Marine; Line 9—Inland Marine; Line 16—Workers' Compensation; Line 17—Other Liability; Line 18—Products Liability; Line 22—Aircraft (all perils); and Line 27—Boiler and Machinery; and

(2) Does not include:

(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*), or any other type of crop or livestock insurance that is privately issued or reinsured (including crop insurance reported under either Line 2.1—Allied Lines or Line 2.2—Multiple Peril (Crop) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(ii) Private mortgage insurance (as defined in section 2 of the Homeowners Protection Act of 1998) (12 U.S.C. 4901) or title insurance;

(iii) Financial guaranty insurance issued by monoline financial guaranty insurance corporations;

(iv) Insurance for medical malpractice;

(v) Health or life insurance, including group life insurance;

(vi) Flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*) or earthquake insurance reported under Line 12 of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(vii) Reinsurance or retrocessional reinsurance;

(viii) Commercial automobile insurance, including insurance reported under Lines 19.3 (Commercial Auto No-Fault (personal injury protection)), 19.4 (Other Commercial Auto Liability) and 21.2 (Commercial Auto Physical Damage) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(ix) Burglary and theft insurance, including insurance reported under Line 26 (Burglary and Theft) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(x) Surety insurance, including insurance reported under Line 24 (Surety) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(xi) Professional liability insurance as defined in paragraph (t) of this section; or

(xii) Farm owners multiple peril insurance, including insurance reported under Line 3 (Farmowners Multiple Peril) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14).

(x) *Reciprocal insurer* means an insurer organized under relevant state law as a reciprocal or interinsurance exchange.

(y) *Secretary* means the Secretary of the U.S. Department of the Treasury.

(z) *Small insurer* means an insurer (or an affiliated group of insurers in the case of affiliates within the meaning of paragraph (c) of this section) whose policyholder surplus for the immediately preceding year (as reported on its Annual Statement for state regulatory purposes at Page 3, Line 37, Column 1, or as calculated in similar fashion by participating insurers that do not file an Annual Statement) is less than five times the Program Trigger amount for the current year and whose direct earned premium for the preceding year is also less than five times the Program Trigger amount for the current year. An insurer that has not had a full year of operations during the immediately preceding calendar year is a small insurer if its policyholder surplus in the current year is less than five times the Program Trigger amount for the current year. A captive insurer is not a small insurer, regardless of the size of its policyholder surplus or direct earned premium.

(aa) *State* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

(bb) *Surcharge* means the Federal terrorism policy surcharge as defined in paragraph (l) of this section.

(cc) *Surcharge effective date* means the date established by Treasury that begins the assessment period.

(dd) *Treasury* means the U.S. Department of the Treasury.

(ee) *Uncompensated insured losses* means the aggregate amount of insured losses of all insurers in a calendar year, once there has been a Program Trigger Event, that is not compensated by the Federal Government because such losses:

(1) Are within the insurer deductibles of insurers, or

(2) Are within the portions of losses in excess of insurer deductibles that are not compensated through payments made as a result of claims for the Federal share of compensation.

(ff) *United States* means the several states, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280 and 2281).

§ 50.5 Rule of construction for dates.

Unless otherwise expressly provided in the regulation, any date in these regulations is intended to be applied so that the day begins at 12:01 a.m. and ends at midnight on that date.

§ 50.6 Special rules for Interim Guidance safe harbors.

(a) An insurer will be deemed to be in compliance with the requirements of the Act to the extent the insurer reasonably relied on Interim Guidance prior to the effective date of applicable regulations.

(b) For purposes of this section, Interim Guidance means the following documents, which are available from Treasury at *https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx:*

(1) Interim Guidance I issued by Treasury on December 3, 2002;

(2) Interim Guidance II issued by Treasury on December 18, 2002;

(3) Interim Guidance III issued by Treasury on January 22, 2003;

(4) Interim Guidance IV issued by Treasury on December 29, 2005;

(5) Interim Guidance V issued by Treasury on December 31, 2007; and

(6) Interim Guidance VI issued by Treasury on February 4, 2015.

§ 50.7 Procedure for requesting determinations of controlling influence.

(a) An insurer or insurers not having control over another insurer under § 50.4(c)(2)(i) or (ii) may make a written submission to Treasury to rebut a presumption of controlling influence under § 50.4(c)(4)(i) through (iv) or otherwise to request a determination of controlling influence. Such submissions shall be made to the Terrorism Risk Insurance Program Office, Department of the Treasury, Room 1410, 1500 Pennsylvania Ave. NW., Washington, DC 20220. The submission should be entitled, ''Controlling Influence Submission,'' and should provide the full name and address of the submitting insurer(s) and the name, title, address and telephone number of the designated contact person(s) for such insurer(s).

(b) Treasury will review submissions and determine whether Treasury needs additional written or orally presented information. In its discretion, Treasury may schedule a date, time, and place for an oral presentation by the insurer(s).

(c) An insurer or insurers must provide all relevant facts and circumstances concerning the relationship(s) between or among the affected insurers and the control factors in § 50.4(c)(4)(i) through (iv); and must explain in detail any basis for why the insurer believes that no controlling influence exists (if a presumption is being rebutted) in light of the particular facts and circumstances, as well as the Act's language, structure and purpose. Any confidential business or trade secret information submitted to Treasury should be clearly marked. Treasury will handle any subsequent request for information designated by an insurer as confidential business or trade secret information in accordance with Treasury's Freedom of Information Act regulations at 31 CFR part 1.

(d) Treasury will review and consider the insurer submission and other relevant facts and circumstances. Unless otherwise extended by Treasury, within 60 days after receipt of a complete submission, including any additional information requested by Treasury, and including any oral presentation, Treasury will issue a final determination of whether one insurer has a controlling influence over another insurer for purposes of the Program. The determination shall set forth Treasury's basis for its determination.

(Approved by the Office of Management & Budget under control number 1505–0190.)

§ 50.8 Procedure for requesting general interpretations of statute.

Persons actually or potentially affected by the Act or regulations in this Part may request an interpretation of the Act or regulations by writing to the Terrorism Risk Insurance Program Office, Room 1410, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220, giving a detailed explanation of the facts and circumstances and the reason why an interpretation is needed. A requester should segregate and mark any confidential business or trade secret information clearly. Treasury in its discretion will provide written responses to requests for interpretation. Treasury reserves the right to decline to provide a response in any case. Except in the case of any confidential business or trade secret information, Treasury will make written requests for interpretations and responses publicly available at the Treasury Department

Library, on the Treasury Web site, or through other means as soon as practicable after the response has been provided. Treasury will handle any subsequent request for information that had been designated by a requester as confidential business or trade secret information in accordance with Treasury's Freedom of Information Act regulations at 31 CFR part 1.

Subpart B—Disclosures as Conditions for Federal Payment

§ 50.10 General disclosure requirements.

(a) *Content of disclosure.* As a condition for Federal payments under section 103(b) of the Act, the Act requires that an insurer provide clear and conspicuous disclosure to the policyholder of:

(1) The premium charged for insured losses covered by the Program; and

(2) The Federal share of compensation for insured losses under the Program.

(b) *Form and timing of disclosure.* The disclosure required by the Act must be made on a separate line item in the policy, at the time of offer and of renewal of the policy.

§ 50.11 Definition.

For purposes of this Subpart, unless the context indicates otherwise, the term ''disclosure'' or ''disclosures'' refers to the disclosure described in section 103(b)(2) of the Act and § 50.10. The term ''cap disclosure'' refers to the disclosure required by section 103(b)(3) of the Act and § 50.15.

§ 50.12 Clear and conspicuous disclosure.

(a) *General.* Whether a disclosure is clear and conspicuous depends on the totality of the facts and circumstances of the disclosure. See § 50.16 for model forms.

(b) *Description of premium.* An insurer may describe the premium charged for insured losses covered by the Program as a portion or percentage of a policy premium, if consistent with standard business practice and provided that the amount of policy premium or the method of determining the policy premium is also stated. An insurer may not describe the premium in a manner that is misleading in the context of the Program, such as by characterizing the premium as a ''surcharge.''

(c) *Method of disclosure.* Subject to § 50.10(b), an insurer may provide disclosures using normal business practices, including forms and methods of communication used to communicate similar policyholder information to policyholders.

(d) *Use of producer.* If an insurer normally communicates with a policyholder through an insurance producer or other intermediary, an insurer may provide disclosures through such producer or other intermediary. If an insurer elects to make the disclosures through an insurance producer or other intermediary, the insurer remains responsible for ensuring that the disclosures are provided by the insurance producer or other intermediary to policyholders in accordance with the Act.

(e) *Demonstration of compliance.* An insurer may demonstrate that it has satisfied the requirement to provide clear and conspicuous disclosure as described in § 50.10 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

(f) *Certification of compliance.* An insurer must certify that it has complied with the requirement to provide disclosure to the policyholder on all policies that form the basis for any claim that is submitted by an insurer for Federal payment under the Program.

§ 50.13 Offer and renewal.

An insurer is deemed to be in compliance with the requirement of providing disclosure ''at the time of offer and of renewal of the policy'' under § 50.10(b) if the insurer makes the disclosure no later than the time the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder.

§ 50.14 Separate line item.

An insurer is deemed to be in compliance with the requirement of providing disclosure on a ''separate line item in the policy'' under § 50.10(b) if the insurer makes the disclosure:

(a) On the declarations page of the policy;

(b) Elsewhere within the policy itself; or

(c) In any rider or endorsement, or other document that is made a part of the policy.

§ 50.15 Cap disclosure.

(a) *General.* Under section 103(e)(2) of the Act, if the aggregate insured losses exceed $100,000,000,000 during any calendar year, the Secretary shall not make any payment for any portion of the amount of such losses that exceeds $100,000,000,000, and no insurer that has met its insurer deductible shall be liable for the payment of any portion of the amount of such losses that exceeds $100,000,000,000.

(b) *Other requirements.* As a condition for Federal payments under section 103(b) of the Act, an insurer must provide clear and conspicuous disclosure to the policyholder of the existence of the $100,000,000,000 cap under section 103(e)(2). The cap disclosure must be made at the time of offer, purchase, and renewal of the policy.

(c) *Offer, purchase, and renewal.* An insurer is deemed to be in compliance with the requirement of providing disclosure ''at the time of offer, purchase, and renewal of the policy'' under § 50.15(b) if the insurer:

(1) Makes the disclosure no later than the time the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder; and

(2) If terrorism risk coverage is purchased, the insurer makes clear and conspicuous reference back to that disclosure, as well as the final terms of terrorism insurance coverage, at the time the transaction is completed.

(d) *Other applicable rules.* The cap disclosure is covered by the rules in § 50.12(a), (c), (d), (e), and (f) (relating to clear and conspicuous disclosure).

§ 50.16 Use of model forms.

(a) *General.* An insurer that is required to make the disclosure under § 50.10(b) or § 50.15(b) is deemed to be in compliance with the disclosure requirements if the insurer uses NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2, as appropriate.

(b) *Not exclusive means of compliance.* An insurer is not required to use NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2 to satisfy the disclosure requirements. An insurer may use other means to comply with the disclosure requirements, as long as the disclosures comport with the requirements of the Act.

(c) *Definitions.* For purposes of this section, references to NAIC Model Disclosure Form No. 1 and NAIC Model Disclosure Form No. 2 refer to such forms as revised in January 2015, or as subsequently modified by the NAIC, provided Treasury has stated that usage by insurers of the subsequently modified forms is deemed to satisfy the disclosure requirements of the Act and the insurer uses the most current forms, so approved by Treasury, that are available at the time of disclosure. These forms may be found on the Treasury Web site at *https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx.*

§ 50.17 General disclosure requirements for State residual market insurance entities and State workers' compensation funds.

(a) *Residual market mechanism disclosure.* A state residual market

insurance entity or state workers' compensation fund may provide the disclosures required by this subpart B to policyholders using normal business practices, including forms and methods of communication used to communicate similar information to policyholders. The disclosures may be made by the state residual market insurance entity or state workers' compensation fund itself, the individual insurers that participate in the state residual market insurance entity or state workers' compensation fund, or its servicing carriers. The ultimate responsibility for ensuring that the disclosure requirements have been met rests with the insurer filing a claim under the Program.

(b) *Other requirements.* Except as provided in this section, all other disclosure requirements set out in this subpart B apply to state residual insurance market entities and state workers' compensation funds.

Subpart C—Mandatory Availability

§ 50.20 General mandatory availability requirements.

(a) *General requirements.* Under section 103(c) of the Act, an insurer must:

(1) Make available, in all of its property and casualty insurance policies, coverage for insured losses; and

(2) Make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

(b) *Compliance through 2020.* Under section 108(a) of the Act, an insurer must comply with paragraphs (a)(1) and (2) of this section through calendar year 2020.

(c) *Beyond 2020.* Notwithstanding paragraph (a)(2) of this section and § 50.22(a), property and casualty insurance coverage for insured losses does not have to be made available beyond December 31, 2020, even if the policy period of insurance coverage for losses from events other than acts of terrorism extends beyond that date.

§ 50.21 Make available.

(a) *General.* The requirement to make available coverage as provided in § 50.20 applies at the time an insurer makes the initial offer of coverage as well as at the time an insurer makes an initial offer of renewal of an existing policy.

(b) *Offer consistent with definition of act of terrorism.* An insurer must make available coverage for insured losses in a policy of property and casualty insurance consistent with the definition of an act of terrorism as defined in § 50.4(b).

(c) *Changes negotiated subsequent to initial offer.* If an insurer satisfies the requirement to make available coverage as described in § 50.20 by first making an offer with coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, which the policyholder or prospective policyholder declines, the insurer may negotiate with the policyholder or prospective policyholder an option of partial coverage for insured losses at a lower amount of coverage if permitted by any applicable state law. An insurer is not required by the Act to offer partial coverage if the policyholder or prospective policyholder declines full coverage. See § 50.23.

(d) *Demonstrations of compliance.* If an insurer makes an offer of insurance but no contract of insurance is concluded, the insurer may demonstrate that it has satisfied the requirement to make available coverage as described in § 50.20 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

§ 50.22 No Material difference from other coverage.

(a) *Terms, amounts, and other coverage limitations.* As provided in § 50.20(a)(2), an insurer must offer coverage for insured losses arising from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations (including deductibles) applicable to losses arising from events other than acts of terrorism. For purposes of this requirement, ''terms'' excludes price.

(b) *Limitations on types of risk.* An insurer is not required to cover risks that it typically excludes or does not write to satisfy the requirement to make available coverage for losses resulting from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. For example, if an insurer does not cover all types of risks, either because the insurer is outside of direct state regulatory oversight, or because a state permits certain exclusions for certain types of losses, such as nuclear, biological, or chemical events, then the insurer is not required to make such coverage available.

§ 50.23 Applicability of State law requirements.

(a) *General.* After satisfying the requirement to make available coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, if coverage is rejected an insurer may then offer coverage that is on different terms, amounts, or coverage limitations, as long as such an offer does not violate any applicable state law requirements.

(b) *Examples.* (1) If an insurer subject to state regulation first makes available coverage in accordance with § 50.20 and the state has a requirement that an insurer offer full coverage without any exclusion, then the requirement would continue to apply and the insurer may not subsequently offer less than full coverage or coverage with exclusions.

(2) If an insurer subject to state regulation first makes available coverage in accordance with § 50.20 and the state permits certain exclusions or allows for other limitations, or an insurance policy is not governed by state law requirements, then the insurer may subsequently offer limited coverage or coverage with exclusions.

Subpart D—State Residual Market Insurance Entities; State Workers' Compensation Funds

§ 50.30 General participation requirements.

(a) *Insurers.* As defined in § 50.4(o), all state residual market insurance entities and state workers' compensation funds are insurers under the Program even if such entities do not receive direct earned premiums.

(b) *Mandatory participation.* State residual market insurance entities and State workers' compensation funds are mandatory participants in the Program subject to the rules issued in this Subpart.

(c) *Identification.* Treasury maintains a list of state residual market insurance entities and state workers' compensation funds at *https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx.* Procedures for providing comments and updates to that list are posted with the list.

§ 50.31 Entities that do not share profits and losses with private sector insurers.

(a) *Treatment.* A state residual market insurance entity or a state workers' compensation fund that does not share profits and losses with a private sector insurer is deemed to be a separate insurer under the Program.

(b) *Premium calculation.* A state residual market insurance entity or a

state workers' compensation fund that is deemed to be a separate insurer should follow the guidelines specified in § 50.4(h)(1) or (2) for the purposes of calculating the appropriate measure of direct earned premium.

§ 50.32 Entities that share profits and losses with private sector insurers.

(a) *Treatment.* A State residual market insurance entity or a State workers' compensation fund that shares profits and losses with a private sector insurer is deemed not to be a separate insurer under the Program.

(b) *Premium and loss calculation.* A state residual market insurance entity or a State workers' compensation fund that is deemed not to be a separate insurer should continue to report, in accordance with normal business practices, to each participant insurer its share of premium income and insured losses, which shall then be included respectively in the participant insurer's direct earned premium or insured loss calculations.

§ 50.33 Allocation of premium income associated with entities that do share profits and losses with private sector insurers.

(a) *Servicing carriers.* For purposes of this subpart, a servicing carrier is an insurer that enters into an agreement to place and service insurance contracts for a state residual market insurance entity or a state workers' compensation fund and to cede premiums associated with such insurance contracts to the State residual market insurance entity or State workers' compensation fund. Premiums written by a servicing carrier on behalf of a state residual market insurance entity or State workers' compensation fund that are ceded to such an entity or fund shall not be included as direct earned premium (as described in § 50.4(h)(1) or (2)) of the servicing carrier.

(b) *Participant insurers.* For purposes of this Subpart, a participant insurer is an insurer that shares in the profits and losses of a state residual market insurance entity or a state workers' compensation fund. Premium income that is distributed to or assumed by participant insurers in a state residual market insurance entity or state workers' compensation fund (whether directly or as quota share insurers of risks written by servicing carriers), shall be included in direct earned premium (as described in § 50.4(h)(1) or (2)) of the participant insurer.

Subpart E—[Reserved]

Subpart F—Data Collection

§ 50.50 General.

Treasury may request from insurers such data and information as may be reasonably required in support of Treasury's administration of the Program.

§ 50.51 Annual data reporting.

(a) *General.* No later than May 15 of each calendar year, all insurers shall provide specified data and information respecting their Program participation.

(b) *Scope.* Except as otherwise provided by Treasury, the information to be provided shall address: the lines of property and casualty insurance subject to the Program, the premiums earned for terrorism risk insurance within those lines and for those lines generally, the geographical location of exposures covered under terrorism risk insurance, the pricing of terrorism risk insurance, the take-up rate for terrorism risk insurance, the amount of private reinsurance obtained by participating insurers in connection with such policies, and other matters concerning the Program as may be identified by Treasury.

(c) *Method of reporting.* (1) Treasury will promulgate forms defining the specific data and information that each insurer must submit and make these forms available on its Web site. Treasury may adopt different data reporting forms for different types of insurers that participate in the Program, which modify the requested information by each different category of participating insurer based upon the manner and scope of the participation of those insurers in the Program. Each insurer shall submit the required data and information by electronic submission through the forms and data portal(s) identified on Treasury's Web site. All data and information provided as part of such electronic submission shall be certified by the insurer as a full and true statement of the information provided to the best of its knowledge, information and belief.

(2) The data and information required to be provided under this subsection may be modified annually by Treasury. Any modification shall be made during the prior calendar year, and Treasury shall provide insurers at least 90 days before requiring collection of any newly specified data or information.

(d) *Supplemental requests.* Treasury may issue supplemental requests, to some or all participating insurers, in connection with the annual data request provided for under this section, to the extent Treasury determines that it requires additional or clarifying information in order to analyze the effectiveness of the Program. Insurers shall respond to any such supplemental requests as may be made within the timeframe and in the manner specified by Treasury.

(e) *Small insurer exception.* The Secretary may exempt a small insurer that meets the definition in § 50.4(z) from any or all data calls under this section, or may modify the requests as applicable to such small insurer.

§ 50.52 Small insurer data.

(a) *General.* The Secretary may collect information relating to small insurers, as defined in § 50.4(z), in order to conduct a study of small insurers participating in the Program, and identify any competitive challenges small insurers face in the terrorism risk insurance marketplace.

(b) *Scope.* Information collected concerning small insurers may include information necessary for Treasury to identify:

(1) Changes to the market share, premium volume, and policyholder surplus of small insurers relative to large insurers;

(2) How the property and casualty insurance market for terrorism risk differs between small and large insurers, and whether such a difference exists within other perils;

(3) The impact on small insurers of the Program's mandatory availability requirement under section 103(c) of the Act;

(4) The effect on small insurers of increasing the trigger amount for the Program under section 103(e)(1)(B) of the Act;

(5) The availability and cost of private reinsurance for small insurers; and

(6) The impact that state workers compensation laws have on small insurers and workers compensation carriers in the terrorism risk insurance marketplace.

§ 50.53 Collection of claims data.

(a) *General.* Subsequent to any certification by the Secretary of an act of terrorism, insurers shall report to Treasury information respecting insured losses arising from the act of terrorism.

(b) *Contents of periodic reporting.* Reporting under this subsection shall be by a form prescribed by Treasury and made available on the Treasury Web site, which provides basic information about each claim established by an insurer that involves or potentially involves an insured loss. Information to be reported for any claims by or against a policyholder shall identify paid and

reserved amounts associated with the claim. In the case of an affiliated group of insurers, the form required by this subsection shall be submitted by a single insurer designated within the affiliated group, which shall report on a consolidated basis. Data and information reported under this subsection will include:

(1) A listing of each claim by name of insured, catastrophe code, line of business, and in the case of an affiliated group of insurers, the particular insurer or insurers within the group associated with each claim;

(2) Amounts paid, both loss and loss adjustment expenses, in connection with the claim as of the effective date of the report; and

(3) Amounts reserved, both loss and loss adjustment expenses, in connection with the claim as of the effective date of the report.

(c) *Timing of reporting.* To the extent that an insurer has established one or more claims that it believes involve insured losses arising from an act of terrorism, the insurer shall submit its first report within 60 days of establishing the first of such claims. An updated report shall be submitted each month thereafter, reporting data as of the prior month, until all claims arising from the act of terrorism have been resolved.

(d) *Interrelationship with other reporting requirements.* The reporting requirements under this subsection are independent of the Initial Notice of Deductible Erosion, Initial Certification of Loss, and Supplementary Certifications of Loss requirements in subpart H.

(e) *Other sources of information.* Subsequent to any certification of an act of terrorism, Treasury may also seek information respecting loss estimates and projections from one or more organizations that are not participants in the Program, such as state insurance regulators, insurance modeling organizations, rating agencies, insurance brokers and producers, and insurance data aggregators. A data request may also be directed to insurers identified in connection with such inquiries. An insurer subject to such a data call shall respond to this request within the time frame specified in the request.

§ 50.54 Handling of data.

(a) *General.* All nonpublic information submitted to the Secretary under subparts F and G of this part shall be considered proprietary information and shall:

(1) Be handled and stored by Treasury in an appropriately secure manner;

(2) Be considered, where appropriate, to be trade secrets or commercial or financial information obtained from a person and privileged or confidential; and

(3) Not be publicly released in any unaggregated form in which a consumer, policyholder, or insurer is identifiable.

(b) *Use of insurance statistical aggregator.* To the extent Treasury utilizes an insurance statistical aggregator in connection with any data collection under subparts F and G, such insurance statistical aggregator shall keep any nonpublic information that it collects confidential, consistent with the requirements of this section.

(c) *Confidentiality.* (1) The submission of any non-publicly available data and information to the Secretary under subparts F and G of this part, and the sharing of any non-publicly available data with or by the Secretary among other Federal agencies, the state insurance regulatory authorities, or any other entities shall not constitute a waiver of, or otherwise affect, any privilege or immunity arising under Federal or state law (including the rules of any Federal or state court) to which the data or information is otherwise subject.

(2) Any requirement under Federal or state law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any non-publicly available data or information and the source of such data or information to the Secretary, regarding privacy or confidentiality of any data or information in the possession of the source to the Secretary, shall continue to apply to such data or information after the data or information has been provided pursuant to this Subpart.

(3) Any data or information obtained by the Secretary under subparts F or G of this part may be made available to state insurance regulatory authorities, individually or collectively through an information-sharing agreement that:

(i) Shall comply with applicable Federal law; and

(ii) Shall not constitute a waiver of, or otherwise affect, any privilege or immunity under Federal or state law (including any privilege referred to in paragraph (b)(1) of this section and the rules of any Federal or State court) to which the data or information is otherwise subject.

(4) Section 552 of title 5, United States Code, including any exceptions thereunder, shall apply to any data or information submitted under this Subpart by an insurer or affiliate of an insurer.

Subpart G—Certification

§ 50.60 Certification.

(a) *Certification decision.* The Secretary, in consultation with the Attorney General of the United States and the Secretary of Homeland Security, is responsible for determining whether to certify an act as an act of terrorism.

(b) *Timeline for eligibility.* An act is eligible for certification as an act of terrorism at the end of the following timeline:

(1) The Secretary commences review of whether an act satisfies the definition in § 50.4(b);

(2) Within 30 days of the Secretary commencing review, Treasury publishes the notice required by § 50.61(a). During such review, the schedule of public notifications in § 50.61(b) shall apply, as appropriate;

(3) The Secretary's review finds that the act satisfies the elements for certification under § 50.4(b)(1)(i) through (iv), and that it is not otherwise precluded from certification by § 50.4(b)(2); and

(4) Within 30 days or as soon as otherwise practicable after the review identified in paragraph (b)(3) of this section concludes that the act satisfies the necessary criteria, the Secretary consults with the Attorney General of the United States and the Secretary of Homeland Security pursuant to section 102(1)(A) of the Act.

(c) *Other consultation.* Nothing in this section shall prevent the Secretary from consulting and coordinating with the Attorney General of the United States, the Secretary of Homeland Security, or any other government official prior to the consultation identified in paragraph (b)(4) of this section.

(d) *Finality.* Any decision by the Secretary to certify, or determination not to certify, an act as an act of terrorism under this Subpart shall be final, and shall not be subject to judicial review.

(e) *Nondelegation.* The Secretary may not delegate or designate to any other officer, employee, or person, the determination of whether to certify an act as an act of terrorism.

§ 50.61 Public communication.

(a) *Initial notification.* After the Secretary commences review of whether an act may satisfy the definition in § 50.4(b), Treasury shall publish a notice in the **Federal Register** within 30 days of the Secretary commencing review notifying the public that the act is under review for certification as an act of terrorism. Treasury may also announce that an act is not under review for certification.

(b) *Update notification.* Not later than 30 days following the publication of a notice under paragraph (a) of this section that an act is under review for certification, and not later than every 60 days thereafter until the Secretary determines whether to certify an act as an act of terrorism, Treasury shall publish a notice in the **Federal Register** notifying the public whether the act is still under review for certification as an act of terrorism.

(c) *Contents of notification.* Nothing in this section shall require Treasury to provide any information other than whether the act is under review for certification as an act of terrorism (or is no longer under such review) or shall limit Treasury from providing further information of relevance.

(d) *Rules of construction.* Nothing in this section shall be construed to preclude the Secretary from certifying or determining not to certify an act as an act of terrorism before notifying the public that the act is under review for certification. If, in the discretion of the Secretary, circumstances relating to an act render timely notification under this section by Treasury impracticable, Treasury shall provide the notification as soon as practicable, in a manner the Secretary determines is appropriate.

(e) *Nonbinding decision.* A notification made under this section shall not be construed to be a final determination by the Secretary of whether to certify an act as an act of terrorism.

§ 50.62 Certification data collection.

(a) *General.* (1) The Secretary, when evaluating an act for certification as an act of terrorism, may at any time direct one or more insurers to submit information regarding projected and actual losses in connection with an act and any other information the Secretary determines appropriate. The information sought by the Secretary shall be specified in the data request, and any insurer subject to the data request shall respond to the request within the time frame specified by the Secretary at the time of the request. The data requested may include actual loss reserves established by insurers in connection with the act under consideration, loss estimates generated by insurers in connection with the act under consideration which have not yet been established as actual loss reserves, and information respecting an insurer's property and casualty exposures in a particular geographic area associated with the act under consideration.

(2) An insurer not required by Treasury to submit information under paragraph (a)(1) of this section may voluntarily submit information to the Secretary as specified in public notifications issued by Treasury.

(b) *Other sources of information.* The Secretary may request information with respect to loss estimates and likely affected insurers from organizations, including state insurance regulators, insurance modeling organizations, rating agencies, insurance brokers and producers, and insurance data aggregators.

§ 50.63 Notification of certification determination.

(a) *Public notification.* Not later than 5 business days after the Secretary determines whether to certify an act as an act of terrorism, Treasury shall publish a statement and submit a notice to the **Federal Register** notifying the public of the Secretary's decision.

(b) *Insurance supervisor notification.* Not later than 5 business days after the Secretary determines whether to certify an act as an act of terrorism, Treasury shall notify in writing any relevant supervisory officials of the Secretary's decision.

(c) *Congressional notification.* Not later than 5 business days after the Secretary determines whether to certify an act as an act of terrorism, Treasury shall notify in writing the President of the U.S. Senate and the Speaker of the U.S. House of Representatives of the Secretary's decision.

(d) *Rule of construction.* If, in the discretion of the Secretary, circumstances relating to an act render timely notification by Treasury under this section impracticable, Treasury shall provide the notification as soon as practicable, in a manner the Secretary determines is appropriate.

Subpart H—Claims Procedures

§ 50.70 Federal share of compensation.

(a) *General.* (1) Treasury will pay the Federal share of compensation for insured losses as provided in section 103 of the Act once a Certification of Loss required by § 50.73 is deemed sufficient. The Federal share of compensation under the Program shall be:

(i) 85 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2015;

(ii) 84 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2016;

(iii) 83 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2017;

(iv) 82 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2018;

(v) 81 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2019; and

(vi) 80 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2020 and any calendar year thereafter.

(2) The percentages in paragraph (a)(1) of this section are subject to any adjustments described in § 50.71 and to the cap of $100 billion as provided in section 103(e)(2) of the Act.

(b) *Program Trigger amounts.* Notwithstanding paragraph (a) of this section or anything in this subpart to the contrary, Federal compensation will not be paid by Treasury unless the aggregate industry insured losses resulting from one or more certified acts of terrorism exceed the following amounts:

(1) For insured losses resulting from acts of terrorism taking place in calendar year 2015: $100 million;

(2) For insured losses resulting from acts of terrorism taking place in calendar year 2016: $120 million;

(3) For insured losses resulting from acts of terrorism taking place in calendar year 2017: $140 million;

(4) For insured losses resulting from acts of terrorism taking place in calendar year 2018: $160 million;

(5) For insured losses resulting from acts of terrorism taking place in calendar year 2019: $180 million;

(6) For insured losses resulting from acts of terrorism taking place in calendar year 2020 and any calendar year thereafter: $200 million.

(c) *Conditions for payment of Federal share.* Subject to paragraph (d) of this section, Treasury shall pay the appropriate amount of the Federal share of compensation for an insured loss to an insurer upon a determination that:

(1) The insurer is an entity, including an affiliate thereof, that meets the requirements of § 50.4(o);

(2) The insurer's insured losses, as defined in § 50.4(n) and limited by paragraph (d) of this section (including the allocated dollar value of the insurer's proportionate share of insured losses from a state residual market insurance entity or a state workers' compensation fund as described in § 50.33), have exceeded its insurer deductible as defined in § 50.4(p);

(3) The insurer has paid or is prepared to pay an insured loss, based on a filed claim for the insured loss;

(4) Neither the insurer's claim for Federal payment nor any underlying

claim for an insured loss is fraudulent, collusive, made in bad faith, dishonest or otherwise designed to circumvent the purposes of the Act and regulations;

(5) The insurer has provided a clear and conspicuous disclosure as required by §§ 50.10 through 50.14 and a cap disclosure as required by § 50.15;

(6) The insurer offered coverage for insured losses and the offer was accepted by the insured prior to the act which results in the insured loss;

(7) The insurer took all steps reasonably necessary to properly and carefully investigate the insured loss and otherwise processed the insured loss using practices appropriate for the business of insurance;

(8) The insured loss is within the scope of coverage issued by the insurer under the terms and conditions of one or more policies for commercial property and casualty insurance as defined in § 50.4(w); and

(9) The procedures specified in this Subpart have been followed and all conditions for payment have been met.

(d) *Adjustments.* Treasury may subsequently adjust, including requiring repayment of, any payment made under paragraph (c) of this section in accordance with its authority under the Act.

(e) *Suspension of payment for other insured losses.* Upon a determination by Treasury that an insurer has failed to meet any of the requirements for payment specified in paragraph (c) of this section for a particular insured loss, Treasury may suspend payment of the Federal share of compensation for all other insured losses of the insurer pending investigation and audit of the insurer's insured losses.

(f) *Aggregate industry losses.* Treasury will determine the amount of aggregate industry insured losses resulting from a certified act of terrorism. If aggregate industry insured losses in a calendar year resulting from one or more certified acts of terrorism exceed the applicable Program Trigger amounts specified in paragraph (b) of this section, Treasury will publish a document in the **Federal Register** of a Program Trigger Event.

§ 50.71 Adjustments to the Federal share of compensation.

(a) *Aggregate amount of insured losses.* The aggregate amount of insured losses of an insurer in a calendar year used to calculate the Federal share of compensation shall be reduced by any amounts recovered by the insurer as salvage or subrogation for its insured losses in the calendar year.

(b) *Amount of Federal share of compensation.* The Federal share of compensation shall be adjusted as follows:

(1) *No excess recoveries.* For any calendar year, the sum of the Federal share of compensation paid by Treasury to an insurer and the insurer's recoveries for insured losses from other sources shall not be greater than the insurer's aggregate amount of insured losses for acts of terrorism in that calendar year. Amounts recovered for insured losses in excess of an insurer's aggregate amount of insured losses for acts of terrorism in a calendar year shall be repaid to Treasury within 45 days after the end of the month in which total recoveries of the insurer, from all sources, become excess. For purposes of this paragraph, amounts recovered from a reinsurer pursuant to an agreement whereby the reinsurer's right to any excess recovery has priority over the rights of Treasury shall not be considered a recovery subject to repayment to Treasury.

(2) *Reduction of amount payable.* The Federal share of compensation for insured losses under the Program shall be reduced by the amount of other compensation provided by other Federal programs to an insured or a third party to the extent such other compensation duplicates the insurance indemnification for those insured losses.

(i) *Other Federal program compensation.* For purposes of this section, compensation provided by other Federal programs for insured losses means compensation that is provided by Federal programs established for the purpose of compensating persons for losses in the event of emergencies, disasters, acts of terrorism, or similar events. Compensation provided by Federal programs for insured losses excludes benefit or entitlement payments, such as those made under the Social Security Act, under laws administered by the Secretary of Veteran Affairs, railroad retirement benefit payments, and other similar types of benefit payments.

(ii) *Insurer due diligence.* With respect to any underlying claim for insured losses, each insurer shall inquire of all involved policyholders, insureds, and claimants whether the person receiving insurance proceeds for an insured loss has received, expects to receive, or is entitled to receive compensation from another Federal program for the insured loss, and if so, the source and the amount of the compensation received or expected. The response, source, and such amounts shall be reported with each underlying claim on the form specified in § 50.73(b)(1).

§ 50.72 Notice of deductible erosion.

Each insurer shall submit to Treasury a Notice on a form prescribed by Treasury whenever the insurer's aggregate insured losses (including reserves for ''incurred but not reported'' losses) within a calendar year exceed an amount equal to 50 percent of the insurer's deductible as specified in § 50.4(p). Insurers are advised that the form for the Notice of Deductible Erosion will include an initial estimate of aggregate insured losses for the calendar year, the amount of the insurer deductible, and an estimate of the Federal share of compensation for the insurer's aggregate insured losses. In the case of an affiliated group of insurers, the Notice will include the name and address of a single designated insurer within the affiliated group that will serve as the single point of contact for the purpose of providing loss and compliance certifications as required in § 50.73 and for receiving, disbursing, and distributing payments of the Federal share of compensation in accordance with § 50.74. An insurer, at its option, may elect to include with its Notice of Deductible Erosion the certification of direct earned premium required by § 50.73(b)(3).

§ 50.73 Loss certifications.

(a) *General.* When an insurer has paid aggregate insured losses that exceed its insurer deductible for a calendar year, the insurer may make claim upon Treasury for the payment of the Federal share of compensation for its insured losses. The insurer shall file an Initial Certification of Loss, on a form prescribed by Treasury, and thereafter such Supplementary Certifications of Loss, on a form prescribed by Treasury, as may be necessary to receive payment for the Federal share of compensation for its insured losses.

(b) *Initial certification of loss.* An insurer shall use its best efforts to file with the Program the Initial Certification of Loss within 45 days following the last calendar day of the month when an insurer has paid aggregate insured losses that exceed its insurer deductible. The Initial Certification of Loss will include the following:

(1) Basic information, on a form prescribed by Treasury, about each insured loss paid (or to be paid pursuant to § 50.73(b)(2)(i)) by the insurer. The form will include:

(i) A listing of each insured loss paid (or to be paid pursuant to § 50.73(b)(2)(i)) by the insurer by catastrophe code and line of business;

(ii) The total amount of reinsurance recovered from other sources;

(iii) A calculation of the aggregate insured losses sustained by the insurer above its insurer deductible for the calendar year; and

(iv) The amount the insurer claims as the Federal share of compensation for its aggregate insured losses.

(2) A certification that the insurer is in compliance with the provisions of section 103(b) of the Act and this part, including certifications that:

(i) The underlying insured losses reported pursuant to § 50.73(b)(1) either: Have been paid by the insurer; or will be paid by the insurer upon receipt of an advance payment of the Federal share of compensation as soon as possible, consistent with the insurer's normal business practices, but not longer than five business days after receipt of the Federal share of compensation;

(ii) The underlying claims for insured losses were filed by persons who suffered an insured loss, or by persons acting on behalf of such persons;

(iii) The underlying claims for insured losses were processed in accordance with appropriate business practices and the procedures specified in this subpart;

(iv) The insurer has complied with the disclosure requirements of §§ 50.10 through 50.14, and the cap disclosure requirement of § 50.15, for each underlying insured loss that is included in the amount of the insurer's aggregate insured losses; and

(v) The insurer has complied with the mandatory availability requirements of subpart C of this part.

(3) A certification of the amount of the insurer's direct earned premium, together with the calculation of its insurer deductible (provided this certification was not submitted previously with the Notice of Deductible Erosion).

(4) A certification that the insurer will disburse payment of the Federal share of compensation in accordance with this Subpart.

(5) A certification that if Treasury has determined a *Pro Rata* Loss Percentage (PRLP) (see § 50.112), the insurer has complied with applying the PRLP to insured loss payments, where required.

(c) *Supplementary certifications of loss.* If the total amount of the Federal share of compensation due an insurer for insured losses under the Act has not been determined at the time an Initial Certification of Loss has been filed, the insurer shall file monthly, or on a schedule otherwise determined by Treasury, Supplementary Certifications of Loss updating the amount of the Federal share of compensation due for the insurer's insured losses. Supplementary Certifications of Loss will include the following:

(1) A form as described in § 50.73(b)(1); and

(2) A certification as described in § 50.73(b)(2).

(d) *Supplementary information.* In addition to the information required in paragraphs (b) and (c) of this section, Treasury may require such additional supporting documentation as required to ascertain the Federal share of compensation for the insured losses of any insurer.

(e) *State Residual Market Insurance Entities and State Workers' Compensation Funds.* A state residual market insurance entity or a state workers' compensation fund described in § 50.32 shall provide the Certifications of Loss described in § 50.73(b) and (c) for all of its insured losses to each participating insurer at the time it provides the allocated dollar value of the participating insurer's proportionate share of insured losses. In addition, at such time the state residual market insurance entity or state workers' compensation fund shall provide the certification described in § 50.73(b)(2) to Treasury. Participating insurers shall treat the allocated dollar value of their proportionate share of insured losses from a state residual market insurance entity or state workers' compensation fund as an insured loss for the purpose of their own reporting to Treasury in seeking the Federal share of compensation.

§ 50.74 Payment of Federal share of compensation.

(a) *Timing.* Treasury will promptly pay to an insurer the Federal share of compensation due the insurer for its insured losses. Payment shall be made in such installments and on such conditions as determined by the Treasury to be appropriate. Any overpayments by Treasury of the Federal share of compensation will be offset from future payments to the insurer or returned to Treasury within 45 days.

(b) *Payment process.* Payment of the Federal share of compensation for insured losses will be made to the insurer designated on the Notice of Deductible Erosion required by § 50.72. An insurer that requests payment of the Federal share of compensation for insured losses must receive payment through electronic funds transfer. The insurer must establish either an account for reimbursement as described in paragraph (c) of this section (if the insurer only seeks reimbursement) or a segregated account as described in paragraph (d) of this section (if the insurer seeks advance payments or a combination of advance payments and reimbursement). Applicable procedures will be posted at *https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx* or otherwise will be made publicly available.

(c) *Account for reimbursement.* An insurer shall designate an account for the receipt of reimbursement of the Federal share of compensation at an institution eligible to receive payments through the Automated Clearing House (ACH) network.

(d) *Segregated account for advance payments.* An insurer that seeks advance payments of the Federal share of compensation as certified according to § 50.73(b)(2)(i) shall establish a segregated account into which Treasury will make advance payments as well as reimbursements to the insurer.

(1) *Definition of segregated account.* For purposes of this section, a segregated account is an interest-bearing separate account established by an insurer at a financial institution eligible to receive payments through the ACH network. Such an account is limited to the purposes of:

(i) Receiving payments of the Federal share of compensation;

(ii) Disbursing payments to insureds and claimants; and

(iii) Transferring payments to the insurer or affiliated insurers for insured losses reported as already paid.

(2) *Remittance of interest.* All interest earned on advance payments in the segregated account must be remitted at least quarterly to Treasury's Bureau of the Fiscal Service or as otherwise prescribed in applicable procedures.

(e) *Denial or withholding of advance payment.* Treasury may deny or withhold advance payments of the Federal share of compensation to an insurer if Treasury determines that the insurer has not properly disbursed previous advances of the Federal share of compensation or otherwise has not complied with the requirements for advance payment as provided in this Subpart.

(f) *Affiliated group.* In the case of an affiliated group of insurers, Treasury will make payment of the Federal share of compensation for the insured losses of the affiliated group to the insurer designated in the Notice of Deductible Erosion to receive payment on behalf of the affiliated group. The designated insurer receiving payment from Treasury must distribute payment to affiliated insurers in a manner that ensures that each insurer in the affiliated group is compensated for its share of insured losses, taking into account a reasonable and fair allocation

of the group deductible among affiliated insurers. Upon payment of the Federal share of compensation to the designated insurer, Treasury's payment obligation to the insurers in the affiliated group with respect to any insured losses covered is discharged to the extent of the payment.

§ 50.75 Determination of affiliations.

For the purposes of this subpart, an insurer's affiliates for any calendar year shall be determined by the circumstances existing on the date of the act which is the Program Trigger Event for that calendar year.

§ 50.76 Final netting.

(a) *General.* Pursuant to section 103(e)(4) of the Act, the Secretary shall have sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall become final.

(b) *Final Netting Date.* The Secretary may determine a Final Netting Date for a calendar year, which for purposes of this Part is the date on or before which an insurer must report to Treasury on the insurer's Certifications of Loss (both Initial Certification of Loss and any Supplemental Certifications of Loss) all insured losses that have been reported by its policyholders for the calendar year.

(1) *Criteria for Final Netting Date.* The establishment of a Final Netting Date will be based on factors and considerations including:

(i) Amounts of case reserves reported by insurers to Treasury for open underlying insured losses;

(ii) The rate at which claims for the Federal share of compensation for insured losses are being made by insurers to Treasury;

(iii) The rate at which new underlying insured losses are being added by insurers to their Supplementary Certifications of Loss and reported;

(iv) The predominant lines of business for which underlying insured losses are being reported;

(v) Tort and contract statutes of limitations relevant to insured losses and the manner in which they are being applied by the Federal courts;

(vi) Common business practices;

(vii) Issues that are delaying final resolution of insured losses;

(viii) The application of the liability limitations and procedures under the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (6 U.S.C. 441 *et seq.*) that may affect final resolution of insured losses;

(ix) Issues related to the cap on annual liability for insurer losses, including whether a projection that the cap on annual liability will be reached in connection with any calendar year indicates that no Final Netting Date should be set for that calendar year;

(x) Treasury's claims administration costs; and

(xii) Such other factors as the Secretary considers appropriate to take into account.

(2) *Notice of Final Netting Date.* Treasury shall announce and publish in the **Federal Register** notice of a proposed Final Netting Date and its application to a specific calendar year, and will solicit comments from the public regarding the appropriateness of the proposed Final Netting Date. After receipt and evaluation of comments respecting its proposed Final Netting Date, Treasury will publish in the **Federal Register** a Final Netting Date, which is at least 180 days after the date of publication. The Secretary's determination of a Final Netting Date is final and not subject to judicial review.

(c) *Post-Final Netting Date claims.* After the Final Netting Date, insurers may only make further claims for the Federal share of compensation for insured losses by submission of Supplemental Certifications of Loss with updated information on underlying insured losses previously reported to Treasury. Such updated information may reflect a decision by a court of competent jurisdiction concerning a limitation of liability under the Support Anti-terrorism by Fostering Effective Technologies Act of 2002. In the case of workers' compensation losses, the insurer may provide updated information based on the number of workers' compensation claimants previously reported. An insurer may not report any new underlying insured losses, or increased workers' compensation loss amounts based on an increase in the number of workers' compensation claimants, to Treasury after a Final Netting Date, except as provided in this section.

(d) *Commutation.* A commutation is the payment by Treasury of a lump sum present value of future payments to an insurer in lieu of making payments in the future, as provided in this section.

(1) In lieu of continued submission of Supplemental Certifications of Loss after the Final Netting Date as provided in paragraph (c) of this section, Treasury may require, or consider an insurer's request for, a commutation of an insurer's future claims for the Federal share of compensation based on estimates for the underlying insured losses reported to Treasury on or before the Final Netting Date. The payment by Treasury of a final commuted amount to an insurer will discharge Treasury from all future liabilities to the insurer for the Federal share of compensation for insured losses for the applicable calendar year. In the case of an affiliated group of insurers, the requirements of § 50.74(f) apply, and payment of the final commuted amount to the designated insurer of the affiliated group discharges Treasury's payment obligation to the insurers in the affiliated group for insured losses for the applicable calendar year.

(2) If future claims are to be commuted, Treasury may require additional information from the insurer, including an insurer's justification for a final payment amount with necessary actuarial factors and methodology, and pertinent information regarding the insurer's business relationships and other reinsurance recoverables. Insurers will be required to justify discount and other factors from which final payment amounts are derived. If Treasury notifies an insurer of a requirement to submit additional information to inform its commutation decision, the insurer will be provided (depending upon the complexity of the material sought) no less than 90 days from the date of notification to submit material required in the notice. If the insurer fails to provide the requested information, it will forfeit the right to future payments from Treasury. Treasury will evaluate such information in order to determine a final payment amount or (if applicable) an amount to be repaid to Treasury. Treasury may determine that it will not consider commutation until it has completed an audit of an insurer's insured losses pursuant to the authority set forth in Subpart I of these regulations.

(3) Payments of commuted amounts are not considered to be advance payments requiring a segregated account as described in § 50.74(d).

(4) Notwithstanding § 50.70(d), a payment by Treasury of a final commuted amount to an insurer is final unless:

(i) Treasury is put on notice that an insurer's claim was fraudulent or that other conditions for Federal payment were not met, in which case the insurer will be required to repay amounts that were not due; or

(ii) The exception in paragraph (e) of this section applies, in which case Treasury may make additional payments for insured losses, but only under the conditions described in paragraph (e).

(e) *Exception.* If within one year after the Final Netting Date, and regardless of commutation, an insurer has additional underlying reported insured losses that, in the absence of a Final Netting Date,

would result in an increase of the Federal share of compensation to that insurer by 20% of the total amount already paid to that insurer, the insurer may request Treasury to allow those underlying insured losses to be submitted as part of a certification of loss. Under such circumstances and provided that all other conditions for payment have been met, Treasury may reopen or extend the insurer's claim for the Federal share of compensation for insured losses for the pertinent calendar year.

Subpart I—Audit and Investigative Procedures

§ 50.80 Audit authority.

The Secretary of the Treasury, or an authorized representative, shall have, upon reasonable notice, access to all books, documents, papers and records of an insurer that are pertinent to amounts paid to the insurer as the Federal share of compensation for insured losses, or pertinent to any Federal terrorism policy surcharge that is imposed pursuant to subpart J of this part, for the purposes of investigation, confirmation, audit, and examination.

§ 50.81 Recordkeeping.

(a) Each insurer that seeks payment of a Federal share of compensation under subpart H of this part shall retain such records as are necessary to fully disclose all material matters pertinent to insured losses and the Federal share of compensation sought under the Program, including, but not limited to, records regarding premiums and insured losses for all commercial property and casualty insurance issued by the insurer and information relating to any adjustment in the amount of the Federal share of compensation payable. Insurers shall maintain detailed records for not less than five (5) years from the termination dates of all reinsurance agreements involving property and casualty insurance subject to the Act. Records relating to premiums shall be retained and available for review for not less than three (3) years following the conclusion of the policy year. Records relating to underlying claims shall be retained for not less than five (5) years following the final adjustment of the claim.

(b) Each insurer that collects a Federal terrorism policy surcharge as required by Subpart J of this part shall retain records related to such surcharge, including records of the property and casualty insurance premiums subject to the surcharge, the amount of the surcharge imposed on each policy, aggregate Federal terrorism policy surcharges collected, and aggregate Federal terrorism policy surcharges remitted to Treasury during each assessment period. Such records shall be retained and kept available for review for not less than three (3) years following the conclusion of the assessment period or settlement of accounts with Treasury, whichever is later.

§ 50.82 Civil penalties.

(a) *General.* The Secretary may assess a civil monetary penalty, in an amount not exceeding the amount specified under § 50.83, against any insurer that the Secretary determines, on the record after opportunity for a hearing:

(1) Has failed to charge, collect, or remit the Federal terrorism policy surcharge under Subpart J;

(2) Has intentionally provided to Treasury erroneous information regarding premium or loss amounts;

(3) Submits to Treasury fraudulent claims under the Program for insured losses;

(4) Has failed to provide any disclosures or other information required by Treasury; or

(5) Has otherwise failed to comply with provisions of the Act or these regulations.

(b) *Recovery of amount in dispute.* A penalty under this section for any failure to pay, charge, collect, or remit amounts in accordance with the Act or under these regulations shall be in addition to any such amounts recovered by Treasury.

(c) *Procedure.* Treasury shall notify in writing any insurer that it believes has committed one or more of the acts identified in paragraph (a) of this section. In that notification, Treasury shall identify the act or acts that it believes has been violated, and its basis for that belief, and shall set a schedule for further proceedings which shall include:

(1) The opportunity for a written submission by the insurer that provides all relevant facts and circumstances concerning the alleged conduct, including any information that the insurer wishes Treasury to consider in connection with the alleged conduct; and

(2) A hearing on the record, unless waived by the insurer, during which Treasury and the insurer may present further information respecting the conduct in question.

(d) *Other remedies preserved.* Treasury's assessment and collection of a civil monetary penalty under this section shall be in addition and without prejudice to any other civil remedies or criminal penalties that may arise on account of the conduct in question under any other laws or regulations of the United States.

§ 50.83 Adjustment of civil monetary penalty amount.

(a) *Catch-up adjustment.* Any penalty under the Act and these regulations may not exceed the greater of $1,311,850 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with the Act or these regulations such amount in dispute.

(b) *Annual adjustment.* The maximum penalty amount that may be assessed under this section will be adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. 2461 note, by January 15 of each year and the updated amount will be posted in the **Federal Register** and on the Treasury Web site at *https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx*.

Subpart J—Recoupment and Surcharge Procedures

§ 50.90 Mandatory and discretionary recoupment.

(a) Pursuant to section 103(e) of the Act, the Secretary shall impose, and insurers shall collect, such Federal terrorism policy surcharges as needed to recover 140 percent of the mandatory recoupment amount for any calendar year.

(b) In the Secretary's discretion, the Secretary may recover any portion of the aggregate Federal share of compensation that exceeds the mandatory recoupment amount through a Federal terrorism policy surcharge based on the factors set forth in section 103(e)(7)(D) of the Act.

(c) If the Secretary imposes a Federal terrorism policy surcharge as provided in paragraph (a) of this section, then the required amounts, based on the extent to which payments for the Federal share of compensation have been made by the collection deadlines in section 103(e)(7)(E) of the Act, shall be collected in accordance with such deadlines:

(1) For any act of terrorism that occurs on or before December 31, 2017, the Secretary shall collect all required amounts by September 30, 2019;

(2) For any act of terrorism that occurs between January 1 and December 31, 2018, the Secretary shall collect 35 percent of any required amounts by September 30, 2019, and the remainder by September 30, 2024; and

(3) For any act of terrorism that occurs on or after January 1, 2019, the Secretary shall collect all required amounts by September 30, 2024.

§ 50.91 Determination of recoupment amounts.

(a) If payments for the Federal share of compensation have been made for a calendar year, and Treasury determines that insured loss information is sufficiently developed and credible to serve as a basis for calculating recoupment amounts, Treasury will make an initial determination of any mandatory or discretionary recoupment amounts for that calendar year.

(b)(1) Within 90 days after certification of an act of terrorism, the Secretary shall publish in the **Federal Register** an estimate of aggregate insured losses which shall be used as the basis for initially determining whether mandatory recoupment will be required.

(2) If at any time Treasury projects that payments for the Federal share of compensation will be made for a calendar year, and that in order to meet the collection timing requirements of section 103(e)(7)(E) of the Act it is necessary to use an estimate of such payments as a basis for calculating recoupment amounts, Treasury will make an initial determination of any mandatory recoupment amounts for that calendar year.

(c) Following the initial determination of recoupment amounts for a calendar year, Treasury will recalculate any mandatory or discretionary recoupment amount as necessary and appropriate, and at least annually, until a final recoupment amount for the calendar year is determined. Treasury will compare any recalculated recoupment amount to amounts already remitted and/or to be remitted to Treasury for a Federal terrorism policy surcharge previously established to determine whether any additional amount will be recouped by Treasury.

(d) For the purpose of determining initial or recalculated recoupment amounts, Treasury may issue a data call to insurers for insurer deductible and insured loss information by calendar year. Treasury's determination of the aggregate amount of insured losses from Program Trigger Events of all insurers for a calendar year will be based on the amounts reported in response to a data call and any other information Treasury in its discretion considers appropriate. Submission of data in response to a data call shall be on a form promulgated by Treasury.

§ 50.92 Establishment of Federal terrorism policy surcharge.

(a) Treasury will establish the Federal terrorism policy surcharge based on the following factors and considerations:

(1) In the case of a mandatory recoupment amount, the requirement to collect 140 percent of that amount;

(2) The total dollar amount to be recouped as a percentage of the latest available annual aggregate industry direct written premium information;

(3) The adjustment factors for terrorism loss risk-spreading premiums described in section 103(e)(8)(D) of the Act;

(4) The annual 3 percent limitation on terrorism loss risk-spreading premiums collected on a discretionary basis as provided in section 103(e)(8)(C) of the Act;

(5) A preferred minimum initial assessment period of one full year and subsequent extension periods in full year increments;

(6) The collection timing requirements of section 103(e)(8)(E) of the Act;

(7) The likelihood that the amount of the Federal terrorism policy surcharge may result in the collection of an aggregate recoupment amount in excess of the planned recoupment amount; and

(8) Such other factors as the Secretary considers appropriate to take into account.

(b) The Federal terrorism policy surcharge shall be the obligation of the policyholder and is payable to the insurer with the premium for a property and casualty insurance policy in effect during the assessment period established by Treasury. See § 50.94(c).

§ 50.93 Notification of recoupment.

(a) Treasury will provide notifications of recoupment through publication of notices in the **Federal Register** or in another manner Treasury deems appropriate, based upon the circumstances of the certified act(s) of terrorism under consideration.

(b) Treasury will provide reasonable advance notice to insurers of any initial Federal terrorism policy surcharge effective date. This effective date shall be January 1 of the calendar year following publication of the notice, unless such date would not provide for sufficient notice of implementation while meeting the collection timing requirements of section 103(e)(8)(E) of the Act.

(c) Treasury will provide reasonable advance notice to insurers of any modification or cessation of the Federal terrorism policy surcharge.

(d) Treasury will provide notification to insurers annually as to the continuation of the Federal terrorism policy surcharge.

§ 50.94 Collecting the surcharge.

(a) Insurers shall collect a Federal terrorism policy surcharge from policyholders as required by Treasury.

(b) Policies subject to the Federal terrorism policy surcharge are those for which direct written premium is reported on commercial lines of business on the NAIC's Exhibit of Premiums and Losses of the NAIC Annual Statement (commonly known as Statutory Page 14) as provided in § 50.4(w)(1), or equivalently reported.

(c) For policies subject to the Federal terrorism policy surcharge, the surcharge shall be imposed and collected on a written premium basis for policies that become effective or renew during the assessment period. All new, renewal, mid-term, and audit premiums for a policy term are subject to the surcharge in effect on the policy term effective date. Notwithstanding this paragraph, if the premium for a policy term that would otherwise be subject to the surcharge is revised after the end of the reporting period described in § 50.95(e), then any additional premium attributable to such revision is not subject to the Surcharge. For purposes of this Subpart:

(1) Written premium basis means the premium amount charged a policyholder by an insurer for property and casualty insurance, including all premiums, policy expense constants and fees defined as premium pursuant to the Statements of Statutory Accounting Principles established by the NAIC, as adopted by the state for which the premium will be reported.

(2) In the case of a policy providing multiple insurance coverages, if an insurer cannot identify the premium amount charged a policyholder specifically for property and casualty insurance under the policy, then:

(i) If the insurer estimates that the portion of the premium amount charged for coverage other than property and casualty insurance is *de minimis* to the total premium for the policy, the insurer may impose and collect from the policyholder a surcharge amount based on the total premium for the policy, but

(ii) If the insurer estimates that the portion of the premium amount charged for coverage other than property and casualty insurance is not *de minimis,* the insurer shall impose and collect from the policyholder a Surcharge amount based on a reasonable estimate of the premium amount for the property and casualty insurance coverage under the policy.

(3) The Federal terrorism policy surcharge is not considered premium.

(d) A policyholder must pay the applicable Federal terrorism policy

surcharge when due. The insurer shall have such rights and remedies to enforce the collection of the surcharge that are the equivalent to those that exist under applicable state or other law for nonpayment of premium.

(e) When an insurer returns an unearned premium, or otherwise refunds premium to a policyholder, it shall also return any Federal terrorism policy surcharge collected that is attributable to the refunded unearned premium. Notwithstanding this paragraph, if the written premium for a policy is revised and refunded after the end of the reporting period described in § 50.95(e), then the insurer is not required to refund any Surcharge that is attributable to the refunded premium.

(f) Notwithstanding paragraphs (a), (b), and (c) of this section, if the expense of collecting the Federal terrorism policy surcharge from all policyholders of an insurer during an assessment period exceeds the amount of the Surcharges anticipated to be collected, such insurer may satisfy its obligation to collect by omitting actual collection and instead remitting to Treasury the amount otherwise due.

(g) The Federal terrorism policy surcharge is repayment of Federal financial assistance in an amount required by law. No fee or commission shall be charged on the Federal terrorism policy surcharge.

§ 50.95 Remitting the surcharge.

(a) Each insurer shall report direct written premium and Federal terrorism policy surcharges to Treasury on a monthly and annual basis during the assessment period. Reporting will be on a form prescribed by Treasury and will be due according to the following schedule:

(1) *Monthly:* From the beginning of the assessment period through November, on the last business day of the calendar month following the month for which premium is reported, and

(2) *Annually:* March 1 for the prior calendar year.

(b) The monthly statements provided to Treasury will include the following:

(1) Cumulative calendar year direct written premium adjusted for premium not subject to the Federal terrorism policy surcharge, summarized by policy year.

(2) The aggregate Federal terrorism policy surcharge amount calculated by applying the established surcharge percentage to the insurer's adjusted direct written premium by policy year.

(3) Insurer certification of the submission.

(c) The annual statements to be provided to Treasury will include the following:

(1) Direct written premium, adjusted for premium not subject to the Federal terrorism policy surcharge, summarized by policy year and by commercial line of insurance as specified in § 50.4(w).

(2) The aggregate Federal terrorism policy surcharge amount calculated by applying the established surcharge percentage to the insurer's adjusted direct written premium by policy year.

(3) In the case of an insurer that has chosen not to collect the Federal terrorism policy surcharge from its policyholders as provided in § 50.94(f), a certification that the expense of collecting the Surcharge during the assessment period would have exceeded the amount of the surcharges collected over the assessment period.

(4) Insurer certification of the submission.

(d) The calculated aggregate Federal terrorism policy surcharge amount, as described in paragraphs (b)(2) and (c)(2) of this section, shall be remitted to Treasury upon submission of each monthly and annual statement. Through its submitted statements, an insurer obtains credit for a refund of any Federal terrorism policy surcharge previously remitted to Treasury that was subsequently returned by the insurer to a policyholder as attributable to refunded premium under § 50.94(e). A negative calculated amount in a monthly or annual statement indicates payment from Treasury is due to the insurer.

(e) Reporting shall continue for the one-year period following the end of the assessment period established by Treasury, unless otherwise permitted by Treasury.

§ 50.96 Insurer responsibility.

Notwithstanding § 50.4(o), for purposes of the collection, reporting and remittance of Federal terrorism policy surcharges to Treasury, the definition of insurer shall not include any affiliate of the insurer.

Subpart K—Federal Cause of Action; Approval of Settlements

§ 50.100 Federal cause of action and remedy.

(a) *General.* If the Secretary certifies an act as an act of terrorism pursuant to Subpart G of this Part, there shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from such act of terrorism, pursuant to section 107 of the Act, which shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or relating to such act of terrorism, except as provided in paragraph (d) of this section.

(b) *Jurisdiction.* For each determination described in paragraph (a) of this section, not later than 90 days after the Secretary certifies an act as an act of terrorism, the Judicial Panel on Multidistrict Litigation shall designate a single district court or, if necessary, multiple district courts of the United States that shall have original and exclusive jurisdiction over all actions for any claim (including any claim for loss of property, personal injury, or death) relating to or arising out of an act of terrorism subject to section 107 of the Act.

(c) *Effective period.* The exclusive Federal cause of action and remedy described in paragraph (a) of this section shall exist only for causes of action for property damage, personal injury, or death that arise out of or result from acts of terrorism during the effective period of the Program.

(d) *Rights not affected.* Nothing in section 107 of the Act or this Subpart shall in any way:

(1) Limit the liability of any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism;

(2) Affect any party's contractual right to arbitrate a dispute; or

(3) Affect any provision of the Air Transportation Safety and System Stabilization Act (Pub. L. 107–42; 49 U.S.C. 40101 note).

§ 50.101 State causes of action preempted.

All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under state law are preempted, except that, pursuant to section 107(b) of the Act, nothing in this section shall limit in any way the liability of any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits the act of terrorism certified by the Secretary.

§ 50.102 Advance approval of settlements.

(a) *Mandatory submission of settlements for advance approval.* Pursuant to section 107(a)(6) of the Act, an insurer shall submit to Treasury for advance approval any proposed agreement to settle or compromise any Federal cause of action for property damage, personal injury, or death, asserted by a third-party or parties against an insured, involving an insured loss, all or part of the payment of which

the insurer intends to include in its aggregate insured losses for purposes of calculating the insurer deductible or the Federal share of compensation of its insured losses under the Program, when:

(1) Any portion of the proposed settlement amount that is attributable to an insured loss or losses involving personal injury or death in the aggregate is $2 million or more per third-party claimant, regardless of the number of causes of action or insured losses being settled; or

(2) Any portion of the proposed settlement amount that is attributable to an insured loss or losses involving property damage (including loss of use) in the aggregate is $10 million or more per third-party claimant, regardless of the number of causes of action or insured losses being settled.

(b) *Discretionary review of other settlements.* Notwithstanding paragraph (a) of this section, Treasury may require that an insurer submit for review and advance approval any proposed agreement to settle or compromise any Federal cause of action for property damage, personal injury, or death, asserted by a third-party or parties against an insured, involving an insured loss, all or part of the payment of which the insurer intends to include in its aggregate insured losses for purposes of calculating the insurer deductible or the Federal share of compensation of its insured losses where the settlement amounts are below the applicable monetary thresholds identified in paragraphs (a)(1) and (2) of this section.

(c) *Factors.* In determining whether to approve a proposed settlement, Treasury will consider the nature of the loss, the facts and circumstances surrounding the loss, and other factors such as whether:

(1) The proposed settlement compensates for a third-party's loss, the liability for which is an insured loss under the terms and conditions of the underlying commercial property and casualty insurance policy, as certified by the insurer pursuant to § 50.103(d)(2);

(2) Any amount of the proposed settlement is attributable to punitive or exemplary damages intended to punish or deter (whether or not specifically so described as such damages);

(3) The settlement amount offsets amounts received from the United States pursuant to any other Federal program;

(4) The settlement amount does not include any items such as fees and expenses of attorneys, experts, and other professionals that have caused the insured losses under the underlying commercial property and casualty insurance policy to be overstated; and

(5) Any other criteria that Treasury may consider appropriate, depending on the facts and circumstances surrounding the settlement, including the information contained in § 50.103.

(d) *Settlement without seeking advance approval or despite disapproval.* If an insurer settles a cause of action or agrees to the settlement of a cause of action without submitting the proposed settlement for Treasury's advance approval in accordance with paragraph (a) or (b) of this section, and in accordance with § 50.103 or despite Treasury's disapproval of the proposed settlement, the insurer will not be entitled to include the paid settlement amount (or portion of the settlement amount, to the extent partially disapproved) in its aggregate insured losses for purposes of calculating the Federal share of compensation of its insured losses, unless the insurer can demonstrate, to the satisfaction of Treasury, extenuating circumstances.

§ 50.103 Procedure for requesting approval of proposed settlements.

(a) *Submission of notice.* Insurers must request advance approval of a proposed settlement by submitting a notice of the proposed settlement and other required information in writing to the Terrorism Risk Insurance Program Office or its designated representative. The address where notices are to be submitted will be available at *https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx* following any certification of an act of terrorism pursuant to section 102(1) of the Act.

(b) *Complete notice.* Treasury will review requests for advance approval and determine whether additional information is needed to complete the notice.

(c) *Treasury response or deemed approval.* Within 30 days after Treasury's receipt of a complete notice, or as extended in writing by Treasury, Treasury may issue a written response and indicate its partial or full approval or rejection of the proposed settlement. If Treasury does not issue a response within 30 days after Treasury's receipt of a complete notice, unless extended in writing by Treasury, the request for advance approval is deemed approved by Treasury. Any settlement is still subject to review under the claim procedures pursuant to § 50.80.

(d) *Notice format.* A notice of a proposed settlement should be entitled, ''Notice of Proposed Settlement—Request for Approval,'' and should provide the full name and address of the submitting insurer and the name, title, address, and telephone number of the designated contact person. An insurer must provide all relevant information, including the following, as applicable:

(1) A brief description of the claim against the insured, the amount of the claim, the operative policy terms, and defenses to coverage;

(2) A certification by the insurer that the settlement is for a third-party's loss, the liability for which is an insured loss under the terms and conditions of the underlying commercial property and casualty insurance policy;

(3) A brief description of all damages allegedly sustained and an itemized statement of all damages by category (*i.e.,* actual, economic and non-economic loss, punitive damages, etc.);

(4) A statement from the insurer or its attorney in support of the settlement;

(5) The total dollar amount of the proposed settlement and the amount of the proposed settlement which is an insured loss;

(6) Indication as to whether the settlement was negotiated by counsel;

(7) The amount to be paid that will compensate for any items such as fees and expenses of attorneys, experts, and other professionals for their services and expenses related to the insured loss and/or settlement and the net amount to be received by the third-party after such payment;

(8) The amount(s) received from the United States pursuant to any other Federal program(s) for compensation of insured losses related to an act of terrorism;

(9) The proposed terms of the written settlement agreement, including release language and subrogation terms;

(10) Other relevant agreements, including:

(i) Admissions of liability or insurance coverage;

(ii) Determinations of the number of occurrences under a commercial property and casualty insurance policy;

(iii) The allocation of paid amounts or amounts to be paid to certain policies, or to a specific policy, coverage and/or aggregate limits;

(iv) Any other agreement that may affect the payment or amount of the Federal share of compensation to be paid to the insurer; and

(v) Any other relevant agreement requested by Treasury.

(11) A statement indicating whether the proposed settlement has been approved by the Federal court or is subject to such approval and whether such approval is expected or likely; and

(12) Such other information that is related to the insured loss as may be requested by Treasury that it deems necessary to evaluate the proposed settlement.

§ 50.104 Subrogation.

An insurer shall not waive its rights of subrogation under its property and casualty insurance policy with respect to any losses the payment of which the insurer intends to include in its insurer deductible or the aggregate insured losses for purposes of calculating the Federal share of compensation of its insured losses and shall, unless upon request the United States agrees in writing to forbear from exercising such right, preserve the subrogation right of the United States as provided by section 107(c) of the Act by not taking any action that would prejudice the subrogation right of the United States.

Subpart L—Cap on Annual Liability

§ 50.110 Cap on annual liability.

Pursuant to section 103 of the Act, if the aggregate insured losses exceed $100,000,000,000 during a calendar year:

(a) The Secretary shall not make any payment for any portion of the amount of such losses that exceeds $100,000,000,000;

(b) An insurer that has met its insurer deductible shall not be liable for the payment of any portion of the amount of such losses that exceeds $100,000,000,000; and

(c) The Secretary shall determine the *pro rata* share of insured losses to be paid by each insurer that incurs insured losses under the Program.

§ 50.111 Notice to Congress.

Pursuant to section 103(e)(3) of the Act, the Secretary shall provide an initial notice to Congress within 15 days of the certification of an act of terrorism, stating whether the Secretary estimates that aggregate insured losses will exceed $100,000,000,000 for the calendar year in which the event occurs. Such initial estimate may be based on insured loss amounts as compiled by insurance industry statistical organizations, data previously collected by the Secretary, and any other information the Secretary in his or her discretion considers appropriate. The Secretary shall also notify Congress if estimated or actual aggregate insured losses exceed $100,000,000,000 during any calendar year.

§ 50.112 Determination of *pro rata* share.

(a) *Pro rata loss percentage (PRLP)* is the percentage determined by the Secretary to be applied by an insurer against the amount that would otherwise be paid by the insurer under the terms and conditions of an insurance policy providing property and casualty insurance under the Program if there were no cap on annual liability under section 103(e)(2)(A) of the Act.

(b) Except as provided in paragraph (e) of this section, if Treasury estimates that aggregate insured losses may exceed the cap on annual liability for a calendar year, then Treasury will determine a PRLP. The PRLP applies to insured loss payments by insurers for insured losses incurred in the subject calendar year, as specified in § 50.113, from the effective date of the PRLP, as established by Treasury, until such time as Treasury provides notice that the PRLP is revised. Treasury will determine the PRLP based on the following considerations:

(1) Estimates of insured losses from insurance industry statistical organizations;

(2) Any data calls issued by Treasury (see § 50.114);

(3) Expected reliability and accuracy of insured loss estimates and likelihood that insured loss estimates could increase;

(4) Estimates of insured losses and expenses not included in available statistical reporting;

(5) Such other factors as the Secretary considers important.

(c) Treasury shall provide notice of the determination of the PRLP through publication in the **Federal Register**, or in another manner Treasury deems appropriate, based upon the circumstances of the act of terrorism under consideration.

(d) As appropriate, Treasury will determine any revision to a PRLP based on the same considerations listed in paragraph (b) of this section, and will provide notice for its application to insured loss payments.

(e) If Treasury estimates based on an initial act of terrorism or subsequent act of terrorism within a calendar year that aggregate insured losses may exceed the cap on annual liability, but an appropriate PRLP cannot yet be determined, Treasury will provide notification advising insurers of this circumstance and, after consulting with the relevant state authorities, may initiate the action described in either paragraph (e)(1) or (2) of this section.

(1) *Hiatus in payments.* Call a hiatus in insurer loss payments for insured losses of up to two weeks. In such a circumstance, Treasury will determine a PRLP as quickly as possible. The PRLP, as later determined, will be effective retroactively as of the start of the hiatus. Any insured losses submitted in support of an insurer's claim for the Federal share of compensation will be reviewed for the insurer's compliance with *pro rata* payments in accordance with the effective date of the PRLP.

(2) *Determine an interim PRLP.* (i) An interim PRLP is an amount determined without the availability of information necessary for consideration of all factors listed in § 50.112(b). It is a conservatively low percentage amount determined in order to facilitate initial partial claim payments by insurers after an act of terrorism and prior to the time that information becomes available to determine a PRLP based on consideration of the factors listed in § 50.112(b).

(ii) In such a circumstance, Treasury will determine a PRLP to replace the interim PRLP as quickly as possible. The PRLP, as later determined, will be effective retroactively as of the effective date of the interim PRLP. Any insured losses submitted in support of an insurer's claim for the Federal share of compensation will be reviewed for the insurer's compliance with *pro rata* payments in accordance with the effective date of the interim PRLP, or as later replaced by the PRLP as appropriate.

§ 50.113 Application of *pro rata* share.

An insurer shall apply the PRLP to determine the *pro rata* share of each insured loss to be paid by the insurer on all insured losses in the absence of an agreement on a complete and final settlement as evidenced by a signed settlement agreement or other means reviewable by a third party as of the effective date established by Treasury. Payments based on the application of the PRLP and determination of the *pro rata* share satisfy the insurer's liability for payment under the Program. Application of the PRLP and the determination of the *pro rata* share are the exclusive means for calculating the amount of insured losses for Program purposes. The *pro rata* share is subject to the following:

(a) The *pro rata* share is determined based on the estimated or actual final claim settlement amount that would otherwise be paid.

(b) *All policies.* If partial payments have already been made as of the effective date of the PRLP, then the *pro rata* share for that loss is the greater of the amount already paid as of the effective date of the PRLP or the amount computed by applying the PRLP to the estimated or actual final claim settlement amount that would otherwise be paid.

(c) *Certain workers' compensation insurance policies.* If an insurer's payments under a workers' compensation policy cumulatively exceed the amount computed by applying the PRLP to the estimated or actual final claim settlement amount

that would otherwise be paid because such estimated or actual final settlement amount is reduced from a previous estimate, then the insurer may request a review and adjustment by Treasury in the calculation of the Federal share of compensation. In requesting such a review, the insurer must submit information to supplement its Certification of Loss demonstrating a reasonable estimate invalidated by unexpected conditions differing from prior assumptions including, but not limited to, an explanation and the basis for the prior assumptions.

(d) If an insurer has not yet made payments in excess of its insurer deductible, the rules in this paragraph apply.

(1) If the insurer estimates that it will exceed its insurer deductible making payments based on the application of the PRLP to its insured losses, then the insurer shall apply the PRLP as of the effective date specified in § 50.112(b).

(2)(i) If the insurer estimates that it will not exceed its insurer deductible making payments based on the application of the PRLP to its insured losses, then the insurer may make payments on the same basis as prior to the effective date of the PRLP. The insurer may also make payments on the basis of applying some other *pro rata* amount it determines that is greater than the PRLP, where the insurer estimates that application of such other *pro rata* amount will result in it not exceeding its insurer deductible. The insurer remains liable for losses in accordance with § 50.115(c).

(ii) If an insurer estimates that it will not exceed its insurer deductible and has made payments on the basis provided in paragraph (d)(2)(i) of this section, but thereafter reaches its insurer deductible, then the insurer shall apply the PRLP to any remaining insured losses. When such an insurer submits a claim for the Federal share of compensation, the amount of the insurer's losses will be deemed to be the amount it would have paid if it had applied the PRLP as of the effective date, and the Federal share of compensation will be calculated on that amount. However, an insurer may request an exception if it can demonstrate that its estimate was invalidated as a result of insured losses from a subsequent act of terrorism.

§ 50.114 Data call authority.

For the purpose of determining initial or recalculated PRLPs, Treasury may issue a data call to insurers for insured loss information, seeking information in addition to any information provided to Treasury under subparts F and H of this part.

§ 50.115 Final amount.

(a) Treasury shall determine if, as a final proration, remaining insured loss payments, as well as adjustments to previous insured loss payments, can be made by insurers based on an adjusted PLRP, and aggregate insured losses still remain within the cap on annual liability. In such a circumstance, Treasury will notify insurers as to the final PRLP and its application to insured losses.

(b) If paragraph (a) of this section applies, Treasury may require, as part of the insurer submission for the Federal share of compensation for insured losses, a supplementary explanation regarding how additional payments will be provided on previously settled insured losses.

(c) An insurer that has prorated its insured losses, but that has not met its insurer deductible, remains liable for loss payments that in the aggregate bring the insurer's total insured loss payments up to an amount equal to the lesser of its insured losses without proration or its insurer deductible.

Dated: December 9, 2016.

Amias Moore Gerety,

Acting Assistant Secretary for Financial Institutions.

[FR Doc. 2016–29987 Filed 12–16–16; 4:15 pm]

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FEDERAL REGISTER

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Part IV

The President

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 9556 of December 16, 2016

Returning the Flag of the United States to Full-Staff

By the President of the United States of America

A Proclamation

By the authority vested in me by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at full-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions beginning at sunset, December 17, 2016. I also direct that the flag shall be flown at full-staff on such day at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of December, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–30953
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Presidential Documents

Proclamation 9557 of December 16, 2016

Wright Brothers Day, 2016

By the President of the United States of America

A Proclamation

On December 17, 1903, two brothers from Dayton, Ohio successfully flew the world's first powered aircraft. The plane remained airborne for only 12 seconds, but Orville and Wilbur Wright's innovative legacy has endured for generations—unleashing unparalleled possibilities and forever transforming our way of life. On Wright Brothers Day, we celebrate the determination and ingenuity that drove their pursuit and recommit to shaping the future through our ideas and discoveries.

As self-taught mechanics, the Wright brothers devoted years to research and experimentation before taking their talents and creativity to the strong winds above Kitty Hawk, North Carolina, where they completed the monumental first flight. Their mother, Susan, spent considerable time in her youth designing and building mechanical appliances; she guided her children whenever she could and always encouraged them to chase their curiosities. As Orville and Wilbur grew, they followed their entrepreneurial instincts, launching a newspaper and later opening a bicycle shop to sell their designs. Their resilience through early failed attempts at flight, and their resolve to dream big in the face of that which had never been done before, still serves as an inspiration.

Our capacity to harness new inventions and technologies to tackle our greatest challenges has allowed our Nation to lead the world in innovation. From sending people into the skies and outer space to finding ways to instantly communicate with others across the globe, the creativity inherent in our DNA and our commitment to science have sparked our progress and set us apart. The same American spirit of innovation that led the Wright brothers to test their theories again and again—finding ways to make things work and then make them even better—is still reflected in the imagination and tenacity that move inventors and explorers to push the frontiers of what is known and achieve groundbreaking feats that were once unimaginable.

In upholding this legacy, we must resolve to help all young Americans understand that they can have a place in advancing science and technology—regardless of their race, gender, or circumstances. Brilliant ideas can come from anyone and anywhere, and it is our obligation to increase the availability of science, technology, engineering, and math (STEM) training and encourage the next generation to pursue STEM careers. This commitment to science and innovation can revitalize our communities and economies and reignite our shared sense of optimism and opportunity.

Today, we reflect on the century of flight the Wright brothers helped make possible. Their story reminds us not just of where we have been, but where we still can go when we foster ingenuity and discovery and refuse to accept the sky as the limit. With the right investments and the perseverance of dreamers and doers who see a challenge and yearn to find a solution, there is nothing we cannot achieve.

The Congress, by a joint resolution approved December 17, 1963, as amended (77 Stat. 402; 36 U.S.C. 143), has designated December 17 of each year as ''Wright Brothers Day'' and has authorized and requested the President

to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim December 17, 2016, as Wright Brothers Day.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of December, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

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