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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9573; Directorate Identifier 2016–NM–149–AD; Amendment 39–18938; AD 2017–13–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2015–23–13, for all Airbus Model A318 and A319 series airplanes, Model A320–211, –212, –214, –231, –232, and –233 airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2015–23–13 required modification of the pin programming of the flight warning computer (FWC) to activate the stop rudder input warning (SRIW) logic; and an inspection to determine the part numbers of the FWC and the flight augmentation computer (FAC), and replacement of the FWC and FAC if necessary. This new AD, for certain airplanes, also requires accomplishment of additional modification instructions to install the minimum FWC and FAC configuration compatible with SRIW activation. This AD was prompted by a determination that, in specific flight conditions, the allowable load limits on the vertical tail plane could be reached and possibly exceeded. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 3, 2017.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 3, 2017.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of December 29, 2015 (80 FR 73099, November 24, 2015).

ADDRESSES: For service information identified in this final rule, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* 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–2016–9573.

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–2016–9573; 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 (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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2015–23–13, Amendment 39–18330 (80 FR 73099, November 24, 2015) (''AD 2015–23–13''). AD 2015–23–13 applied to all Airbus Model A318 and A319 series airplanes, Model A320–211, –212, –214, –231, –232, and –233 airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The NPRM published in the **Federal Register** on February 15, 2017 (82 FR 10721) (''the NPRM''). The NPRM was prompted by a determination that, for certain airplanes, additional modification instructions must be accomplished to allow installation of the minimum FWC and FAC configuration compatible with SRIW activation. The NPRM proposed to continue to require modification of the pin programming of the FWC to activate the SRIW logic; and an inspection to determine the part numbers of the FWC and the FAC, and replacement of the FWC and FAC if necessary. The NPRM also proposed, for certain airplanes, to also require accomplishment of additional modification instructions to install the minimum FWC and FAC configuration compatible with SRIW activation. We are issuing this AD to prevent detachment of the vertical tail plane and consequent loss of 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 2016–0132, dated July 5, 2016; corrected July 20, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A318 and A319 series airplanes, Model A320–211, –212, –214, –231, –232, and –233 airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The MCAI states:

> During design reviews that were conducted following safety recommendations related to in-service incidents and one accident on another aircraft type, it has been determined that, in specific flight conditions, the allowable load limits on the vertical tail plane could be reached and possibly exceeded.
>
> This condition, if not corrected, could lead to in-flight detachment of the vertical tail plane, possibly resulting in loss of control of the aeroplane.
>
> To address this unsafe condition, Airbus developed modifications within the flight augmentation computer (FAC) to reduce the vertical tail plane stress and to activate a conditional aural warning within the flight warning computer (FWC) to further protect against pilot induced rudder doublets.
>
> Consequently, EASA issued AD 2014–0217 (later revised) [which corresponds to FAA AD 2015–23–13] to require installation and activation of the stop rudder input warning (SRIW) logic. In addition, that [EASA] AD

required upgrades of the FAC and FWC, to introduce the SRIW logic and SRIW aural capability, respectively. After modification, the [EASA] AD prohibited (re)installation of certain Part Number (P/N) FWC and FAC.

Since EASA AD 2014–0217R1 was issued, Airbus made available additional modification instructions that, for certain aeroplanes, must be accomplished to allow installation of the minimum FWC and FAC configuration compatible with SRIW activation.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2014–0217R1, which is superseded, and includes reference to modification instructions, which must be accomplished on certain aeroplanes.

This [EASA] AD is republished to remove a typographical error in Appendix 1 [of the EASA AD].

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–2016–9573.

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 for Technical Details

Mr. Geoffrey Barrance stated that the public disclosure in the NPRM did not provide sufficient technical details and disclosure relative to the unsafe condition; and that, presumably, the actions required by this proposed AD are to improve the protection provided by the SRIW logic. Mr. Barrance noted that the purpose of publication in the **Federal Register** is to provide public disclosure. We infer the commenter is requesting that we provide additional technical details.

We do not agree with the commenter's request. The technical details associated with correcting the unsafe condition were already provided in the previously published AD, AD 2015–23–13. That AD and all service information that was incorporated by reference in AD 2015–23–13 is posted on the public docket in the Federal Docket Management System and is available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0251. This superseding AD only mandates accomplishment of additional modification instructions to ensure design compatibility. We have not revised this AD in this regard.

Request for Review of Design Approval Process and Compliance Time Determination

Mr. Geoffrey Barrance asserted that this rulemaking action is a result of failure of design, development, oversight and approval processes at the EASA and the FAA. Mr. Barrance asserted that the FAA must do a comprehensive review of these processes and evaluate the extent that the flying public has been exposed to risks due to delayed processes in releasing this AD.

We do not agree with Mr. Geoffrey Barrance's comments. Mr. Barrance has submitted no data to substantiate his claims. This rulemaking action simply supersedes a previous AD in order to mandate accomplishment of additional modification instructions to ensure design compatibility. Furthermore, we and our bilateral partner, EASA, work closely with Airbus to ensure that design solutions are certificated based on applicable airworthiness regulations prior to mandating those solutions to mitigate safety risks. We also ensure that all appropriate instructions and parts are available at the appropriate time to comply with AD requirements. As a component of our safety management system, we continuously evaluate our certification system and procedures and improve them when problems are found. We have not revised this AD in this regard.

Request for Compliance Time Review

The Air Line Pilots Association, International (ALPA) stated that it agrees with the NPRM, but requested that we revisit the compliance timeframe to ensure it is aligned with the intent of the AD.

The EASA has determined the compliance times based on the overall risk to the fleet, including the severity of the failure and the likelihood of the failure's occurrence. The FAA and EASA worked with Airbus to ensure that all appropriate action(s) are taken at appropriate times to mitigate the risk to the fleet. We have not changed this AD in this regard.

Request for Correction of Typographical Error

Jetblue Airways (Jetblue) requested that we correct a typographical error in paragraph (i)(10) of the NPRM. Jetblue stated that it should be ''FWC H2–F7,'' not ''FWC H–F7.''

We agree with the commenter's request and have revised this AD accordingly.

Request for an Alternative Method of Compliance (AMOC)

Jetblue requested that we include an AMOC for FWC standard H2–F9D (P/N 350E053021818) in this AD.

We do not agree to include an AMOC in this AD because certain later approved parts are already addressed in paragraph (l) of this AD. To clarify, FWCs approved after March 5, 2015, are an approved method of compliance with the requirements of paragraph (h) or (j) of this AD, provided the requirements specified in paragraphs (l)(1) and (l)(2) of this AD are met. We have not changed this AD in this regard.

Conclusion

We reviewed the available data, including 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 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

Airbus has issued Service Bulletin A320–22–1480, Revision 02, dated March 30, 2015, and Service Bulletin A320–22–1480, Revision 03, dated October 13, 2015. This service information describes procedures for modifying the pin programming to activate the SRIW logic. These documents are distinct due to editorial revisions.

Airbus has also issued the following service information. The service information describes procedures for replacing FWCs and FACs. These documents are distinct since they apply to different airplane configurations and software packages.

- Airbus Service Bulletin A320–22–1375, dated January 15, 2014.
- Airbus Service Bulletin A320–22–1427, Revision 05, including Appendix 01, dated November 24, 2014.
- Airbus Service Bulletin A320–22–1447, Revision 03, dated April 21, 2015.
- Airbus Service Bulletin A320–22–1454, dated February 12, 2014.
- Airbus Service Bulletin A320–22–1461, Revision 07, including Appendix 01, dated March 23, 2015.
- Airbus Service Bulletin A320–22–1502, dated November 14, 2014.
- Airbus Service Bulletin A320–22–1539, Revision 01, dated February 24, 2016.
- Airbus Service Bulletin A320–22–1553, dated March 21, 2016.
- Airbus Service Bulletin A320–22–1554, dated April 19, 2016.
- Airbus Service Bulletin A320–31–1414, Revision 03, dated September 15, 2014.

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 will affect 1,032 airplanes of U.S. registry.

The actions required by AD 2015–23–13, and retained in this AD take about 3 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2015–23–13 is $255 per product.

We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $263,160, or $255 per product.

In addition, we estimate that any necessary follow-on actions will take about 6 work-hours (3 work-hours for an FWC and 3 work-hours for an FAC), and require parts costing $88,000 (FAC), for a cost of $88,510 per product. We have no way of determining the number of aircraft that might need these actions.

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 removing Airworthiness Directive (AD) 2015–23–13, Amendment 39–18330 (80 FR 73099, November 24, 2015), and adding the following new AD:

2017–13–08 Airbus: Amendment 39–18938; Docket No. FAA–2016–9573; Directorate Identifier 2016–NM–149–AD.

(a) Effective Date

This AD is effective August 3, 2017.

(b) Affected ADs

This AD replaces AD 2015–23–13, Amendment 39–18330 (80 FR 73099, November 24, 2015) (''AD 2015–23–13'').

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A318–111, –112, –121, and –122 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto Flight; 31, Instruments.

(e) Reason

This AD was prompted by a determination that, in specific flight conditions, the allowable load limits on the vertical tail plane could be reached and possibly exceeded. Exceeding allowable load limits could result in detachment of the vertical tail plane. We are issuing this AD to prevent detachment of the vertical tail plane and consequent loss of control of the airplane.

(f) Compliance

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

(g) Retained Pin Programming Modification, With New Service Information

This paragraph restates the requirements of paragraph (g) of AD 2015–23–13, with new service information. Within 48 months after December 29, 2015 (the effective date of AD 2015–23–13), modify the pin programming to activate the stop rudder input warning (SRIW) logic, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–22–1480, Revision 02, dated March 30, 2015; or Airbus Service Bulletin A320–22–1480, Revision 03, dated October 13, 2015. As of the effective date of this AD, use only Airbus Service Bulletin A320–22–1480, Revision 03, dated October 13, 2015.

(h) Retained Inspection To Determine Part Numbers (P/Ns), Flight Warning Computer (FWC) and Flight Augmentation Computer (FAC) Replacement, With New Replacement Part Numbers

This paragraph restates the requirements of paragraph (h) of AD 2015–23–13, with new replacement part numbers. Prior to or concurrently with the actions required by paragraph (g) of this AD: Inspect the part numbers of the FWC and the FAC installed on the airplane. If any FWC or FAC having a part number identified in paragraph (h)(1) or (h)(2) of this AD, as applicable, is installed on an airplane, prior to or concurrently with the actions required by paragraph (g) of this AD, replace all affected FWCs and FACs with a unit having a part number identified in figure 1 to paragraph (h)(3) of this AD, in accordance with the Accomplishment Instructions of the applicable Airbus service information specified in paragraph (i) of this AD. As of the effective date of this AD, use only figure 1 to paragraph (h)(3) of this AD to identify the replacement part numbers.

(1) Paragraphs (h)(1)(i) through (h)(1)(xvii) of this AD identify FWCs having part numbers that are non-compatible with the SRIW activation required by paragraph (g) of this AD.

(i) 350E017238484 (H1–D1).
(ii) 350E053020303 (H2–E3).
(iii) 350E016187171 (C5).
(iv) 350E053020404 (H2–E4).
(v) 350E017248685 (H1–D2).
(vi) 350E053020606 (H2–F2).
(vii) 350E017251414 (H1–E1).
(viii) 350E053020707 (H2–F3).
(ix) 350E017271616 (H1–E2).
(x) 350E053021010 (H2–F3P).
(xi) 350E018291818 (H1–E3CJ).
(xii) 350E053020808 (H2–F4).
(xiii) 350E018301919 (H1–E3P).
(xiv) 350E053020909 (H2–F5).
(xv) 350E018312020 (H1–E3Q).
(xvi) 350E053021111 (H2–F6).
(xvii) 350E053020202 (H2–E2).

(2) Paragraphs (h)(2)(i) through (h)(2)(xxxiv) of this AD identify FACs having part numbers that are non-compatible with the SRIW activation required by paragraph (g) of this AD.

(i) B397AAM0202.
(ii) B397BAM0101.
(iii) B397BAM0512.
(iv) B397AAM0301.
(v) B397BAM0202.
(vi) B397BAM0513.
(vii) B397AAM0302.
(viii) B397BAM0203.
(ix) B397BAM0514.
(x) B397AAM0303.
(xi) B397BAM0305.
(xii) B397BAM0515.
(xiii) B397AAM0404.
(xiv) B397BAM0406.
(xv) B397BAM0616.
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(xxv) B397AAM0508.
(xxvi) B397BAM0509.
(xxvii) B397BAM0620.
(xxviii) B397AAM0509.
(xxix) B397BAM0510.
(xxx) B397CAM0101.
(xxxi) B397AAM0510.
(xxxii) B397BAM0511.
(xxxiii) B397CAM0102.
(xxxiv) Soft P/N G2856AAA01 installed on hard P/N C13206AA00.

(3) As of the effective date of this AD, figure 1 to paragraph (h)(3) of this AD identifies the FACs and FWCs having the part numbers that are compatible with SRIW activation required by paragraph (g) of this AD.

BILLING CODE 4910–13–P

Figure 1 to Paragraph (h)(3) of this AD - *FWC and FAC installation compatible with activation of SRIW*

	Aeroplane Configuration						
	A318	A319		A320		A321	
	Without Sharklet	Without Sharklet	With Sharklet	Without Sharklet	With Sharklet	Without Sharklet	With Sharklet
FAC P/N B397BAM0621 (621 hard B)	CFM	X	NC	X	NC	X	NC
FAC P/N B397BAM0622 (622 hard B)	CFM	X	CFM	NC	X	X	NC
FAC P/N B397BAM0623 (623 hard B)	CFM	X	X	X	X	X	X
FAC P/N B397BAM0624 (624 hard B)	X	X	X	X	X	X	X
FAC soft P/N G2856AAA02 installed on hard P/N C13206AA00 (CAA02 hard C)	CFM	X	X	X	X	X	X
FAC soft P/N G2856AAA03 installed on hard P/N C13206AA00 (CAA03 hard C)	X	X	X	X	X	X	X
FAC soft P/N G2856AAA04 installed on hard P/N C13206AA00 (CAA04 hard C)	X	X	X	X	X	X	X
FWC P/N 350E053021212 (H2-F7)	X	X	X	X	X	X	X
FWC P/N 350E053021313 (H2-F8P)	X	X	X	X	X	X	X
FWC P/N 350E053021414 (H2-F8)	X	X	X	X	X	X	X

'X' mean that the FAC / FWC is compatible with any engine installation for that aeroplane model.

'CFM' mean that the FAC / FWC is compatible with CFM engine installation for that aeroplane model.

'NC' mean that the FAC / FWC is not compatible with that aeroplane configuration.

BILLING CODE 4910–13–C

(i) Retained Service Information for Actions Required by Paragraph (h) of This AD, With New Service Information

This paragraph restates the requirements of paragraph (i) of AD 2015–23–13, with new service information. Do the actions required by paragraph (h) of this AD in accordance with the Accomplishment Instructions of the applicable Airbus service information specified in paragraphs (i)(1) through (i)(10) of this AD.

(1) Airbus Service Bulletin A320–22–1375, dated January 15, 2014 (FAC 621 hard B).

(2) Airbus Service Bulletin A320–22–1427, Revision 05, including Appendix 01, dated November 24, 2014 (FAC 622 hard B).

(3) Airbus Service Bulletin A320–22–1447, Revision 03, dated April 21, 2015 (FAC CAA02 hard C).

(4) Airbus Service Bulletin A320–22–1454, dated February 12, 2014 (FAC CAA02).

(5) Airbus Service Bulletin A320–22–1461, Revision 07, including Appendix 01, dated March 23, 2015 (FAC 623 hard B).

(6) Airbus Service Bulletin A320–22–1502, dated November 14, 2014 (FAC CAA02).

(7) Airbus Service Bulletin A320–22–1539, Revision 01, dated February 24, 2016 (FAC CAA03).

(8) Airbus Service Bulletin A320–22–1553, dated March 21, 2016 (FAC B624).

(9) Airbus Service Bulletin A320–22–1554, dated April 19, 2016 (FAC CAA03).

(10) Airbus Service Bulletin A320–31–1414, Revision 03, dated September 15, 2014 (FWC H2–F7).

(j) Retained Exclusion From Actions Required by Paragraphs (g) and (h) of This AD, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2015–23–13, with no changes. An airplane on which Airbus Modification 154473 has been embodied in production is excluded from the requirements of paragraphs (g) and (h) of this AD, provided that within 30 days after December 29, 2015 (the effective date of AD 2015–23–13), an inspection of the part numbers of the FWC and the FAC installed on the airplane is done to determine that no FWC having a part number listed in paragraph (h)(1) of this AD, and no FAC having a part number listed in paragraph (h)(2) of this AD, has been installed on that airplane since date of manufacture. A review of airplane maintenance records is acceptable in lieu of this inspection if the part numbers of the FWC and FAC can be conclusively determined from that review. If any FWC or FAC having a part number identified in paragraph (h)(1) or (h)(2) of this AD, as applicable, is installed on a post Airbus Modification 154473 airplane: Within 30 days after December 29, 2015, do the replacement required by paragraph (h) of this AD.

(k) Retained Parts Installation Prohibitions, With New Requirements

This paragraph restates the parts installation prohibitions specified in paragraph (k) of AD 2015–23–13, with new requirements.

(1) After modification of an airplane as required by paragraphs (g), (h), or (j) of this AD: Do not install on that airplane any FWC having a part number listed in paragraph (h)(1) of this AD or any FAC having a part number listed in paragraph (h)(2) of this AD.

(2) For an airplane that does not have a FWC having a part number listed in paragraph (h)(1) of this AD and does not have a FAC having a part number listed in paragraph (h)(2) of this AD: As of the effective date of this AD, do not install a FWC having a part number listed in paragraph (h)(1) of this AD or a FAC having a part number listed in paragraph (h)(2) of this AD.

(l) Retained Later Approved Parts, With a Different Effective Date

This paragraph restates the requirements of paragraph (l) of AD 2015–23–13, with a different effective date. Installation of a version (part number) of the FWC or FAC approved after March 5, 2015 (the effective date of European Aviation Safety Agency (EASA) AD 2014–0217R1), is an approved method of compliance with the requirements of paragraph (h) or (j) of this AD, provided the requirements specified in paragraphs (l)(1) and (l)(2) of this AD are met.

(1) The version (part number) must be approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA Design Organization Approval (DOA).

(2) The installation must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

(m) Credit for Previous Actions

(1) This paragraph restates the credit provided by paragraph (m)(1) of AD 2015–23–13. This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before December 29, 2015 (the effective date of AD 2015–23–13) using the service information specified in paragraphs (m)(1)(i) or (m)(1)(ii) of this AD.

(i) Airbus Service Bulletin A320–22–1480, dated July 9, 2014.

(ii) Airbus Service Bulletin A320–22–1480, Revision 01, dated February 6, 2015.

(2) This paragraph restates the credit provided by paragraph (m)(2) of AD 2015–23–13. This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before December 29, 2015 (the effective date of AD 2015–23–13) using the applicable Airbus service information identified in paragraphs (m)(2)(i) through (m)(2)(xviii) of this AD.

(i) Airbus Service Bulletin A320–22–1427, dated January 25, 2013.

(ii) Airbus Service Bulletin A320–22–1427, Revision 01, dated July 30, 2013.

(iii) Airbus Service Bulletin A320–22–1427, Revision 02, dated October 14, 2013.

(iv) Airbus Service Bulletin A320–22–1427, Revision 03, dated November 8, 2013.

(v) Airbus Service Bulletin A320–22–1427, Revision 04, dated February 11, 2014.

(vi) Airbus Service Bulletin A320–22–1447, dated October 18, 2013.

(vii) Airbus Service Bulletin A320–22–1447, Revision 01, dated September 18, 2014.

(viii) Airbus Service Bulletin A320–22–1447, Revision 02, dated December 2, 2014.

(ix) Airbus Service Bulletin A320–22–1461, dated October 31, 2013.

(x) Airbus Service Bulletin A320–22–1461, Revision 01, dated February 25, 2014.

(xi) Airbus Service Bulletin A320–22–1461, Revision 02, dated April 30, 2014.

(xii) Airbus Service Bulletin A320–22–1461, Revision 03, dated July 17, 2014.

(xiii) Airbus Service Bulletin A320–22–1461, Revision 04, dated September 15, 2014.

(xiv) Airbus Service Bulletin A320–22–1461, Revision 05, dated November 13, 2014.

(xv) Airbus Service Bulletin A320–22–1461, Revision 06, dated January 21, 2015.

(xvi) Airbus Service Bulletin A320–31–1414, dated December 19, 2012.

(xvii) Airbus Service Bulletin A320–31–1414, Revision 01, dated March 21, 2013.

(xviii) Airbus Service Bulletin A320–31–1414, Revision 02, dated July 30, 2013.

(3) This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–22–1539, dated December 28, 2015.

(n) 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 the attention of the person identified in paragraph (o)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(i) 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.

(ii) AMOCs approved previously for AD 2015–23–13, are approved as AMOCs for the corresponding provisions of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, 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 Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's

maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0132, dated July 5, 2016; corrected July 20, 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–2016–9573.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(5) and (p)(6) of this AD.

(p) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on August 3, 2017.

(i) Airbus Service Bulletin A320–22–1480, Revision 03, dated October 13, 2015.

(ii) Airbus Service Bulletin A320–22–1539, Revision 01, dated February 24, 2016.

(iii) Airbus Service Bulletin A320–22–1553, dated March 21, 2016.

(iv) Airbus Service Bulletin A320–22–1554, dated April 19, 2016.

(4) The following service information was approved for IBR on December 29, 2015 (80 FR 73099, November 24, 2015).

(i) Airbus Service Bulletin A320–22–1375, dated January 15, 2014.

(ii) Airbus Service Bulletin A320–22–1427, Revision 05, including Appendix 01, dated November 24, 2014.

(iii) Airbus Service Bulletin A320–22–1447, Revision 03, dated April 21, 2015.

(iv) Airbus Service Bulletin A320–22–1454, dated February 12, 2014.

(v) Airbus Service Bulletin A320–22–1461, Revision 07, including Appendix 01, dated March 23, 2015.

(vi) Airbus Service Bulletin A320–22–1480, Revision 02, dated March 30, 2015.

(vii) Airbus Service Bulletin A320–22–1502, dated November 14, 2014.

(viii) Airbus Service Bulletin A320–31–1414, Revision 03, dated September 15, 2014.

(5) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on June 16, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–13407 Filed 6–28–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9437; Directorate Identifier 2016–NM–131–AD; Amendment 39–18941; AD 2017–13–11]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Model G–IV airplanes. This AD was prompted by a report indicating that the G–IV gust lock system allows more throttle travel than was intended and could allow the throttle to be advanced to reach take-off thrust. This AD requires modification of the gust lock system, and a revision of the maintenance or inspection program to incorporate functional tests. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 3, 2017.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 3, 2017.

ADDRESSES: For service information identified in this final rule, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* 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–2016–9437.

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–2016–9437; 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: Gideon Jose, Aerospace Engineer, Systems and Equipment Branch, ACE–119A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5569; fax: 404–474–5606; email: *gideon.jose@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 Gulfstream Aerospace Corporation Model G–IV airplanes. The NPRM published in the **Federal Register** on December 12, 2016 (81 FR 89397) (''the NPRM''). The NPRM was prompted by a report indicating that the G–IV gust lock system allows more throttle travel than was intended and could allow the throttle to be advanced to reach take-off thrust. The intended function of the gust lock system is to restrict throttle lever movement to a maximum of 6 degrees of forward travel, which provides an unmistakable warning to the pilot that the gust lock system is still engaged, prohibiting the use of the primary flight control surfaces. The NPRM proposed to require modification of the gust lock system, and a revision of the maintenance or inspection program to incorporate functional tests. We are issuing this AD to prevent the throttle lever movement from advancing more than 6 degrees of forward travel, which could result in the aircraft reaching near take-off thrust and high velocities without primary flight

controls (aileron, elevator, and rudder) and cause a failure to rotate during take-off and high speed runway overrun.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. The commenter, the National Transportation Safety Board (NTSB), supported the NPRM.

New Service Information

Since we issued the NPRM, we received the following customer bulletins that clarify the modification instructions, and we have revised paragraph (g) of this AD to refer to these bulletins:

- Gulfstream IV Customer Bulletin Number 236B, dated February 3, 2017;
- Gulfstream G300 Customer Bulletin Number 236B, dated February 3, 2017; and
- Gulfstream G400 Customer Bulletin Number 236B, dated February 3, 2017.

We have also added the following customer bulletins to paragraph (k) of this AD to provide credit for the actions required by paragraph (g) of this AD if those actions were performed before the effective date of this AD:

- Gulfstream IV Customer Bulletin Number 236A, dated August 8, 2016;
- Gulfstream G300 Customer Bulletin Number 236A, dated August 8, 2016; and
- Gulfstream G400 Customer Bulletin Number 236A, dated August 8, 2016.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD with the changes 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 the following customer bulletins:

- Gulfstream IV Customer Bulletin Number 236B, dated February 3, 2017;
- Gulfstream G300 Customer Bulletin Number 236B, dated February 3, 2017; and
- Gulfstream G400 Customer Bulletin Number 236B, dated February 3, 2017.

The service information describes procedures for modifying the gust lock system by doing a retrofit of the gust lock throttle interlock. These documents are distinct since they apply to different airplane models in different configurations.

We also reviewed the following temporary revisions (TRs):

- Gulfstream IV Maintenance Manual TR 27–3, dated April 29, 2016;
- Gulfstream IV MSG–3 Maintenance Manual TR 27–3, dated April 29, 2016;
- Gulfstream G300 Maintenance Manual TR 27–3, dated April 29, 2016; and
- Gulfstream G400 Maintenance Manual TR 27–3, dated April 29, 2016.

The service information describes procedures for a functional test of the throttle lever gust lock protection. These documents are distinct since they apply to different airplane models in different configurations.

We also reviewed the following temporary revisions:

- Gulfstream IV Maintenance Manual TR 5–7, dated April 29, 2016;
- Gulfstream IV MSG–3 Maintenance Manual TR 5–6, dated April 29, 2016;
- Gulfstream G300 Maintenance Manual TR 5–3, dated April 29, 2016; and
- Gulfstream G400 Maintenance Manual TR 5–3, dated April 29, 2016.

The service information describes an airworthiness limitation (certification maintenance requirement) task to do functional tests of the throttle lever gust lock protection. These documents are distinct since they apply to different airplane models in different configurations.

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 425 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
Modification and Maintenance or Inspection Program Revision.	109 work-hours × $85 per hour = $9,265	$9,080	$18,345	$7,796,625

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

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):

2017–13–11 Gulfstream Aerospace Corporation: Amendment 39–18941; Docket No. FAA–2016–9437; Directorate Identifier 2016–NM–131–AD.

(a) Effective Date

This AD is effective August 3, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Gulfstream Aerospace Corporation Model G–IV airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Unsafe Condition

This AD was prompted by a report indicating that the G–IV gust lock system allows more throttle travel than was intended and could allow the throttle to be advanced to reach take-off thrust. The intended function of the gust lock system is to restrict throttle lever movement to a maximum of 6 degrees of forward travel, which provides an unmistakable warning to the pilot that the gust lock system is still engaged, prohibiting the use of the primary flight control surfaces. We are issuing this AD to prevent the throttle lever movement from advancing more than 6 degrees of forward travel, which could result in the aircraft reaching near take-off thrust and high velocities without primary flight controls (aileron, elevator, and rudder) and cause a failure to rotate during take-off and high speed runway overrun.

(f) Compliance

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

(g) Modification

Within 36 months after the effective date of this AD, modify the gust lock system by doing a retrofit of the gust lock throttle interlock, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD.

(1) Gulfstream IV Customer Bulletin Number 236B, dated February 3, 2017.

(2) Gulfstream G300 Customer Bulletin Number 236B, dated February 3, 2017.

(3) Gulfstream G400 Customer Bulletin Number 236B, dated February 3, 2017.

(h) Maintenance or Inspection Program Revision To Include a Functional Test

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate a functional test of the throttle lever gust lock protection specified in the applicable temporary revision (TR) identified in paragraphs (h)(1) through (h)(4) of this AD. The initial compliance time for the functional test is within the applicable time specified in paragraphs (h)(1) through (h)(4) of this AD, or within 90 days after the effective date of this AD, whichever occurs later. The functional test must be done in accordance with the applicable service information specified in paragraphs (i)(1) through (i)(4) of this AD.

(1) *For Gulfstream IV Maintenance Manual TR 5–7, dated April 29, 2016:* Within 12 months or 4,500 flight hours, whichever occurs first after accomplishing the modification required by paragraph (g) of this AD.

(2) *For Gulfstream IV MSG–3 Maintenance Manual TR 5–6, dated April 29, 2016:* Before the next 1C maintenance check or within 4,500 flight hours, whichever occurs first after accomplishing the modification required by paragraph (g) of this AD.

(3) *For Gulfstream G300 Maintenance Manual TR 5–3, dated April 29, 2016:* Before the next 1C maintenance check or within 4,500 flight hours, whichever occurs first after accomplishing the modification required by paragraph (g) of this AD.

(4) *For Gulfstream G400 Maintenance Manual TR 5–3, dated April 29, 2016:* Before the next 1C maintenance check or within 4,500 flight hours, whichever occurs first after accomplishing the modification required by paragraph (g) of this AD.

(i) Service Information for the Functional Test of the Throttle Lever Gust Lock Protection

The functional test of the throttle lever gust lock protection specified in paragraph (h) of this AD must be done in accordance with the applicable service information specified in paragraphs (i)(1) through (i)(4) of this AD.

(1) Gulfstream IV Maintenance Manual TR 27–3, dated April 29, 2016.

(2) Gulfstream IV MSG–3 Maintenance Manual TR 27–3, dated April 29, 2016.

(3) Gulfstream G300 Maintenance Manual TR 27–3, dated April 29, 2016.

(4) Gulfstream G400 Maintenance Manual TR 27–3, dated April 29, 2016.

(j) No Alternative Actions and Intervals

After the maintenance or inspection program has been revised as required by paragraph (h) 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 (AMOC) in accordance with the procedures specified in paragraph (m) of this AD.

(k) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable service information identified in paragraph (k)(1), (k)(2), or (k)(3) of this AD.

(1) Gulfstream IV Customer Bulletin Number 236, dated June 1, 2016; or 236A, dated August 8, 2016.

(2) Gulfstream G300 Customer Bulletin Number 236, dated June 1, 2016; or 236A, dated August 8, 2016.

(3) Gulfstream G400 Customer Bulletin Number 236, dated June 1, 2016; or 236A, dated August 8, 2016.

(l) Exception for Reporting and Return of Parts

Although the service information identified in paragraph (g) of this AD specifies to submit certain information to the manufacturer and to return parts to the manufacturer, this AD does not include those requirements.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta 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 (n)(1) of this AD.

(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) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (m)(3)(i) and (m)(3)(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 substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. 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.

(n) Related Information

(1) For more information about this AD, contact Gideon Jose, Aerospace Engineer, Systems and Equipment Branch, ACE–119A, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5569; fax: 404–474–5606; email: *gideon.jose@faa.gov.*

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

(o) 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) Gulfstream G300 Customer Bulletin Number 236B, dated February 3, 2017.

(ii) Gulfstream G300 Maintenance Manual Temporary Revision 27–3, dated April 29, 2016.

(iii) Gulfstream G300 Maintenance Manual Temporary Revision 5–3, dated April 29, 2016.

(iv) Gulfstream G400 Customer Bulletin Number 236B, dated February 3, 2017.

(v) Gulfstream G400 Maintenance Manual Temporary Revision 27–3, dated April 29, 2016.

(vi) Gulfstream G400 Maintenance Manual Temporary Revision 5–3, dated April 29, 2016.

(vii) Gulfstream IV Customer Bulletin Number 236B, dated February 3, 2017.

(viii) Gulfstream IV Maintenance Manual Temporary Revision 27–3, dated April 29, 2016.

(ix) Gulfstream IV Maintenance Manual Temporary Revision 5–7, dated April 29, 2016.

(x) Gulfstream IV MSG–3 Maintenance Manual Temporary Revision 27–3, dated April 29, 2016.

(xi) Gulfstream IV MSG–3 Maintenance Manual Temporary Revision 5–6, dated April 29, 2016.

(3) For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.*

(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 June 16, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–13405 Filed 6–28–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8185; Directorate Identifier 2016–NM–050–AD; Amendment 39–18940; AD 2017–13–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2003–18–06, which applied to certain Airbus Model A319–131 and –132 airplanes; Model A320–231, –232, and –233 airplanes; and Model A321–131 and –231 airplanes. AD 2003–18–06 required installing new anti-swivel plates and weights on the engine fan cowl door (FCD) latches and a new cowl door hold-open device. This AD retains the previous actions and requires modifying the engine FCDs, installing placards, and re-identifying the FCDs. This AD also adds airplanes to the applicability. This AD was prompted by reports of additional engine FCD in-flight losses, and a new FCD front latch and keeper assembly that has been developed to address this unsafe condition. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 3, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 3, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of October 16, 2003 (68 FR 53501, September 11, 2003).

ADDRESSES: For service information identified in this final rule, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* 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–2016–8185.

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–2016–8185; 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 (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: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1405; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2003–18–06, Amendment 39–13297 (68 FR 53501, September 11, 2003) (''AD 2003–18–06''). AD 2003–18–06 applied to certain Airbus Model A319–131 and –132 airplanes; Model A320–231, –232, and –233 airplanes; and Model A321–131 and –231 airplanes. The NPRM published in the **Federal Register** on August 5, 2016 (81 FR 51813). The NPRM was prompted by reports of additional engine FCD in-flight losses, and a new FCD front latch and keeper assembly that has been developed to address this unsafe condition. The NPRM proposed to continue to require installing new anti-swivel plates and weights on the engine FCD latches and a new cowl door hold-open device. The NPRM also proposed to require modifying the engine FCDs, installing placards, and re-identifying the FCDs with new part numbers. Additionally, the NPRM proposed to revise the applicability to include all Model

A319–131 and –132 airplanes; Model A320–231, –232, and –233 airplanes; and Model A321–131 and –231 airplanes. We are issuing this AD to prevent in-flight loss of an engine FCD and possible consequent damage to 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 2016–0053, dated March 14, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A319–131 and -132 airplanes; Model A320–231, –232, and –233 airplanes; and Model A321–131 and –231 airplanes. The MCAI states:

> Fan Cowl Door (FCD) losses during take-off were reported on aeroplanes equipped with IAE V2500 engines. Prompted by these occurences, [Direction Générale de l'Aviation Civile] DGAC France issued AD 2000–444–156(B), mandating FCD latch improvements. This [DGAC] AD was later superseded by [DGAC] AD 2001–381(B) [which corresponds to FAA AD 2003–18–06], requiring installation of additional fan cowl latch improvement by installing a hold open device.
>
> Since that [DGAC] AD was issued, further FCD in flight losses were experienced in service. Investigations confirmed that in all cases, the fan cowls were opened prior to the flight and were not correctly re-secured. During the pre-flight inspection, it was then not detected that the FCD were not properly latched.
>
> This condition, if not corrected, could lead to in-flight loss of a FCD, possibly resulting in damage to the aeroplane and/or injury to persons on the ground.
>
> Prompted by these recent events, new FCD front latch and keeper assembly were developed, having a specific key necessary to un-latch the FCD. This key cannot be removed unless the FCD front latch is safely closed. The key, after removal, must be stowed in the flight deck at a specific location, as instructed in the applicable Aircraft Maintenance Manual. Applicable Flight Crew Operating Manual has been amended accordingly. After modification, the FCD is identified with a different Part Number (P/N).
>
> For the reasons described above, this [EASA] AD retains the requirements of DGAC AD 2001–381(B), which is superseded, and requires modification and re-identification of FCD.

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–2016–8185.

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 Withdraw the NPRM

United Airlines (UAL) stated that it strongly disagrees with making the new latch keys installation mandatory. UAL stated that each one of the fan cowl door losses during takeoff can be attributed solely to human error. UAL explained that the mechanics are not correctly latching the fan cowl after maintenance and the flight crews are not checking that the latches are secured before departure. UAL asserted that it did not believe that introduction of the new latch design would resolve human error problems. Historically, UAL noted, visual cues have proven ineffective, but other changes, especially dual inspection signoff, have proven much more effective. Therefore, instead of mandating the modification, UAL stated that more emphasis should be placed on addressing the root cause—not the design, but human error.

Further, UAL explained that the fan cowls are routinely accessed for engine and thrust reverser maintenance, and adding another loose piece of equipment to be maintained and stored on the airplane would lead to operational complications. UAL also noted that additional time would be added to accomplishing routine tasks after incorporation of the modification. In a case where the maintenance personnel are required to open the fan cowls, UAL contended that additional time would be required to access the cockpit, retrieve the key, and open the fan cowls, which would expose personnel and the airplane to further damage or harm. Mandating the modification, UAL argued, would impose an unnecessary financial and maintenance burden on operators that have proactively implemented alternate procedures.

UAL further stated that some airplanes in their Model A319 and Model A320 fleet are installed with monolithic FCDs which have some design advantages to mitigate the risks addressed in this AD. This AD does not include any modification instructions for these FCDs.

From these statements, we infer that UAL was requesting that we withdraw the NPRM. We do not agree with UAL's request. The EASA, as the State of Design Authority for Airbus products, has determined an unsafe condition exists after conducting a risk analysis taking into consideration the in-service events in the worldwide fleet. We agree with EASA's decision to mitigate the risk by mandating a new design that makes it apparent to the flight crew on a pre-flight walk-around that an FCD is not latched. Regarding the concern about operational complications, we have determined that the safety benefits of the new design outweigh any potential complications. UAL has not provided any substantiating information to support withdrawing the NPRM. If an operator believes that there are certain FCDs that cannot be modified in accordance with the AD requirements, then they may apply for an alternative method of compliance (AMOC) using the procedures specified in paragraph (m)(1) of this AD. We have not revised this AD in this regard.

Requests To Allow Continued Operation With a Lost or Damaged Key/Lock

UAL and American Airlines (AAL) requested that we add a provision in the proposed AD to allow continued operation with a damaged or missing key or damaged lock. UAL also stated that it disagrees with mandating the exact stowage location of the key and that it should be left to the operator's discretion where to store the key on the airplane. UAL pointed out that the key could become lost or damaged, and that it's possible the lock could become damaged, requiring the airplane to be taken out of service.

We disagree with the commenters. EASA has determined that proper stowage for retrieval of the key and a fully functional lock are necessary to mitigate the risk of losing an FCD in flight, and we agree with EASA's assessment. If relief is approved in the future, such as Master Minimum Equipment List (MMEL) relief, that allows continued operation with a damaged or missing key or damaged lock, we will consider additional rulemaking. An operator may also apply for an AMOC using the procedures specified in paragraph (m)(1) of this AD, provided they submit sufficient data to substantiate that the AMOC provides an acceptable level of safety. We have not revised this AD in this regard.

Requests To Remove Placard Installation Requirement

AAL requested that we revise the proposed AD to allow continued operation with a damaged or missing placard provided the placard is replaced within a specific time. AAL pointed out that a missing or damaged placard does not reduce flight safety. UAL also requested that the installation and location of the placard not be mandated. UAL explained that the placard itself does not prevent a fan cowl door loss event, nor does it raise awareness about the issue.

We disagree with the commenters. Installation of the placard is designed to ensure that the key is stowed in a particular location on board the airplane and can be consistently retrieved from that location when needed. However, an operator may apply for an AMOC using the procedures specified in paragraph (m)(1) of this AD, provided they can show they have an alternative means to ensure the key is stowed on board the airplane in a constantly retrievable and accessible location. We have not revised this AD in this regard.

Request To Revise Cost Estimate

AAL requested that we review the proposed cost estimate for significant economic impact as related to the actual costs of compliance. AAL asserted that the proposed cost estimate is underestimated and that the actual cost is nearly double the specified amount. AAL stated that two kits are required per airplane instead of the one kit estimated in the NPRM, and that the placard cost from Airbus is $50. AAL explained that the NPRM does not account for the cost of maintenance activities such as re-rigging all cowl latches during embodiment, or other recording, tracking, and supply chain costs. Additionally, AAL mentioned that U.S. operators are competing with operators worldwide for these parts, which could impact the availability of necessary parts.

We partially agree with AAL's request. We recognize that, in accomplishing the requirements of any AD, operators might incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs. However, we have confirmed the need for two kits and the cost of the placards; therefore, we have revised this final rule to reflect the cost for two kits and placards.

Regarding the reference to a ''significant economic impact,'' according to Executive Order 12866, we are not required to do a full cost-benefit analysis for an AD unless it is considered a significant regulatory action. This AD is not a significant regulatory action because it does not have an annual effect on the economy of $100 million dollars or more; it does not create inconsistency with an action planned by another agency; it does not impact entitlements, grants, user fees or loan programs; and it does not raise novel legal or policy issues. However, the FAA does comply with Executive Order 12866 by assessing the costs and determining that correcting the unsafe condition justifies them. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after we determine that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, we have already determined that they establish a level of safety that is cost beneficial. When we later make a finding of an unsafe condition in an aircraft and issue an AD, it means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost beneficial, and because the AD does not add any additional regulatory requirement that increases the level of safety beyond what has been established by the type design, a full cost-benefit analysis would be redundant and unnecessary. We have not revised this AD in this regard.

Request To Exempt Certain Airplanes

Airbus requested that we revise the NPRM to exclude airplanes on which the following Airbus modifications were installed in production from the requirements of paragraph (g) of the proposed AD.

- Modifications 21948/P6222 and 30869.
- Modifications 24259/P6222 and 30869.
- Modifications 24259/P6222 and 24259/P6473.

We agree with excluding airplanes with these Airbus modifications that were installed during production. These modifications address the identified unsafe condition. These exempt airplanes were inadvertently omitted from paragraph (g) of the proposed AD. We have revised paragraph (g) of this AD accordingly.

Request To Extend Compliance Time

AAL requested that, due to the elapsed time needed to complete each airplane modification and the potential unavailability of modification kits to match the operator's modification schedule, we extend the compliance time for the new modification from 36 months to 48 months.

We do not agree with AAL's request to extend the compliance time. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition, the availability of required parts, and the practical aspect of accomplishing the required modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. According to the manufacturer, adequate parts will be available to modify the U.S. fleet within the required compliance time. However, under the provisions of paragraph (m)(1) of this AD, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. We have not changed this AD in his regard.

Request To Use Later Revisions of the Service Information

AAL requested that we allow later revisions of Airbus Service Bulletin A320–71–1069, dated December 18, 2015, to be used as a method of compliance for the actions specified in paragraph (h) of the proposed AD.

We may not refer to any document that does not yet exist in an AD. In general terms, we are required by the Office of the Federal Register's (OFR) regulations to either publish the service document contents as part of the actual AD language; or submit the service document to the OFR for approval as ''referenced'' material, in which case we may only refer to such material in the text of an AD. The AD may refer to the service document only if the OFR approved it for ''incorporation by reference.'' See 1 CFR part 51.

To allow operators to use later revisions of the referenced document (issued after publication of the AD), either we must revise the AD to reference specific later revisions, or operators must request approval to use later revisions as an AMOC with this AD under the provisions of paragraph (m)(1) of this AD.

However, since we issued the NPRM, we have received Airbus Service Bulletin A320–71–1069, Revision 01, including Appendix 01, dated April 28, 2016. This revision clarifies a storage location for Groups 7 and 8 but specifies no additional work requirements from the previous issue (Airbus Service Bulletin A320–71–1069, dated December 18, 2015). Therefore, we have revised paragraph (h) of this AD to specify Airbus Service Bulletin A320–71–1069, Revision 01, including Appendix 01, dated April 28, 2016, as an appropriate source of service information for accomplishing the required actions. We have also added paragraph (l) to this AD to provide credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–71–1069, dated December 18,

2015. We have redesignated subsequent paragraphs accordingly.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these changes:

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

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–71–1069, Revision 01, including Appendix 01, dated April 28, 2016. The service information describes procedures for modifying the engine FCDs, installing placards, and re-identifying the FCDs with new part numbers. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 558 airplanes of U.S. registry.

The actions required by AD 2003–18–06, and retained in this AD, take about 8 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $1,500 per product. Based on these figures, the estimated cost of the actions that are required by AD 2003–18–06 is $2,180 per product.

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 $9,676 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $5,683,788, or $10,186 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 removing Airworthiness Directive (AD) 2003–18–06, Amendment 39–13297 (68 FR 53501, September 11, 2003), and adding the following new AD:

2017–13–10 Airbus: Amendment 39–18940; Docket No. FAA–2016–8185; Directorate Identifier 2016–NM–050–AD.

(a) Effective Date

This AD is effective August 3, 2017.

(b) Affected ADs

This AD replaces AD 2003–18–06, Amendment 39–13297 (68 FR 53501, September 11, 2003), (''AD 2003–18–06'').

(c) Applicability

This AD applies to Airbus Model A319–131 and –132 airplanes; Model A320–231, –232, and –233 airplanes; and Model A321–131 and –231 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Reason

This AD was prompted by reports of engine fan cowl door (FCD) in-flight losses, and a new FCD front latch and keeper assembly that has been developed to address this unsafe condition. We are issuing this AD to prevent in-flight loss of an engine FCD and possible consequent damage to the airplane.

(f) Compliance

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

(g) Retained Modification and/or Installation, With No Changes

This paragraph restates the requirements of paragraph (a) of AD 2003–18–06, with no changes. For airplanes identified in paragraph (c) of this AD, except those airplanes on which Airbus Modifications 21948/P6222 and 30869, Modifications 24259/P6222 and 30869, or Modifications 24259/P6222 and 24259/P6473 have been installed in production: Within 18 months after October 16, 2003 (the effective date of AD 2003–18–06), do the action(s) specified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For Configuration 01 airplanes identified in Airbus Service Bulletin A320–71–1028, dated March 23, 2001: Modify the door latches of the fan cowl of both engines (*i.e.,* installation of new anti-swivel plates and weights), and install a new hold-open device, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–71–1028, dated March 23, 2001.

(2) For Configuration 02 airplanes identified in Airbus Service Bulletin A320–71–1028, dated March 23, 2001: Install a new hold-open device, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–71–1028, dated March 23, 2001.

(h) New Modifications

Within 36 months after the effective date of this AD, do the actions required by paragraphs (h)(1), (h)(2), and (h)(3) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–71–1069, Revision 01, including Appendix 01, dated April 28, 2016.

(1) Modify the left-hand and right-hand FCDs on engines 1 and 2.

(2) Install a placard on the box located at the bottom of the 120 VU panel or at the bottom of the coat stowage, as applicable.

(3) Re-identify both engine FCDs with the new part numbers (P/Ns), as specified in table 1 and table 2 to paragraph (h) of this AD, as applicable.

TABLE 1 TO PARAGRAPH (h) OF THIS AD—LEFT-SIDE DOOR

Old part No.	New part No.
740–4000–501	740–4000–9501
740–4000–503	740–4000–9503
745–4000–501	745–4000–513
745–4000–503	745–4000–515
745–4000–505	745–4000–517

TABLE 2 TO PARAGRAPH (h) OF THIS AD—RIGHT-SIDE DOOR

Old part No.	New part No.
740–4000–502	740–4000–9502
740–4000–504	740–4000–9504
740–4000–506	740–4000–9506
740–4000–508	740–4000–9508
745–4000–502	745–4000–9502
745–4000–504	745–4000–9504
745–4000–506	745–4000–9506
745–4000–508	745–4000–514
745–4000–510	745–4000–516
745–4000–512	745–4000–518

(i) New Method of Compliance: Replacement

(1) Replacing an engine FCD having a part number listed as ''Old Part Number'' in table 1 to paragraph (h) of this AD or table 2 to paragraph (h) of this AD, as applicable, with an FCD having the corresponding part number listed as ''New Part Number'' in table 1 to paragraph (h) of this AD or table 2 to paragraph (h) of this AD, as applicable, is an acceptable method of compliance with the requirements of paragraphs (h)(1) and (h)(3) of this AD for that engine FCD only.

(2) An airplane on which Airbus Modification 157516 has been embodied in production is compliant with the requirements of paragraphs (h)(1) and (h)(3) of this AD, provided no engine FCD, having a part number identified as ''Old Part Number'' in table 1 to paragraph (h) of this AD or table 2 to paragraph (h) of this AD, as applicable, is installed on that airplane.

(3) An airplane on which Airbus Modification 157718 has been embodied in production is compliant with the requirements of paragraph (h)(2) of this AD.

(j) New Parts Installation Limitations

(1) For an airplane with an engine FCD installed having a part number identified as ''Old Part Number'' in table 1 to paragraph (h) of this AD or table 2 to paragraph (h) of this AD, as applicable: After modification of that airplane as required by paragraph (h) of this AD, do not install an engine FCD, having a part number identified as ''Old Part Number'' in table 1 to paragraph (h) of this AD or table 2 to paragraph (h) of this AD, as applicable.

(2) For an airplane that does not have an engine FCD installed having a part number identified as ''Old Part Number'' in table 1 to paragraph (h) of this AD or table 2 to paragraph (h) of this AD, as applicable: On or after the effective date of this AD, do not install an engine FCD, having a part number identified as ''Old Part Number'' in table 1 to paragraph (h) of this AD or table 2 to paragraph (h) of this AD, as applicable.

(k) New Method of Compliance: Installation

Installation on an engine of a right-hand and left-hand engine FCD having a part number approved after the effective date of this AD is a method of compliance with the requirements of paragraphs (g), (h)(1), and (h)(3) of this AD for that engine only, provided the part number is approved, and the installation is accomplished, in accordance with the procedures specified in paragraph (m)(2) of this AD.

(l) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–71–1069, dated December 18, 2015.

(m) 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 the attention of the person identified in paragraph (n)(2) of this AD. 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:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (k) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0053, dated March 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–2016–8185.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1405; fax: 425–227–1149.

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on August 3, 2017.

(i) Airbus Service Bulletin A320–71–1069, Revision 01, including Appendix 01, dated April 28, 2016.

(ii) Reserved.

(4) The following service information was approved for IBR on October 16, 2003 (68 FR 53501, September 11, 2003).

(i) Airbus Service Bulletin A320–71–1028, dated March 23, 2001.

(ii) Reserved.

(5) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on June 17, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–13409 Filed 6–28–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–7529; Directorate Identifier 2014–NM–207–AD; Amendment 39–18939; AD 2017–13–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2014–16–02, which applied to certain Bombardier, Inc., Model CL–600–1A11 (CL–600) airplanes. AD 2014–16–02 required revising the airplane flight manual to prohibit thrust reverser operation, doing repetitive detailed inspections of both engine thrust reversers for cracks, and modifying the thrust reversers if necessary. The modification is also an interim (optional) terminating action for the repetitive inspections. This new AD adds a new terminating modification of the thrust reversers, which includes new inspections and repair, if necessary. This AD was prompted by a determination that it is necessary to add a requirement to repair or modify the thrust reversers, which would terminate the requirements of AD 2014–16–02. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 3, 2017.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 3, 2017.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of August 12, 2014 (79 FR 46968, August 12, 2014).

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 number 1–866–538–1247 or direct-dial telephone number 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–2015–7529.

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–2015–7529; 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 (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: Cesar Gomez, 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 516–228–7318; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede AD 2014–16–02, Amendment 39–17926 (79 FR 46968, August 12, 2014) (''AD 2014–16–02''). AD 2014–16–02 applied to certain Bombardier, Inc. Model CL–600–1A11 (CL–600) airplanes. The SNPRM published in the **Federal Register** on December 13, 2016 (81 FR 89881) (''the SNPRM''). We preceded the SNPRM with a notice of proposed rulemaking (NPRM) that published in the **Federal Register** on December 24, 2015 (80 FR 80293) (''the NPRM''). The NPRM was prompted by a determination that it is necessary to add a requirement to repair or modify the thrust reversers, which would terminate the requirements of AD 2014–16–02 after modification or repair. The NPRM proposed to continue to require the actions specified in AD 2014–16–02 until modification or repair of the thrust reversers. The SNPRM proposed to reduce the compliance time for modification of the thrust reversers, and add new modification procedures. We are issuing this AD to detect and correct cracks of the translating sleeve at the thrust reverser actuator attachment points, which could result in deployment or dislodgement of an engine thrust reverser in flight and subsequent reduced control of the airplane.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2014–19R1, dated March 11, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–1A11 (CL–600) airplanes. The MCAI states:

> There have been two reported incidents of partial deployment of an engine thrust reverser in-flight, caused by a failure of the translating sleeve at the thrust reverser actuator attachment points. Inspection of the same area on some other thrust reversers revealed cracks emanating from the holes under the nut plates.
>
> In both incidents, the affected aeroplane landed safely without any noticeable controllability issues, however structural failure of thrust reverser actuator attachment points resulting in thrust reverser deployment or dislodgment in flight is a safety hazard warranting an immediate mitigating action.
>
> To help in mitigating any immediate safety hazard, Bombardier Inc. has revised the Aircraft Flight Manual (AFM) through Temporary Revisions (TR) 600/29, 600/30, 600–1/24 and 600–1/26, to prohibit the thrust reverser operation on affected aeroplanes. Additionally, as an interim corrective action, Bombardier Inc. has issued alert service bulletin (ASB) A600–0769 requiring an inspection and/or a mechanical lock out of the thrust reverser to prevent it from moving out of forward thrust mode.
>
> Original [TCCA] Emergency AD CF–2014–19 [which corresponds to FAA AD 2014–16–02] was issued 20 June 2014 to mandate the incorporation of above mentioned revised AFM procedures and compliance with ASB A600–0769. This [TCCA] AD is now being revised to include the terminating action [modification of the thrust reversers] in accordance with Part C of the ASB A600–0769 Rev 02 dated 22 February 2016.

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–2015–7529.

Comments

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

Conclusion

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

changes. We have determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016. The service information describes procedures for a new permanent modification of the thrust reversers on both engines, which includes inspections for cracks and elongated holes.

We also reviewed the following TRs, which introduce procedures to prohibit thrust reverser operation. These documents are distinct since they apply to different airplane configurations.

- Canadair TR 600/29–2, dated January 18, 2016, to the Canadair CL–600–1A11 AFM.
- Canadair TR 600–1/24–2, dated January 18, 2016, to the Canadair CL–600–1A11 AFM (Winglets).

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 18 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
AFM revision; inspection [retained actions from AD 2014-16-02].	29 work-hours × $85 per hour = $2,465	N/A	$2,465	$44,370
New modification	100 work-hours × $85 per hour = $8,500	$509	9,009	162,162

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Modification	36 work-hours × $85 per hour = $3,060	$509	$3,569

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions for the inspections that are part of the new modification 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

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 removing Airworthiness Directive (AD) 2014–16–02, Amendment 39–17926 (79 FR 46968, August 12, 2014), and adding the following new AD:

2017–13–09 Bombardier, Inc.: Amendment 39–18939; Docket No. FAA–2015–7529; Directorate Identifier 2014–NM–207–AD.

(a) Effective Date

This AD is effective August 3, 2017.

(b) Affected ADs

This AD replaces AD 2014–16–02, Amendment 39–17926 (79 FR 46968, August 12, 2014) (''AD 2014–16–02'').

(c) Applicability

This AD applies to Bombardier, Inc., Model CL–600–1A11 (CL–600) airplanes, certificated in any category, serial numbers 1004 through 1085 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 78, Engine Exhaust.

(e) Reason

This AD was prompted by reports of partial deployment of an engine thrust reverser in flight caused by a failure of the translating sleeve at the thrust reverser attachment points. We are issuing this AD to detect and correct cracks of the translating sleeve at the thrust reverser actuator attachment points, which could result in deployment or dislodgement of an engine thrust reverser in flight and subsequent reduced control of the airplane.

(f) Compliance

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

(g) Retained Airplane Flight Manual (AFM) Revision With Revised Service Information

This paragraph restates the requirements of paragraph (g) of AD 2014–16–02, with revised service information. Within 1 calendar day after August 12, 2014 (the effective date of AD 2014–16–02): Revise the applicable sections of the AFM to include the information specified in the temporary revisions (TRs) identified in paragraphs (g)(1) and (g)(2) of this AD, as applicable. These TRs introduce procedures to prohibit thrust reverser operation. Operate the airplane according to the limitations and procedures in the TRs identified in paragraphs (g)(1) and (g)(2) of this AD, as applicable. The revision required by paragraph (g) of this AD may be done by inserting copies of the applicable TRs identified in paragraphs (g)(1) and (g)(2) of this AD into the AFM. When these TRs have been included in the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in the applicable TRs, and the TRs may be removed.

(1) Canadair TR 600/29, dated June 20, 2014, to the Canadair CL–600–1A11 AFM; or Canadair TR 600/29–2, dated January 18, 2016, to the Canadair CL–600–1A11 AFM. As of the effective date of this AD, use only Canadair TR 600/29–2, dated January 18, 2016, to the Canadair CL–600–1A11 AFM.

(2) Canadair TR 600–1/24, dated June 20, 2014, to the Canadair CL–600–1A11 AFM (Winglets), including Erratum, Publication No. PSP 600–1AFM (US), TR No. 600–1/24, June 20, 2014; or Canadair TR 600–1/24–2, dated January 18, 2016, to the Canadair CL–600–1A11 AFM (Winglets). As of the effective date of this AD, use only Canadair TR 600–1/24–2, dated January 18, 2016, to the Canadair CL–600–1A11 AFM (Winglets).

(h) Retained Repetitive Inspections and Modifications, With Revised Service Information

This paragraph restates the requirements of paragraph (h) of AD 2014–16–02, with revised service information. Within 25 flight cycles or 90 days, whichever occurs first, after August 12, 2014 (the effective date of AD 2014–16–02), do detailed inspections (including a borescope inspection) of both engine thrust reversers for cracks, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A600–0769, Revision 01, dated June 26, 2014; or Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016. As of the effective date of this AD, use only Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016.

(1) If no cracking is found during any inspection required by paragraph (h) of this AD, repeat the inspection required by paragraph (h) of this AD thereafter at intervals not to exceed 100 flight cycles until the repair or modification specified in paragraph (i) or (k) of this AD is done.

(2) If any cracking is found during any inspection required by paragraph (h) of this AD, before further flight, modify the thrust reversers on both engines, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A600–0769, Revision 01, dated June 26, 2014; or Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016. As of the effective date of this AD, use only Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016.

(i) Retained Optional Terminating Modification, With Revised Service Information

This paragraph restates the optional terminating action specified in paragraph (i) of AD 2014–16–02, with revised service information. Modifying the thrust reversers on both engines, in accordance with Part B of the Accomplishment Instructions of Bombardier Alert Service Bulletin A600–0769, Revision 01, dated June 26, 2014; or Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016; terminates the inspections required by paragraph (h) of this AD. As of the effective date of this AD, use only Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016.

(j) Retained Credit for Previous Actions, With No Changes

This paragraph restates the credit provided in paragraph (j) of AD 2014–16–02, with no changes. This paragraph provides credit for actions required by paragraphs (h) and (i) of this AD, if those actions were performed before August 12, 2014 (the effective date of AD 2014–16–02), using Bombardier Alert Service Bulletin A600–0769, dated June 19, 2014.

(k) New Requirement of This AD: Permanent Modification and Inspections

Within 24 months after the accomplishing the modification specified in paragraph (h)(2) of this AD, or within 48 months after accomplishing the initial inspection required by paragraph (h) of this AD, whichever occurs later: Modify the thrust reversers on both engines, including doing the inspections specified in paragraphs (k)(1) through (k)(6) of this AD, in accordance with Part C of the Accomplishment Instructions of Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016, except as required by paragraphs (m)(1) and (m)(2) of this AD. Modification of all thrust reversers terminates the requirements of paragraphs (g), (h), and (i) of this AD.

(1) Do general visual inspections of the flipper doors for cracks.

(2) Do a general visual inspection of the thrust reverser skin, frames, joints, splices, and fasteners for cracks.

(3) Do a general visual inspection of the thrust reverser for cracks.

(4) Do liquid penetrant or eddy current inspections, as applicable, of the frames for cracks.

(5) Do a detailed visual inspection of the frames for cracks and elongated holes, and do a liquid penetrant inspection of the frames for cracks.

(6) Do a liquid penetrant or an eddy current inspection of the translating sleeve skin for cracks.

(l) New Requirement of This AD: Repair

If, during any inspection required by paragraph (k) of this AD, any cracking or elongated hole is found, 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).

(m) New Exceptions to Service Information

(1) If it is not possible to follow all instructions specified in Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016, during accomplishment of the actions required by paragraph (k) 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.

(2) Where Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016, specifies to contact Bombardier if shim thickness is over the applicable thicknesses identified in Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016, 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.

(n) 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 manager of 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:* As of the effective date of this AD, 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.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2014–19R1, dated March 11, 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–2015–7529.

(2) For more information about this AD, contact Cesar Gomez, 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 516–228–7318; fax 516–794–5531.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(5) and (p)(6) of this AD.

(p) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on August 3, 2017.

(i) Bombardier Alert Service Bulletin A600–0769, Revision 02, dated February 22, 2016.

(ii) Canadair Temporary Revision 600/29–2, dated January 18, 2016, to the Canadair CL–600–1A11 Airplane Flight Manual.

(iii) Canadair Temporary Revision 600–1/24–2, dated January 18, 2016, to the Canadair CL–600–1A11 Airplane Flight Manual (Winglets).

(4) The following service information was approved for IBR on August 12, 2014 (79 FR 46968, August 12, 2014).

(i) Bombardier Alert Service Bulletin A600–0769, Revision 01, dated June 26, 2014.

(ii) Canadair TR 600/29, dated June 20, 2014, to the Canadair CL–600–1A11 Airplane Flight Manual.

(iii) Canadair TR 600–1/24, dated June 20, 2014, to the Canadair CL–600–1A11 AFM (Winglets), including Erratum, Publication No. PSP 600–1AFM (US), TR No. 600–1/24, June 20, 2014.

(5) 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 number 1–866–538–1247 or direct-dial telephone number 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on June 16, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–13411 Filed 6–28–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–9496; Airspace Docket No. 16–AEA–16]

Establishment of Class E Airspace; Finleyville, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Finleyville, PA, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures (SIAPs) serving Finleyville Airpark. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, August 17, 2017. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace extending upward from 700 feet above the surface at Finleyville Airpark, Finleyville, PA to support instrument flight rules (IFR) operations at the airport.

History

On April 7, 2017, the FAA published in the **Federal Register** (82 FR 16962) Docket No. FAA–2016–9496, a notice of proposed rulemaking (NPRM) to establish Class E airspace extending upward from 700 feet above the surface at Finleyville, PA, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures for Finleyville Airpark. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A dated August 3, 2016, and effective September 15, 2016, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this

document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Finleyville Airpark, Finleyville, PA, to support the new RNAV (GPS) standard instrument approach procedures for IFR operations at the airport.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, effective September 15, 2016, is amended as follows:

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

* * * * *

AEA PA E5 Finleyville, PA [New]

Finleyville Airpark, PA
(Lat. 40°14′45″ N., long. 80°00′44″ W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Finleyville Airpark.

Issued in College Park, Georgia, on June 22, 2017.

Ryan W. Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2017–13568 Filed 6–28–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2016–9536; Airspace Docket No. 16–AWP–27]

Establishment of Temporary Restricted Areas R–2509E, R–2509W, and R–2509N; Twentynine Palms, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes temporary restricted areas (Temp RAs) R–2509E, R–2509W, and R–2509N, Twentynine Palms, CA, to support a Marine Expeditionary Brigade level Large Scale Exercise (LSE) planned for existing and newly acquired training lands at Marine Corps Air Ground Combat Center (MCAGCC), Twentynine Palms from August 7 to August 26, 2017.

DATES: Effective date 0901 UTC, August 7, 2017.

FOR FURTHER INFORMATION CONTACT: Kenneth Ready, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish the temporary restricted area airspace at Twentynine Palms, CA, to support a Marine Expeditionary Brigade level LSE and accommodate essential USMC training requirements.

History

On February 23, 2017, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) (82 FR 11414), Docket No. FAA–2016–9536, to establish Temp RAs R–2509E, R–2509W, and R–2509N, Twentynine Palms, CA, to support a Marine Expeditionary Brigade level LSE. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. Five comments were received; four from individuals and one from Aircraft Owners and Pilots Association (AOPA).

Discussion of Comments

In their response to the NPRM, the commenters raised several substantive issues. The commenters contend the temporary restricted airspace design could be managed through alternative airspace management methods like temporary flight restrictions or controlled firing areas. Additionally, commenters contended that the location and lack of knowledge of temporary restricted areas would have a negative impact on general aviation aircraft. One commenter supported the exercise to allow warfighters the opportunity to practice tactics in preparation for actual war. The comments have been categorized in the following groupings: (1) Alternative designation of the airspace as a temporary flight restriction (TFR) or as a controlled firing area (CFA); (2) the general concern that R–2509W creates a narrow funneling of traffic at a known ''choke point'' of airspace; and (3) the need for advanced notification of pilots of activation and awareness of temporary restricted areas.

Having considered the issues and recommendations provided by the commenters, the FAA offers the following responses.

Designation of the Airspace as a TFR or as a CFA

Two commenters suggested the airspace would be better served as TFR because a TFR could be depicted graphically and would provide better notification to pilots. The commenters noted perceived limitations in the NOTAM system used to inform pilots of temporary restricted areas established under part 73.

TFRs under 14 CFR 91.137 are not used for any pre-planned military operations involving hazardous activity. Additionally, a TFR issued under § 91.137 involves restrictions and limitations that are not appropriately applied to military operations. The fact that commenters perceive that a TFR permits better notification to a pilot about restricted airspace is not sufficient to warrant using § 91.137 for activity that it was not intended to cover.

One commenter suggested a CFA as an alternative. CFAs are not intended for aerial activities which involve aircraft ordinance delivery which this LSE will involve.

R–2509W Creates a Narrow Funneling of Traffic at a Known ''Choke Point'' of Airspace

One commenter stated the corridor created by restricted airspace in the high desert of Southern California is already very narrow and congested and funnels high amounts of traffic today. The commenter noted that adding restricted areas that will reduce the corridor will exacerbate the problem. The commenter suggested expanding the existing restricted area into one of the already established military operations areas (MOA) on the eastern side of R–2509 and away from the already narrow funnel in the west. AOPA contends that the proposed restricted areas create an unnecessary and unacceptable risk to general aviation pilots. AOPA specifically noted that, because the proposed R–2509W overlies a valley, it will force general aviation pilots to fly closer to precipitous rising terrain and will provide a greater challenge to pilots needing to turn around safely. AOPA also commented that federal airway V–386 which is heavily utilized by general aviation pilots will be impacted by the proposed restricted area. AOPA contended that the restricted area would force many pilots to deviate further to the west and into more complex and congested airspace. AOPA also noted that the FAA previously withdrew a proposal for the same temporary restricted areas because efforts to mitigate the aeronautical impacts were unsuccessful.

After the 2016 NPRM was withdrawn, LA Center negotiated certain mitigations with the Marine Corps in response to LA Center's aeronautical study of the impact of the temporary restricted areas to non-participating aircraft operating within the corridor west of the proposed restricted areas. In response to the aeronautical study, the Marines met with LA Center and addressed internal boundary changes for R–2509N and R–2509E which allow for arrivals and departures to fly over the restricted areas allowing better flow control and altitude stratum for Metroplex procedures. Additionally, the Marine Corps agreed to limit the maximum altitude for R–2509E to FL400 for only three days of the exercise otherwise the maximum altitude will be FL220. The FAA has further addressed the commenters concerns by restricting the airspace the Marine Corps will utilize within R–2509W to 8,000 feet MSL for the duration of the exercise and limiting the airspace above R–2509N to 16,000 feet MSL for the duration of the exercise. These changes account for the differences from the 2016 NPRM that could not be agreed upon prior to the August 2016 exercise. Those operations were cancelled and the NPRM withdrawn due to inability to alleviate aeronautical concerns. The mitigations agreed to by the Marine Corps have adequately addressed the FAA's earlier concerns.

In regard to the commenters' recommendation to expand to the east rather than into the corridor in the west, the Marine Corps conducted an extensive land use study which included a review of the possible expansion to the east side of the current restricted area. The planned exercise requires land and airspace that allows for close air support, which is the use of aviation in support of ground units, surface fires and maneuver areas that are oriented for continual progression throughout the exercise area. The study found that the land to the east was not a feasible alternative for the conduct of the planned exercise. Additionally, the use of surface fires is required to integrate with both fixed and rotary winged aircraft that would require the use of land the Department of Defense does not possess. Lastly, the Safety Risk Management Panel conducted by FAA identified the proposal added minimal impact to the National Airspace System (NAS) compared to daily operations.

Pilots Need Advanced Notifications of Activation and Awareness of Temp RAs

AOPA stated concerns of the lack of awareness for pilots for Temp RAs as a whole. The infrequent use of Temp RAs in the past 20 years, lack of discussion within the aeronautical manuals for general aviation pilots, and lack of temporary special use airspace depicted electronically (most notably the electronic flight bag), all lead to the potential of a general aviation pilot to violate the Temp RAs. AOPA commented that the times of use in the NOTAM for the temporary restricted areas should be changed to provide 4 hours advance notice before the areas are activated.

The FAA agrees and directed the Marine Corps to work within the current system to insure pilots are notified of the LSE by:

1. Working with Los Angeles Center to establish ''Pointer NOTAMs'' to enhance coverage and visibility of the activities taking place.

2. Publish Special Use Airspace NOTAMs no less than six hours prior to hazardous activity taking place.

3. Work with the FAA to ensure the Temp RAs will be reflected on the FAA's SUA Web site: *https://sua.faa.gov/sua/siteFrame.app,* for current flight planning information.

4. Coordinate with AOPA on public outreach matters.

Additionally, the FAA has started the process to update aeronautical manuals to define what temporary special use airspace entails and developing a process to electronically display temporary special use airspace on the electronic flight bag.

Differences From the NPRM

In response to comments and the FAA aeronautical study completed by Los Angeles Center, the FAA changed the internal boundaries of two of the restricted areas (R–2509N and R–2509W) that were proposed in the NPRM. Geographic lat./long. coordinates have been adjusted to accommodate traffic above and around the newly established temporary restricted areas ensure ample separation from non-participating traffic. The following restricted area updates are incorporated in this action.

Three geographic lat./long. coordinates internal to R–2509N and R–2509E have been changed and four new points were established.

The Rule

The FAA is amending 14 CFR part 73 to establish new temporary restricted areas (R–2509E, R–2509W, and R–

2509N) at Twentynine Palms, CA. Subsequent to the NPRM, the FAA is also incorporating the restricted area updates noted in the Differences from the NPRM section. The FAA is taking this action to accommodate live fire from pistols, rifles, machine guns, anti-tank weapons, mortars, artillery, Unmanned Aircraft Systems, fixed wing, and rotary wing training activities including close air support and live ordnance delivery. These temporary restricted areas are required to effectively deconflict Department of Defense and civilian air traffic from hazards associated with live fire training. The amendments are as follows:

Temporary R–2509E: The geographic coordinate lat. 34°40′30″ N., long. 116°29′43″ W., in the boundaries description proposed in the NPRM is replaced with lat. 34°39′24″ N., long. 116°29′19″ W.; Geographic coordinate lat. 34°34′17″ N., long. 116°35′52″ W.; in the boundaries description proposed in the NPRM is replaced with lat. 34°32′36″ N., long. 116°35′12″ W.

Temporary R–2509N: The geographic coordinate lat. 34°39′24″ N., long. 116°29′19″ W.; was added to the proposed legal description. The geographic coordinate lat. 34°34′17″ N., long. 116°35′52″ W.; in the proposed boundaries description, is replaced with lat. 34°32′36″ N., long. 116°35′12″ W.

Temporary R2509N/E/W: The ''times of use'' for each legal description has changed to read: Intermittent by NOTAM 6 hours in advance during the period from August 7 to August 26, 2017.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

In accordance with FAA Order 1050.1F, paragraphs 8–2 and 9–2, *Adoption of Other Agencies' National Environmental Policy Act Documents,* and *Written Re-evaluations,* and 7400.2L, paragraph 32–2–3, the FAA, after conducting an independent review and evaluation of the United States Navy's 2012 Final Environmental Impact Statement (EIS) and the U.S. Navy's 2017 Final Supplemental Environmental Impact Statement (2017 EIS) and Written Re-evaluation for Land Acquisition and Airspace Establishment to Support Large-Scale Marine Air Ground Task Force Live-Fire and Maneuver Training at Marine Corps Air Ground Combat Center, Twenty-nine Palms, California, has determined that the 2012 EIS and 2017 SEIS and their supporting documentation, as incorporated by reference, adequately assess and disclose the environmental impacts of the Proposed Action including evaluation of the establishment of airspace for six temporary restricted airspace areas R–2509, 2509E, 2509W, and 2509N (aka R–2509 E/W/N)

Based on the evaluation for potential environmental impact in the above-mentioned NEPA documents, the FAA, as the Cooperating Agency, concluded that adoption of the EIS for Land Acquisition and Airspace Establishment to Support Large-Scale Marine Air Ground Task Force Live-Fire and Maneuver Training at Marine Corps Air Ground Combat Center, Twenty-nine Palms, California, with incorporation of its supporting documentation, is authorized in accordance with 40 CFR1506.3, *Adoption.* Accordingly, FAA adopts the 2012 EIS and 2017 EIS and takes full responsibility for the scope and content that address the FAA's airspace establishment action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.25 California [Amended]

■ 2. § 73.25 is amended as follows:

* * * * *

R–2509E Twentynine Palms, CA [New]

Boundaries. Beginning at lat. 34°39′24″ N., long. 116°29′19″ W.; to lat. 34°36′00″ N., long. 116°28′03″ W.; to lat. 34°31′30″ N., long. 116°26′48″ W.; to lat. 34°30′00″ N., long. 116°26′23″ W.; to lat. 34°21′35″ N., long. 116°21′38″ W.; to lat. 34°19′30″ N., long. 116°20′29″ W.; to lat. 34°17′38″ N., long. 116°19′19″ W.; to lat. 34°22′25″ N., long. 116°31′10″ W.; to lat. 34°32′36″ N., long. 116°35′12″ W.; to the point of beginning.

Designated altitudes. Surface to FL 400.

Time of designation. Intermittent by NOTAM 6 hours in advance from August 7 to August 26, 2017.

Controlling agency. FAA, Los Angeles Air Route Traffic Control Center.

Using agency. Commanding General, Marine Corps Air Ground Combat Center (MCAGCC), Twentynine Palms, CA.

R–2509W Twentynine Palms, CA [New]

Boundaries. Beginning at lat. 34°35′03″ N., long. 116°36′10″ W.; to lat. 34°22′25″ N., long. 116°31′10″ W.; to lat. 34°27′38″ N., long. 116°40′34″ W.; to lat. 34°27′59″ N., long. 116°42′51″ W.; to lat. 34°29′44″ N., long. 116°42′51″ W.; to the point of beginning. Excluding that airspace within a 3.4-mile radius of point in space at lat. 34°25′32″ N., long. 116°36′52″ W.; surface to 1,500 feet AGL.

Designated altitudes. Surface to 8,000 feet MSL.

Time of designation. Intermittent by NOTAM 6 hours in advance from August 7 to August 26, 2017.

Controlling agency. FAA, Los Angeles Air Route Traffic Control Center.

Using agency. Commanding General, Marine Corps Air Ground Combat Center (MCAGCC), Twentynine Palms, CA.

R–2509N Twentynine Palms, CA [New]

Boundaries. Beginning at lat. 34°35′03″ N., long. 116°36′10″ W.; to lat. 34°40′30″ N., long. 116°29′43″ W.; to lat. 34°39′24″ N., long. 116°29′19″ W.; to lat. 34°32′36″ N., long. 116°35′12″ W.; to the point of beginning.

Designated altitudes. Surface to 16,000 feet MSL.

Time of designation. Intermittent by NOTAM 6 hours in advance from August 7 to August 26, 2017.

Controlling agency. FAA, Los Angeles Air Route Traffic Control Center.

Using agency. Commanding General, Marine Corps Air Ground Combat

Center (MCAGCC), Twentynine Palms, CA.

* * * * *

Issued in Washington, DC, on June 22, 2017.

Rodger A. Dean, Jr.,

Manager, Airspace Policy Group.

[FR Doc. 2017–13566 Filed 6–28–17; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1261

[Document Number NASA–2017–0003; Notice: 17–040]

RIN 2700–AD83

Processing of Monetary Claims

AGENCY: National Aeronautics and Space Administration.

ACTION: Direct final rule.

SUMMARY: This direct final rule makes changes to comply with statutory modifications increasing NASA's approval authority for certain actions from $20,000 to $100,000 and makes nonsubstantive changes to clarify the existing notification and review procedures. Pursuant to statutory amendments, NASA's authority to approve certain claims has increased from $20,000 to $100,000. NASA is amending its implementing regulation accordingly. Prior to this statutory change, amounts over $20,000 had to be forwarded to officials within the Department of Justice for approval. The additional changes to procedures were made to comply with ''plain wording'' criteria and to incorporate debt collection procedural changes implemented under the Debt Collection Improvement Act of 1996. No substantive changes were made to existing NASA provisions for notice and review of claims or indebtedness. The revision to this rule is part of NASA's retrospective plan under Executive Order (E.O.) 13563 completed in August 2011.

DATES: This direct final rule is effective August 28, 2017. Comments due on or before July 31, 2017. If adverse comments are received, NASA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: NASA's full plan can be accessed on the Agency's open Government Web site at *http://www.nasa.gov/open/*.

FOR FURTHER INFORMATION CONTACT: Bryan R. Diederich, Office of the General Counsel, NASA Headquarters, telephone (202) 358–0216.

SUPPLEMENTARY INFORMATION:

Direct Final Rule

NASA has determined this rulemaking meets the criteria for a direct final rule because it involves non-discretionary statutory modifications to certain of NASA's claims and indebtedness approval authorities and makes nonsubstantive and ''plain wording'' changes to existing notification and review procedures within NASA. However, if the Agency receives a significant adverse comment, it will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

Statutory Authority: Title 31, Subchapter II, Section 3711(a)(2) Collection and compromise.

Regulatory Analysis

Paperwork Reduction Act Statement

This final rule does not contain an information collection requirement that is subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12866 and Executive Order 13563

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

Regulatory Flexibility Act

It has been certified that this final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 1261

Claims.

Accordingly, 14 CFR part 1261 is amended as follows:

PART 1261—PROCESSING OF MONETARY CLAIMS (GENERAL)

■ 1. The authority citation for part 1261 is revised to read as follows:

Authority: Subparts 1261.4, 1261.5, and 1261.6 issued under 51 U.S.C. 20113; 31 U.S.C. 3711 *et seq.;* 5 U.S.C. 5514; 31 CFR parts 900 through 904; 5 CFR part 550, subpart K, §§ 550.1101 through 550.1107.

Subpart 1261.3—Claims Against NASA or Its Employees for Damage to or Loss of Property or Personal Injury or Death—Accruing On or After January 18, 1967

■ 2. The authority citation for subpart 1261.3 is revised to read as follows:

Authority: 28 U.S.C. 2671–2680, 51 U.S.C. 20113(m), and 28 CFR part 14.

■ 3. Amend § 1261.301 by revising paragraphs (b) and (c) to read as follows:

§ 1261.301 Authority.

* * * * *

(b) Under 51 U.S.C. 20113(m)(1), NASA is authorized to consider, ascertain, adjust, determine, settle, and pay, on behalf of the United States, in full satisfaction thereof, any claim for $25,000 or less against the United States for bodily injury, death, or damage to or loss of real or personal property resulting from the conduct of NASA's functions as specified in 51 U.S.C. 20112. At the discretion of NASA, a claim may be settled and paid under this authority even though the United States could not be held legally liable to the claimant.

(c) Under 51 U.S.C. 20113(m)(2), if NASA considers that a claim in excess of $25,000 is meritorious and would otherwise be covered by 51 U.S.C. 20113(m)(1), NASA may report the facts and circumstances of the claim to the Congress for its consideration or to the Comptroller General as provided in the ''Supplemental Appropriations Act, 1978,'' Public Law 95–240 (92 Stat. 107), 31 U.S.C. 724a.

* * * * *

■ 4. Revise § 1261.304 to read as follows:

§ 1261.304 Place of filing claim.

A claim arising in the United States should be submitted to the Chief Counsel of the NASA installation whose activities are believed to have given rise to the claimed injury, loss, or death. If the identity of such installation is not

known, or if the claim arose in a foreign country, the claim should be submitted to the General Counsel, Headquarters, National Aeronautics and Space Administration, Washington, DC 20546.

■ 5. Amend § 1261.307 by revising paragraph (b) to read as follows:

§ 1261.307 Time limitations.

* * * * *

(b) A claim may not be acted upon pursuant to 51 U.S.C. 20113(m)(1) or (2) unless it is presented to NASA within two years after the occurrence of the accident or incident out of which the claim arose.

* * * * *

■ 6. Amend § 1261.308 by revising paragraphs (c) and (d) to read as follows:

§ 1261.308 NASA officials authorized to act upon claims.

* * * * *

(c) Claims of $10,000 or more, pursuant either to the Federal Tort Claims Act, or 51 U.S.C. 20113(m), shall be acted upon only with the prior approval of the General Counsel. Such claims shall be forwarded to the General Counsel for approval, if the Chief Counsel or the Associate General Counsel for General Law is of the opinion that the claim may be meritorious and otherwise suitable for settlement under any authority. A claim so forwarded should be accompanied by a report of the facts of the claim, based upon such investigation as may be appropriate, and a recommendation as to the action to be taken.

(d) Claims acted upon by NASA officials pursuant to this section shall be acted upon pursuant to the Federal Tort Claims Act, or 51 U.S.C. 20113(m)(1) or (2), as the NASA official deems appropriate.

■ 7. Amend § 1261.312 by revising paragraph (a) to read as follows:

§ 1261.312 Action on approved claims.

(a) Upon settlement of a claim, the official designated in § 1261.308 will prepare and have executed by the claimant a Voucher for Payment of Tort Claims (NASA Form 616) if the claim has been acted upon pursuant to 51 U.S.C. 20113(m), or a Voucher for Payment under Federal Tort Claims Act (Standard Form 1145) if the claim has been acted upon pursuant to the Federal Tort Claims Act. The form will then be referred to the cognizant NASA installation fiscal or financial management office for appropriate action.

* * * * *

■ 8. Amend § 1261.315 by revising paragraphs (b) introductory text and (c) introductory text to read as follows:

§ 1261.315 Procedures for the handling of lawsuits against NASA employees arising within the scope of their office or employment.

* * * * *

(b) Upon receipt of such process and pleadings, the Associate General Counsel for General Law or the Chief Counsel of the NASA installation receiving the same shall furnish to the U.S. Attorney for the district embracing the place where the action or proceeding is brought and, if appropriate, the Director, Torts Branch, Civil Division, Department of Justice, the following:

* * * * *

(c) The Associate General Counsel for General Law or a Chief Counsel acting pursuant to paragraph (b) of this section shall submit the following documents to the General Counsel, who is hereby designated to receive such documents on behalf of the Administrator:

* * * * *

■ 9. Amend § 1261.317 by revising paragraph (b) to read as follows:

§ 1261.317 Attorney-client privilege.

* * * * *

(b) Any adverse information communicated by the client-employee to an Agency attorney during the course of such attorney-client relationship shall not be disclosed to anyone, either inside or outside NASA, other than attorneys responsible for representation of the employee, unless such disclosure is authorized by the employee. Such adverse information shall continue to be fully protected whether or not representation is provided and even though representation may be denied or discontinued.

Subpart 1261.4—Collection of Civil Claims of the United States Arising Out of the Activities of the National Aeronautics and Space Administration (NASA)

■ 10. Amend § 1261.402 by revising paragraphs (b), (c), (d) and (e) to read as follows:

§ 1261.402 Delegation of authority.

* * * * *

(b) For Headquarters, with regard to subpart 1261.4 and subpart 1261.5: The Associate Administrator for Mission Support or a designee who reports directly to the Associate Administrator for Mission Support. A copy of such designation, if any, shall be sent to the Director, Financial Management Division, NASA Headquarters.

(c) With respect to the analysis required by § 1261.413: The NASA Chief Financial Officer or designee.

(d) NASA-wide, with regard to subpart 1261.6: The NASA Chief Financial Officer or designee.

(e) NASA-wide, for complying with pertinent provisions under these regulations for agency hearing or review (see §§ 1261.408(b), 1261.503, and 1261.603(c)): The NASA General Counsel or designee.

■ 11. Amend § 1261.403 by revising paragraph (a) introductory text to read as follows:

§ 1261.403 Consultation with appropriate officials; negotiation.

(a) The authority pursuant to § 1261.402 to determine to forgo collection of interest, to accept payment of a claim in installments, or, as to claims which do not exceed $100,000, exclusive of interest and related charges, to compromise a claim or to refrain from doing so, or to refrain from, suspend, or terminate collection action, shall be exercised only after consultation with legal counsel for the particular installation and the following NASA officials or designees, who may also be requested to negotiate the appropriate agreements or arrangements with the debtor:

* * * * *

■ 12. Amend § 1261.405 by revising paragraph (a) to read as follows:

§ 1261.405 Subdivision of claims not authorized; other administrative proceedings.

(a) *Subdivision of claims.* Claims may not be subdivided to avoid the $100,000 ceiling, exclusive of interest, penalties, and administrative costs, for purposes of compromise (§ 1261.414) or suspension or termination of collection (§ 1261.416). The debtor's liability arising from a particular transaction or contract shall be considered a single claim (31 CFR 900.6).

* * * * *

■ 13. Amend § 1261.407 by adding paragraph (b)(4) to read as follows:

* * * * *

(b) * * *

(4) The name, address, and phone number of a contact person or office within the Agency.

* * * * *

■ 14. Amend § 1261.408 by revising paragraph (b)(2)(ii) to read as follows:

§ 1261.408 Use of consumer reporting agency.

* * * * *

(b) * * *

(2) * * *

(ii) If a current address is available, notifying the individual by certified mail, return receipt requested, that: The designated NASA official has reviewed the claim and determined that it is valid and overdue; within not less than 60 days after sending this notice, NASA intends to disclose to a consumer reporting agency the specific information to be disclosed under paragraph (b)(1) of this section; the individual may request a complete explanation of the claim, dispute the information in the records of NASA about the claim, and file for an administrative review or repeal of the claim or for reconsideration of the initial decision on the claim.

* * * * *

■ 15. Amend § 1261.409 by revising paragraph (a) introductory text, adding paragraph (a)(5), revising paragraph (b), and adding paragraph (c) to read as follows:

§ 1261.409 Contracting for collection services.

(a) When NASA determines that there is a need to contract for collection services, the following conditions shall apply:

* * * * *

(5) The debt must not be subject to mandatory transfer to the Department of the Treasury for collection. See 31 CFR 901.5(a) and (b).

(b) NASA shall use Government-wide debt collection contracts to obtain debt collection services provided by private collection contractors. See 31 CFR 901.5(b).

(c) NASA shall fund private collection contractor contracts in accordance with 31 U.S.C. 3728(d) or as otherwise permitted by law. See 31 CFR 901.5(c).

■ 16. Amend § 1261.411 by revising paragraph (a) to read as follows:

§ 1261.411 Collection in installments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest penalties, and administrative costs as required by § 1261.412, should be collected in full in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. Debtors who represent that they are unable to pay the debt in one lump sum must submit justification, including financial statements. If NASA agrees to accept payment in regular installments, it will obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than three years. Installment payments of less than $50 per month should be accepted only if justifiable on the grounds of financial hardship or similar reasonable cause. If the claim is unsecured, an executed confess-judgment note should be obtained from a debtor when the total amount of the deferred installments will exceed $750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, the debtor should be provided with written explanation of the consequences of signing the note, and documentation should be maintained sufficient to demonstrate that the debtor has signed the note knowingly and voluntarily. Security for deferred payments other than a confess-judgment note may be accepted in appropriate cases. NASA, at its option, may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security.

* * * * *

■ 17. Amend § 1261.412 by revising paragraph (i)(1)(iv) and (i)(2) to read as follows:

§ 1261.412 Interest, penalties, and administrative costs.

* * * * *

(i) * * *

(1) * * *

(iv) To debts arising under the Social Security Act, the Internal Revenue Code, or the tariff laws of the United States.

(2) NASA may, however, assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or applicable statutory authority.

■ 18. Amend § 1261.413 by revising the introductory text to read as follows:

§ 1261.413 Analysis of costs; automation; prevention of overpayments, delinquencies, or defaults.

The Office of the NASA Chief Financial Officer will:

* * * * *

■ 19. Amend § 1261.414 by revising paragraphs (a) and (b) to read as follows:

§ 1261.414 Compromise of claims.

(a) Designated NASA officials (see §§ 1261.402 and 1261.403) may compromise claims for money or property arising out of the activities of the Agency where the claim, exclusive of interest, penalties, and administrative costs, does not exceed $100,000, prior to the referral of such claims to the Government Accountability Office, or to the Department of Justice for litigation. The Comptroller General may exercise such compromise authority with respect to claims referred to the Government Accountability Office prior to their further referral for litigation. Only the Comptroller General may effect the compromise of a claim that arises out of an exception made by the Government Accountability Office in the account of an accountable officer, including a claim against the payee, prior to its referral by the Government Accountability Office for litigation.

(b) When the claim, exclusive of interest, penalties, and administrative costs, exceeds $100,000, the authority to accept the compromise rests solely with the Department of Justice. NASA should evaluate the offer, using the factors set forth in paragraphs (c) through (f) of this section, and may recommend compromise for reasons under one, or more than one, of those paragraphs. If NASA then wishes to accept the compromise, it must refer the matter to the Department of Justice, using the Claims Collection Litigation Report. See § 1261.417(e) or 31 CFR 904.2(c). Claims for which the gross amount is over $200,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is $200,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. The referral should specify the reasons for the Agency's recommendation. If NASA has a debtor's firm written offer of compromise which is substantial in amount and the Agency is uncertain as to whether the offer should be accepted, it may refer the offer, the supporting data, and particulars concerning the claim to the Government Accountability Office or to the Department of Justice. The Government Accountability Office or the Department of Justice may act upon such an offer or return it to the agency with instructions or advice. If NASA wishes to reject the compromise, Government Accountability Office or Department of Justice approval is not required.

* * * * *

■ 20. Amend § 1261.416 by revising paragraphs (a), (b), (c)(3)(iii) and (e) to read as follows:

§ 1261.416 Suspending or terminating collection action.

(a) The standards set forth in this section apply to the suspension or termination of collection action pursuant to 31 U.S.C. 3711(a)(3) on claims which do not exceed $100,000, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any. NASA may suspend or terminate collection action under this part with respect to claims for money or property arising out of activities of the Agency, prior to the referral of such claims to the Government Accountability Office or to the Department of Justice for litigation. The Comptroller General (or designee) may exercise such authority with respect to claims referred to the Government Accountability Office prior to their further referral for litigation.

(b) If, after deducting the amount of partial payments or collections, if any, a claim exceeds $100,000, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the Department of Justice. If the designated official believes suspension or termination may be appropriate, the matter should be evaluated using the factors set forth in paragraphs (c) and (d) of this section. If the Agency concludes that suspension or termination is appropriate, it must refer the matter, with its reasons for the recommendation, to the Department of Justice, using the Claims Collection Litigation Report. See § 1261.417(e) or 31 CFR 904.2(c). If NASA decides not to suspend or terminate collection action on the claim, Department of Justice approval is not required; or if it determines that its claim is plainly erroneous or clearly without legal merit, it may terminate collection action regardless of the amount involved, without the need for Department of Justice concurrence.

(c) * * *

(3) * * *

(iii) Collection of the debt will cause undue hardship on the debtor.

* * * * *

(e) *Transfer of claim.* When NASA has doubt as to whether collection action should be suspended or terminated on a claim, it may refer the claim to the Government Accountability Office for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a Government-sponsored program, NASA may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration under paragraphs (d)(1) and (2) of this section. Claims on which NASA holds a judgment by assignment or otherwise will be referred to the Department of Justice for further action if renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this section.

■ 21. Amend § 1261.417 by revising the section heading and paragraphs (c) and (d) to read as follows:

§ 1261.417 Referral to Department of Justice or Government Accountability Office.

* * * * *

(c) When the merits of the claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination are in doubt, the designated official should refer the matter to the Government Accountability Office for resolution and instructions prior to proceeding with collection action and/or referral to the Department of Justice for litigation.

(d) Once a claim has been referred to the Government Accountability Office or to the Department of Justice pursuant to this section, NASA shall refrain from having any contact with the debtor about the pending claim and shall direct the debtor to the Government Accountability Office or to the Department of Justice, as appropriate, when questions concerning the claim are raised by the debtor. The Government Accountability Office or the Department of Justice, as appropriate, shall be immediately notified by NASA of any payments which are received from the debtor subsequent to referral of a claim under this section.

* * * * *

■ 22. Add § 1261.418 to read as follows:

§ 1261.418 Transfer of debts to Treasury for collection.

Unless subject to an exception identified in 31 CFR 285.12(d), NASA shall transfer any debt that is more than 180 days delinquent to the Financial Management Service for debt collection services in accordance with the procedures described in 31 CFR 285.12.

Subpart 1261.5—Administrative Offset of Claims

■ 23. Amend § 1261.500 by revising paragraphs (a), (b), and (c) introductory text to read as follows:

§ 1261.500 Scope of subpart.

(a) This subpart applies to collection of claims by administrative offset under section 5 of the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996 (31 U.S.C. 3716), other statutory authority, or the common law; it does not include ''Salary Offset,'' which is governed by subpart 1261.6, infra.

(b) NASA shall refer past due, legally enforceable nontax debts which are over 180 days delinquent to the Secretary of the Treasury for collection by centralized administrative offset. For purposes of debts governed by this provision, NASA adopts and will follow the procedures established by the Department of the Treasury in 31 CFR 901.3.

(c) For claims not subject to mandatory transfer to the Department of the Treasury pursuant to paragraph (b), NASA may consider *ad hoc* non-centralized administrative offset of claims at its sole discretion. Any *ad hoc* non-centralized administrative offset of claims will be conducted consistent with the requirements of 31 CFR 901.3(c).

* * * * *

■ 24. Amend § 1261.503 by revising paragraphs (a) introductory text, (a)(2), (b), and (c) to read as follows:

§ 1261.503 Agency records inspection; hearing or review.

(a) NASA shall provide the debtor with a reasonable opportunity for a live, telephonic, or video-teleconference hearing when:

* * * * *

(2) Unless otherwise required by law, a hearing under this section is not required to be a formal evidentiary-type hearing, although significant matters discussed at the hearing should be documented. See 31 CFR 901.3(e)(1). Such hearing may be an informal discussion/interview with the debtor, face-to-face meeting between debtor and cognizant NASA personnel, or written formal submission by the debtor and response by the NASA cognizant personnel with an opportunity for oral presentation. The hearing will be conducted before or in the presence of an official as designated by the NASA General Counsel on a case-by-case basis. The hearing is not an adversarial adjudication and need not take the form

of an evidentiary hearing. However, depending on the particular facts and circumstances, the hearing may be analogous to a fact-finding proceeding with oral presentations; or an informal meeting with or interview of the employee; or formal written submissions, with an opportunity for oral presentation, and decision based on the available written record. Ordinarily, hearings may consist of informal conferences before the hearing official in which the employee and Agency officials will be given full opportunity to present evidence, witnesses, and argument. The employee may represent himself or herself or be represented by an individual of his or her choice at no cost to the United States. The hearing official must maintain or provide for a summary record of the hearing provided under this subpart. The decision of the reviewing/hearing official should be communicated in writing (no particular form is required) to the affected parties and will constitute the final administrative decision of the Agency.

(b) Paragraph (a) of this section does not require a hearing with respect to debt collection systems, as determinations of indebtedness or waiver from these rarely involve issues of credibility or veracity since NASA has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. See 31 CFR 901.3(e)(3).

(c) In those cases where a live, telephonic, or video-teleconference hearing is not required or granted, NASA will nevertheless accord the debtor an opportunity to submit any position regarding the matter by documentation and/or written presentation—that is, the Agency will make its determination on the request for waiver or reconsideration based upon a review of the available written record. See 31 CFR 901.3(e)(4). In such case, the responsible official or designee shall refer the request to the appropriate NASA Office of General Counsel or Chief Counsel for review and recommendation.

* * * * *

■ 25. Amend § 1261.507 by revising paragraph (e)(3) to read as follows:

§ 1261.507 Civil Service Retirement and Disability Fund.

* * * * *

(e) * * *

(3) Provide or not provide a live, telephonic, or video-teleconference hearing.

Subpart 1261.6—Collection by Offset From Indebted Government Employees

■ 26. Amend § 1261.601 by revising paragraph (b)(2) to read as follows:

§ 1261.601 Scope of subpart.

* * * * *

(b) * * *

(2) *Waiver requests and claims to the Government Accountability Office.* This subpart does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the Government Accountability Office in accordance with procedures prescribed by the Government Accountability Office. Similarly, in the case of other types of debts, it does not preclude an employee from requesting waiver, if waiver is available under any statutory provision pertaining to the particular debt being collected.

■ 27. Amend § 1261.603 by revising the introductory text and paragraphs (a) introductory text and (c)(2) and (5), removing paragraphs (c)(6) through (8), and revising paragraph (e) to read as follows:

§ 1261.603 Procedures for salary offset.

If NASA determines that a Federal employee is indebted to the United States or is notified of such by the head of another agency (or delegee), the amount of indebtedness may be collected in monthly installments, or regularly established pay intervals, by deduction from the affected employee's pay account. The deductions may be made from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, from other authorized pay. The requirements in paragraphs (a) through (h) of this section must be met before a deduction is made from the current pay account of an employee.

(a) *Written notice.* The employee must be sent a minimum of 30 days written notice prior to further offset action, which specifies:

* * * * *

(c) * * *

(2) The petition should be addressed to the Agency counsel designated in the notice, but the hearing will be conducted by an official not under the supervision or control of the NASA Administrator. The Agency Chief Financial Officer is authorized to appoint an administrative law judge or other Federal executive branch employee or official on a reimbursable or other basis. Notice of the name and address of the hearing official will be sent to the employee within 10 days of receipt of petition.

* * * * *

(5) As for the conduct of any live, telephonic, or video teleconference hearing, for additional guidance see 14 CFR 1261.503.

* * * * *

(e) *Limitation on amount and duration of deductions.* Ordinarily, debts are to be collected in one lump-sum payment. However, if the employee is financially unable to pay in one lump sum or if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay (see 14 CFR 1261.411), but the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made (unless the employee has agreed in writing to the deduction of a greater amount). Deduction must commence with the next full pay interval (ordinarily, the next biweekly pay period). Such installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be, except as provided in paragraph (f) of this section.

* * * * *

Nanette Smith,

NASA Federal Register Liaison Officer.

[FR Doc. 2017–13421 Filed 6–28–17; 8:45 am]

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SUSQUEHANNA RIVER BASIN COMMISSION

18 CFR Parts 806 and 808

Review and Approval of Projects; Hearings and Enforcement Actions

AGENCY: Susquehanna River Basin Commission.

ACTION: Final rule.

SUMMARY: This document contains rules that would amend the regulations of the Susquehanna River Basin Commission (Commission) to clarify application requirements and standards for review of projects, add a subpart to provide for registration of grandfathered projects, and revise requirements dealing with hearings and enforcement actions. These rules are designed to enhance the Commission's existing authorities to manage the water resources of the basin and add regulatory clarity.

DATES: This rule is effective July 1, 2017, except for the amendments to § 806.4(a)(1)(iii) and (a)(2)(iv) and the addition of subpart E to part 806 which are effective January 1, 2018.

ADDRESSES: Susquehanna River Basin Commission, 4423 N. Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, Esq., General Counsel, telephone: 717–238–0423, ext. 1312; fax: 717–238–2436; email: *joyler@srbc.net.* Also, for further information on the final rulemaking, including the comment response document, visit the Commission's Web site at *www.srbc.net.*

SUPPLEMENTARY INFORMATION: Notice of proposed rulemaking was published in the **Federal Register** on September 21, 2016 (81 FR 64812); *New York Register* on October 5, 2016; *Pennsylvania Bulletin* on October 8, 2016; and *Maryland Register* on October 14, 2017. The Commission convened four public hearings: On November 3, 2016, in Harrisburg, Pennsylvania; on November 9, 2016, in Binghamton, New York; on November 10, 2016, in Williamsport, Pennsylvania; and on December 8, 2016, in Annapolis, Maryland. A written comment period was held open through January 30, 2017.

The Commission received 14 written public comments in addition to testimony received at the public hearings. The Commission has prepared a comment response document, which is available to the public at *www.srbc.net.* Comments that led to a change to the proposed rulemaking and their responses are discussed below.

Registration of Grandfathered Projects, Subpart E and § 806.4(a)(1)(iii) and (a)(2)(iv)

Comment: The Commission should allow projects to register a grandfathered amount previously determined by the Commission if it is not seeking a higher amount through the registration process.

Response: The Commission agrees that previous grandfathering determinations should be honored if the project wishes to register that amount. A new paragraph (c) is added in § 806.44 allowing the Executive Director to use past grandfathering determinations, and revisions are made to § 806.42(b) allowing the Commission to waive certain registration information if a project is relying on a past grandfathering determination.

Comment: Ongoing reporting requirements need to be linked to member jurisdiction reporting to avoid duplication of effort and confusion.

Response: The Commission agrees with the commenter that it is important to avoid unnecessary duplication of effort with state law requirements. Section 806.43(c) notes that if quantity reporting is required by the member jurisdiction where the project is located, the Commission may accept that reporting to satisfy the requirements of this paragraph. This evidences the Commission's intent to use its best efforts to accept state reporting requirements where appropriate. The Commission will add language to §§ 806.42(a)(6) and 806.43(c) to clarify its intention to rely on member jurisdiction reporting where it is able, and that any additional reporting required will be because it is not duplicated by the member jurisdiction. A new § 806.43(d) is added to emphasize the commitment of the Commission and its member jurisdiction to share all reporting data and to further the goal of creating a unified data set for all agencies involved.

Comment: The proposed rule at § 806.4(a)(1)(iii)(A) and (a)(2)(iv)(A) changes the current rule that allows a grandfathered consumptive use an additional increase of up to 20,000 gpd and a grandfathered withdrawal an additional increase of up to 100,000 gpd before review and approval of the grandfathered activity is triggered. This leeway should be restored for grandfathered projects.

Response: In most instances, the registration process will allow grandfathered projects sufficient margin for operational flexibility. However, the Commission agrees that the registration process should not put a project in jeopardy of needing review and approval subsequent to registration absent a change to the project. A new factor is added as § 806.44(b)(4) that allows the Executive Director to consider whether the grandfathered amount includes an operational margin of safety.

Comment: The proposed rule provides that the determination of the grandfathered quantity will be based on the most recent data. This may be too restrictive and projects should be allowed to submit more than the last five years of data and where such data is submitted, the Executive Director should base the determination under § 806.44 on the peak 30-day average for withdrawals and consumptive uses shown by the data.

Response: The Commission agrees that the factor as written could be clarified and the final rule reflects a revision to § 806.44(b)(1) to allow more than a minimum of five years of data to be submitted and that the Executive Director will consider the withdrawal and use data and the peak consecutive 30-day average shown by all the data submitted.

Consumptive Use Mitigation, § 806.22

Comments: The Commission should not adopt the Consumptive Use Mitigation Policy and the changes to the Consumptive Use Mitigation Rule.

The Commission should not shift the responsibility for physical consumptive use mitigation to project sponsors because project sponsor based mitigation will be more balkanized and less effective and the Commission has powerful tools to set up projects to provide such mitigation from the Compact.

The mitigation plan proposal should be removed or smaller projects should be able to have an abbreviated consumptive use mitigation alternative analysis.

New consumptive use mitigation requirements should not be applied retroactively to existing projects upon renewal.

The proposed rule should be revised to allow greater use of groundwater storage and quarries and be more flexible with respect to the ''no impacts'' to surface water requirements for such mitigation.

The Commission should focus its mitigation requirements to the low flow period.

All references to water critical planning areas should be removed. Article 11 of the Compact provides for designation of protected areas. This concept appears to circumvent those procedures.

Water critical areas should not be based on member jurisdiction planning areas and it should not be a mechanism to require mitigation for pre-compact consumptive use.

Response: The Commission has reviewed the detailed comments regarding how the Commission requires consumptive use mitigation and the options of projects to provide such mitigation. The Commission will further examine and reevaluate its policies and procedures for consumptive use and consumptive use mitigation in a more comprehensive fashion. As a result, the Commission will not move forward with the changes to the Consumptive Use Mitigation Policy and the consumptive use mitigation rule as follows. The definition of ''water critical area'' in § 806.3 is removed and all references to water critical areas are removed from §§ 806.22 and 808.1. The reference and changes associated with a mitigation plan in § 806.22(b) are removed. The

changes associated with amending the 90 day mitigation requirement to 45 days in § 806.22(b)(1)(i) and (ii) are removed and reserved for the reevaluation process for consumptive use mitigation described above.

Project Review Application Procedures and Standards for Review and Approval—18 CFR Part 806, Subparts B and C

Comment: The Commission should clarify how the alternatives analysis under § 806.14(b)(2)(v) differs from the previous provision in the current rules at § 806.14(b)(1)(iii) and specify what is expected from applicants.

Response: The purpose for this requirement is to document the project sponsor's consideration of alternatives during planning of the proposed project to include, but not be limited to, identification of reasonable alternatives to the proposed water withdrawal project, the extent of the project sponsor's economic and technical investigation, the adequacy of the source to meet the demand, an assessment of the potential environmental impact, and measures for avoidance or minimization of adverse impact of each alternative. Specifically, the alternatives analysis should include identification of reasonable alternative water sources and locations, including opportunities for uses of lesser quality waters; project footprint and infrastructure; opportunities for water conservation or water saving technology; requirements of the uses of the water as related to the proposed locations; the economic feasibility of the alternative(s) and technical opportunities or limitations identified in the evaluation of reasonable alternate sites. The Commission is preparing a draft policy to outline how alternative analyses should be conducted and evaluated, and will release it for public comment prior to consideration for Commission adoption. In addition, on final rulemaking, the Commission will adjust the language of § 806.14(b)(1)(v) to make clear that the analysis is needed only for new projects and for major modifications that seek to increase the surface water withdrawal.

Comment: The Commission should reconcile the application requirements in § 806.14 to recognize that the potential for waiver of the aquifer testing requirements in § 806.12.

Response: The Commission agrees and has revised § 806.14(b)(2)(i) and (d)(2)(i).

Comment: The Commission should clarify whether renewals that involve a major modification should be handled under the new application and major modification standards in § 806.14(a) and (b) or in the renewal standards in § 806.14(c) and (d).

Response: The Commission agrees that the rule should be clarified and proposes changes to § 806.14(c) and 806.14(d)(2), (4) and (6) to establish that renewal applications, with either minor or major modifications, are subject to § 806.14(c) and (d).

Comment: The Commission should accept other types of certified mail proof of delivery beyond the US Postal Service under § 806.15(g).

Response: The Commission agrees and § 806.15(g) is revised to include the verified return delivery receipt from a comparable delivery service to the U.S. Postal Service.

Comment: The Commission should revise § 806.15(b)(3) to clarify which property is subject to the notice requirements and should read ''where the property *of such property owner* is served by a public water supply.''

Response: The Commission agrees and the final rulemaking is revised accordingly.

Comment: The Commission should exempt AMD passive treatment systems from the requirements for mining and construction dewatering under §§ 806.14(b)(6) and (d)(6) and 806.23(b)(5).

Response: The Commission has not extended its review jurisdiction over *passive* AMD treatment facilities and nothing in the proposed rule was meant to alter that long standing determination. Accordingly, the final rule contains revisions to §§ 806.14(b)(6) and (d)(6) and 806.23(b)(5) to remove the word ''gravity-drained'' and clarify its application to ''AMD facilities that qualify as a withdrawal.''

Miscellaneous Changes

Comment: Including in § 808.2(a) that the 30 day appeal period can run from publication on the Commission's Web site creates issues, including knowing whether the appeal period runs from publication on the Web site or the **Federal Register** and the fact that it is not always clear when something is posted to a Web site or is easily found on the Web site.

Response: The final rule revises § 808.2(a) to remove this language. The 30-day appeal period for third party appeals will run from the date of publication in the **Federal Register**.

Comment: The addition of ''or other fluids associated with the development of natural gas resources'' to the definition of ''production fluids'' under § 806.3 is inaccurate and over-inclusive. The revised definition of production fluids would cause confusion with the member jurisdiction terminology. The commenter is supportive of the stated goal of this change and proposed additional language to be added in other parts of regulations.

Response: The final rule removes the change to the definition of ''production fluid.'' The revision proposed by the commenter will be evaluated for inclusion in a future rulemaking.

Comment: The addition of ''consumptive use'' to the definition of ''facility'' in § 806.3 is unwarranted as the definition of ''facility'' matches the definition in the Compact.

Response: The final rule will remove the amendment to the definition of ''facility''. However, the definition of facility includes plants, structures, machinery and equipment acquired, constructed, operated or maintained for the beneficial use of water resources that includes the consumptive use of water.

The Commission also is making additional housekeeping changes on the final rulemaking:

(1) § 806.6(b)(6) (related to transfers of approvals) was added to recognize registered grandfathered aspects of a project under subpart E.

(2) The phrase ''hydro report'' in § 806.14(d)(2)(ii) was clarified to ''hydrogeologic report''.

(3) The word ''Commission's'' is removed from § 806.41(c).

Transition Issues

As noted in the **DATES** section, this rule will take effect on July 1, 2017, with the exception of the adoption of subpart E (related to registration of grandfathered projects) and the corresponding changes to § 806.4(a)(1)(iii) and (a)(2)(iv), which take effect on January 1, 2018.

Coincident with the authorization to adopt this final rulemaking, the Commission also adopted a Regulatory Program Fee Schedule that sets forth the fee for registration for grandfathered projects. This fee schedule is available on the Commission's Web site at *www.srbc.net/policies/policies.htm.*

List of Subjects in 18 CFR Parts 806 and 808

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission amends 18 CFR parts 806 and 808 as follows:

PART 806—REVIEW AND APPROVAL OF PROJECTS

■ 1. The authority citation for part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509, *et seq.*

■ 2. Amend § 806.1 by revising paragraphs (a) and (f) to read as follows:

§ 806.1806.1 Scope.

(a) This part establishes the scope and procedures for review and approval of projects under section 3.10 of the Susquehanna River Basin Compact, Pub. L. 91–575, 84 Stat. 1509, *et seq.,* (the compact) and establishes special standards under section 3.4(2) of the compact governing water withdrawals, the consumptive use of water, and diversions. The special standards established pursuant to section 3.4(2) shall be applicable to all water withdrawals and consumptive uses in accordance with the terms of those standards, irrespective of whether such withdrawals and uses are also subject to project review under section 3.10. This part, and every other part of 18 CFR chapter VIII, shall also be incorporated into and made a part of the comprehensive plan.

* * * * *

(f) Any Commission forms or documents referenced in this part may be obtained from the Commission at 4423 North Front Street, Harrisburg, PA 17110, or from the Commission's Web site at *www.srbc.net.*

■ 3. In § 806.3, add, in alphabetical order, a definition for ''Wetlands'' to read as follows:

§ 806.3806.3 Definitions.

* * * * *

Wetlands. Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

* * * * *

■ 4. Amend § 806.4 by revising paragraphs (a) introductory text, (a)(1)(iii), (a)(2) introductory text, and (a)(2)(iv) and adding paragraph (a)(3)(vii) to read as follows:

§ 806.4806.4 Projects requiring review and approval.

(a) Except for activities relating to site evaluation, to aquifer testing under § 806.12 or to those activities authorized under § 806.34, no person shall undertake any of the following projects without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B of this part and shall be subject to the applicable standards in subpart C of this part.

(1) * * *

(iii) With respect to projects that existed prior to January 23, 1971, any project:

(A) Registered in accordance with subpart E of this part that increases its consumptive use by any amount over the quantity determined under § 806.44;

(B) Increasing its consumptive use to an average of 20,000 gpd or more in any consecutive 30-day period; or

(C) That fails to register its consumptive use in accordance with subpart E of this part.

* * * * *

(2) *Withdrawals.* Any project, including all of its sources, described below shall require an application to be submitted in accordance with § 806.13, and shall be subject to the standards set forth in §§ 806.21 and 806.23. Hydroelectric projects, except to the extent that such projects involve a withdrawal, shall be exempt from the requirements of this section regarding withdrawals; provided, however, that nothing in this paragraph (a)(2) shall be construed as exempting hydroelectric projects from review and approval under any other category of project requiring review and approval as set forth in this section, § 806.5, or part 801 of this chapter. The taking or removal of water by a public water supplier indirectly through another public water supply system or another water user's facilities shall constitute a withdrawal hereunder.

* * * * *

(iv) With respect to groundwater projects that existed prior to July 13, 1978, surface water projects that existed prior to November 11, 1995, or projects that existed prior to January 1, 2007, with multiple sources involving a withdrawal of a consecutive 30-day average of 100,000 gpd or more that did not require Commission review and approval, any project:

(A) Registered in accordance with subpart E of this part that increases its withdrawal by any amount over the quantity determined under § 806.44;

(B) Increasing its withdrawal individually or cumulatively from all sources to an average of 100,000 gpd or more in any consecutive 30-day period; or

(C) That fails to register its withdrawals in accordance with subpart E of this part.

* * * * *

(3) * * *

(vii) The diversion of any flowback or production fluids from hydrocarbon development projects located outside the basin to an in-basin treatment or disposal facility authorized under separate government approval to accept flowback or production fluids, shall not be subject to separate review and approval as a diversion under this paragraph (c)(3), provided the fluids are handled, transported and stored in compliance with all standards and requirements of the applicable member jurisdiction.

* * * * *

■ 5. Amend § 806.6 by adding paragraph (b)(6) to read as follows:

§ 806.6806.6 Transfer of approvals.

* * * * *

(b) * * *

(6) The project is registered under subpart E of this part.

* * * * *

■ 6. Amend § 806.11 by revising paragraph (b) to read as follows:

§ 806.11 Preliminary consultations.

* * * * *

(b) Except for project sponsors of electric power generation projects under § 801.12(c)(2) of this chapter, preliminary consultation is optional for the project sponsor (except with respect to aquifer test plans under § 806.12) but shall not relieve the sponsor from complying with the requirements of the compact or with this part.

■ 7. Amend § 806.12 by revising paragraph (a) and adding paragraph (f) to read as follows:

§ 806.12 Constant-rate aquifer testing.

(a) Prior to submission of an application pursuant to § 806.13, a project sponsor seeking approval for a new groundwater withdrawal, a renewal of an expiring groundwater withdrawal, or an increase of a groundwater withdrawal shall perform a constant-rate aquifer test in accordance with this section.

* * * * *

(f) Review of submittals under this section may be terminated by the Commission in accordance with the procedures set forth in § 806.16.

■ 8. Revise § 806.14 to read as follows:

§ 806.14 Contents of application.

(a) Applications for a new project or a major modification to an existing approved project shall include, but not be limited to, the following information and, where applicable, shall be subject to the requirements in paragraph (b) of this section and submitted on forms and in the manner prescribed by the Commission.

(1) Identification of project sponsor including any and all proprietors,

corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on a map with a 7.5-minute USGS topographic base, and evidence of legal access to the property upon which the project is proposed.

(3) Project description, including: Purpose, proposed quantity to be withdrawn or consumed, if applicable, and identification of all water sources related to the project including location and date of initiation of each source.

(4) Anticipated impact of the project, including impacts on existing water withdrawals, nearby surface waters, and threatened or endangered species and their habitats.

(5) The reasonably foreseeable need for the proposed quantity of water to be withdrawn or consumed, including supporting calculations, and the projected demand for the term of the approval.

(6) A metering plan that adheres to § 806.30.

(7) Evidence of coordination and compliance with member jurisdictions regarding all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project.

(8) Project estimated completion date and estimated construction schedule.

(9) Draft notices required by § 806.15.

(10) The Commission may also require the following information as deemed necessary:

(i) Engineering feasibility.

(ii) Ability of the project sponsor to fund the project.

(b) Additional information is required for a new project or a major modification to an existing approved project as follows.

(1) *Surface water.* (i) Water use and availability.

(ii) Project setting, including surface water characteristics, identification of wetlands, and site development considerations.

(iii) Description and design of intake structure.

(iv) Anticipated impact of the proposed project on local flood risk, recreational uses, fish and wildlife, and natural environment features.

(v) For new projects and major modifications to increase a withdrawal, alternatives analysis for a withdrawal proposed in settings with a drainage area of 50 miles square or less, or in a waterway with exceptional water quality, or as required by the Commission.

(2) *Groundwater*—(i) With the exception of mining related withdrawals solely for the purpose of dewatering; construction dewatering withdrawals and withdrawals for the sole purpose of groundwater or below water table remediation generally which are addressed in paragraph (b)(6) of this section, the project sponsor shall provide an interpretative report that includes all monitoring and results of a constant-rate aquifer test consistent with § 806.12 and an updated groundwater availability estimate if changed from the aquifer test plan, unless a request for a waiver of the requirements of § 806.12 is granted. The project sponsor shall obtain Commission approval of the test procedures prior to initiation of the constant-rate aquifer test.

(ii) Water use and availability.

(iii) Project setting, including nearby surface water features.

(iv) Groundwater elevation monitoring plan for all production wells.

(v) Alternatives analysis as required by the Commission.

(3) *Consumptive use.* (i) Consumptive use calculations, and a mitigation plan consistent with § 806.22(b).

(ii) Water conservation methods, design or technology proposed or considered.

(iii) Alternatives analysis as required by the Commission.

(4) *Into basin diversions.* (i) Provide the necessary information to demonstrate that the proposed project will meet the standards in § 806.24(c).

(ii) Identification of the source and water quality characteristics of the water to be diverted.

(5) *Out of basin diversions.* (i) Provide the necessary information to demonstrate that the proposed project will meet the standards in § 806.24(b).

(ii) Project setting.

(6) *Other projects.* Other projects, including without limitation, mine dewatering, construction dewatering, water resources remediation projects, and AMD remediation facilities that qualify as a withdrawal.

(i) In lieu of aquifer testing, report(s) prepared for any other purpose or as required by other governmental regulatory agencies that provides a demonstration of the hydrogeologic and/or hydrologic effects and limits of said effects due to operation of the proposed project and effects on local water availability.

(ii) [Reserved]

(c) All applications for renewal of expiring approved projects, including those with minor or major modifications, shall include, but not be limited to, the following information, and, where applicable, shall be subject to the requirements in paragraph (d) of this section and submitted on forms and in the manner prescribed by the Commission.

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters, the project location displayed on map with a 7.5-minute USGS topographic base, and evidence of legal access to the property upon which the project is located.

(3) Project description, to include, but not be limited to: Purpose, proposed quantity to be withdrawn or consumed if applicable, identification of all water sources related to the project including location and date of initiation of each source, and any proposed project modifications.

(4) The reasonably foreseeable need for the requested renewal of the quantity of water to be withdrawn or consumed, including supporting calculations, and the projected demand for the term of the approval.

(5) An as-built and approved metering plan.

(6) Copies of permits from member jurisdictions regarding all necessary permits or approvals obtained for the project from other federal, state, or local government agencies having jurisdiction over the project.

(7) Copy of any approved mitigation or monitoring plan and any related as-built for the expiring project.

(8) Demonstration of registration of all withdrawals or consumptive uses in accordance with the applicable state requirements.

(9) Draft notices required by § 806.15.

(d) Additional information is required for the following applications for renewal of expiring approved projects.

(1) *Surface water.* (i) Historic water use quantities and timing of use.

(ii) Changes to stream flow or quality during the term of the expiring approval.

(iii) Changes to the facility design.

(iv) Any proposed changes to the previously authorized purpose.

(2) *Groundwater*—(i) The project sponsor shall provide an interpretative report that includes all monitoring and results of any constant-rate aquifer testing previously completed or submitted to support the original approval. In lieu of a testing report,

historic operational data pumping and elevation data may be considered, as a request for waiver of the requirements of § 806.12. Those projects that did not have constant-rate aquifer testing completed for the original approval that was consistent with § 806.12 or sufficient historic operational pumping and groundwater elevation data may be required to complete constant-rate aquifer testing consistent with § 806.12, prepare and submit an interpretative report that includes all monitoring and results of any constant-rate aquifer test.

(ii) An interpretative report providing analysis and comparison of current and historic water withdrawal and groundwater elevation data with previously completed hydrogeologic report.

(iii) Current groundwater availability analysis assessing the availability of water during a 1-in-10 year recurrence interval under the existing conditions within the recharge area and predicted for term of renewal (*i.e.,* other users, discharges, and land development within the groundwater recharge area).

(iv) Groundwater elevation monitoring plan for all production wells.

(v) Changes to the facility design.

(vi) Any proposed changes to the previously authorized purpose.

(3) *Consumptive use.* (i) Consumptive use calculations, and a copy of the approved plan or method for mitigation consistent with § 806.22.

(ii) Changes to the facility design.

(iii) Any proposed changes to the previously authorized purpose.

(4) *Into basin diversion.* (i) Provide the necessary information to demonstrate that the proposed project will meet the standards in § 806.24(c).

(ii) Identification of the source and water quality characteristics of the water to be diverted.

(iii) Changes to the facility design.

(iv) Any proposed changes to the previously authorized purpose.

(5) *Out of basin diversion.* (i) Historic water use quantities and timing of use.

(ii) Changes to stream flow or quality during the term of the expiring approval.

(iii) Changes to the facility design.

(iv) Any proposed changes to the previously authorized purpose,

(6) *Other projects.* Other projects, including without limitation, mine dewatering, water resources remediation projects, and AMD facilities that qualify as a withdrawal.

(i) Copy of approved report(s) prepared for any other purpose or as required by other governmental regulatory agencies that provides a demonstration of the hydrogeologic and/or hydrologic effects and limits of said effects due to operation of the project and effects on local water availability.

(ii) Any data or reports that demonstrate effects of the project are consistent with those reports provided in paragraph (d)(6)(i) of this section.

(iii) Demonstration of continued need for expiring approved water source and quantity.

(iv) Changes to the facility design.

(v) Any proposed changes to the previously authorized purpose.

(e) A report about the project prepared for any other purpose, or an application for approval prepared for submission to a member jurisdiction, may be accepted by the Commission provided the said report or application addresses all necessary items on the Commission's form or listed in this section, as appropriate.

(f) Applications for minor modifications must be complete and will be on a form and in a manner prescribed by the Commission. Applications for minor modifications must contain the following:

(1) Description of the project;

(2) Description of all sources, consumptive uses and diversions related to the project;

(3) Description of the requested modification;

(4) Statement of the need for the requested modification; and

(5) Demonstration that the anticipated impact of the requested modification will not adversely impact the water resources of the basin.

(g) For any applications, the Executive Director or Commission may require other information not otherwise listed in this section.

■ 9. Amend § 806.15 by revising paragraph (a), adding paragraph (b)(3), and revising paragraph (g) to read as follows:

§ 806.15 Notice of application.

(a) Except with respect to paragraphs (h) and (i) of this section, any project sponsor submitting an application to the Commission shall provide notice thereof to the appropriate agency of the member State, each municipality in which the project is located, and the county and the appropriate county agencies in which the project is located. The project sponsor shall also publish notice of submission of the application at least once in a newspaper of general circulation serving the area in which the project is located. The project sponsor shall also meet any of the notice requirements set forth in paragraphs (b) through (f) of this section, if applicable. All notices required under this section shall be provided or published no later than 20 days after submission of the application to the Commission and shall contain a description of the project, its purpose, the requested quantity of water to be withdrawn, obtained from sources other than withdrawals, or consumptively used, and the address, electronic mail address, and phone number of the project sponsor and the Commission. All such notices shall be in a form and manner as prescribed by the Commission.

(b) * * *

(3) For groundwater withdrawal applications, the Commission or Executive Director may allow notification of property owners through alternate methods where the property of such property owner is served by a public water supply.

* * * * *

(g) The project sponsor shall provide the Commission with a copy of the United States Postal Service return receipt or the verified return receipt from a comparable delivery service for the notifications to agencies of member States, municipalities and appropriate county agencies required under paragraph (a) of this section. The project sponsor shall also provide certification on a form provided by the Commission that it has published the newspaper notice(s) required by this section and made the landowner notifications as required under paragraph (b) of this section, if applicable. Until these items are provided to the Commission, processing of the application will not proceed. The project sponsor shall maintain all proofs of publication and records of notices sent under this section for the duration of the approval related to such notices.

* * * * *

■ 10. Amend § 806.21 by revising paragraphs (a) and (c)(1) to read as follows:

§ 806.21 General standards.

(a) A project shall be feasible and not be detrimental to the proper conservation, development, management, or control of the water resources of the basin.

* * * * *

(c) * * *

(1) The Commission may suspend the review of any application under this part if the project is subject to the lawful jurisdiction of any member jurisdiction or any political subdivision thereof, and such member jurisdiction or political subdivision has disapproved or denied the project. Where such disapproval or denial is reversed on appeal, the appeal is final, and the project sponsor

provides the Commission with a certified copy of the decision, the Commission shall resume its review of the application. Where, however, an application has been suspended hereunder for a period greater than three years, the Commission may terminate its review. Thereupon, the Commission shall notify the project sponsor of such termination and that the application fee paid by the project sponsor is forfeited. The project sponsor may reactivate the terminated application by reapplying to the Commission, providing evidence of its receipt of all necessary governmental approvals and, at the discretion of the Commission, submitting new or updated information.

* * * * *

■ 11. Amend § 806.22 by revising paragraphs (b) introductory text, (b)(3), (e), and (f)(3) and (9) to read as follows:

§ 806.22 Standards for consumptive use of water.

* * * * *

(b) *Mitigation.* All project sponsors whose consumptive use of water is subject to review and approval under § 806.4, § 806.5, § 806.6, or § 806.17 shall mitigate such consumptive use. Except to the extent that the project involves the diversion of the waters out of the basin, public water supplies shall be exempt from the requirements of this section regarding consumptive use; provided, however, that nothing in this section shall be construed to exempt individual consumptive users connected to any such public water supply from the requirements of this section. Mitigation may be provided by one or a combination of the following:

* * * * *

(3) Provide monetary payment to the Commission, for all water consumptively used over the course of a year, in an amount and manner prescribed by the Commission.

* * * * *

(e) *Approval by rule for consumptive uses.* (1) *General rule.* Except with respect to projects involving hydrocarbon development subject to the provisions of paragraph (f) of this section, any project who is solely supplied water for consumptive use by public water supply may be approved by the Executive Director under this paragraph (e) in accordance with the following, unless the Executive Director determines that the project cannot be adequately regulated under this approval by rule.

(2) *Notification of intent.* Prior to undertaking a project or increasing a previously approved quantity of consumptive use, the project sponsor shall submit a notice of intent (NOI) on forms prescribed by the Commission, and the appropriate application fee, along with any required attachments.

(3) *Time of notice.* Within 20 days after submittal of an NOI under paragraph (e)(2) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

(4) *Metering, daily use monitoring, and quarterly reporting.* The project sponsor shall comply with metering, daily use monitoring, and quarterly reporting as specified in § 806.30.

(5) *Standard conditions.* The standard conditions set forth in § 806.21 shall apply to projects approved by rule.

(6) *Mitigation.* The project sponsor shall comply with mitigation in accordance with paragraph (b)(2) or (3) of this section.

(7) *Compliance with other laws.* The project sponsor shall obtain all necessary permits or approvals required for the project from other federal, state or local government agencies having jurisdiction over the project. The Commission reserves the right to modify, suspend or revoke any approval under this paragraph (e) if the project sponsor fails to obtain or maintain such approvals.

(8) *Decision.* The Executive Director may grant, deny, suspend, revoke, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule previously granted hereunder, and will notify the project sponsor of such determination, including the quantity of consumptive use approved.

(9) *Term.* Approval by rule shall be effective upon written notification from the Executive Director to the project sponsor, shall expire 15 years from the date of such notification, and shall be deemed to rescind any previous consumptive use approvals.

(f) * * *

(3) Within 20 days after submittal of an NOI under paragraph (f)(2) of this section, the project sponsor shall satisfy the notice requirements set forth in § 806.15.

* * * * *

(9) The Executive Director may grant, deny, suspend, revoke, modify or condition an approval to operate under this approval by rule, or renew an existing approval by rule granted hereunder, and will notify the project sponsor of such determination, including the sources and quantity of consumptive use approved. The issuance of any approval hereunder shall not be construed to waive or exempt the project sponsor from obtaining Commission approval for any water withdrawals or diversions subject to review pursuant to § 806.4(a). Any sources of water approved pursuant to this section shall be further subject to any approval or authorization required by the member jurisdiction.

* * * * *

■ 12. Amend § 806.23 by revising paragraphs (b)(2) and (b)(3)(i) and adding paragraph (b)(5) to read as follows:

§ 806.23 Standards for water withdrawals.

* * * * *

(b) * * *

(2) The Commission may deny an application, limit or condition an approval to ensure that the withdrawal will not cause significant adverse impacts to the water resources of the basin. The Commission may consider, without limitation, the following in its consideration of adverse impacts: Lowering of groundwater or stream flow levels; groundwater and surface water availability, including cumulative uses; rendering competing supplies unreliable; affecting other water uses; causing water quality degradation that may be injurious to any existing or potential water use; affecting fish, wildlife or other living resources or their habitat; causing permanent loss of aquifer storage capacity; affecting wetlands; or affecting low flow of perennial or intermittent streams.

(3) * * *

(i) Limit the quantity, timing or rate of withdrawal or level of drawdown, including requiring a total system limit.

* * * * *

(5) For projects consisting of mine dewatering, water resources remediation, and AMD facilities that qualify as a withdrawal, review of adverse impacts will have limited consideration of groundwater availability, causing permanent loss of aquifer storage and lowering of groundwater levels provided these projects are operated in accordance with the laws and regulations of the member jurisdictions.

■ 13. Amend § 806.30 by revising the introductory text and paragraph (a)(4) and adding paragraph (a)(8) to read as follows:

§ 806.30 Monitoring.

The Commission, as part of the project review, shall evaluate the proposed methodology for monitoring consumptive uses, water withdrawals and mitigating flows, including flow metering devices, stream gages, and other facilities used to measure the withdrawals or consumptive use of the project or the rate of stream flow. If the

Commission determines that additional flow measuring, metering or monitoring devices are required, these shall be provided at the expense of the project sponsor, installed in accordance with a schedule set by the Commission, and installed per the specifications and recommendations of the manufacturer of the device, and shall be subject to inspection by the Commission at any time.

(a) * * *

(4) Measure groundwater levels in all approved production and other wells, as specified by the Commission.

* * * * *

(8) Perform other monitoring for impacts to water quantity, water quality and aquatic biological communities, as specified by the Commission.

* * * * *

■ 14. Amend § 806.31 by revising paragraphs (d) and (e) to read as follows:

§ 806.31 Term of approvals.

* * * * *

(d) If the Commission determines that a project has been abandoned, by evidence of nonuse for a period of time and under such circumstances that an abandonment may be inferred, the Commission may revoke the approval for such withdrawal, diversion or consumptive use.

(e) If a project sponsor submits an application to the Commission no later than six months prior to the expiration of its existing Commission docket approval or no later than one month prior to the expiration of its existing ABR or NOI approval, the existing approval will be deemed extended until such time as the Commission renders a decision on the application, unless the existing approval or a notification in writing from the Commission provides otherwise.

■ 15. Add subpart E to read as follows:

Subpart E—Registration of Grandfathered Projects

Sec.

§ 806.40 Applicability.

(a) This subpart is applicable to the following projects, which shall be known as grandfathered projects:

(1) The project has an associated average consumptive use of 20,000 gpd or more in any consecutive 30-day period all or part of which is a pre-compact consumptive use that has not been approved by the Commission pursuant to § 806.4.

(2) The project has an associated groundwater withdrawal average of 100,000 gpd or more in any consecutive 30-day period all or part of which was initiated prior to July 13, 1978, that has not been approved by the Commission pursuant to § 806.4.

(3) The project has an associated surface water withdrawal average of 100,000 gpd or more in any consecutive 30-day period all or part of which was initiated prior to November 11, 1995, that has not been approved by the Commission pursuant to § 806.4.

(4) The project (or an element of the project) has been approved by the Commission but has an associated consumptive use or water withdrawal that has not been approved by the Commission pursuant to § 806.4.

(5) Any project not included in paragraphs (a)(2) through (4) of this section that has a total withdrawal average of 100,000 gpd or more in any consecutive 30-day average from any combination of sources which was initiated prior to January 1, 2007, that has not been approved by the Commission pursuant to § 806.4.

(6) Any source associated with a project included in paragraphs (a)(2) through (5) of this section regardless of quantity.

(b) A project, including any source of the project, that can be determined to have been required to seek Commission review and approval under the pertinent regulations in place at the time is not eligible for registration as a grandfathered project.

§ 806.41 Registration and eligibility.

(a) Project sponsors of grandfathered projects identified in § 806.40 shall submit a registration to the Commission, on a form and in a manner prescribed by the Commission, by December 31, 2019.

(b) Any grandfathered project that fails to register under paragraph (a) of this section shall be subject to review and approval under § 806.4.

(c) Any project that is not eligible to register under paragraph (a) of this section shall be subject to review and approval under § 806.4.

(d) The Commission may establish fees for obtaining and maintaining registration in accordance with § 806.35.

(e) A registration under this subpart may be transferred pursuant to § 806.6.

§ 806.42 Registration requirements.

(a) Registrations shall include the following information:

(1) Identification of project sponsor including any and all proprietors, corporate officers or partners, the mailing address of the same, and the name of the individual authorized to act for the sponsor.

(2) Description of the project and site in terms of:

(i) Project location, including latitude and longitude coordinates in decimal degrees accurate to within 10 meters.

(ii) Project purpose.

(3) Identification of all sources of water, including the date the source was put into service, each source location (including latitude and longitude coordinates in decimal degrees accurate to within 10 meters), and if applicable, any approved docket numbers.

(4) Identification of current metering and monitoring methods for water withdrawal and consumptive use.

(5) Identification of current groundwater level or elevation monitoring methods at groundwater sources.

(6) All quantity data for water withdrawals and consumptive use for a minimum of the previous five calendar years. If the project sponsor registering submitted the water withdrawal and consumptive use data for the previous five calendar years to a member jurisdiction, that data will satisfy this requirement. A project sponsor registering may provide supplementary data related to water withdrawals and consumptive use quantities. If quantity data are not available, any information available upon which a determination of quantity could be made.

(7) For consumptive use, description of processes that use water, identification of water returned to the Basin, history of the use, including process changes, expansions and other actions that would have an impact on the amount of water consumptively used during the past five calendar years.

(8) Based on the data provided, the quantity of withdrawal for each individual source and consumptive use the project sponsor requests to be grandfathered by the Commission.

(9) Any ownership or name changes to the project since January 1, 2007.

(b) The Commission may require any other information it deems necessary for the registration process or waive any information required under paragraph (a) of this section for projects relying on a prior determination of the Commission.

§ 806.43 Metering and monitoring requirements.

(a) As a part of the registration process, the Commission shall review the current metering and monitoring for grandfathered withdrawals and consumptive uses.

(b) The Commission may require a metering and monitoring plan for the project sponsor to follow.

(c) Project sponsors, as an ongoing obligation of their registration, shall report to the Commission all information specified in the grandfathering determination under § 806.44 in a form and manner determined by the Commission. If water withdrawal and consumptive use quantity reporting is required by the member jurisdiction where the project is located, the Commission shall accept that reported quantity to satisfy the requirements of this paragraph (c), unless the Commission finds that additional data is needed that is not required by the member jurisdiction.

(d) Any data generated or collected under paragraph (c) of this section will be made available to the member jurisdictions in a manner and timeframe mutually agreeable to both the Commission and the jurisdiction.

§ 806.44 Determination of grandfathered quantities.

(a) For each registration submitted, the Executive Director shall determine the grandfathered quantity for each withdrawal source and consumptive use.

(b) In making a determination, the following factors should be considered:

(1) The withdrawal and use data and the peak consecutive 30-day average shown by the data;

(2) The reliability and accuracy of the data and/or the meters or measuring devices;

(3) Determination of reasonable and genuine usage of the project, including any anomalies in the usage;

(4) Whether the grandfathered amount includes an operational margin of safety; and

(5) Other relevant factors.

(c) The Executive Director, in lieu of a determination under paragraph (b) of this section, may accept a previous grandfathering determination by the Commission at the request of the project sponsor.

§ 806.45 Appeal of determination.

(a) A final determination of the grandfathered quantity by the Executive Director must be appealed to the Commission within 30 days from actual notice of the determination.

(b) The Commission shall appoint a hearing officer to preside over appeals under this section. Hearings shall be governed by the procedures set forth in part 808 of this chapter.

PART 808—HEARINGS AND ENFORCEMENT ACTIONS

■ 16. The authority citation for part 808 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91–575, 84 Stat. 1509, *et seq.*

■ 17. Revise § 808.1 to read as follows:

§ 808.1808.1 Public hearings.

(a) *Required hearings.* A public hearing shall be conducted in the following instances:

(1) Addition of projects or adoption of amendments to the comprehensive plan, except as otherwise provided by section 14.1 of the compact.

(2) Review and approval of diversions.

(3) Imposition or modification of rates and charges.

(4) Determination of protected areas.

(5) Drought emergency declarations.

(6) Hearing requested by a member jurisdiction.

(7) As otherwise required by sections 3.5(4), 4.4, 5.2(e), 6.2(a), 8.4, and 10.4 of the compact.

(b) *Optional hearings.* A public hearing may be conducted by the Commission or the Executive Director in any form or style chosen by the Commission or Executive Director in the following instances:

(1) Proposed rulemaking.

(2) Consideration of projects, except projects approved pursuant to memoranda of understanding with member jurisdictions.

(3) Adoption of policies and technical guidance documents.

(4) When it is determined that a hearing is necessary to give adequate consideration to issues related to public health, safety and welfare, or protection of the environment, or to gather additional information for the record or consider new information on a matter before the Commission.

(c) *Notice of public hearing.* At least 20 days before any public hearing required by the compact, notices stating the date, time, place and purpose of the hearing including issues of interest to the Commission shall be published at least once in a newspaper of general circulation in the area affected. In all other cases, at least 20 days prior to the hearing, notice shall be posted on the Commission Web site, sent to the parties who, to the Commission's knowledge, will participate in the hearing, and sent to persons, organizations and news media who have made requests to the Commission for notices of hearings or of a particular hearing. With regard to rulemaking, hearing notices need only be forwarded to the directors of the *New York Register,* the *Pennsylvania Bulletin,* the *Maryland Register* and the **Federal Register**, and it is sufficient that this notice appear in the **Federal Register** at least 20 days prior to the hearing and in each individual state publication at least 10 days prior to any hearing scheduled in that state.

(d) *Standard public hearing procedure.* (1) Hearings shall be open to the public. Participants may be any person, including a project sponsor, wishing to appear at the hearing and make an oral or written statement. Statements shall be made a part of the record of the hearing, and written statements may be received up to and including the last day on which the hearing is held, or within 10 days or a reasonable time thereafter as may be specified by the presiding officer.

(2) Participants are encouraged to file with the Commission at its headquarters written notice of their intention to appear at the hearing. The notice should be filed at least three days prior to the opening of the hearing.

(e) *Representative capacity.* Participants wishing to be heard at a public hearing may appear in person or be represented by an attorney or other representative. A governmental authority may be represented by one of its officers, employees or by a designee of the governmental authority.

(f) *Description of project.* When notice of a public hearing is issued, there shall be available for inspection, consistent with the Commission's Access to Records Policy, all plans, summaries, maps, statements, orders or other supporting documents which explain, detail, amplify, or otherwise describe the project the Commission is considering. Instructions on where and how the documents may be obtained will be included in the notice.

(g) *Presiding officer.* A public hearing shall be presided over by the Commission chair, the Executive Director, or any member or designee of the Commission or Executive Director. The presiding officer shall have full authority to control the conduct of the hearing and make a record of the same.

(h) *Transcript.* Whenever a project involving a diversion of water is the subject of a public hearing, and at all other times deemed necessary by the Commission or the Executive Director, a written transcript of the hearing shall be made. A certified copy of the transcript and exhibits shall be available for review during business hours at the Commission's headquarters to anyone wishing to examine them. Persons wishing to obtain a copy of the transcript of any hearing shall make arrangements to obtain it directly from

the recording stenographer at their expense.

(i) *Joint hearings.* The Commission may conduct any public hearings in concert with any other agency of a member jurisdiction.

■ 18. Revise § 808.2 to read as follows:

§ 808.2808.2 Administrative appeals.

(a) A project sponsor or other person aggrieved by a final action or decision of the Executive Director shall file a written appeal with the Commission within 30 days of the receipt of actual notice by the project sponsor or within 30 days of publication of the action in the **Federal Register**. Appeals shall be filed on a form and in a manner prescribed by the Commission and the petitioner shall have 20 days from the date of filing to amend the appeal. The following is a non-exclusive list of actions by the Executive Director that are subject to an appeal to the Commission:

(1) A determination that a project requires review and approval under § 806.5;

(2) An approval or denial of an application for transfer under § 806.6;

(3) An approval of a Notice of Intent under a general permit under § 806.17;

(4) An approval of a minor modification under § 806.18;

(5) A determination regarding an approval by rule under § 806.22(e) or (f);

(6) A determination regarding an emergency certificate under § 806.34;

(7) Enforcement orders issued under § 808.14;

(8) A finding regarding a civil penalty under § 808.15(c);

(9) A determination of grandfathered quantity under § 806.44;

(10) A decision to modify, suspend or revoke a previously granted approval; and

(11) A records access determination made pursuant to Commission policy.

(b) The appeal shall identify the specific action or decision being appealed, the date of the action or decision, the interest of the person requesting the hearing in the subject matter of the appeal, and a statement setting forth the basis for objecting to or seeking review of the action or decision.

(c) Any request not filed on or before the applicable deadline established in paragraph (a) of this section hereof will be deemed untimely and such request for a hearing shall be considered denied unless the Commission, upon written request and for good cause shown, grants leave to make such filing nunc pro tunc; the standard applicable to what constitutes good cause shown being the standard applicable in analogous cases under Federal law. Receipt of requests for hearings pursuant to this section, whether timely filed or not, shall be submitted by the Executive Director to the commissioners for their information.

(d) Petitioners shall be limited to a single filing that shall set forth all matters and arguments in support thereof, including any ancillary motions or requests for relief. Issues not raised in this single filing shall be considered waived for purposes of the instant proceeding. Where the petitioner is appealing a final determination on a project application and is not the project sponsor, the petitioner shall serve a copy of the appeal upon the project sponsor within five days of its filing.

(e) The Commission will determine the manner in which it will hear the appeal. If a hearing is granted, the Commission shall serve notice thereof upon the petitioner and project sponsor and shall publish such notice in the **Federal Register**. The hearing shall not be held less than 20 days after publication of such notice. Hearings may be conducted by one or more members of the Commission, or by such other hearing officer as the Commission may designate.

(1) The petitioner may also request a stay of the action or decision giving rise to the appeal pending final disposition of the appeal, which stay may be granted or denied by the Executive Director after consultation with the Commission chair and the member from the affected member State. The decision of the Executive Director on the request for stay shall not be appealable to the Commission under this section and shall remain in full force and effect until the Commission acts on the appeal.

(2) In addition to the contents of the request itself, the Executive Director, in granting or denying the request for stay, will consider the following factors:

(i) Irreparable harm to the petitioner.

(ii) The likelihood that the petitioner will prevail.

(f) The Commission shall grant the hearing request pursuant to this section if it determines that an adequate record with regard to the action or decision is not available, or that the Commission has found that an administrative review is necessary or desirable. If the Commission denies any request for a hearing, the party seeking such hearing shall be limited to such remedies as may be provided by the compact or other applicable law or court rule. If a hearing is granted, the Commission shall refer the matter for hearing to be held in accordance with § 808.3, and appoint a hearing officer.

(g) If a hearing is not granted, the Commission may set a briefing schedule and decide the appeal based on the record before it. The Commission may, in its discretion, schedule and hear oral argument on an appeal.

(h)(1) A request for intervention may be filed with the Commission by persons other than the petitioner within 20 days of the publication of a notice of the granting of such hearing in the **Federal Register**. The request for intervention shall state the interest of the person filing such notice, and the specific grounds of objection to the action or decision or other grounds for appearance. The hearing officer(s) shall determine whether the person requesting intervention has standing in the matter that would justify their admission as an intervener to the proceedings in accordance with Federal case law.

(2) Interveners shall have the right to be represented by counsel, to present evidence and to examine and cross-examine witnesses.

(i) Where a request for an appeal is made, the 90-day appeal period set forth in section 3.10 (6) and Federal reservation (o) of the compact shall not commence until the Commission has either denied the request for or taken final action on an administrative appeal.

■ 19. Revise § 808.11 to read as follows:

§ 808.11 Duty to comply.

It shall be the duty of any person to comply with any provision of the compact, or the Commission's rules, regulations, orders, approvals, docket conditions, staff directives or any other requirement of the Commission.

■ 20. Revise § 808.14 to read as follows:

§ 808.14 Orders.

(a) Whether or not an NOV has been issued, the Executive Director may issue an order directing an alleged violator to cease and desist any action or activity to the extent such action or activity constitutes an alleged violation, or may issue any other order related to the prevention of further violations, or the abatement or remediation of harm caused by the action or activity.

(b) If the project sponsor fails to comply with any term or condition of a docket or other approval, the commissioners or Executive Director may issue an order suspending, modifying or revoking approval of the docket. The commissioners may also, in their discretion, suspend, modify or revoke a docket approval if the project sponsor fails to obtain or maintain other federal, state or local approvals.

(c) The commissioners or Executive Director may issue such other orders as may be necessary to enforce any provision of the compact, the

Commission's rules or regulations, orders, approvals, docket conditions, or any other requirements of the Commission.

(d) It shall be the duty of any person to proceed diligently to comply with any order issued pursuant to this section.

(e) The Commission or Executive Director may enter into a Consent Order and Agreement with an alleged violator to resolve non-compliant operations and enforcement proceedings in conjunction with or separately from settlement agreements under § 808.18.

■ 21. Revise § 808.15 to read as follows:

§ 808.15 Show cause proceeding.

(a) The Executive Director may issue an order requiring an alleged violator to show cause why a penalty should not be assessed in accordance with the provisions of this chapter and section 15.17 of the compact. The order to the alleged violator shall:

(1) Specify the nature and duration of violation(s) that is alleged to have occurred.

(2) Set forth the date by which the alleged violator must provide a written response to the order.

(3) Identify the civil penalty recommended by Commission staff.

(b) The written response by the project sponsor should include the following:

(1) A statement whether the project sponsor contests that the violations outlined in the Order occurred;

(2) If the project sponsor contests the violations, then a statement of the relevant facts and/or law providing the basis for the project sponsor's position;

(3) Any mitigating factors or explanation regarding the violations outlined in the Order; and

(4) A statement explaining what the appropriate civil penalty, if any, should be utilizing the factors at § 808.16.

(c) Based on the information presented and any relevant policies, guidelines or law, the Executive Director shall make a written finding affirming or modifying the civil penalty recommended by Commission staff.

■ 22. Amend § 808.16 by revising paragraphs (a) introductory text and (a)(7), adding paragraph (a)(8), and revising paragraph (b) to read as follows:

§ 808.16 Civil penalty criteria.

(a) In determining the amount of any civil penalty or any settlement of a violation, the Commission and Executive Director shall consider:

* * * * *

(7) The length of time over which the violation occurred and the amount of water used, diverted or withdrawn during that time period.

(8) The punitive effect of a civil penalty.

(b) The Commission and/or Executive Director retains the right to waive any penalty or reduce the amount of the penalty recommended by the Commission staff under § 808.15(a)(3) should it be determined, after consideration of the factors in paragraph (a) of this section, that extenuating circumstances justify such action.

■ 23. Revise § 808.17 to read as follows:

§ 808.17 Enforcement of penalties, abatement or remedial orders.

Any penalty imposed or abatement or remedial action ordered by the Commission or the Executive Director shall be paid or completed within such time period as shall be specified in the civil penalty assessment or order. The Executive Director and Commission counsel are authorized to take such additional action as may be necessary to assure compliance with this subpart. If a proceeding before a court becomes necessary, the penalty amount determined in accordance with this part shall constitute the penalty amount recommended by the Commission to be fixed by the court pursuant to section 15.17 of the compact.

■ 24. Revise § 808.18 to read as follows:

§ 808.18 Settlement by agreement.

(a) An alleged violator may offer to settle an enforcement action by agreement. The Executive Director may enter into settlement agreements to resolve an enforcement action. The Commission may, by Resolution, require certain types of enforcement actions or settlements to be submitted to the Commission for action or approval.

(b) In the event the violator fails to carry out any of the terms of the settlement agreement, the Commission or Executive Director may reinstitute a civil penalty action and any other applicable enforcement action against the alleged violator.

Dated: June 21, 2017.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2017–13324 Filed 6–28–17; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2017–0531]

Safety Zone; Southern California Annual Firework Events for the San Diego Captain of the Port Zone.

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the San Diego, CA POPS Fireworks Display on the waters of San Diego Bay, CA on specific evenings from June 30, 2017 to September 3, 2017. This safety zone is necessary to provide for the safety of the participants, spectators, official vessels of the events, and general users of the waterway. Our regulation for the Southern California Annual Firework Events for the San Diego Captain of the Port Zone identifies the regulated area for the events. During the enforcement period, no spectators shall anchor, block, loiter in, or impede the transit of official patrol vessels in the regulated area without the approval of the Captain of the Port, or designated representative.

DATES: The regulations in 33 CFR 165.1123, Table 1, Item 1 will be enforced from 9 p.m. through 10 p.m. on June 30 through July 2, July 7 and July 8, July 14 and July 15, July 28, August 4 and August 5, August 18 and August 19, August 25 and August 26, and September 1 through September 3, 2017 for Item 1 in Table 1 of 33 CFR 165.1123.

FOR FURTHER INFORMATION CONTACT: If you have questions on this publication, call or email LT Robert Cole, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619–278–7656, email *D11MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the regulations in 33 CFR 165.1123 for a safety zone on the waters of San Diego Bay, CA for the San Diego, CA POPS Fireworks Display in 33 CFR 165.1123, Table 1, Item 1 of that section, from 9 p.m. through 10 p.m. on specific evenings from June 30, 2017 to September 3, 2017. This action is being taken to provide for the safety of life on navigable waterways during the fireworks events. Our regulation for Southern California Annual Firework Events for the San Diego Captain of the Port Zone identifies the regulated areas for the events. Under the provisions of

33 CFR 165.1123, a vessel may not enter the regulated area, unless it receives permission from the Captain of the Port, or his designated representative. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter, or impede the transit of participants or official patrol vessels. The Coast Guard may be assisted by other Federal, state, or local law enforcement agencies in enforcing this regulation.

This document is issued under authority of 33 CFR 165.1123 and 5 U.S.C. 552 (a). In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and local advertising by the event sponsor.

If the Captain of the Port or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: June 16, 2017.

E.M. Cooper,

Commander, U.S. Coast Guard, Acting Captain of the Port San Diego.

[FR Doc. 2017–13649 Filed 6–28–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2017–0321]

RIN 1625–AA00

Safety Zone: San Francisco Independence Day Fireworks Display, San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones in the navigable waters of the San Francisco Bay near Aquatic Park in support of the San Francisco Fourth of July Fireworks Display on July 4, 2017. These safety zones are established to ensure the safety of participants and spectators from the dangers associated with pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zones without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective on from July 3 to July 4, 2017. This rule will be enforced from 9 a.m. on July 3, 2017 through 10:30 p.m. on July 4, 2017.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2017–0321. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Christina Ramirez, U.S. Coast Guard Sector San Francisco; telephone (415) 399–2001 or email at *D11-PF-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Acronyms

COTP U.S. Coast Guard Captain on the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rule Making
PATCOM U.S. Coast Guard Patrol Commander
APA Administrative Procedure Act
NOAA National Oceanic and Atmospheric Administration
U.S.C. United States Code

II. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing an NPRM would be impractical because it must be in place by the date of the event, July 3, 2017.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For these same reasons, the Coast Guard finds good cause for implementing this rule less than thirty days before the effective date.

III. Legal Authority and Need for Rule

The legal basis for the proposed rule is 33 U.S.C 1231; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

San Francisco Travel Association will sponsor the San Francisco Independence Day Fireworks Display on July 4, 2017, near Aquatic Park in San Francisco, CA in approximate positions 37°48′49″ N., 122°24′46′ W. and 37°48′45″ N., 122°25′39″ W. (NAD83) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18650.

Loading of the pyrotechnics onto the fireworks barges is scheduled to take place from 9 a.m. on July 3, 2017 until 5 p.m. on July 4, 2017, at Pier 50 in San Francisco, CA. The fireworks barges will remain at Pier 50 until their transit to the respective display locations. Towing of the barges from Pier 50 to the display locations is scheduled to take place from 7:30 p.m. until 8:15 p.m. on July 4, 2017 where they will remain until the conclusion of the fireworks display.

IV. Discussion of the Rule

The Coast Guard will enforce the San Francisco Independence Day Fireworks Display safety zones from 9 a.m. on July 3, 2017 through 10:30 p.m. on July 4, 2017.

These safety zones establish temporary restricted areas on the navigable waters within 100 feet of the fireworks barges during the loading, transit, and arrival of the pyrotechnics from the loading site to the display launch locations and until 15 minutes prior to the commencement of the fireworks display. 15 minutes prior to the commencement of the fireworks display, the safety zones will increase in size and encompass the navigable waters around the fireworks barges within a radius of 700 feet. The fireworks display is meant for entertainment purposes. These restricted areas around the fireworks barges are necessary to protect spectators, vessels, and other property from the hazards associated with pyrotechnics.

During the loading, transit, and until 15 minutes prior to the start of the fireworks display, the safety zones apply to the navigable waters around and under the fireworks barges within a radius of 100 feet. At 9:15 p.m. on July 4, 2017, 15 minutes prior to the commencement of the 30-minute fireworks display, the safety zones will increase in size and encompass the

navigable waters around and under the fireworks barges within a radius of 700 feet and will be located off of Pier 39 in approximate position 37°48′49″ N., 122°24′46″ W. (NAD 83) and off Black Point in approximate position 37°48′45″ N., 122°25′39″ W. (NAD 83) for the San Francisco Independence Day Fireworks Display. The safety zones shall terminate at 10:30 p.m. on July 4, 2017.

The effect of the temporary safety zones will be to restrict navigation in the vicinity of the launch sites until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted areas. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the launch sites to ensure the safety of participants, spectators, and transiting vessels.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

A. Regulatory Planning and Review

E.O.s 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it.

As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

We expect the economic impact of this rule will not rise to the level of necessitating a full Regulatory Evaluation. The safety zones are limited in duration, and are limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zones, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zones will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

B. Impact on Small Entities

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

This rule may affect owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons. These safety zones would be activated, and thus subject to enforcement, for a limited duration. When the safety zones are activated, vessel traffic could pass safely around the safety zones. The maritime public will be advised in advance of these safety zones via Broadcast Notice to Mariners.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves safety zones lasting in a limited duration that will prohibit entry within 700 feet of the pyrotechnic launch locations. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A Record of Environmental Consideration for categorically excluded actions is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–850 to read as follows:

§ 165.T11–850 Safety Zone; San Francisco Independence Day Fireworks Display, San Francisco Bay, San Francisco, CA.

(a) *Location.* These temporary safety zones are established in the navigable waters of the San Francisco Bay near Aquatic Park in San Francisco, CA, as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18650. From 9 a.m. on July 3, 2017 until 9:15 p.m. on July 4, 2017, the temporary safety zones apply to the nearest point of the fireworks barges within a radius of 100 feet during the loading, transit, and arrival of the fireworks barges from Pier 50 to the launch sites near Aquatic Park in approximate positions 37°48′49″ N., 122°24′46″ W. and 37°48′45″ N., 122°25′39″ W. (NAD83). From 9:15 p.m. until 10:30 p.m. on July 4, 2017, the temporary safety zones will increase in size and encompass the navigable waters around and under the fireworks barges in approximate positions 37°48′49″ N., 122°24′46″ W. and 37°48′45″ N., 122°25′39″ W. (NAD83) within a radius of 700 feet.

(b) *Enforcement period.* The zones described in paragraph (a) of this section will be enforced from 9 a.m. on July 3, 2017 until 10:30 p.m. on July 4, 2017. The Captain of the Port of San Francisco (COTP) will notify the maritime community of periods during which these zones will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zones.

(d) *Regulations.* (1) Under the general regulations in 33 CFR part 165, subpart C, entry into, transiting or anchoring within these safety zones is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zones are closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zones must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zones must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zones on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: May 25, 2017.

Anthony J. Ceraolo,

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

[FR Doc. 2017–13652 Filed 6–28–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2017–0560]

Safety Zones; Ashland 4th of July Fireworks Display, Chequamegon Bay, Ashland, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the Ashland 4th of July Fireworks Display in Ashland, WI from 9:30 p.m. through 11:30 p.m. on July 4, 2017. This action is necessary to protect participants and spectators during the Ashland 4th of July Fireworks Display. During the enforcement period, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or her designated on-scene representative.

DATES: The regulations in 33 CFR 165.943(b) will be enforced from 9:30 p.m. through 11:30 p.m. on July 4, 2017, for the Ashland 4th of July Fireworks Display safety zone, § 165.943(a)(6).

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email LT John Mack, Chief of Waterways Management, Coast Guard; telephone (218) 725–3818, email *john.v.mack@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the safety zone for the annual Ashland 4th of July Fireworks Display in 33 CFR 165.943(a)(6) from 9:30 p.m. through 11:30 p.m. on July 4, 2017 on all waters of Chequamegon Bay bounded by the arc of a circle with a 560-foot radius from the fireworks launch site with its center in position 46°35′50″ N., 090°52′59″ W.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or her designated on-scene representative. The Captain of the Port's designated on-scene representative may be contacted via VHF Channel 16 or telephone at (715) 779–5100.

This document is issued under authority of 33 CFR 165.943 and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this safety zone via Broadcast Notice to Mariners. The

Captain of the Port Duluth or her on-scene representative may be contacted via VHF Channel 16 or telephone at (715) 779–5100.

Dated: June 22, 2017.

E.E. Williams,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 2017–13576 Filed 6–28–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. PTO–T–2010–0016]

RIN 0651–AC41

Revival of Abandoned Applications, Reinstatement of Abandoned Applications and Cancelled or Expired Registrations, and Petitions to the Director

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) amends its rules regarding petitions to revive an abandoned trademark application and petitions to the Director of the USPTO (Director) regarding other trademark matters and to codify USPTO practice regarding requests for reinstatement of abandoned trademark applications and cancelled or expired trademark registrations. The changes will permit the USPTO to provide more detailed procedures regarding the deadlines and requirements for requesting revival, reinstatement, or other action by the Director. These rules will thereby ensure that the public has notice of the deadlines and requirements for making such requests, facilitate the efficient and consistent processing of such requests, and promote the integrity of application/registration information in the trademark electronic records system as an accurate reflection of the status of applications and registrations.

DATES: This rule is effective on July 8, 2017.

FOR FURTHER INFORMATION CONTACT: Catherine Cain, Office of the Deputy Commissioner for Trademarks Examination Policy, by email at *TMFRNotices@uspto.gov* or by telephone at (571) 272–8946.

SUPPLEMENTARY INFORMATION:

Purpose: The USPTO revises the rules in part 2 of title 37 of the Code of Federal Regulations to provide more detailed procedures regarding the deadlines and requirements for petitions to revive an abandoned trademark application under 37 CFR 2.66 and petitions to the Director under 37 CFR 2.146. The changes also codify USPTO practice regarding requests for reinstatement of trademark applications that were abandoned and trademark registrations that were cancelled or expired, due to Office error. By providing more detailed procedures regarding requesting revival, reinstatement, or other action by the Director, the rulemaking benefits applicants, registrants, and the public because it: (1) Promotes the integrity of application/registration information in the trademark electronic records system as an accurate reflection of the status of live applications and registrations; (2) clarifies the time periods in which applications or registrations can be revived or reinstated after abandonment or cancellation and specifies the related filing requirements; (3) clarifies the deadline for requesting that the Director take action regarding other matters; and (4) facilitates the efficient and consistent handling of such requests.

The public relies on the trademark electronic records system to determine whether a chosen mark is available for use or registration. Applicants are encouraged to utilize the trademark electronic search system, which provides access to text and images of marks, to determine whether a mark in any pending application or current registration is similar to their mark and used on the same or related products or for the same or related services. The search system also indicates the status of an application or registration, that is, whether the application or registration is live or dead. A ''live'' status indicates the application or registration is active and may bar the registration of a similar mark in a new application. A ''dead'' status indicates the application has become abandoned or the registration is cancelled or expired and does not serve as a bar to registration of a similar mark in a new application unless it is restored to a live status pursuant to a corresponding rule.

When a party's search discloses a potentially confusingly similar mark, that party may incur a variety of resulting costs and burdens, such as those associated with investigating the actual use of the disclosed mark to assess any conflict, proceedings to oppose the application or cancel the registration or of the disclosed mark, civil litigation to resolve a dispute over the mark, or changing plans to avoid use of the party's chosen mark. In order to determine whether to undertake one or more of these actions, the party would refer to the status of the conflicting application/registration and would need to consult the relevant rule to determine whether the application or registration is within the time period in which the applicant or registrant may request revival, reinstatement, or other action by the Director. Thus, the effective notice provided by the USPTO's records plays a critical role in a party's decision-making by enabling the party to clearly distinguish between the dead marks that are no longer candidates for, or protected by, a federal registration and those that are still able to be restored to active status.

If the trademark electronic records system indicates that an application or registration is dead because it is abandoned, cancelled, or expired, and there is any doubt as to whether the application or registration might be eligible for revival, reinstatement, or other action by the Director, the costs and burdens discussed above may be incurred unnecessarily. By providing more detailed procedures as to the deadlines and requirements for requesting revival, reinstatement, or other action by the Director, these rules will help the public avoid such needless costs and burdens and promote the efficient and consistent processing of such requests by the Office.

Background

Petition To Revive: The statutory period for responding to an examining attorney's Office action is six months from the Office action's date of issuance. 15 U.S.C. 1062(b); 37 CFR 2.62(a). If no response is received by the USPTO within the statutory period, and the Office action was sent to the correspondence address in the USPTO's records, the application is then abandoned in full or in part, as appropriate. 37 CFR 2.65(a); *Trademark Manual of Examining Procedure* (TMEP) § 718.06.

The statutory period for filing a statement of use or a request for an extension of time to file a statement of use, in response to a notice of allowance issued under section 13(b)(2) of the Trademark Act (Act), is also six months. 15 U.S.C. 1051(d)(1), (2); 37 CFR 2.88(a), 2.89(a). Thus, an application is abandoned if the applicant fails to file a statement of use or request for an extension of time to file a statement of use within the statutory period or within a previously granted extension period. 37 CFR 2.65(c), 2.88(k); TMEP § 718.04.

An application is considered to be abandoned as of the day after the date

on which a response to an Office action or notice of allowance is due. TMEP § 718.06. However, to accommodate timely mailed paper submissions and to ensure that the required response was not received and placed in the record of another application (*e.g.,* if the applicant enters the incorrect serial number on its response), the USPTO generally waits one month after the due date to update the trademark electronic records system to reflect the abandonment. When the trademark electronic records system is updated, the USPTO sends a computer-generated notice of abandonment to the correspondence address listed in the application. *Id.* If an application becomes abandoned for failure to respond to an Office action or notice of allowance within the statutory period, and the delay in responding was unintentional, the application may be revived upon proper submission of a petition under 37 CFR 2.66. Prior to this final rule, the deadlines for filing the petition were within two months after the date of issuance of the notice of abandonment or within two months of actual knowledge of the abandonment, if the applicant did not receive the notice of abandonment and the applicant was diligent in checking the status of the application every six months.

Request for Reinstatement: If an applicant has proof that an application was inadvertently abandoned due to a USPTO error, an applicant may file a request to reinstate the application, instead of a petition to revive. TMEP § 1712.01. Prior to this final rule, an applicant was required to file a request for reinstatement within two months of the issuance date of the notice of abandonment. *Id.* If the applicant asserted that it did not receive a notice of abandonment, the applicant was required to file the request within two months of the date the applicant had actual knowledge that the application was abandoned, and the applicant must have been duly diligent in monitoring the status of the application every six months. *Id.*

Similarly, a registrant could file a request to reinstate a cancelled or expired registration if the registrant had proof that a required document was timely filed and that USPTO error caused the registration to be cancelled or expired. TMEP § 1712.02. Prior to implementation of this rule, there was no deadline for filing a request to reinstate a cancelled/expired registration, and the USPTO generally did not invoke the requirement for due diligence when there was proof that a registration was cancelled or expired solely due to USPTO error. TMEP § 1712.02(a).

Petition to the Director Under 37 CFR 2.146: Applicants, registrants, and parties to inter partes proceedings before the Trademark Trial and Appeal Board (TTAB) who believe they have been injured by certain adverse actions of the USPTO, or who believe that they cannot comply with the requirements of the Trademark Rules of Practice (37 CFR parts 2, 3, 6, and 7) because of an extraordinary situation, may seek equitable relief by filing a petition under 37 CFR 2.146. A variety of issues may be reviewed on petition under this section. *See* TMEP § 1703. Generally, unless a specific deadline is specified elsewhere in the rules or within this section, such as the deadlines for petitions regarding actions of the TTAB under § 2.146(e), a petition must be filed within two months of the date of issuance of the action from which relief is requested and, prior to this final rule, no later than two months from the date when Office records were updated to show that a registration was cancelled or expired under § 2.146(d). If a petitioner sought to reactivate an application or registration that was abandoned, cancelled, or expired because documents not received by the Office were lost or mishandled, the petitioner was also required to be duly diligent in checking the status of the application or registration. The section was traditionally invoked when papers submitted pursuant to the mailing rules in § 2.197 and § 2.198 were lost. However, the occurrence of such incidents is minimal. Further, the USPTO believes that if an applicant or registrant has proof that documents mailed in accordance with the requirements of § 2.197 or § 2.198 were lost or mishandled by the USPTO, thereby causing the abandonment of an application or cancellation/expiration of a registration, the proper recourse is to seek relief under new § 2.64 for requesting reinstatement.

Due-Diligence Requirement: The USPTO generally processes applications, responses, and other documents in the order in which they are received, and it is reasonable to expect some notice or acknowledgement from the USPTO regarding action on a pending matter within six months of the filing or receipt of a document. If an applicant or registrant does not receive a notice from the USPTO regarding the abandonment of its application, cancellation/expiration of its registration, or denial of some other request, but otherwise learns of the abandonment, cancellation/expiration, or denial, the applicant or registrant must have been duly diligent in tracking the status of its application or registration in order to be granted revival, reinstatement, or other action by the Director. Being duly diligent means that a party who has not received a notice or acknowledgement from the USPTO within six months of the filing has the burden of inquiring as to the status of action on its filing and requesting in writing that corrective action be taken when necessary, to protect third parties who may be harmed by reliance on inaccurate information regarding the status of an application or registration in the trademark electronic records system. *See* TMEP § 1705.05. For example, a third party may have searched USPTO records and begun using a mark because the search showed that an earlier-filed application or prior registration for a conflicting mark had been abandoned or cancelled. In other cases, an examining attorney may have searched USPTO records and approved for publication a later-filed application for a conflicting mark because the earlier-filed application was shown as abandoned or a prior registration was shown as cancelled.

When a party seeks to revive an application that was abandoned or reinstate a registration that was cancelled or expired, due either to the failure of the applicant or registrant to file a required document or to the loss or mishandling of documents sent to or from the USPTO, or asks the Director to take some other action, the USPTO may deny the request if the petitioner was not diligent in checking the status of the application or registration, even if the petitioner shows that the USPTO actually received documents or declares that a notice from the USPTO was never received by the petitioner.

The due-diligence requirement means that any petition filed more than two months after the notice of abandonment or cancellation was issued or more than two months after Office records are updated is likely to be dismissed as untimely because the applicant or registrant will be unable to establish that it was duly diligent. For example, if an applicant files an application in July 1, 2016, and an Office action is issued on October 15, 2016, a response must be filed on or before April 15, 2017. If the applicant does not respond, the trademark electronic records system will be updated to show the application as abandoned and a notice of abandonment will be sent to the applicant on or about May 15, 2017. If the applicant does not receive the notice of abandonment, only checks the trademark electronic records system in

August 2017 (*i.e.,* more than two months after the issue date of the notice of abandonment and more than a year after filing), and thereafter files a petition to revive, that petition would be denied as untimely. Even if the applicant asserts that it only became aware of the issuance of the Office action and the notice of abandonment on, for example, July 18, 2017 (actual notice), the petition would be denied as untimely because the applicant could not prove that it was duly diligent in monitoring the status of the application by checking the status every six months.

Moreover, in some situations when an applicant or owner of a registration asserts that it did not receive a notice of abandonment or cancellation, it is often difficult for the USPTO to determine when the party had actual notice of the abandonment/cancellation and whether the party was duly diligent in prosecuting the application or maintaining the registration. By effectively making applicants and registrants more clearly aware of the requirement to conduct the requisite status checks of Office records every six months from the filing of a document, whether an application or a submission requesting action by the Office, parties would have sufficient notice to timely respond to any issues regarding the acceptance or refusal of their submission in the vast majority of circumstances. For example, if a document is filed on January 2 and an Office action requiring a response within six months is issued on February 2, and if the submitting party is duly diligent and reviews the trademark electronic records system on July 2, it would learn of the issuance of the action, even if the party did not receive it. In that situation, the party would still have one month in which to respond timely.

Discussion of Changes and Rulemaking Goals

Establish Certainty Regarding Timeliness: The goals of the changes implemented herein are to harmonize the deadlines for requesting revival, reinstatement, or other action by the Director and remove any uncertainty for applicants, registrants, third parties, and the Office as to whether a request is timely.

In this rulemaking, the USPTO adds §§ 2.64(a)(1)(i) and (b)(1)(i) and amends §§ 2.66(a)(1) and 2.146(d)(1) to clarify that applicants and registrants who receive an official document from the USPTO, such as a notice of abandonment or cancellation or a denial of certification of an international registration, must file a petition to revive, request for reinstatement, or petition to the Director to take another action, by not later than two months after the issue date of the notice. The addition of §§ 2.64(a)(1)(i) and (b)(1)(i) codifies this deadline for parties seeking reinstatement of an application or registration abandoned or cancelled due to Office error and makes it consistent with the deadline in § 2.66(a)(1). The amendment to § 2.66(a) clarifies that the deadline applies to abandonments in full or in part. Finally, the change to § 2.146(d) deletes the requirement that a petition be filed no later than two months from the date when Office records are updated to show that a registration is cancelled or expired. As noted below, this deadline is extended to not later than six months after the date the trademark electronic records system indicates that the registration is cancelled/expired, when the registrant declares that it did not receive the action or where no action was issued, to harmonize the deadlines across the relevant sections.

To establish certainty and ensure consistency, the rule also adds §§ 2.64(a)(1)(ii) and (b)(1)(ii) to codify the deadline for all applicants and registrants who assert that they did not receive a notice of abandonment or cancellation/expiration from the Office and thereafter seek reinstatement. This deadline is identical to the deadlines implemented in §§ 2.66(a)(2) and 2.146(d)(2) for applicants and registrants who assert that they did not receive a notice from the Office and thereafter seek relief. Under §§ 2.64(a)(1)(ii) and (b)(1)(ii), if the applicant or registrant did not receive the notice, or no notice was issued, a petition must be filed by not later than two months of actual knowledge that a notice was issued or that an action was taken by the Office and not later than six months after the date the trademark electronic records system is updated to indicate the action taken by the Office. Thus, the rule makes clear that applicants and registrants must check the status of their applications and registrations every six months after the filing of an application or other document and thereby removes any uncertainty in the Office's assessment of whether an applicant or registrant was duly diligent.

Balance Duties of the USPTO to Registrants and Third Parties: Under this rule, the USPTO adds § 2.64(b)(1)(ii) and § 2.146(d)(2)(ii) to include the requirement for due diligence in tracking the status of a registration after the timely filing of an affidavit of use or excusable non-use under section 8 or 71 of the Act or a renewal application under section 9 of the Act. Registrants who have timely filed such documents and who seek reinstatement of a registration cancelled due to Office error, but who assert that they did not receive a notice of cancellation/expiration, or where no notice was issued, must file the request by not later than two months of actual knowledge of the cancellation and not later than six months after the date the trademark electronic records system indicates that the registration is cancelled/expired.

As noted above, the USPTO has generally not invoked the requirement for due diligence when there is proof that a registration was cancelled or expired solely due to Office error. Although the USPTO has a duty to correct its errors, the USPTO has a concurrent duty toward third parties to ensure that the trademark electronic records system accurately reflects the status of applications and registrations, especially given that the USPTO encourages such third parties to search the trademark electronic records system prior to adopting or seeking to register a mark. Therefore, the USPTO must balance its duties to third parties who rely on the accuracy of the trademark electronic records system and to registrants whose registration may have been cancelled as a result of Office error. The USPTO believes that, in order to fulfill its duties to all parties, the requirement for due diligence should apply equally to registrants who timely filed an affidavit of use or excusable non-use under section 8 or 71 of the Act or a renewal application under section 9 of the Act, but did not receive a notice of cancellation/expiration, and who then request reinstatement of their registrations, as it does to all other applicants and registrants who do not receive notice of any other action taken by the Office. As noted above, it is reasonable to expect some notice or acknowledgement from the USPTO regarding action on a pending matter within six months of the filing of a document. A registrant who has timely filed a maintenance or renewal document, but has not received notification from the USPTO regarding the acceptance or refusal of the document within that time frame, has the burden of inquiring as to the status of the USPTO's action on the filing and requesting in writing that corrective action be taken when necessary, to protect third parties who may be harmed by reliance on inaccurate information regarding the status of its registration in the trademark electronic records system.

Maintain Pendency: The USPTO herein changes § 2.66 to prevent

applicants from utilizing the revival process to delay prosecution by repeatedly asserting non-receipt of an Office action or notice of allowance. Specifically, the regulations at § 2.66(b) are amended to clarify that a response to the outstanding Office action is required or, if the applicant asserts that the unintentional delay is based on non-receipt of an Office action or notification, the applicant may not assert non-receipt of the same Office action or notification in a subsequent petition. The USPTO also adds § 2.66(b)(3)(i)–(ii) to clarify the requirements for requesting revival when the abandonment occurred after a final Office action. The regulations at § 2.66(c) are amended to clarify that if the applicant asserts that the unintentional delay is based on non-receipt of a notice of allowance, the applicant may not assert non-receipt of the notice of allowance in a subsequent petition.

In some situations, an application will become abandoned multiple times for failure to respond to an Office action or notice of allowance, and the applicant will assert that it did not receive the same Office action or the notice of allowance each time that it petitions to revive the application. Under the regulations implemented herein at § 2.66(b)(3) and § 2.66(c)(2)(iii), the Office limits the applicant's ability to assert more than once that the unintentional delay is based on non-receipt of the same Office action or the notice of allowance. When an applicant becomes aware that its application has been abandoned, either via receipt of a notice of abandonment or after checking the status of the application, the applicant is thereby on notice that the Office has taken action on the application. If the applicant then files a petition to revive an application held abandoned for failure to respond to an Office action, which states that the applicant did not receive the action, and the petition is granted, the USPTO will issue a new Office action, if there are additional issues that need to be raised since the original Office action was sent, and provide the applicant with a new six-month response period. If all issues previously raised remain the same, after reviving the application, the USPTO will send a notice to the applicant directing the applicant to view the previously issued Office action in the electronic file for the application available on the USPTO's Web site and provide the applicant with a new six-month response period. When a petition to revive an application for failure to respond to a notice of allowance states that the applicant did not receive the notice, and the petition is granted, the USPTO will cancel the original notice of allowance and issue a new notice, giving the applicant a new six-month period in which to file a statement of use or request for extension of time to file a statement of use.

In either situation, the USPTO sends the new Office action (or notice directing the applicant to view the previously issued Office action in the electronic file) or notice of allowance to the correspondence address of record. In general, under the current regulations at 37 CFR 2.18, the owner of an application has a duty to maintain a current and accurate correspondence address with the USPTO, which may be either a physical or email address. If the correspondence address changes, the USPTO must be promptly notified in writing of the new address. If the correspondence address has not changed in the USPTO records since the filing of the application, the applicant is on notice that documents regarding its application are being sent to that address by virtue of its awareness of the abandonment of the application and its subsequent filing of the petition to revive.

Allowing an applicant who is on notice that the Office has taken action in an application to continually assert non-receipt of the same Office action or notice of allowance significantly delays prosecution of the application. It also results in uncertainty for the public, which relies on the trademark electronic records system to determine whether a chosen mark is available for use or registration. Therefore, because the applicant is on notice that documents regarding its application are being sent to the address of record, this final rule limits an applicant to asserting only once that the unintentional delay is based on non-receipt of the same Office action or notice of allowance. If the correspondence address has changed since the filing of the application, the applicant is responsible for updating the address, as noted above, so that any further Office actions or notices will be sent to the correct address.

Codify Requirements for Reinstatement: The USPTO hereby implements a new regulation at § 2.64 to codify the requirements for seeking reinstatement of an application that was abandoned or a registration that was cancelled or expired due to Office error. The regulation indicates that there is no fee for requesting reinstatement. It also sets out the deadlines for submitting such requests, as discussed under the heading ''Establish Certainty Regarding Timeliness,'' and the nature of proof necessary to support an allegation of Office error in the abandonment of the relevant application or cancellation/expiration of the relevant registration. Further, the regulation provides an avenue for requesting waiver of the requirements if the applicant or registrant is not entitled to reinstatement.

The rationale for the changes to the deadline for requesting reinstatement of a registration when the registrant did not receive a notice of cancellation is discussed above. The TMEP currently sets out the deadlines for requesting reinstatement of an application or registration that was abandoned, cancelled, or expired due to Office error. TMEP §§ 1712.01, 1712.02(a). Other requirements, such as the nature of proof required to establish Office error, are also set out in the TMEP. However, although the TMEP sets out the deadlines and guidelines for submitting and handling requests for reinstatement, it does not have the force of law. Codifying the deadlines for filing a request for reinstatement in a separate rule that also lists the types of proof necessary to warrant such remedial action provides clear and definite standards regarding an applicant's or registrant's burden. It also furnishes the legal underpinnings of the Office's authority to grant or deny a request for reinstatement and provides applicants and owners of registrations with the benefit of an entitlement to relief when the standards of the rules are met.

If an applicant or registrant is found not to be entitled to reinstatement, the rule also provides a possible avenue of relief in that the request may be construed as a petition to the Director under § 2.146 or a petition to revive under § 2.66, if appropriate. In addition, if the applicant or registrant is unable to meet the timeliness requirement for filing the request, the rule provides that the applicant or registrant may submit a petition to the Director under § 2.146(a)(5) to request a waiver of that requirement.

Proposed Rule: Comments and Responses

The USPTO published a proposed rule on October 28, 2016, at 81 FR 74997, soliciting comments on the proposed amendments. In response, the USPTO received comments from three organizations and one individual. The commenters generally supported the proposed rules as meeting the stated objectives while also raising specific issues. Those issues are summarized below, with similar comments grouped together, and are followed by the USPTO's responses. All comments are

posted on the USPTO's Web site at *https://www.uspto.gov/trademark/trademark-updates-and-announcements/comments-proposed-rulemaking-relating-revival.*

Comment: One commenter inquired as to the meaning of ''abandonment'' in the phrase ''Two months after the date of actual knowledge of the abandonment'' and whether the two-month period begins on the date of the missed deadline, if the party knows the deadline was missed, or on the date of the notice of abandonment.

Response: As discussed above, an application is considered to be abandoned as of the day after the date on which a response to an Office action or notice of allowance is due. However, to accommodate timely mailed paper submissions and to ensure that the required response was not received and placed in the record of another application, the USPTO generally waits one month after the due date to update the trademark electronic records system to reflect the abandonment. When the trademark electronic records system is updated, the USPTO sends a computer-generated notice of abandonment to the correspondence address listed in the application. The provision for filing a petition or request for reinstatement within two months after the date of actual knowledge of an abandonment or cancellation/expiration, but not later than six months after the date the trademark electronic records system indicates that the application is abandoned or the registration is cancelled/expired, applies specifically when an applicant declares that it did not receive a notice of abandonment, or a registrant declares that it did not receive a notice of cancellation/expiration or the Office did not issue such a notice. If the applicant or registrant did not receive a notice that was issued, the applicant or registrant would presumably not be aware of the date of the notice and the two-month time period would start running on the date the applicant or registrant had actual knowledge of the abandonment or cancellation/expiration.

However, as also discussed above, if an applicant or registrant does not receive a notice from the USPTO regarding the abandonment of its application, cancellation/expiration of its registration, or denial of some other request, but otherwise learns of the abandonment, cancellation/expiration, or denial, the applicant or registrant must have been duly diligent in tracking the status of its application or registration in order to be granted revival, reinstatement, or other action by the Director. To be considered duly diligent, an applicant must check the status of the application at least every six months between the filing date of the application and issuance of a registration. After filing an affidavit of use or excusable nonuse under section 8 or section 71 of the Act or a renewal application under section 9 of the Act, a registrant must check the status of the registration every six months until the registrant receives notice that the affidavit or renewal application has been accepted or refused. The provision for filing a petition or request for reinstatement when an applicant or registrant did not receive a notice of abandonment or of cancellation/expiration clarifies that, even if a petition is filed within two months of actual knowledge, it will not be considered timely if the date of filing is later than six months after the date the trademark electronic records system indicates that the application is abandoned or cancelled/expired, because the applicant or registrant was not duly diligent.

Comment: One commenter requested that the USPTO explain why the deadlines refer to a notice of cancellation/expiration when the Office does not currently issue such a notice for the failure to file a timely § 8 affidavit or a § 9 renewal application. The commenter also asked the Office to begin issuing a notice of cancellation/expiration for any registration that is cancelled or expired for failure to file a timely § 8 affidavit and/or a § 9 renewal application.

Response: The USPTO does not issue a notice of cancellation/expiration when a registrant fails to file a timely § 8 affidavit and/or a § 9 renewal application, nor does it plan to do so, because there is no remedy in such situations. Sections 8(a) and 71(a) of the Trademark Act, 15 U.S.C. 1058(a), 1141k(a), require an affidavit or declaration of use or excusable nonuse during the sixth year after the date of registration, at the end of each successive ten-year period following the date of registration, or within a six-month grace period after each required period. Section 9 of the Trademark Act, 15 U.S.C. 1059, provides that registrations resulting from applications based on section 1 or section 44 of the Trademark Act may be renewed for successive periods of ten years following the date of registration and that the application for renewal be filed within one year before the expiration of the ten-year period or within the six-month grace period after the expiration of the ten-year period. If the § 8 or § 71 affidavit is not filed within the statutory filing period (which includes the grace period), the registration shall be cancelled. If the § 9 renewal application is not filed within the statutory filing period (which includes the grace period), the registration expires. The duration of a registration and the time frames for filing the maintenance and renewal documents are statutory requirements, which the USPTO has no authority to waive, and filing after the expiration of the grace period is not a deficiency that can be cured. Therefore, the filing of a petition in response to a notice of cancellation/expiration would provide no remedy in such situations. The petition would be dismissed since the Director is without authority to provide any relief.

The USPTO also notes that it sends a courtesy email reminder of maintenance filing deadlines to trademark owners who authorize email communication and maintain a current email address with the USPTO.

Comment: Two commenters expressed support for the proposed rules, but were concerned that the proposed changes appear to require registrants to check the USPTO's electronic records every six months and do not make it clear that this requirement is linked to the pendency of a filed affidavit of use or excusable nonuse under § 8 or § 71 of the Trademark Act or a renewal application under § 9 of the Trademark Act. One of the commenters recommended a revision to the proposed revised rules and the comments to clarify that the requirement to check the status of a registration (as compared to an application) every six months is only applicable during the time that the registrant is waiting for the USPTO to take action on a filed affidavit of use or excusable nonuse under § 8 or § 71 or a renewal application under § 9.

Response: The USPTO appreciates the commenters' support of the rule changes and concurs that the requirement to check the status of a registration every six months is only applicable during the time that the registrant is waiting for the USPTO to take action on a filed affidavit of use or excusable nonuse under § 8 or § 71 or a renewal application under § 9. To that end, §§ 2.64(b)(1)(ii) and 2.146(d)(2)(ii) have been revised to indicate that the deadlines recited therein apply where the registrant has timely filed an affidavit of use or excusable non-use under § 8 or § 71 or a renewal application under § 9.

Costs and Benefits: This rulemaking is not considered to be economically significant under Executive Order 12866 (Sept. 30, 1993).

Discussion of Regulatory Changes

The USPTO adds § 2.64 and amends §§ 2.66 and 2.146 to clarify the requirements for submitting petitions to revive an abandoned application and petitions to the Director regarding other matters, as described in the section-by-section analysis below.

The USPTO adds § 2.64 to codify the requirements for requests to reinstate an application that was abandoned or a registration that was cancelled or expired, due to Office error. After internal review, the provisions in §§ 2.64(a)(2)(iv) and (b)(2)(iv) of the proposed rule regarding the correspondence address were further revised for enhanced clarity. In response to comments from stakeholders, § 2.64(b)(1)(ii) was revised to clarify that the deadlines apply where the registrant has timely filed an affidavit of use or excusable non-use under section 8 or 71 of the Act or a renewal application under section 9 of the Act.

The USPTO amends the title of § 2.66 to ''Revival of applications abandoned in full or in part due to unintentional delay.''

The USPTO amends § 2.66(a) by adding the title ''Deadline'' and the wording ''in full or in part'' and ''by not later than,'' amends § 2.66(a)(1) by indicating that the deadline is not later than two months after the issue date of the notice of abandonment in full or in part, and amends § 2.66(a)(2) by revising the deadline if the applicant did not receive the notice of abandonment.

The USPTO amends § 2.66(b) by adding the title ''Petition to Revive Application Abandoned in Full or in Part for Failure to Respond to an Office Action'' and rewords the paragraph for clarity and to add ''in full or in part''; revises § 2.66(b)(3) to clarify that (1) if a response to the outstanding Office action is submitted, it must be properly signed, (2) non-receipt of the same Office action or notification can be asserted only once, and (3) if the abandonment is after a final Office action, the response is treated as a request for reconsideration; and adds § 2.66(b)(3)(i)-(ii) to set out the requirements for requesting revival when the abandonment occurs after a final Office action. After internal review, the provision in § 2.66(b)(3) contained in the proposed rule limiting an assertion of non-receipt of an Office action was further revised for enhanced clarity.

The USPTO amends § 2.66(c) by adding the title ''Petition to Revive Application Abandoned for Failure to Respond to a Notice of Allowance''; adds § 2.66(c)(2)(i)–(iv) to incorporate and further clarify requirements in current §§ 2.66(c)(4) and (5), to indicate that non-receipt of a notice of allowance can be asserted only once, and to set out requirements for a multiple-basis application; deletes current § 2.66(c)(3)–(4); and redesignates current § 2.66(c)(5) as § 2.66(c)(3) and deletes the wording prior to ''the applicant must file.'' After internal review, the provision in § 2.66(c)(2)(iii) contained in the proposed rule limiting an assertion of non-receipt of the notice of allowance was revised for enhanced clarity.

The USPTO amends § 2.66(d) by adding the title ''Statement of Use or Petition to Substitute a Basis May Not Be Filed More Than 36 Months After Issuance of the Notice of Allowance'' and rewords the paragraph for clarity.

The USPTO deletes current § 2.66(e).

The USPTO redesignates current § 2.66(f) as § 2.66(e), adds the title ''Request for Reconsideration,'' rewords the paragraph for clarity, and revises paragraphs (1) and (2) to clarify the requirements for requesting reconsideration of a petition to revive that has been denied.

The USPTO amends § 2.146(b) by deleting the wording ''considered to be.''

The USPTO amends § 2.146(d) by deleting the current paragraph and adding a sentence introducing new § 2.146(d)(1)–(2)(iii), which sets out the deadlines for filing a petition. In response to comments from stakeholders, § 2.146(d)(2)(ii) was revised to clarify that the deadlines apply where the registrant has timely filed an affidavit of use or excusable non-use under section 8 or 71 of the Act or a renewal application under section 9 of the Act.

The USPTO amends § 2.146(e)(1) by changing the wording ''within fifteen days from the date of issuance'' and ''within fifteen days from the date of service'' to ''by not later than fifteen days after the issue date'' and ''by not later than fifteen days after the date of service.'' The USPTO amends § 2.146(e)(2) by changing the wording ''within thirty days after the date of issuance'' and ''within fifteen days from the date of service'' to ''by not later than thirty days after the issue date'' and ''by not later than fifteen days after the date of service.''

The USPTO deletes current § 2.146(i).

The USPTO redesignates current § 2.146(j) as new § 2.146(i), deletes the wording ''the petitioner,'' and revises paragraphs (1) and (2) to clarify the requirements for requesting reconsideration of a petition to revive that has been denied.

Rulemaking Considerations

Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Perez* v. *Mortg. Bankers Ass'n,* 135 S. Ct. 1199, 1204 (2015) (Interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers.'' (citation and internal quotation marks omitted)); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (Rule that clarifies interpretation of a statute is interpretive.); *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (Rules governing an application process are procedural under the Administrative Procedure Act.); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (Rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims.).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Perez,* 135 S. Ct. at 1206 (Notice-and-comment procedures are required neither when an agency ''issue[s] an initial interpretive rule'' nor ''when it amends or repeals that interpretive rule.''); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(A))). However, the Office chose to seek public comment before implementing the rule to benefit from the public's input.

Similarly, the 30-day delay in effectiveness is not applicable because this rule is not a substantive rule as the changes herein have no impact on the standard for reviewing trademark applications. 5 U.S.C. 553(d). As discussed above, this rulemaking involves rules of agency practice and procedure, consisting of changes to the deadlines and requirements for requesting revival, reinstatement, or other action by the Director. These changes are procedural in nature and will have no substantive impact on the evaluation of a trademark application. Therefore, the requirement for a 30-day delay in effectiveness is not applicable.

Regulatory Flexibility Act: The Deputy General Counsel for General Law of the USPTO has certified to the Chief Counsel for Advocacy of the Small

Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities. *See* Regulatory Flexibility Act, 5 U.S.C. 605(b).

This rule amends the regulations to provide detailed deadlines and requirements for petitions to revive an abandoned application and petitions to the Director regarding other matters and to codify USPTO practice regarding requests for reinstatement of abandoned applications and cancelled or expired registrations. The rule will apply to all persons seeking a revival or reinstatement of an abandoned trademark application or registration or other equitable action by the Director. Applicants for a trademark are not industry specific and may consist of individuals, small businesses, non-profit organizations, and large corporations. The USPTO does not collect or maintain statistics on small- versus large-entity applicants, and this information would be required in order to determine the number of small entities that would be affected by the rule.

The burdens to all entities, including small entities, imposed by these rule changes will be minor procedural requirements on parties submitting petitions to revive an abandoned application and petitions to the Director regarding other matters and those submitting requests for reinstatement of abandoned applications and cancelled or expired registrations. The changes do not impose any additional economic burden in connection with the changes as they merely clarify existing requirements or codify existing procedures.

Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule changes; (2) tailored the rules to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing a notice of proposed rulemaking, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs): Because this rulemaking has been determined to be not significant for purposes of Executive Order 12866, the requirements of Executive Order 13771 (Jan. 30, 2017) do not apply. *See Guidance Implementing Executive Order 13771, Titled ''Reducing Regulation and Controlling Regulatory Costs,''* at page 3 (OMB mem.) (April 5, 2017).

Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

Unfunded Mandates Reform Act of 1995: The changes in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

Paperwork Reduction Act: This rulemaking involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this rule has been reviewed and previously approved by OMB under control numbers 0651–0051, 0651–0054, and 0651–0061.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Trademarks.

For the reasons stated in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the Office amends part 2 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for 37 CFR Part 2 continues to read as follows:

Authority: 15 U.S.C. 1113, 15 U.S.C. 1123, 35 U.S.C. 2, Section 10 of Public Law 112–29, unless otherwise noted.

■ 2. Add § 2.64 to read as follows:

§ 2.64 Reinstatement of applications and registrations abandoned, cancelled, or expired due to Office error.

(a) *Request for Reinstatement of an Abandoned Application.* The applicant may file a written request to reinstate an application abandoned due to Office error. There is no fee for a request for reinstatement.

(1) *Deadline.* The applicant must file the request by not later than:

(i) Two months after the issue date of the notice of abandonment; or

(ii) Two months after the date of actual knowledge of the abandonment and not later than six months after the date the trademark electronic records system indicates that the application is abandoned, where the applicant declares under § 2.20 or 28 U.S.C. 1746 that it did not receive the notice of abandonment.

(2) *Requirements.* A request to reinstate an application abandoned due to Office error must include:

(i) Proof that a response to an Office action, a statement of use, or a request

for extension of time to file a statement of use was timely filed and a copy of the relevant document;

(ii) Proof of actual receipt by the Office of a response to an Office action, a statement of use, or a request for extension of time to file a statement of use and a copy of the relevant document;

(iii) Proof that the Office processed a fee in connection with the filing at issue and a copy of the relevant document;

(iv) Proof that the Office sent the Office action or notice of allowance to an address that is not the designated correspondence address; or

(v) Other evidence, or factual information supported by a declaration under § 2.20 or 28 U.S.C. 1746, demonstrating Office error in abandoning the application.

(b) *Request for Reinstatement of Cancelled or Expired Registration.* The registrant may file a written request to reinstate a registration cancelled or expired due to Office error. There is no fee for the request for reinstatement.

(1) *Deadline.* The registrant must file the request by not later than:

(i) Two months after the issue date of the notice of cancellation/expiration; or

(ii) Where the registrant has timely filed an affidavit of use or excusable non-use under section 8 or 71 of the Act, or a renewal application under section 9 of the Act, two months after the date of actual knowledge of the cancellation/expiration and not later than six months after the date the trademark electronic records system indicates that the registration is cancelled/expired, where the registrant declares under § 2.20 or 28 U.S.C. 1746 that it did not receive the notice of cancellation/expiration or where the Office did not issue a notice.

(2) *Requirements.* A request to reinstate a registration cancelled/expired due to Office error must include:

(i) Proof that an affidavit or declaration of use or excusable nonuse, a renewal application, or a response to an Office action was timely filed and a copy of the relevant document;

(ii) Proof of actual receipt by the Office of an affidavit or declaration of use or excusable nonuse, a renewal application, or a response to an Office action and a copy of the relevant document;

(iii) Proof that the Office processed a fee in connection with the filing at issue and a copy of the relevant document;

(iv) Proof that the Office sent the Office action to an address that is not the designated correspondence address; or

(v) Other evidence, or factual information supported by a declaration under § 2.20 or 28 U.S.C. 1746, demonstrating Office error in cancelling/expiring the registration.

(c) *Request for Reinstatement May be Construed as Petition.* If an applicant or registrant is not entitled to reinstatement, a request for reinstatement may be construed as a petition to the Director under § 2.146 or a petition to revive under § 2.66, if appropriate. If the applicant or registrant is unable to meet the timeliness requirement under paragraphs (a)(1) or (b)(1) of this section for filing the request, the applicant or registrant may submit a petition to the Director under § 2.146(a)(5) to request a waiver of the rule.

■ 3. Revise § 2.66 to read as follows:

§ 2.66 Revival of applications abandoned in full or in part due to unintentional delay.

(a) *Deadline.* The applicant may file a petition to revive an application abandoned in full or in part because the applicant did not timely respond to an Office action or notice of allowance, if the delay was unintentional. The applicant must file the petition by not later than:

(1) Two months after the issue date of the notice of abandonment in full or in part; or

(2) Two months after the date of actual knowledge of the abandonment and not later than six months after the date the trademark electronic records system indicates that the application is abandoned in full or in part, where the applicant declares under § 2.20 or 28 U.S.C. 1746 that it did not receive the notice of abandonment.

(b) *Petition To Revive Application Abandoned in Full or in Part for Failure To Respond to an Office Action.* A petition to revive an application abandoned in full or in part because the applicant did not timely respond to an Office action must include:

(1) The petition fee required by § 2.6;

(2) A statement, signed by someone with firsthand knowledge of the facts, that the delay in filing the response on or before the due date was unintentional; and

(3) A response to the Office action, signed pursuant to § 2.193(e)(2), or a statement that the applicant did not receive the Office action or the notification that an Office action issued. If the applicant asserts that the unintentional delay is based on non-receipt of an Office action or notification, the applicant may not assert non-receipt of the same Office action or notification in a subsequent petition. When the abandonment is after a final Office action, the response is treated as a request for reconsideration under § 2.63(b)(3) and the applicant must also file:

(i) A notice of appeal to the Trademark Trial and Appeal Board under § 2.141 or a petition to the Director under § 2.146, if permitted by § 2.63(b)(2)(iii); or

(ii) A statement that no appeal or petition is being filed from the final refusal(s) or requirement(s).

(c) *Petition To Revive Application Abandoned for Failure To Respond to a Notice of Allowance.* A petition to revive an application abandoned because the applicant did not timely respond to a notice of allowance must include:

(1) The petition fee required by § 2.6;

(2) A statement, signed by someone with firsthand knowledge of the facts, that the delay in filing the statement of use (or request for extension of time to file a statement of use) on or before the due date was unintentional; and one of the following:

(i) A statement of use under § 2.88, signed pursuant to § 2.193(e)(1), and the required fees for the number of requests for extensions of time to file a statement of use that the applicant should have filed under § 2.89 if the application had never been abandoned;

(ii) A request for an extension of time to file a statement of use under § 2.89, signed pursuant to § 2.193(e)(1), and the required fees for the number of requests for extensions of time to file a statement of use that the applicant should have filed under § 2.89 if the application had never been abandoned;

(iii) A statement that the applicant did not receive the notice of allowance and a request to cancel said notice and issue a new notice. If the applicant asserts that the unintentional delay in responding is based on non-receipt of the notice of allowance, the applicant may not assert non-receipt of the notice of allowance in a subsequent petition; or

(iv) In a multiple-basis application, an amendment, signed pursuant to § 2.193(e)(2), deleting the section 1(b) basis and seeking registration based on section 1(a) and/or section 44(e) of the Act.

(3) The applicant must file any further requests for extensions of time to file a statement of use under § 2.89 that become due while the petition is pending, or file a statement of use under § 2.88.

(d) *Statement of Use or Petition To Substitute a Basis May Not Be Filed More Than 36 Months After Issuance of the Notice of Allowance.* In an application under section 1(b) of the Act, the Director will not grant a

petition under this section if doing so would permit an applicant to file a statement of use, or a petition under § 2.35(b) to substitute a basis, more than 36 months after the issue date of the notice of allowance under section 13(b)(2) of the Act.

(e) *Request for Reconsideration.* If the Director denies a petition to revive under this section, the applicant may request reconsideration, if:

(1) The applicant files the request by not later than:

(i) Two months after the issue date of the decision denying the petition; or

(ii) Two months after the date of actual knowledge of the decision denying the petition and not later than six months after the issue date of the decision where the applicant declares under § 2.20 or 28 U.S.C. 1746 that it did not receive the decision; and

(2) The applicant pays a second petition fee under § 2.6.

■ 4. Revise § 2.146 to read as follows:

§ 2.146 Petitions to the Director.

(a) Petition may be taken to the Director:

(1) From any repeated or final formal requirement of the examiner in the ex parte prosecution of an application if permitted by § 2.63(a) and (b);

(2) In any case for which the Act of 1946, or Title 35 of the United States Code, or this Part of Title 37 of the Code of Federal Regulations specifies that the matter is to be determined directly or reviewed by the Director;

(3) To invoke the supervisory authority of the Director in appropriate circumstances;

(4) In any case not specifically defined and provided for by this Part of Title 37 of the Code of Federal Regulations; or

(5) In an extraordinary situation, when justice requires and no other party is injured thereby, to request a suspension or waiver of any requirement of the rules not being a requirement of the Act of 1946.

(b) Questions of substance arising during the ex parte prosecution of applications, including, but not limited to, questions arising under sections 2, 3, 4, 5, 6, and 23 of the Act of 1946, are not appropriate subject matter for petitions to the Director.

(c) Every petition to the Director shall include a statement of the facts relevant to the petition, the points to be reviewed, the action or relief requested, and the fee required by § 2.6. Any brief in support of the petition shall be embodied in or accompany the petition. The petition must be signed by the petitioner, someone with legal authority to bind the petitioner (*e.g.,* a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter, in accordance with the requirements of § 2.193(e)(5). When facts are to be proved on petition, the petitioner must submit proof in the form of verified statements signed by someone with firsthand knowledge of the facts to be proved, and any exhibits.

(d) Unless a different deadline is specified elsewhere in this chapter, a petition under this section must be filed by not later than:

(1) Two months after the issue date of the action, or date of receipt of the filing, from which relief is requested; or

(2) Where the applicant or registrant declares under § 2.20 or 28 U.S.C. 1746 that it did not receive the action, or where no action was issued, the petition must be filed by not later than:

(i) Two months of actual knowledge of the abandonment of an application and not later than six months after the date the trademark electronic records system indicates that the application is abandoned in full or in part;

(ii) Where the registrant has timely filed an affidavit of use or excusable non-use under Section 8 or 71 of the Act, or a renewal application under Section 9 of the Act, two months after the date of actual knowledge of the cancellation/expiration of a registration and not later than six months after the date the trademark electronic records system indicates that the registration is cancelled/expired; or

(iii) Two months after the date of actual knowledge of the denial of certification of an international application under § 7.13(b) and not later than six months after the trademark electronic records system indicates that certification is denied.

(e)(1) A petition from the grant or denial of a request for an extension of time to file a notice of opposition must be filed by not later than fifteen days after the issue date of the grant or denial of the request. A petition from the grant of a request must be served on the attorney or other authorized representative of the potential opposer, if any, or on the potential opposer. A petition from the denial of a request must be served on the attorney or other authorized representative of the applicant, if any, or on the applicant. Proof of service of the petition must be made as provided by § 2.119. The potential opposer or the applicant, as the case may be, may file a response by not later than fifteen days after the date of service of the petition and must serve a copy of the response on the petitioner, with proof of service as provided by § 2.119. No further document relating to the petition may be filed.

(2) A petition from an interlocutory order of the Trademark Trial and Appeal Board must be filed by not later than thirty days after the issue date of the order from which relief is requested. Any brief in response to the petition must be filed, with any supporting exhibits, by not later than fifteen days after the date of service of the petition. Petitions and responses to petitions, and any documents accompanying a petition or response under this subsection, must be served on every adverse party pursuant to § 2.119.

(f) An oral hearing will not be held on a petition except when considered necessary by the Director.

(g) The mere filing of a petition to the Director will not act as a stay in any appeal or inter partes proceeding that is pending before the Trademark Trial and Appeal Board, nor stay the period for replying to an Office action in an application, except when a stay is specifically requested and is granted or when §§ 2.63(a) and (b) and 2.65(a) are applicable to an ex parte application.

(h) Authority to act on petitions, or on any petition, may be delegated by the Director.

(i) If the Director denies a petition, the petitioner may request reconsideration, if:

(1) The petitioner files the request by not later than:

(i) Two months after the issue date of the decision denying the petition; or

(ii) Two months after the date of actual knowledge of the decision denying the petition and not later than six months after the issue date of the decision where the petitioner declares under § 2.20 or 28 U.S.C. 1746 that it did not receive the decision; and

(2) The petitioner pays a second petition fee under § 2.6.

Dated: June 22, 2017.

Joseph D. Matal,

Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2017–13519 Filed 6–28–17; 8:45 am]

BILLING CODE 3510–16–P

LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201 and 202

[Docket No. 2016–8]

Group Registration of Contributions to Periodicals

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The United States Copyright Office is modernizing its registration practices to increase the efficiency of the registration process for both the Office and copyright owners. To further these efforts, this final rule adopts modifications to the Office's procedures for group registration for contributions to periodicals. Specifically, the Office adopts a new requirement that applicants seeking copyright registrations for groups of contributions to periodicals must submit applications through the Office's electronic registration system; modifies the deposit requirement by requiring applicants to submit their contributions in a digital format and to upload those files through the electronic system; clarifies the eligibility requirements; and alters the administrative classes used for such registrations.

DATES: Effective July 31, 2017.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, or Erik Bertin, Deputy Director of Registration Policy and Practice, by telephone at 202–707–8040, or Emma Raviv, Barbara A. Ringer Fellow, by telephone at 202–707–3246.

SUPPLEMENTARY INFORMATION:

I. Background

On December 1, 2016, the Copyright Office (the ''Office'') published a Notice of Proposed Rulemaking (''NPRM'') setting forth proposed regulatory amendments designed to make the procedure for group registration of contributions to periodicals (''GRCP'') more efficient. *See* 81 FR 86634 (Dec. 1, 2016). By statute, the Office is required to provide for ''a single registration for a group of works by the same individual author, all first published as contributions to periodicals, including newspapers, within a twelve-month period, on the basis of a single deposit, application, and registration fee, under the following conditions—(A) if the deposit consists of one copy of the entire issue of the periodical, or of the entire section in the case of a newspaper, in which each contribution was first published; and (B) if the application identifies each work separately, including the periodical containing it and its date of first publication.'' 17 U.S.C. 408(c)(2); *see also* 37 CFR 202.3(b)(8).

The NPRM encompassed—and explained in detail the rationale for—four major changes to the GRCP registration procedure. First, the NPRM proposed amending the regulations to require applicants to register their contributions through the Office's electronic registration system (instead of submitting a paper application). Second, it proposed modifying the deposit requirements for this option by requiring applicants to submit a digital copy of each contribution and to upload these copies through the electronic registration system (instead of submitting a physical copy of each contribution).[1] Third, the NPRM proposed a modification requiring applicants to register their contributions either in Class TX or Class VA (but not Class PA), and to identify the date of publication for each contribution and the periodical where each contribution was first published. Fourth, the NPRM proposed modifying the eligibility criteria for the GRCP option by providing a more specific definition of the term ''periodical,'' and by specifically requiring the contributions to be owned by the same copyright claimant.

Authors Guild (''AG'') and National Writers Union (''NWU'') both submitted comments in response to the NPRM.[2] The commenters took no issue with the Office's proposal to issue all GRCP registrations in either Class TX or Class VA,[3] or the requirement that the contributions must be owned by the same claimant. Commenters did express some concerns regarding the shift to online-only registration, as well as some additional concerns regarding technical aspects of the proposed rules, which are addressed below. Having reviewed and carefully considered the comments received, bearing on the two other changes, the Office now issues a final rule that closely follows the proposed rule, with some alterations in response to the comments, as discussed below.[4]

II. Discussion of Comments

A. Online Filing Requirement

After this final rule goes into effect, GRCP applicants will be required to use an online application specifically designed for GRCP as a condition for using this group option. The Office will no longer accept groups of contributions that are submitted with a paper application on Form TX, Form VA, Form PA, or Form GR/CP.

AG stated that it welcomed the introduction of an online application and predicted that it would ''greatly increase the efficiency of the registration process,'' create a more robust and easily-searchable public record, and for most authors will likely become the preferred mode for seeking a group registration. AG Comments at 1–2, 4. However, AG expressed concern that many authors are ''well-accustomed'' to the paper application or may not have access to broadband Internet service. AG Comments at 2. AG stated that the Office should gauge the demand for the paper application before issuing a final rule,[5] and then gradually phase out the application after a specified period of time while providing adequate notice during the phase-out period. If the Office determined that a cognizable number of authors prefer to use the paper application, AG recommended that the Office continue to offer this form and offer ''special dispensation'' from the online filing requirement ''on a case by case basis.'' *Id.*

NWU, too, opposed the online filing requirement and urged the Office to retain the paper application, contending that the proposed rule would increase the burden on writers who use the group option. NWU Comments at 4.

The Office considered AG's and NWU's concerns, but has decided to implement the online application requirement and eliminate the paper application, with some exceptions and new resources in place to assist applicants. When the final rule goes into effect, applicants generally will be required to use the online application in

[1] Although the statute specifies the specific kinds of deposit the Office must accept for the group option for contributions to periodicals—*i.e.,* ''one copy of the entire issue of the periodical, or of the entire section in the case of a newspaper, in which each contribution was first published''—the NPRM also explained how, consistent with the overall statutory scheme, the Office may accept deposits other than those set forth in that provision. 81 FR at 86640. No commenter took issue with the Office's interpretation of its authority to expand the deposits that may be accepted under this group registration option.

[2] The comments received in response to the NPRM can be found on the Copyright Office's Web site at *https://www.copyright.gov/rulemaking/grcp/.*

[3] AG supported this proposal outright. AG Comments at 2.

[4] The final rule makes a few technical amendments to the rule as proposed: The rule will appear in § 202.4(g), rather than § 202.4(h) of the regulations, and the statutory definitions for ''compilation'' and ''derivative work'' have been incorporated by reference.

[5] Authors Guild filed comments on behalf of its 9,000 members but apparently did not poll these individuals to determine if they would prefer to use a paper application or if they have Internet access.

order to seek a group registration for contributions to periodicals. Paper applications submitted on Form TX or VA with Form GR/CP will not be accepted.

The Office recognizes, however, that authors are accustomed to using the paper application. To ease the transition to the online application, the Office is developing several new resources. The Office will revise chapters 1100 and 1400 of the *Compendium of U.S. Copyright Office Practices, Third Edition* (hereinafter ''*Compendium*''), which summarize the procedures for issuing registrations under this group option. The Office is also preparing a new circular which provides a general introduction to GRCP. The Office has added a notice to the instructions for Form GR/CP indicating that this form may not be used once the final rule goes into effect.

In addition, a provision has been added to the final rule permitting the Office to waive the online filing requirement in ''an exceptional case'' and ''subject to such conditions as the Associate Register and Director of the Office of Registration Policy and Practice may impose on the applicant.'' Authors who do not have Internet access and are unable to use the online application may contact the Office, and the Office will review the specific details of their cases and determine their eligibility.

The Office will then make accommodations for applicants who receive a waiver under this provision. One accommodation that the Office plans to implement will be to allow such applicants to contact the Public Information Office (''PIO'') by telephone for assistance in filling out the application. A member of the staff will ask the applicant to provide the information that is called for in the application, such as the titles of the works and the periodicals containing them, the volume or issue numbers and pages on which the contributions appeared, and the dates of first publication. PIO staff will enter this information into the electronic registration system. Then they will print a copy of the application and mail it to the applicant for his or her review. If the applicant approves the draft, he or she will sign the application and mail it back to the Office, along with a check to cover the filing fee. In providing this service, members of the PIO staff are not providing legal advice; their assistance is merely a service for convenience, and applicants remain responsible for providing accurate and complete information in their applications. Applicants should be aware that if they use this option, the effective date for their group registration will be based on the date that the signed application, the filing fee, and deposits are received. At this time, the Office does not intend to charge an additional fee for applicants who submit applications with the assistance of PIO. The Office will track the number of applicants who use this option and the amount of time needed to handle these requests. The Office will use this information in conducting its next fee study.

B. Deposit Requirements

The final rule states that applicants must submit a complete copy of each contribution that is included in the group, and may satisfy this requirement by submitting one copy of the entire issue of the periodical in which the contribution was first published, the entire section of a newspaper in which the contribution was first published, or just a copy of the contribution in the precise form in which it was first published in the periodical (*i.e.,* a copy of the particular pages within the periodical where the contribution was first published). These submissions must be digital copies in Portable Document Format (''PDF''), JPEG format, or other electronic format specifically approved by the Office, and must be submitted through the electronic registration system.

AG agreed that requiring applicants to upload a copy of their works in a digital format would increase the efficiency of the group registration option. AG Comments at 4. But AG expressed concern that this may be ''overly burdensome'' for authors ''who have not made the complete transition from analog to digital.'' *Id.*

NWU also objected to this proposal. NWU contended that authors would need ''PDF creation software and a flatbed scanner with a platen large enough to scan entire pages of a magazine or newspaper.'' NWU Comments at 7. NWU contended that this type of equipment is expensive and that authors who live outside major metropolitan areas may not have access to a copy shop with a scanner large enough to create a PDF of an entire page from the newspaper. *Id.* To avoid this burden, NWU urged the Office to allow authors to submit their works in a hard copy form, or alternatively, to eliminate the deposit requirement altogether. *Id.* at 8–9.[6]

As a preliminary matter, the Office notes that many periodicals publish electronic replicas of their periodicals in downloadable or printable format.[7] It may also be possible for authors to obtain a digital copy in the precise form it was published in the periodical from the periodical publisher directly. As for NWU's contention that special equipment would be needed to create a PDF copy of a contribution that appeared in a magazine or newspaper, the Office notes that even standard home office equipment will generate an acceptable deposit. Most magazines fit comfortably on a multi-function printer or scanner capable of copying a page sized 8½ x 11″ or 11 x 17″—machines many applicants already possess, or can access at a local library or copy shop. And a newspaper could be scanned simply by folding the page in half and scanning the upper and lower portion of that page.

Even a scanner is not necessary to generate an acceptable file. The vast majority of the U.S. population owns a cell phone; as of 2016, Pew Research Center estimated that 77% of American adults owned a smartphone, and that number continues to rise.[8] Most smartphones contain a camera that can be used to take a photograph and save that image as an electronic file; indeed, 95% of cameras sold in 2014 were smartphone cameras.[9] In addition, there are many free apps that permit a smartphone camera to be used as a PDF scanner.[10] Thus, even if an author does not have access to a household scanner, and does not have access to a local merchant or library that provides

[6] NWU notes that many authors ''create and submit their works to periodicals in word processor, text, or HTML file formats, not as the PDF files or page images required by the proposed rules,'' but does not suggest that the version of a work as submitted to the publisher would suffice. *See* NWU Comments at 6. In many cases these works are further edited by the publisher after being received from the author. And as noted in the NPRM, a copy of the work in the precise form it was published provides better proof that the work was indeed published in a periodical. 81 FR at 86640.

[7] *See, e.g.,* the Washington Post's e-Replica edition, at *http://thewashingtonpost.pressreader.com/*the-washington-post. With a subscription, a person can right-click on any article and print it; some browsers, including Google Chrome, will allow you to ''print'' the article as a PDF file.

[8] *See* Aaron Smith, *Record shares of Americans now own smartphones, have home broadband,* Pew Research Center (Jan. 12, 2017), *http://www.pewresearch.org/fact-tank/2017/01/12/evolution-of-technology/.*

[9] Tomi T. Ahonen, *Camera Stats: World has 5.8B Cameras by 4B Unique Camera Owners: 89% of camera owners use a cameraphone to take pictures; This year first time 1 Trillion pictures are taken,* Communities Dominate Brands Blog (Aug. 11, 2014), *http://communitiesdominate.blogs.com/brands/2014/08/camera-stats-world-has-48b-cameras-by-4b-unique-camera-owners-88-of-them-use-cameraphone-to-take-pic.html.*

[10] Sarah Mitroff, *The best scanning apps for Android and iPhone,* CNET (Sept. 8, 2015), *https://www.cnet.com/how-to/best-scanning-apps-for-android-and-iphone/.*

scanning services, he or she can take a digital photograph or scan of that excerpt and submit it as the deposit, so long as the work is legible.

To facilitate the use of these various options, the final rule clarifies that applicants may upload an electronic copy of their works in any of the formats listed on the Office's Web site. The list includes PDF as well as common formats used in digital photography such as .jpg and .tiff. *See* eCO Acceptable File Types, U.S. Copyright Office, *https://www.copyright.gov/eco/help-file-types.html.*

The Office recognizes that there may be rare cases where an author does not have access to any of these resources. The Office also recognizes AG's concerns that some authors may not be comfortable using this type of technology even if it is readily available. The final rule addresses these concerns by clarifying, as mentioned in the NPRM, that applicants may request special relief under § 202.20(d) if they are unable to comply with the deposit requirements for this group option.

The Office, however, is unable to eliminate the deposit requirement entirely, as NWU recommends. NWU Comments at 8. NWU notes that electronic works published in the United States and available only online have been exempted ''from the general deposit requirement.'' *Id.* at 13. NWU contends that the Register of Copyrights has similar authority to exempt online works from the deposit requirement for registration. *Id.* NWU appears to confuse mandatory deposit under section 407 with the deposit requirement for registration under section 408. The Register has the statutory authority under section 407(c) to exempt certain categories of works from mandatory deposit, and recently created a broad exemption for online works. The Register also has the authority under section 408(c)(1) to specify the nature of the copies or phonorecords to be submitted for registration. But the Register does not have the authority to waive the registration deposit requirement altogether. NWU also contends that the Office's application forms have not been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act, citing 44 U.S.C. 3507. *Id.* at 7. These requirements do not apply to the Office; the Office is a component of the Library of Congress, which is not an agency ''in the executive branch of the Government'' under that statute. 44 U.S.C. 3502(1); *see Ethnic Employees of the Library of Congress* v. *Boorstin,* 751 F.2d 1405, 1416 n.15 (D.C. Cir. 1985) (noting that the Library of Congress is not subject to the Administrative Procedure Act or the Freedom of Information Act).[11]

C. Definition of ''Periodical''

The NPRM proposed a definition of ''periodical'' consistent with the one that has appeared in in the *Compendium* since December 22, 2014. It states that a periodical is a collective work that is issued or intended to be issued on an established schedule in successive issues that are intended to be continued indefinitely. It also recognizes that each issue of a periodical usually bears the same title, as well as numerical or chronological designations.[12] *See Compendium,* section 1115.1; 37 CFR 202.3(b)(1)(v); 56 FR 7812, 7813 (Feb. 26, 1991). Contributions to an electronically printed (''ePrint'') publication may be registered under GRCP if that publication fits within the regulatory definition of a ''periodical.'' The NPRM clarified that a Web site would not be considered a periodical, since they may be updated on a continual basis rather than on an established schedule.

AG objects to this definition, calling the distinction between ''ePrint'' publications and Web sites ''arbitrary.'' AG Comments at 3. AG is concerned that the distinction ''would have the effect of disqualifying a great number of electronically-published works from GRCP eligibility.'' *Id.* Specifically, AG notes that nearly all news sites on the internet are updated ''on a continual basis,'' and as such, contributions to those would not be eligible for GRCP. *Id.* The Office has considered these concerns, but notes that at this time, GRCP is a group registration option intended for a specific class of copyrightable works—one that is specifically mandated by the Copyright Act. When developing its priorities for future upgrades to the electronic registration system, the Office will take these concerns into account.

Finally, AG states that the Office should not ''restrict the definition [of ''periodical''] to works that bear the same 'numerical or chronological designations.' '' *Id.* The rule here is not as restrictive as AG suggests. It offers only guidance that ''in *most* cases,'' periodicals will bear those designations. § 202.4(g)(4) (emphasis added). Where a periodical does not bear those designations, but otherwise bears the features of a periodical, the Office is likely to conclude that it falls within the definition.

In a similar vein, NWU seeks a new group registration method for contributions to Web sites, as well as other categories of works. Specifically, NWU submitted a petition urging the Office to create additional group registration options for the following categories of works: ''(a) Multiple works first distributed electronically on multiple dates, regardless of whether they constitute contributions to periodicals or a database and regardless of whether they might be deemed to have been, at the time of registration, published or unpublished, and (b) multiple works that would otherwise be eligible for group registration except that they were not first published as contributions to periodicals.'' NWU Comments at 4, 11–12. The Office is considering the NWU's requests and will take them into account when developing its priorities for future upgrades to the electronic registration system.

D. Additional Objections

NWU raises an additional objection to the proposed rule. NWU contends that requiring authors to register their works in a timely manner and to deposit a copy of the work with the Office as a condition for filing an infringement action or seeking attorneys' fees or statutory damages constitutes an impermissible formality that is prohibited by the Berne Convention. They also contend that these statutory requirements deny authors an ''effective remedy'' for infringement, which is required by the WIPO Copyright Treaty. NWU Comments at 4–5. Although the Office does not agree that these requirements violate Berne or the WCT, this rulemaking is not the proper forum in which to address these concerns in detail. The statutory requirements that NWU complains of are part of the Copyright Act and the Office cannot create exceptions to them as part of this rulemaking.

List of Subjects in 37 CFR Parts 201 and 202

Copyright.

[11] The Copyright Office is subject to the APA and FOIA only because there is a specific statutory provision in title 17 providing so, although it carves out certain actions from the scope of even those provisions. *See* 17 U.S.C. 701(e). There is no equivalent provision specifically rendering the Copyright Office subject to the Paperwork Reduction Act.

[12] The proposed rule provided examples of the types of publications that typically qualify as a periodical, such as newspapers, newsletters, magazines, annuals, and other similar works. 81 FR at 86643. To avoid confusion, the Office decided not to include these examples in the final rule, because those examples may not always qualify as ''periodicals.'' For instance, a weekly ''newsletter'' consisting of a single article written by a single author would not be a ''collective work,'' and thus would not qualify as a periodical.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR parts 201 and 202 as follows:

PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. In § 201.3, revise paragraph (c)(2) to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

* * * * *

(c) * * *

(2) Registration of a claim in a group of contributions to periodicals or a group of database updates	85

* * * * *

■ 3. Amend § 201.7 as follows:

■ a. In the last sentence in paragraph (c)(4) introductory text, add the phrase ''examples of'' after the phrase ''The following are''.

■ b. In paragraph (c)(4)(i), remove the semicolon and add a period in its place.

■ c. In paragraph (c)(4)(ii), remove ''1989,'' and add in its place ''1989'' and remove ''notice;'' and add in its place ''notice.'' .

■ d. In paragraphs (c)(4)(iii) through (viii), remove the semicolon and add a period in its place.

■ e. Remove paragraph (c)(4)(ix) and redesignate paragraphs (c)(4)(x) and (xi) as paragraphs (c)(4)(ix) and (x), respectively.

■ f. In newly redesignated paragraph (c)(4)(ix), remove the term ''; and '' and add a period in its place.

■ g. Add new paragraph (c)(4)(xi).

The addition reads as follows:

§ 201.7 Cancellation of completed registrations.

* * * * *

(c) * * *

(4) * * *

(xi) The requirements for registering a group of related works under section 408(c) of title 17 of the United States Code have not been met.

* * * * *

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 4. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

■ 5. Amend § 202.3 as follows:

■ a. Revise paragraph (b)(4)(ii).

■ b. Remove and reserve paragraph (b)(8).

■ c. In paragraph (b)(11)(ii), redesignate footnote 4 as footnote 2.

■ d. In paragraph (c)(2) introductory text, remove the reference to footnote ''6'' and add the phrase ''or § 202.4, as applicable'' at the end of the second sentence.

■ e. In paragraph (c)(2)(iv), remove footnote 5.

■ f. Designate the undesignated sentence following paragraph (c)(2)(iv) as paragraph (c)(3).

The revision read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(4) * * *

(ii) In the case of an application for registration made under paragraphs (b)(4) through (10) of this section or under § 202.4, the ''year of creation,'' ''year of completion,'' or ''year in which creation of this work was completed'' means the latest year in which the creation of any copyrightable element was completed.

* * * * *

■ 6. Add § 202.4 to read as follows:

§ 202.4 Group registration.

(a) *General.* This section prescribes conditions for issuing a registration for a group of related works under section 408(c) of title 17 of the United States Code.

(b) *Definitions.* For purposes of this section, the terms *compilation, collective work, copy, derivative work,* and *work made for hire* have the meanings set forth in section 101 of title 17 of the United States Code, and the terms *claimant, Class TX, Class VA,* and *works of the visual arts* have the meanings set forth in § 202.3(a)(3) and (b)(1)(i) and (iii).

(c) [Reserved]

(d) [Reserved]

(e) [Reserved]

(f) [Reserved]

(g) *Group registration of contributions to periodicals.* Pursuant to the authority granted by 17 U.S.C. 408(c)(2), the Register of Copyrights has determined that a group of contributions to periodicals may be registered in Class TX or Class VA with one application, one filing fee, and the required deposit, if the following conditions are met:

(1) All the contributions in the group must be created by the same individual.

(2) The copyright claimant must be the same person or organization for all the contributions.

(3) The contributions must not be works made for hire.

(4) Each work must be first published as a contribution to a periodical, and all the contributions must be first published within a twelve-month period (*e.g.,* January 1, 2015 through December 31, 2015; February 1, 2015 through January 31, 2016). For purposes of this section, a periodical is a collective work that is issued or intended to be issued on an established schedule in successive issues that are intended to be continued indefinitely. In most cases, each issue will bear the same title, as well as numerical or chronological designations.

(5) If any of the contributions were first published before March 1, 1989, those works must bear a separate copyright notice, the notice must contain the copyright owner's name (or an abbreviation by which the name can be recognized, or a generally known alternative designation for the owner), and the name that appears in each notice must be the same.

(6) The applicant must complete and submit the online application designated for a group of contributions to periodicals. The application must identify each contribution that is included in the group, including the date of publication for each contribution and the periodical in which it was first published. The application may be submitted by any of the parties listed in § 202.3(c)(1). The application should be filed in Class TX if a majority of the contributions predominantly consist of text, and the application should be filed in Class VA if a majority of the contributions predominantly consist of photographs, illustrations, artwork, or other works of the visual arts.

(7) The appropriate filing fee, as required by § 201.3(c) of this chapter, must be included with the application or charged to an active deposit account.

(8) The applicant must submit one copy of each contribution that is included in the group, either by submitting the entire issue of the periodical where the contribution was first published, the entire section of the newspaper where it was first published, or the specific page(s) from the periodical where the contribution was first published. The contributions must

be contained in separate electronic files that comply with § 202.20(b)(2)(iii). The files must be submitted in a PDF, JPG, or other electronic format approved by the Office, and they must be uploaded to the electronic registration system, preferably in a .zip file containing all the files. The file size for each uploaded file must not exceed 500 megabytes; the files may be compressed to comply with this requirement.

(9) In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (g)(6) of this section or may grant special relief from the deposit requirement under § 202.20(d), subject to such conditions as the Associate Register of Copyrights and Director of the Office of Registration Policy and Practice may impose on the applicant.

(h) [Reserved]

(i) [Reserved]

(j) [Reserved]

(k) *Refusal to register.* The Copyright Office may refuse registration if the applicant fails to satisfy the requirements for registering a group of related works under this section or § 202.3(b)(5) through (7), (9), or (10).

(l) *Cancellation.* If the Copyright Office issues a registration for a group of related works and subsequently determines that the requirements for that group option have not been met, and if the claimant fails to cure the deficiency after being notified by the Office, the registration may be cancelled in accordance with § 201.7 of this chapter.

(m) *The scope of a group registration.* When the Office issues a group registration under paragraph (g) of this section, the registration covers each work in the group and each work is registered as a separate work. For purposes of registration, the group as a whole is not considered a compilation, a collective work, or a derivative work under sections 101, 103(b), or 504(c)(1) of title 17 of the United States Code.

§ 202.20 [Amended]

■ 7. Amend § 202.20 as follows:

■ a. In paragraph (d)(1)(i), remove ''section;'' and add in its place ''section; or'' .

■ b. In paragraph (d)(1)(iii), remove ''section; or'' and add in its place ''section or § 202.4; or'' .

■ c. In paragraph (d)(1)(iv), remove ''§ 202.21.'' and add in its place ''§ 202.4 or § 202.21.''.

Dated: May 31, 2017.

Karyn Temple Claggett,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2017–13548 Filed 6–28–17; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0504; FRL–9964–09–Region 4]

Air Plan Approval; GA and SC: Changes to Ambient Air Standards and Definitions

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Georgia State Implementation Plan (SIP) submitted by the Georgia Department of Natural Resources, Environmental Protection Division (GA EPD), on August 30, 2010, and a portion of the SIP revision submitted on July 25, 2014; and portions of revisions to the South Carolina SIP, submitted by the Department of Health and Environmental Control (SC DHEC) on December 15, 2014, August 12, 2015, and on November 4, 2016. The Georgia SIP revisions incorporate definitions relating to fine particulate matter ($PM_{2.5}$), and amend state rules to reflect the 2008 national ambient air quality standard (NAAQS) for lead. The South Carolina SIP revisions incorporate the 2010 sulfur dioxide (SO_2) NAAQS, 2010 nitrogen dioxide (NO_2) NAAQS, 2012 $PM_{2.5}$ NAAQS, 2015 ozone NAAQS, removes the revoked 1997 8-hour ozone NAAQS, and remove the standard for gaseous fluorides from the SIP. This action is being taken pursuant to the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective August 28, 2017 without further notice, unless EPA receives adverse comment by July 31, 2017. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0504 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, 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. Mr. Akers can be reached via telephone at (404) 562–9089 or via electronic mail at *akers.brad@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 108 and 109 of the CAA govern the establishment, review, and revision, as appropriate, of the NAAQS for the criteria air pollutants (CAPs) to protect public health and welfare. The CAA requires periodic review of the air quality criteria—the science upon which the standards are based—and the standards themselves. EPA's regulatory provisions that govern the NAAQS are found at 40 CFR part 50—*National Primary and Secondary Ambient Air Quality Standards.*

A. Summary of Actions for Georgia SIP Revisions

In this rulemaking, EPA is taking direct final action to approve the portion of Georgia's July 25, 2014, submission amending Georgia's regulations to incorporate the 2008 lead NAAQS, which is found at GA EPD Rule 391–3–1–.02(4), ''Ambient Air Standards,'' at regulation (f)1. EPA is also taking final action on Georgia's August 30, 2010, submittal incorporating definitions of $PM_{2.5}$ and $PM_{2.5}$ emissions.

Through this rulemaking, the Agency is not acting on the following changes

to Georgia's SIP included in the July 25, 2014, submittal: Rule 391–3–1–.02(2)(a)—''General Provisions''; Rule 391–3–1–.02(2)(e)—''Particulate Emissions from Manufacturing Processes''; Rule 391–3–1–.02(2)(l)—''Conical Burners''; Rule 391–3–1–.02(2)(o)—''Cupola Furnaces for Metallurgical Melting''; Rule 391–3–1–.02(2)(p)—''Particulate Emissions from Kaolin and Fuller's Earth Processes''; Rule 391–3–1–.02(2)(q)—''Particulate Emissions from Cotton Gins''; Rule 391–3–1–.02(gg)—''Kraft Pulp Mills''; changes to Rule 391–3–1–.02(6)(a)—''Specific Monitoring and Reporting Requirements for Specific Sources''; or 391–3–1–.03(8)—''Permit Requirements.'' EPA will address these changes in a separate action. Changes made to Rule 391–3–1–.01(llll), ''Volatile Organic Compounds,'' in the July 25, 2014, submittal were approved by EPA on October 5, 2016. *See* 81 FR 68936. Changes made to Rule 391–3–1–.01(nnnn), ''Procedures for Testing and Monitoring Sources of Air Pollution,'' in the July 25, 2014, submittal were approved by EPA in a rulemaking published on January 5, 2017. *See* 82 FR 1206.

B. Summary of Actions for South Carolina SIP Revisions

EPA is taking direct final action to approve portions of the December 15, 2014, submittal, a portion of the August 12, 2015, submittal, and a portion of the November 4, 2016, submittal amending South Carolina's regulations to incorporate the updated 2010 SO_2 NAAQS, 2010 NO_2 NAAQS, 2012 $PM_{2.5}$ NAAQS, and 2015 ozone NAAQS, while removing the revoked 1997 8-hour ozone NAAQS and removing a non-CAP standard (gaseous fluorides) from the South Carolina rule.

EPA is not acting on certain changes to South Carolina's SIP included in the December 15, 2014, submittal, which would have removed the annual SO_2 standard of 0.03 parts per million (ppm) and the 24-hour standard of 0.14 ppm, because the State's request to remove these standards from the SIP was withdrawn from EPA consideration by the State in a letter dated December 20, 2016. In accordance with 40 CFR 50.4(e), the annual and 24-hour standards are still applicable in South Carolina because designations for the 2010 1-hour NAAQS have not been completed in the State. Once designations are completed in the State for the 2010 1-hour SO_2 NAAQS, the annual SO_2 and 24-hour SO_2 NAAQS will be revoked for the State one year after the effective date of the final designation. The December 20, 2016, withdrawal letter is included in the docket for this action.

EPA is also not acting on the following changes to South Carolina's SIP included in the August 12, 2015, submittal at this time: Regulation 61–62.5, Standard No. 1—''Emissions from Fuel Burning Operations''; Regulation 61–62.5, Standard No. 7—''Prevention of Significant Deterioration''; or Regulation 61–62.5, Standard No. 7.1—''Nonattainment New Source Review (NSR).'' EPA will address these changes in a separate action.

The SIP submittals amending Georgia's and South Carolina's rules to incorporate the NAAQS and related provisions can be found in the docket for this rulemaking at *www.regulations.gov* and are summarized below.

II. Analysis of State's Submittals

A. GA EPD Rule 391–3–1–.02(4)—''Ambient Air Standards''

On November 12, 2008 (73 FR 66964), EPA revised the primary lead NAAQS from 1.5 micrograms per cubic meter ($\mu g/m^3$) to 0.15 $\mu g/m^3$ based on a rolling 3-month average for both the primary and secondary standards. Georgia revised Rule 391–3–1–.02(4)(f), ''Lead,'' via an August 30, 2010,[1] SIP submission, to update the standard for lead from 1.5 $\mu g/m^3$ to 0.15 $\mu g/m^3$. EPA approved this revision in a May 16, 2013 (78 FR 28744), direct final rule, which became effective on July 15, 2013. However, the method of calculating the corresponding design value for the 2008 lead NAAQS was not updated in Georgia's SIP. The 2008 lead NAAQS revised the method of calculating the corresponding design value to a rolling 3-month average over a 3-year period, whereas the previous NAAQS used calendar quarter averages over a 3-year period. On July 25, 2014, GA EPD submitted another revision to 391–3–1–.02(4)(f) to revise the form of the standard (*i.e.,* the method of calculating the design value) to match that of the 2008 lead NAAQS. This SIP revision also adds a statement that attainment will be determined in accordance with federal standards at 40 CFR 50.16 (''National primary and secondary ambient air quality standards for lead''). EPA has determined that this is consistent with federal standards and provisions related to the lead NAAQS and is therefore approving this portion of the July 25, 2014, SIP submittal revising the Georgia SIP. These changes became state effective on August 1, 2013.

B. GA EPD Rule 391–3–1–.01—''Definitions''

Georgia is adopting a definition for '' '$PM_{2.5}$' or 'Fine Particulate Matter' '' at Rule 391–3–.01(rrrr) and a definition for ''$PM_{2.5}$ emissions'' at Rule 391–3–1–.01(ssss). GA EPD is adopting definitions related to $PM_{2.5}$ to reflect federal definitions at 40 CFR 53.1 and 40 CFR 51.100. Specifically, $PM_{2.5}$ is defined in the CFR as ''particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on appendix L of part 50 of this chapter and designated in accordance with part 53 of this chapter, by an equivalent method designated in accordance with part 53 of this chapter.'' Georgia's definition is consistent with the federal definition.

''$PM_{2.5}$ emissions'' is not specifically written out in the CFR, but ''PM_{10} emissions'' is defined at 40 CFR 51.100(rr) as ''finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in this chapter or by a test method specified in an approved State implementation plan.'' Georgia's SIP definition for ''$PM_{2.5}$ emissions'' is consistent with the form of the definition for ''PM_{10} emissions'' at 40 CFR 51.100(rr), substituting only that ''$PM_{2.5}$ emissions'' correspond to an aerodynamic diameter less than or equal to 2.5 micrometers.

EPA is approving the aforementioned changes to Rule 391–3–1–.01 into the SIP to provide consistency with the federal definitions related to CAPs. These rule changes became state effective on April 12, 2009.

C. SC DHEC Regulation 61–62.5, Standard No. 2, ''Ambient Air Quality Standards''

1. SO_2

On June 22, 2010 (75 FR 35520), EPA published a revision to the primary NAAQS for SO_2, setting the standard at 75 parts per billion (ppb) and changing the form of the standard from 24-hour and annual to a 1-hour standard. Accordingly, in the December 15, 2014, SIP submission, South Carolina updated Regulation 61–62.5, Standard No. 2, ''Ambient Air Quality Standards,'' to adopt the new primary 1-hour SO_2 NAAQS to be consistent with EPA's

[1] GA EPD submitted three separate SIP submittals to EPA dated August 30, 2010. The August 30, 2010, SIP submittal that EPA is acting on in this direct final action, related to definitions at Rule 391–3–1–.01 (see section II.B. below), is not the same submittal referred to here that originally revised the lead NAAQS.

June 22, 2010, final rule. EPA is approving South Carolina's update to 61–62.5 regarding only the incorporation of the 2010 1-hour SO_2 NAAQS because this change is consistent with federal regulations. As explained in Section I, EPA is not acting on the removal of the annual or 24-hour SO_2 NAAQS because these changes were withdrawn from EPA consideration in a letter dated December 20, 2016. This change to incorporate the new 2010 1-hour SO_2 NAAQS became state effective on September 26, 2014.

2. NO_2

On February 9, 2010 (75 FR 6474), EPA published a revision to the primary NAAQS for NO_2, adding a 1-hour primary standard set at 100 ppb and retaining the existing annual standard set at 53 ppb. Accordingly, in the December 15, 2014, SIP submission, South Carolina updated Regulation 61–62.5, Standard No. 2, ''Ambient Air Quality Standards,'' to adopt the new primary 1-hour NO_2 NAAQS to be consistent with EPA's February 9, 2010, final rule. EPA is approving South Carolina's update to 61–62.5 regarding NO_2 because this change is consistent with federal regulations. This change became state effective on September 26, 2014.

3. $PM_{2.5}$

On December 14, 2012 (78 FR 3086), EPA published a revised primary annual $PM_{2.5}$ NAAQS. In that action, EPA revised the primary annual $PM_{2.5}$ standard, strengthening it from 15.0 μg/m^3 to 12.0 μg/m^3, and retained the existing primary 24-hour $PM_{2.5}$ standard at 35 μg/m^3. The December 14, 2012, final rule also retained the secondary 24-hour standard of 35 μg/m^3 and the secondary annual standard of 15.0 μg/m^3, revising only the form of the secondary annual standard to remove the option for spatial averaging, consistent with the form change to the primary annual $PM_{2.5}$ standard. Accordingly, in the December 15, 2014, SIP submittal, South Carolina revised Regulation 61–62.5, Standard No. 2, ''Ambient Air Quality Standards,'' to update the primary air quality standard for $PM_{2.5}$ to be consistent with the NAAQS that were promulgated by EPA in 2012. South Carolina's December 15, 2014, SIP revision also retains the ambient air standards corresponding to the secondary annual and 24-hour NAAQS.[2] EPA has reviewed these changes to South Carolina's rule for ambient air standards and has made the determination that this change is consistent with federal regulations. These changes became state effective on September 26, 2014.

4. Ozone

Regulation 61–62.5, Standard No. 2, ''Ambient Air Quality Standards.'' EPA published a revised primary 8-hour ozone NAAQS on October 26, 2015 (80 FR 65292). In that action, EPA strengthened the ozone NAAQS from 0.075 parts per million (ppm), as promulgated in 2008, to 0.070 parts per million (ppm). Accordingly, South Carolina's November 4, 2016, SIP submittal adopts the 2015 NAAQS at Regulation 61–62.5, Standard No. 2, ''Ambient Air Quality Standards.'' The submittal also removes the 1997 8-hour ozone NAAQS from the SIP. EPA revoked the 1997 8-hour ozone standard of 0.08 ppm with the March 6, 2015, final rule implementing the 2008 8-hour ozone NAAQS. *See* 80 FR 12264. The March 6, 2015, final rule, including the revocation of the 1997 8-hour ozone NAAQS, became effective on April 6, 2015. EPA is approving the incorporation of the 2015 8-hour ozone NAAQS into the South Carolina SIP, and the removal of the revoked 1997 8-hour ozone NAAQS from the South Carolina SIP, because the changes are consistent with federal regulations. These changes became state effective on September 23, 2016.

5. Hazardous Air Pollutants (HAPs)

South Carolina's August 12, 2015, SIP submittal removes the standards set for gaseous fluorides (as hydrogen fluoride) from Regulation 61–62.5, Standard No. 2, ''Ambient Air Quality Standards.'' Hydrogen fluoride is a HAP, which SC DHEC regulates under its state rule at Regulation 61–62.5, Standard No. 8, ''Toxic Air Pollutants,'' rather than the SIP. EPA is approving the removal of these standards from the South Carolina SIP, as there are no primary or secondary NAAQS related to this pollutant and the revision therefore will not interfere with any applicable requirement concerning attainment or reasonable further progress pursuant to CAA section 110(l). These changes became state effective on June 26, 2015.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of GA EPD Rule 391–3–1-.01, ''Definitions,'' adding definitions of ''$PM_{2.5}$'' and ''$PM_{2.5}$ Emissions,'' effective August 14, 2016 and Rule 391–3–1-.02(4), ''Ambient Air Standards,'' updating the incorporation of the lead NAAQS, effective October 14, 2014;[3] EPA is finalizing the incorporation by reference of SC DHEC Regulation 61–62.5, Standard No. 2, ''Ambient Air Quality Standards,'' effective September 23, 2016, adopting NAAQS for SO_2, NO_2, and $PM_{2.5}$, while removing a HAP standard from the SIP. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[4] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Final Action

EPA is approving changes to the Georgia SIP at Rule 391–3–1-.01, submitted on August 30, 2010, and changes to Rule 391–3–1–02(4), submitted on July 25, 2014, because they are consistent with the CAA and federal regulations. EPA is also approving changes to the South Carolina SIP at Regulation 61–62.5, Standard No. 2, submitted on December 15, 2014, and subsequently August 12, 2015, because they are consistent with the CAA and

[2] South Carolina's December 15, 2014, SIP revision appears to incorporate the 24-hour and annual secondary $PM_{2.5}$ NAAQS for the first time. However, these secondary $PM_{2.5}$ NAAQS were already approved into the SIP. The annual secondary $PM_{2.5}$ NAAQS of 15 μg/m^3 was adopted in a November 19, 2004, submittal and approved on August 22, 2007 (72 FR 46903). The 24-hour secondary NAAQS at 35 μg/m^3 was adopted in a December 4, 2008, submittal and approved on April 3, 2013 (78 FR 19994).

[3] The effective date of the change to Rule 391–3–1–.01 made in Georgia's August 30, 2010, SIP revision is April 12, 2009. However, for purposes of the state effective date included at 40 CFR 52.570(c), that change to Georgia's rule is captured and superseded by Georgia's update in a November 29, 2016, SIP revision, state effective on August 14, 2016, which EPA previously approved on January 5, 2017. *See* 82 FR 1207. The effective date of the change to Rule 391–3–1–.01 made in Georgia's July 25, 2014, SIP revision is August 1, 2013. However, for purposes of the state effective date included at 40 CFR 52.570(c), that change to Georgia's rule is captured and superseded by Georgia's update in a November 12, 2014, SIP revision, state effective on October 14, 2014, which EPA previously approved on July 31, 2015. *See* 80 FR 45609.

[4] 62 FR 27968 (May 22, 1997).

federal regulations. EPA is publishing this rule without prior proposal because the Agency views these submittals as noncontroversial and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 28, 2017 without further notice unless the Agency receives adverse comments by July 31, 2017.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 28, 2017 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *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, these actions merely approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are 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);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are 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.*);
- do 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);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are 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
- do 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).

EPA has determined that this direct final rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the determination does not have ''substantial direct effects'' on an Indian Tribe as a result of these actions. With respect to this direct final action as it relates to South Carolina, EPA notes that the Catawba Indian Nation Reservation is located within the South Carolina and pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' EPA notes these actions 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. 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 August 28, 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 this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Lead, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Dated: June 13, 2017.

V. Anne Heard,

Acting 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 L—Georgia

■ 2. Section 52.570(c) is amended by revising the entries for ''391–3–1-.01'' and ''391–3–1–.02(4)'' to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED GEORGIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
391–3–1–.01	Definitions	8/14/2016	6/29/2017, [Insert citation of publication]	
* *	* *	*	*	*
391–3–1–.02(4)	Ambient Air Standards	10/14/2014	7/31/2015, 80 FR 45609	EPA approved changes to Rule 391–3–1–.02(4) with state effective date August 1, 2013 on June 29, 2017 [Insert citation of publication]
* *	* *	*	*	*

* * * * *

Subpart PP—South Carolina

■ 3. Section 52.2120(c), is amended by revising the entry under ''Regulation No. 62.5'' for ''Standard No. 2'' to read as follows:

(c) * * *

§ 52.2120 Identification of plan.

* * * * *

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/subject	State effective date	EPA approval date	**Federal Register** notice
* *	* *	*	*	*
Standard No. 2	Ambient Air Quality Standards	9/23/2016	6/29/2017	[Insert citation of publication]
* *	* *	*	*	*

* * * * *

[FR Doc. 2017–13543 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0113; FRL–9964–06–Region 4]

Air Plan Approval; Georgia: Permit Exemptions and Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of a State Implementation Plan (SIP) revision submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division (GA EPD), on September 19, 2006, with a clarification submitted on November 6, 2006. This direct final action approves changes to existing minor source permitting exemptions and approves a definition related to minor source permitting exemptions. EPA is approving these portions of this SIP revision because the State has demonstrated that they are consistent with the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective August 28, 2017 without further notice, unless EPA receives adverse comment by July 31, 2017. If EPA receives such comment, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0113 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, 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. Mr. Akers can be reached via telephone at (404)

562–9089 or via electronic mail at *akers.brad@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On September 19, 2006, GA EPD submitted SIP revisions to EPA for review and approval into the Georgia SIP. GA EPD submitted a clarification on November 6, 2006, which fixed typographical errors in the original submission. The submission contains changes to a number of Georgia's air quality rules at Rule 391–3–1. EPA is approving the portions of the SIP revisions that modify Rule 391–3–1–.01—''Definitions,'' and Rule 391–3–1–.03(6)—''Exemptions.'' The changes requested by Georgia in the SIP revision are discussed below in Section II.

EPA is not acting on the changes to the following rule sections proposed by Georgia because the rule sections are not incorporated into the SIP: Rule 391–3–1–.02(2)(ppp)—''Commercial and Industrial Solid Waste Incinerators''; Rule 391–3–1–.02(8)—''New Source Performance Standards''; Rule 391–3–1–.02(9)—''Emission Standards for Hazardous Air Pollutants''; Rule 391–3–1–.03(9)—''Permit Fees''; and Rule 391–3–1–.03(10)—''Title V Operating Permits. EPA is not acting on changes to Rule 391–3–1–.02(2)(ooo)—''Heavy Duty Diesel Engine Requirements,'' included in the September 19, 2006, submittal because the changes were withdrawn from EPA consideration by the State in a letter dated January 25, 2016. EPA is not acting on changes to Rule 391–3–1–.02(6)—''Specific Monitoring and Reporting Requirements for Particular Sources—Emission Statements,'' at paragraph (a)(4) because a subsequent revision to the rules, submitted on March 5, 2007, was approved on November 27, 2009, and supersedes the September 19, 2006, submittal. *See* 74 FR 62249. Accordingly, GA EPD withdrew this superseded revision to Rule 391–3–1–.02(6) from EPA consideration in a letter dated December 1, 2016.

EPA has previously approved the majority of revisions to Georgia rules originally included in the September 19, 2006, submittal. The following revisions were previously approved on February 9, 2010 (75 FR 6309), as corrected on August 26, 2010 (75 FR 52470): Rule 391–3–1–.01—''Definitions'' at paragraph (llll), ''Volatile Organic Compound (VOC)'' and at paragraph (nnnn), ''Procedures for Testing and Monitoring Sources of Air Pollutants''; Rule 391–3–1–.02(2)(d)—''Fuel Burning Equipment''; Rule 391–3–1–.02(2)(tt)—''VOC Emissions From Major Sources''; Rule 391–3–1–.02(2)(yy)—''Emissions of Nitrogen Oxides [NO_X] From Major Sources''; Rule 391–3–1–.02(2)(rrr)—''NO_X Emissions from Small Fuel-Burning Equipment''; Rule 391–3–1–.02(4)—''Ambient Air Standards''; Rule 391–3–1–.02(5)—''Open Burning''; Rule 391–3–1–.03(6)—''Exemptions'' at paragraph (b), ''Combustion Equipment'' and paragraph (j), '' Construction Permit Exemption for Pollution Control Projects''; Rule 391–3–1–.03(11)—''Permit by Rule''; and the repeal of Rule 391–3–1–.05—''Regulatory Exemptions.'' The revisions to Rule 391–3–1–.02(2)(zz)—''Gasoline Dispensing Facilities—Stage II,'' were approved on December 1, 2010. *See* 75 FR 74624. The revisions to Rule 391–3–1–.02(2)(mmm)—''NO_X Emissions from Stationary Gas Turbines and Stationary Engines used to Generate Electricity,'' were approved on August 1, 2015. *See* 80 FR 52627. EPA previously approved the revisions submitted to Rule 391–3–1–.03(6)—''Exemptions'' at paragraph (i), ''Other [sources]'' on April 9, 2013. *See* 78 FR 21065. EPA also previously approved the revisions submitted to Rule 391–3–1–.03(6)—''Exemptions'' at paragraph (j), ''Construction Permit Exemption for Pollution Control Projects'' on February 9, 2010. *See* 75 FR 6309. Finally, the change submitted to Rule 391–3–1–.03(6)—''Exemptions,'' at paragraph (g), subparagraph 5, which revised applicability for an exemption for fuel burning operations at municipal solid waste landfills for NO_X, was previously approved, as submitted on March 15, 2005, and therefore, is not before the EPA for consideration in this action. *See* 70 FR 24310 (May 9, 2005).

II. Analysis of Georgia's Submittal

A. Rule 391–3–1–.01—''Definitions''

Georgia seeks to add a definition of ''pollution control projects'' to its SIP at Rule 391–3–1–.01(qqqq). This definition lists certain projects, described as ''environmentally beneficial,'' that are exempted from the minor new source review (NSR) construction permit requirements under Rule 391–3–1–.03(6)(j). The exemption does not apply to sources subject to major NSR requirements under either Rule 391–3–1–.02(7) (''Prevention of Significant Deterioration [PSD] of Air Quality''), or Rule 391–3–1–.03(8) ''Permit Requirements'' under paragraph (c), (Georgia's nonattainment new source review (NNSR)). The exemption for pollution control projects applies to minor sources only, limiting any emissions increases from the exempted projects to below the major source thresholds for all pollutants.

EPA previously approved the exemption for pollution control projects for minor sources at Rule 391–3–1–.03(6)(j) on February 9, 2010. *See* 75 FR 6309. In this action, EPA is approving a definition of ''pollution control projects'' at Rule 391–3–1–.01(qqqq). Because this definition only applies to minor sources, it is not impacted by the United States Court of Appeals for the District of Columbia Circuit decision in *New York* v. *EPA,* 413 F.3d 3 (D.C. Cir.), in which the D.C. Circuit vacated an exemption for pollution control projects from the federal NSR regulations for major sources. Georgia's major NSR rules are consistent with federal rules and the D.C. Circuit decision on pollution control projects for major NSR.

Section 110(l) of the CAA prevents EPA from approving a SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. EPA has determined that the change to Rule 391–3–1–.01(qqqq) will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA because the change clarifies a previously approved exemption from the construction permit requirements.

B. Rule 391–3–1–.03(6)—''Exemptions''

Georgia is revising existing exemptions from minor NSR permitting by adding language to clarify that these exemptions do not extend to sources that are subject to new source performance standards for stationary sources (NSPS) or national emission standards for hazardous air pollutants (NESHAPs). Georgia's SIP at Rule 391–3–1–.03(6) currently provides exemptions from permitting requirements, so long as the exemption is not used to avoid any other ''applicable requirement,'' such as NSPS or NESHAPS. Rule 391–3–1.03(6)(g)1. currently exempts sanitary wastewater collection systems other than incineration equipment from obtaining minor source construction permits; Rule 391–3–1–.03(6)(g)2. exempts on site soil or groundwater decontamination units from obtaining these permits. The September 19, 2006, SIP revision changes these provisions to reiterate the condition that only systems and units in (g)1. and (g)2. that ''are not subject to any standard, limitation or other requirement under section 111 or section 112 (excluding section 112(r))'' of the CAA—corresponding to NSPS and NESHAPs, respectively—are

exempted. These changes became state effective on July 13, 2006.

EPA has determined that these changes will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA and therefore satisfy section 110(l) of the CAA, because no substantive changes are made to the existing exemptions, and the clarifying amendments provide greater certainty to sources and the public about applicability of the Rule.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Rule 391–3–1–.01(qqqq), ''Definitions,'' effective August 14, 2016,[1] and Rule 391–3–1–.03(6)(g) ''Permits,'' effective August 9, 2012.[2] Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[3] EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and/or at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Final Action

EPA is approving the aforementioned changes to the Georgia SIP at Rules 391–3–1–.01(qqqq) and 391–3–1–.03(6)(g) because they are consistent with the CAA. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 28, 2017 without further notice unless the Agency receives adverse comments by July 31, 2017.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 28, 2017 and no further action will be taken on the proposed rule.

V. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 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 this **Federal Register**, rather than file an immediate petition for judicial

[1] The effective date of the change to Rule 391–3–1–.01 made in Georgia's September 19, 2006, SIP revision is July 13, 2006. However, for purposes of the state effective date included at 40 CFR 52.570(c), that change to Georgia's rule is captured and superseded by Georgia's update in a November 29, 2016, SIP revision, state effective on August 14, 2016, which EPA previously approved on January 5, 2017. *See* 82 FR 1207 (January 5, 2017).

[2] The effective date of the change to Rule 391–3–1–.03 made in Georgia's September 19, 2006, SIP revision is July 13, 2006. However, for purposes of the state effective date included at 40 CFR 52.570(c), that change to Georgia's rule is captured and superseded by Georgia's update in a July 26, 2012, SIP revision, which EPA previously approved on April 9, 2013. *See* 78 FR 21065.

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

review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: June 14, 2017.

V. Anne Heard,

Acting 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 L—Georgia

■ 2. Amend § 52.570(c) by revising the entries for ''391–3–1–.01'' and ''391–3–1–.03'' to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

EPA Approved Georgia Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
391–3–1–.01	Definitions	8/14/2016	6/29/2017, [Insert **Federal Register** citation].	
*	*	*	*	*
391–3–1–.03	Permits	8/9/2012	6/29/2017, [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2017–13536 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2013–0615; FRL–9963–41–Region 6]

Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County; New Source Review (NSR) Preconstruction Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving portions of revisions to the applicable New Source Review (NSR) State Implementation Plan (SIP) for the City of Albuquerque-Bernalillo County. The EPA is approving the following: The establishment of a new Minor NSR general construction permitting program; changes to the Minor NSR Public Participation requirements; and the addition of exemptions from Minor NSR permitting for inconsequential emission sources and activities. Additionally, the EPA is conditionally approving the provisions establishing accelerated review and technical permit revisions.

DATES: This rule is effective on July 31, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2013–0615. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Aimee Wilson, 214–665–7596, *wilson.aimee@epa.gov*.

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

I. Background

The background for this action is discussed in detail in our March 10, 2017 proposal (82 FR 13270). In that document, we proposed to approve the revisions to the City of Albuquerque-Bernalillo County Minor NSR permitting program submitted on July 26, 2013, as supplemented on April 21, 2016; July 5, 2016; September 19, 2016; and December 20, 2016, that update the regulations to be consistent with federal requirements for Minor NSR permitting, remove a provision that refers to obsolete ambient air standards that are unique to the Albuquerque/Bernalillo County Air Quality Control Board, and remove the reference to the State of New Mexico non-methane hydrocarbon standard in 20.11.44 NMAC. We also proposed to conditionally approve severable provisions submitted on July 26, 2013, as supplemented on April 21, 2016; July 5, 2016; September 19, 2016; and December 20, 2016, which establish, and pertain to, the accelerated permitting procedures, conflict of interest, and technical permit revisions.

II. Final Action

We are approving revisions to the City of Albuquerque-Bernalillo County Minor NSR permitting program submitted on July 26, 2013, as supplemented on April 21, 2016; July 5, 2016; September 19, 2016; and December 20, 2016. The revisions were adopted and submitted in accordance with the requirements of the CAA and the EPA's regulations regarding SIP development at 40 CFR part 51. Additionally, we have determined that the submitted revisions to the City of Albuquerque-Bernalillo County Minor

NSR program are consistent with the EPA's regulations at 40 CFR 51.160–51.164 and the associated policy and guidance. Therefore, under section 110 of the Act, the EPA approves into the New Mexico SIP for the City of Albuquerque-Bernalillo County the following revisions adopted on July 10, 2013, and submitted to the EPA on July 26, 2013:

- Revisions to 20.11.41.1 NMAC, Issuing Agency;
- Revisions to 20.11.41.2 NMAC, Scope;
- Revisions to 20.11.41.3 NMAC, Statutory Authority;
- Revisions to 20.11.41.4 NMAC, Duration;
- Revisions to 20.11.41.5 NMAC, Effective Date;
- Revisions to 20.11.41.6 NMAC, Objective;
- Revisions to 20.11.41.7 NMAC, Definitions, with the exception of 20.11.41.7.J NMAC, 20.11.41.7.RR NMAC, and the reference to technical permit revisions in 20.11.41.7EE NMAC, as discussed below;
- Revisions to 20.11.41.8 NMAC, Variances;
- Revisions to 20.11.41.9 NMAC, Savings Clause;
- Revisions to 20.11.41.10 NMAC, Severability;
- Revisions to 20.11.41.11 NMAC, Documents;
- Revisions to 20.11.41.12 NMAC, Fees for Permit Application;
- Revisions to 20.11.41.13 NMAC, Application for Permit;
- Revisions to 20.11.41.14 NMAC, Public Participation;
- Revisions to 20.11.41.15 NMAC, Public Information Hearing;
- Revisions to 20.11.41.16 NMAC, Permit Decision and Air Board Hearing on the Merits;
- Revisions to 20.11.41.17 NMAC, Basis for Permit Denial, with the exception of 20.11.41.17.F NMAC, as discussed below;
- Revisions to 20.11.41.18 NMAC, Applicants' Additional Legal Responsibilities;
- Revisions to 20.11.41.19 NMAC, Permit Conditions;
- Revisions to 20.11.41.20 NMAC, Permit Cancellations, Suspension, or Revocation;
- Revisions to 20.11.41.21 NMAC, Permittee's Obligations to Inform the Department and Deliver an Annual Emissions Inventory;
- Revisions to 20.11.41.22 NMAC, Performance Testing;
- Revisions to 20.11.41.23 NMAC, Temporary Relocation of Portable Stationary Sources;
- Revisions to remove 20.11.41.24 NMAC, Emergency Permits;
- Revisions to 20.11.41.25 NMAC, Nonattainment Area Requirements;
- Revisions to 20.11.41.26 NMAC, Compliance Certification;
- Revisions to 20.11.41.27 NMAC, Enforcement;
- Revisions to 20.11.41.28 NMAC, Administrative and Technical Permit Revisions, with the exception of provisions pertaining to Technical Permit Revisions, as discussed below;
- Revisions to 20.11.41.29 NMAC, Permit Modification;
- Revisions to 20.11.41.30 NMAC, Permit Reopening, Revision and Reissuance; and
- Revisions to 20.11.41.31 NMAC, General Construction Permits.

Additionally, the EPA is finalizing the conditional approval of the severable provisions submitted on July 26, 2013, as supplemented on April 21, 2016; July 5, 2016; September 19, 2016; and December 20, 2016, pertaining to the accelerated permitting procedures, technical permit revisions, and the definition of conflict of interest. In a letter dated December 22, 2016, the City of Albuquerque has committed to addressing the concerns identified in our proposed conditional approval within one year from the date of the EPA's final conditional approval. Based on this commitment and the authority provided under section 110(k)(4) of the Act, we have determined it is appropriate to conditionally approve into the New Mexico SIP for the City of Albuquerque-Bernalillo County the following revisions adopted on July 10, 2013, and submitted to the EPA on July 26, 2013:

- The definition of ''Conflict of Interest'' at 20.11.41.7.J NMAC;
- The references to ''technical permit revisions'' in the definition for ''Permit'' at 20.11.41.7.EE NMAC;
- The definition of ''Technical permit revision or technical revision'' at 20.11.41.7.RR NMAC;
- Revisions to 20.11.41.17.F NMAC for conflict of interest;
- Revisions to 20.11.41.28 NMAC, pertaining to Technical Permit Revisions; and
- Revisions to 20.11.41.32 NMAC, Accelerated Review of Application.

The City of Albuquerque committed in a letter dated December 22, 2016, to adopt specific enforceable measures and to submit these provisions to the EPA for consideration as a SIP revision within one year from the date of the EPA's final conditional approval. If the EPA determines that the submitted revised enforceable measures are complete and approvable, the EPA will take a separate action to propose approval of the revisions. If the State does not meet its commitment within the specified time period by (1) not adopting and submitting measures by the date it committed to, (2) not submitting anything, or (3) EPA finds the submittal incomplete, the approval will be converted to a disapproval. The Regional Administrator would send a letter to the State finding that it did not meet its commitment or that the submittal is incomplete and that the SIP submittal was therefore disapproved. The 18-month clock for sanctions and the two-year clock for a Federal Implementation Plan (FIP) would start as of the date of the letter. Subsequently, a notice to that effect would be published in the **Federal Register**, and appropriate language inserted in the Code of Federal Regulations (CFR).

III. Incorporation by Reference

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

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, the 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 August 28, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 15, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart GG—New Mexico

■ 2. Amend § 52.1620 by:

■ A. In paragraph (c), the second table ''EPA Approved Albuquerque/Bernalillo County, NM Regulations'' is amended by revising the entry for ''Part 41 (20.11.41 NMAC) Authority to Construct''.

■ B. In paragraph (e), the second table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP'' is amended by adding four entries at the end of the table.

The revision and additions read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
*	*	*	*	* * *
Part 41 (20.11.41 NMAC).	Authority to Construct.	7/10/2013	6/29/2017, [Insert **Federal Register** citation].	The following are conditionally approved 20.11.41.7.J NMAC, references to ''technical permit revisions'' in 20.11.41.EE NMAC, 20.11.41.RR NMAC, 20.11.41.17.F NMAC, 20.11.41.28 NMAC, and 20.11.41.32 NMAC.
*	*	*	*	* * *

(e) * * *

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

Name of SIP Provisions	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
* *	* *	*	*	*
City of Albuquerque Clarification Letter on Minor NSR SIP.	City of Albuquerque—Bernalillo County.	4/21/2016	6/29/2017, [Insert **Federal Register** citation].	
City of Albuquerque Clarification Letter Providing Public Notices of Minor NSR to EPA.	City of Albuquerque-Bernalillo County.	6/5/2016	6/29/2017, [Insert **Federal Register** citation].	
City of Albuquerque Letter regarding Public Notice for Minor NSR.	City of Albuquerque-Bernalillo County.	9/19/2016	6/29/2017, [Insert **Federal Register** citation].	
City of Albuquerque Minor NSR Commitment Letter.	City of Albuquerque-Bernalillo County.	12/20/2016	6/29/2017, [Insert **Federal Register** citation].	

[FR Doc. 2017–13449 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2015–0790; FRL 9964–04-Region 7]

Approval of Missouri's Air Quality Implementation Plans; Reporting Emission Data, Emission Fees and Process Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and correcting amendment.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Operating Permits Program for the State of Missouri submitted on March 16, 2015. These revisions update the emissions fee for permitted sources as set by Missouri Statute from $40 to $48 per ton of air pollution emitted annually, effective January 1, 2016. EPA is also responding to comments received on the proposed action published in the **Federal Register** on January 15, 2016. In addition, EPA is making a correction to the previous direct final rule published in the **Federal Register** on January 15, 2016. EPA inadvertently approved and codified this action under both part 52 (Approval and Promulgation of Implementation Plans) and part 70 (State Operating Permit Programs). This final rule removes the part 52 approval and codification and makes a clarification to the part 70 approval relating to the state effective date.

DATES: This final rule is effective on July 31, 2017.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2015–0790. 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 electronically at *www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information. For additional information and general guidance, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Amy Algoe-Eakin, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at 913–551–7942, or by email at *algoe-eakin.amy@epa.gov.*

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

I. What is being addressed in this document?

EPA is taking final action to approve the state's Title V revision to 10 C.S.R. 10–6.110 ''Reporting Emission Data, Emission Fees, and Process Information'', submitted by the state of Missouri on March 16, 2015. This revision updates the emissions fee for permitted sources as set by Missouri Statute. Specifically, section (3)(A) revises the emission fees section, which is approved under the Operating Permits Program only, and updates the emissions fee for permitted sources as set by Missouri Statute from $40 to $48 per ton of air pollution emitted annually, effective January 1, 2016.

In addition, EPA is making a correction to the previous direct final rule published in the **Federal Register** on January 15, 2016 (81 FR 2090). In that action, EPA inadvertently approved and codified the state's submission relating to Missouri rule 10 CSR 6.110(3)(a) pursuant to 40 CFR part 52 (Approval and Promulgation of Implementation Plans) and part 70 (State Operating Permit Programs). This action corrects the error by recodifying table (c) of § 52.1320 back to its previously approved and codified entry (76 FR 77701, 12/14/11). EPA is only approving this action pursuant to 40 CFR part 70 per the state's submission request. Also, the January 15, 2016, direct final rule approved and added new paragraph (ee) to part 70 appendix A. The new paragraph (ee) erroneously listed the state effective date of November 20, 2014. The correct state effective date is March 30, 2015. This final action revises paragraph (ee) to read as set out in the regulatory text below.

II. EPA's Response to Comments

The public comment period on EPA's proposed rule (81 FR 2159, January 15, 2016) opened January 15, 2016, the date of its publication in the **Federal Register**, and closed on February 16, 2016. During this period, EPA received one comment.

Comment: The commenter expressed concern with the intent to increase fees on pollutant emissions and the subsequent use of those fees once collected. The commenter understood that the fees were collected to fund the state's regulatory activities. However, the commenter questioned how those funds would be used by the state and

expressed that the EPA ''should insure the first result of spending any fees be protecting human health and the environment'' and ''unless strict rules are imposed and regular performance audits conducted in a transparent and open way, higher fees would be an incentive for regulators to allow greater pollutant loads with the simple objective of collecting more fees to support their staff and to increase staff size.''

EPA Response: CAA section 502(b)(3)(A) 42 U.S.C. 7661a (b)(3)(A) requires the permitting authority to collect a fee sufficient to cover all reasonable direct and indirect costs required to develop and administer the Title V permit program, including enforcement. The CAA and agency regulation 40 CFR 70.9 require permitting authorities to submit a fee demonstration with their Title V operating permits program. EPA has approved Missouri's Title V permit program fee and determined it meets the requirements of the CAA and EPA guidance regarding the fee demonstration. The fees also include costs associated with all aspects of the Title V permit program (reviewing applications, emissions, ambient monitoring, preparing regulations, modeling).

III. What action is EPA taking?

Upon review and consideration of comments received, EPA is taking final action to approve the state's Title V revision to 10 C.S.R. 10–6.110 ''Reporting Emission Data, Emission Fees, and Process Information'', submitted by the state of Missouri on March 16, 2015. Based upon review of the state's revision and relevant requirements of the CAA, EPA believes that this revision meets applicable requirements and does not adversely impact air quality in Missouri.

EPA is also making a correction which will remove approval of the state's submission from 40 CFR part 52, specifically § 52.1320(c), EPA-Approved Missouri Regulations and revert to the previously codified table (76 FR 77701, 12/14/11). This action also revises paragraph (ee) part 70, appendix A to correct the state effective date.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[1] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT**. section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 action is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate

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

matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

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

Dated: June 12, 2017.

Edward H. Chu,

Acting Regional Administrator, Region 7.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1320, paragraph (c) is amended by revising the entry for 10–6.110 to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.110	Submission of Emission Data, Emission Fees, and Process Information.	9/30/10	12/14/11, 76 FR 77701.	Section (3)(A), Emissions Fees, has not been approved as part of the SIP.
*	*	*	*	*

* * * * *

PART 70—STATE OPERATING PERMIT PROGRAMS

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

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

■ 4. Appendix A to part 70 is amended by revising paragraph (ee) under Missouri to read as follows:

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

* * * * *

Missouri

* * * * *

(ee) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.110, ''Reporting Emission Data, Emission Fees, and Process Information'' on March 16, 2015. The state effective date is March 30, 2015. This revision is effective July 31, 2017.

* * * * *

[FR Doc. 2017–13547 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R06–OAR–2009–0750; 9963–47–Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Redesignation of the Collin County Area to Attainment the 2008 Lead Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is taking direct final action to determine the Collin County Lead (Pb) National Ambient Air Quality Standard (NAAQS) Nonattainment Area (NAA) has attained the 2008 Pb NAAQS and to approve a redesignation request for the area. In directly approving the redesignation request, EPA is also taking direct final action to approve as revisions to the Texas State Implementation Plan (SIP) a maintenance plan for the 2008 Pb NAAQS in the NAA submitted November 2, 2016, an attainment demonstration for the 2008 Pb NAAQS submitted October 10, 2012, and a second 10-year maintenance plan for the 1978 Pb NAAQS submitted September 15, 2009.

DATES: This rule is effective on September 27, 2017 without further notice, unless the EPA receives relevant adverse comment by July 31, 2017. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2009–0750, at *http://www.regulations.gov* or via email to *todd.robert@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary

submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. Robert M. Todd, (214) 665–2156, *todd.robert@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

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

FOR FURTHER INFORMATION CONTACT: Robert M. Todd, (214) 665–2156, *todd.robert@epa.gov.* To inspect the hard copy materials, please contact Mr. Todd or Mr. Bill Deese (214) 665–7253.

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

I. What actions is EPA taking?

EPA is taking several actions related to the redesignation of the Collin County, Texas area to attainment for the 2008 lead NAAQS. EPA is taking direct final action to:

(1) Determine the Collin County Pb NAA (comprising the part of Collin County bounded to the north by latitude 33.153 North, to the east by longitude 96.822 West, to the south by latitude 33.131 North, and to the West by longitude 96.837 West, which surrounds the Exide Technologies property), has attained the 2008 Pb NAAQS;

(2) Find that the requirements are met for redesignation of the Collin County NAA to attainment of the 2008 lead NAAQS under section 107(d)(3)(E) of the CAA and redesignate the NAA to attainment for the 2008 lead NAAQS;

(3) Approve Texas' first 10-year Maintenance Plan for continued maintenance of the 2008 Pb NAAQS in the area as a revision to the Texas SIP;

(4) Approve Texas' October 10, 2012 attainment demonstration plan, to comply with the 2008 Pb NAAQS; and,

(5) Approve Texas' September 15, 2009 second 10-year Maintenance Plan for continued maintenance of the 1978 lead NAAQS.

Our analysis for these actions are discussed in detail in the technical support document (TSD) for this action and in summary in Section IV of this action.

II. What is the background for these actions?

Section 110 of the CAA requires states to develop and submit to the EPA a SIP to ensure that state air quality meets NAAQSs. These ambient standards currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA approved SIP regulations and control strategies are federally enforceable.

Lead is a metal found naturally in the environment as well as in manufactured products. The major sources of lead emissions have historically been from fuels used in on-road motor vehicles (such as cars and trucks) and industrial sources. As a result of EPA's regulatory efforts to remove lead from on-road motor vehicle gasoline, emissions of lead from the transportation sector dramatically declined by 95 percent between 1980 and 1999, and levels of lead in the air decreased by 94 percent between 1980 and 1999. Today, the highest levels of lead in the air are usually found near lead smelters. The major sources of lead emissions to the air today are ore and metals processing facilities and piston-engine aircraft operating on leaded aviation gasoline.

On November 12, 2008 (73 FR 66964), EPA established the 2008 primary and secondary lead NAAQS at 0.15 micrograms per cubic meter ($\mu g/m^3$) based on a maximum arithmetic 3-month mean concentration for a 3-year period. See 40 CFR 50.16. On November 22, 2010 (75 FR 71033), EPA published its initial air quality designations and classifications for the 2008 lead NAAQS based upon air quality monitoring data for calendar years 2007–2009. These designations became effective on December 31, 2010. See 40 CFR 81.344.

In 2012, Exide ceased operations as a lead smelter and the entire production area of the facility was dismantled. There are no longer smelting operations at the site and no longer any point source emissions. Exide is in the process of doing site remediation under its RCRA permit. The smelting operation's lead emissions were the cause of the area's nonattainment of the lead NAAQS. Any future point source of Pb emissions in the area would be required to obtain a new source review permit. In order to obtain a new source review permit, a new facility would be required to install best available control technology to limit Pb emissions and demonstrate a violation of the Pb NAAQS would not result from construction or operation.

On November 2, 2016, the Texas Commission on Environmental Quality (TCEQ) submitted a request that the EPA redesignate the Collin County Pb NAA as attainment for the 2008 Pb NAAQS. The November 02, 2016 submittal from the state includes a demonstration that the area monitors as attainment for the 2008 Pb NAAQS, an approvable SIP meeting the requirements of Section 110 and Part D of the CAA, an attainment emissions inventory, a maintenance plan, a monitoring plan and contingency measures to assure compliance.

On October 10, 2012, TCEQ submitted a SIP revision with an attainment demonstration plan to comply with the 2008 Pb NAAQS as required by the CAA. The submittal contained the demonstration plan, monitoring plan, contingency measures to bring the area into compliance if an exceedance were detected, a Pb emission inventory, a demonstration the state employs a Pb nonattainment New Source Review program, a Pb Reasonably Available Control Measure (RACM) analysis, a Reasonably Achievable Control Technology (RACT) analysis and a Pb Reasonable Further Progress demonstration. A full review of this submittal can be found in the TSD for this action which is located in the docket at EPA–R06–OAR–2009–0750. This attainment plan stipulates controls and actions the Exide facility must implement to bring the area into attainment. However, since the facility's operations have ceased since this plan was submitted, the controls specified are no longer necessary as the controls included in the plan apply to a facility that no longer operates.

On September 15, 2009, TCEQ submitted a second 10-year maintenance plan to demonstrate compliance with the 1978 Pb NAAQS as required by the CAA. The 1978 Pb NAAQS set the standard at 1.5 $\mu g/m^3$, averaged over a calendar year. EPA did not take action on that submittal at the time due to the 2008 revision of the Pb NAAQS which significantly lowered the 1978 Pb standard. Efforts by the EPA

and TCEQ were focused on bringing the NAA into compliance with the more stringent 2008 standard rather than processing that submittal.

III. What are the criteria for evaluation of the State's redesignation request and SIP revision requests?

A. The 2016 Request To Redesignate the Collin County Pb NAA to Attainment

The CAA sets forth the requirements for redesignation of a NAA to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS based on current air quality data; (2) the Administrator has fully approved an applicable SIP for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable emission reductions resulting from implementation of the applicable SIP, Federal air pollution control regulations, or other permanent and enforceable emission reductions; (4) the state containing the area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA; and (5) the Administrator has fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

B. The 2012 Attainment Plan for the 2008 Pb NAAQS

Section 172 of the CAA, along with implementation guidance published by EPA for the 2008 Pb standard,[1] requires the state to submit a SIP revision containing an analysis of reasonably available control measures and reasonably available control technology; a demonstration of attainment through air dispersion modeling; a control strategy demonstration; an emissions inventory; a demonstration of reasonable further progress and, contingency measures to be undertaken if the area fails to make reasonable further progress or attain the NAAQS by the attainment deadline.

C. The 2009 Second 10-Year Maintenance Plan for the 1978 Pb NAAQS

Texas submitted and requested our approval of a second 10-year maintenance plan. This plan is required by Section 175A(b) of the CAA which states that a state must submit a SIP revision for maintenance of the Primary NAAQS for a second 10-year period following expiration of the first 10-year maintenance plan. The maintenance plan must contain a commitment to monitor ambient air quality to determine whether air quality meets the NAAQS and a requirement to implement one or more contingency measures if a quarterly average exceeds the 1978 Pb NAAQS of 1.5 μg/m^3.

IV. What is EPA's analysis of the State's three requests?

A. Analysis of the 2016 Request To Redesignate the Collin County Pb NAA To Attainment

EPA can approve a redesignation request when five conditions are met. We have determined all five conditions are met and we are approving the state's redesignation request. The basis for this analysis follows our established procedures.[2] A complete and thorough analysis of how the Texas meets the requirements for redesignation can be found in the TSD to this notice. A brief discussion of how these conditions are met is presented below.

1. The Area Has Attained the 2008 Pb NAAQS

Monitoring data for the area shows that the 2008 Pb NAAQS was attained. As demonstrated in Table 1, below, the 2013–2015 ''design value'' for the area was 0.08 μg/m^3, well below the 2008 Pb standard of 0.15 μg/m^3. Design values are used to determine whether the NAAQS is met (see page 4 of the accompanying TSD). For convenience, we are detailing the observed monitoring data showing the area is in attainment of the standard in Table 1 below;

TABLE 1—MONITORED LEAD DESIGN VALUES FOR THE COLLIN COUNTY LEAD NONATTAINMENT AREA

Site identification No.	Site name	Site address *	2013 Annual maximum rolling three month average **	2014 Annual maximum rolling three month average **	2015 Annual maximum rolling three month average **	Design value 2013–2015 **
480850003	Frisco 5th Street	7471 South 5th Street	0.05	0.01	0.01	0.05
480850007	Frisco 7	6931 Ash Street	0.02	0.02	0.00	0.02
480850009	Frisco Eubanks	6601 Eubanks	0.08	0.02	0.01	0.08
480850029	Frisco Stonebrook	7202 Stonebrook Parkway	0.07	0.01	0.01	0.07

* All locations in Frisco, Texas.
** μg/m^3.

2. The Area Has a Fully Approved SIP

Section 110(k) of the CAA requires the state meet all criteria for completeness. This means all deadlines for action; criteria for full, partial, or conditional approval; and provisions for SIP revisions and corrections must have been met been met before we can approve the state's request for redesignation from nonattainment to attainment under the 2008 Pb NAAQS. With our approval of the attainment demonstration SIP revision the area has a fully approved SIP to address the 2008 Pb NAAQS (see page 5 of the TSD);

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Emission Reductions

With the state's demonstration that the Exide facility has been permanently shut down and that any future sources of Pb emissions in the area will be required to demonstrate compliance with the 2008 Pb NAAQS, we find the improvement in air quality is due to permanent and enforceable reductions in emissions and applicable Federal air pollution control regulations (see page 5 of the TSD);

4. The Area Has a Fully Approved Maintenance Plan

The state has provided an appropriate maintenance plan to assure on-going attainment with the 2008 Pb NAAQS as required by Section 175A of the CAA. The maintenance plan submitted as part

[1] See 73 FR 66964, November 12, 2008.

[2] See ''Procedures for Processing Requests to Redesignate Areas to Attainment'' Memorandum from John Calcagni, September 4, 1992. *https://www.epa.gov/sites/production/files/2016-03/documents/calcagni_memo_-_procedures_for_processing_requests_to_redesignate_areas_to_attainment_090492.pdf.*

of the redesignation request demonstrates continued attainment of the 2008 Pb NAAQS for at least ten years by establishing an emission inventory baseline and committing to maintaining the Pb emission in the area below the level at which the area reached attainment. The state also provided a commitment to revise the maintenance plan for a second ten-year period as required by Section 175A of the CAA to assure compliance with the 2008 Pb NAAQS is maintained (see page 8 of the TSD).

As demonstrated in Table 1, above, the annual maximum rolling three-month average at any of the four monitors in the NAA was 0.08 μg/m[3] well below the 2008 Pb standard of 0.15 μg/m[3]. Therefore, the area has attained the NAAQS and the State has demonstrated that the area will maintain attainment of the standard; and,

5. The Section 110 and Part D Requirements for the 2008 Pb SIP Are Met

We reviewed the Texas SIP submittals and concluded they meet the general SIP requirements under section 110 and the specific Part D Nonattainment Area requirements. The general requirements under section 110 include SIP adoption after reasonable public notice. The Part D requirements include the attainment demonstration being approved (see pages 9–10 of the TSD).

B. The 2012 Request To Approve the State's Attainment Demonstration for the 2008 Pb NAAQS

Section 172 of the CAA, along with implementation guidance published by EPA for the 2008 Pb standard,[3] requires the state to submit a SIP revision containing an analysis of reasonably available control measures and reasonably available control technology; a demonstration of attainment through air dispersion modeling; a control strategy demonstration; an emissions inventory; a demonstration of reasonable further progress, and contingency measures.

On October 17, 2012, TCEQ submitted a request to revise the Texas SIP for control of Pb emission in the Collin County NAA. The request addressed the six necessary elements described in Section III. B. above. A complete and thorough analysis of the state's October 17, 2012 submittal can be found in the TSD to this action. As a result of our analysis we are taking direct final action to approve the state's request for approval to the SIP to include their plan to demonstrate attainment with the 2008 Pb NAAQS. The TCEQ appropriately addressed all of the required elements and provided adequate public notice of changes to state rules to bring about compliance with the 2008 Pb NAAQS, conducted a public hearing and provided an opportunity for public comment.

As part of the submittal the state provided an enforceable commitment from Exide in the form of an agreed order that proscribed technical improvements to the capture and control of Pb particulate emissions caused by the Exide lead acid recycling operation. Before the new control measures were to go into effect at the facility, however, Exide decided to cease operations. The entire production area of the facility was dismantled. There are no longer smelting operations at the site and no longer any point source emissions, therefore we do not expect these control options to be implemented. Exide is in the process of doing site remediation under its RCRA permit.

C. The 2009 Request To Approve the Second 10-Year Maintenance Plan for the 1978 Pb NAAQS

Section 175A(b) of the CAA requires a state submit a SIP revision for maintenance of the Primary NAAQS for a second 10-year period following expiration of the first 10-year maintenance plan. As described in Section III. C. above, the maintenance plan must contain a commitment to assure the ambient air quality meets the NAAQS and a requirement to implement one or more contingency measures if a quarterly monitored average ambient Pb value exceeds the 1978 Pb NAAQS of 1.5 μg/m[3].

On September 23, 2009, TCEQ submitted a SIP revision for the Collin County area to include a second 10-year maintenance plan for the 1978 Pb NAAQS. The EPA had earlier found the Collin County area to be in compliance with the 1978 Pb NAAQS on December 13, 1999.[4] The second 10-year maintenance plan included: (1) An Agreed Order with Exide assuring the measures included in the maintenance plant were legally enforceable; (2) monitoring plans, to assure continued compliance with the 1978 Pb standard; and (3) action and contingency plans to deal with measured exceedance of the standard. We are taking direct final action to approve the state's revision to the SIP. A complete analysis of the plan and our rationale for approval is included in the TSD to this action.

V. What are the effects of EPA's actions?

This action approves the Texas' redesignation request and changes the legal designation of the portion of Collin County, Texas in the vicinity of the former Exide facility NAA from nonattainment to attainment for the 2008 Pb NAAQS, found at 40 CFR part 81. This action approves the maintenance plan SIP revision and incorporates it into the EPA approved Texas SIP a plan for maintaining the 2008 Pb NAAQS. This action approves the SIP revisions for the 2008 Pb NAAQS attainment demonstration and the second 10-year maintenance plan for the 1978 Pb NAAQS and will incorporate these revisions into the EPA approved Texas SIP.

VI. Final Action

We are approving a request from the State of Texas to redesignate the Collin County Pb NAA to attainment for the 2008 Pb NAAQS. We determined that the Collin County Pb NAA has attained the 2008 Pb NAAQS, based on complete, quality-assured, and certified ambient air quality monitoring data for 2013–2015. In approving the redesignation request, we also approve as a revision to the Texas SIP, a maintenance plan for the 2008 Pb NAAQS in the NAA. We are also approving as revisions to the Texas SIP an attainment demonstration for the 2008 Pb NAAQS, which includes an Agreed Order for the Exide facility, and a second 10-year maintenance plan for the 1978 Pb NAAQS.

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on September 27, 2017 without further notice unless we receive relevant adverse comment by July 31, 2017. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an

[3] See 73 FR 66964, November 12, 2008.

[4] See 64 FR 60930.

amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VII. Incorporation by Reference

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

VIII. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Samuel Coleman was designated the Acting Regional Administrator on June 14, 2017 through the order of succession outlined in Regional Order R6–1110.13, a copy of which is included in the docket for this action.

List of Subjects

40 CFR 52

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

40 CFR 81

Environmental protection, Air pollution control.

Dated: June 14, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

■ 2. In § 52.2270:

■ a. In paragraph (d), the table titled ''EPA Approved Texas Source-Specific Requirements'' is amended by adding an entry for ''Exide Technologies'' at the end of the table.

■ b. In paragraph (e), the second table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding entries for ''Second 10-year Lead maintenance plan for 1978 Lead NAAQS'', ''Lead Attainment Demonstration for 2008 Lead NAAQS'', and ''Maintenance Plan for 2008 Lead NAAQS'' at the end of the table.

The additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(d) * * *

EPA APPROVED TEXAS SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit or order No.	State effective date	EPA approval date	Comments
* *	*	*	*	* *
Exide Technologies	Agreed Order No. 2011–0521–MIS.	8/14/2012	6/29/2017, [Insert **Federal Register** citation].	

(e) * * *

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

Name of SIP provision	Applicable geographic or non-attainment area	State Submittal/ effective date	EPA approval date	Comments
* *	*	*	*	* *
Second 10-year Lead maintenance plan for 1978 Lead NAAQS.	Collin County, TX	9/15/2009	6/29/2017, [Insert **Federal Register** citation].	
Lead Attainment Demonstration for 2008 Lead NAAQS.	Collin County, TX	10/10/2012	6/29/2017, [Insert **Federal Register** citation].	
Maintenance Plan for 2008 Lead NAAQS.	Collin County, TX	11/02/2016	6/29/2017, [Insert **Federal Register** citation].	

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. In § 81.344, the table titled ''Texas-2008 Lead NAAQS'' is amended by revising the entry for Frisco, TX to read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—2008 LEAD NAAQS

Designated area	Designation for the 2008 NAAQS [a]	
	Date [1]	Type
* * * * *	*	*
Frisco, TX	9/27/2017	Attainment
Collin County (part)		
The area immediately surrounding the Exide Technologies battery recycling plant in Frisco, bounded to the north by latitude 33.153 North, to the east by longitude 96.822 West, to the south by latitude 33.131 North, and to the west by longitude 96.837 West.		
* * * * * *		*

[a] Includes Indian County located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

[FR Doc. 2017–13479 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R04–OAR–2017–0209; FRL–9964–32–Region 4]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants; Plating and Polishing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On December 12, 2016, pursuant to section 112(l) of the Clean Air Act (CAA), the Tennessee Department of Environment and Conservation (TDEC) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants (NESHAP) from Plating and Polishing Operations with respect to the operation of the Ellison Surface Technologies, Inc., facility in Morgan County, Tennessee (Ellison). The Environmental Protection Agency is approving this request, and thus, granting TDEC the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after the EPA has approved the State's alternative requirements.

DATES: This direct final rule is August 28, 2017 without further notice, unless the EPA receives adverse comment by July 31, 2017. If the EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2017–0209 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

Copies of all comments must also be sent concurrently to TDEC either via hard copy to Tennessee Department of Environment and Conservation, 312 Rosa L. Parks Avenue, Floor 15, Nashville, Tennessee 37243–1102, attention: Michelle Walker; or via electronic mail to *michelle.b.walker@tn.gov.*

FOR FURTHER INFORMATION CONTACT: Lee Page, South Air Enforcement and Toxics Section, Air Enforcement and Toxics Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Page can be reached via telephone at (404) 562–9131 and via electronic mail at *page.lee@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 112 of the CAA, EPA promulgates NESHAPs for various categories of air pollution sources. On July 1, 2008, the EPA promulgated the NESHAP for Plating and Polishing Operations (*see* 73 FR 37741) which is codified in 40 CFR part 63, subpart WWWWWW, ''National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.'' Ellison performs plating and polishing operations and is subject to subpart WWWWWW.

Under CAA section 112(l), the EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 Federal rules, emission standards, or requirements. The Federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E (*see* 65 FR 55810, dated September 14, 2000). Under these regulations, a state or local air pollution control agency has the option to request the EPA's approval to substitute alternative requirements and authorities that take the form of title V permit terms and conditions instead of source category regulations. This option is referred to as the equivalency by permit (EBP) option. To receive the EPA approval of an EBP program, the requirements of 40 CFR 63.91 and 63.94 must be met.

The EBP process comprises three steps. The first step (*see* 40 CFR 63.94(a) and (b)) is the ''up-front approval'' of the state EBP program. The second step (*see* 40 CFR 63.94(c) and (d)) is the EPA review and approval of the state alternative section 112 requirements in the form of pre-draft permit terms and conditions. The third step (*see* 40 CFR 63.94(e)) is incorporation of the approved pre-draft permit terms and conditions into a specific title V permit and the title V permit issuance process itself. The final approval of the state alternative requirements that substitute for the Federal standard does not occur for purposes of the Act, section 112(l)(5), until the completion of step three.

The purpose of step one, the ''up-front approval'' of the EBP program, is three fold: (1) It ensures that the State meets the criteria of 40 CFR 63.91(d) for up-front approval common to all approval options; (2) it provides a legal foundation for the State to replace the otherwise applicable Federal section 112 requirements that will be reflected in final title V permit terms and conditions; and (3) it delineates the specific sources and Federal emission standards for which the State will be accepting delegation under the EBP option.

On December 12, 2016, TDEC requested delegation of authority to implement and enforce title V permit terms and requirements for Ellison as an alternative to those of subpart WWWWWW. As part of its request to implement and enforce alternative terms and conditions in place of the otherwise applicable Federal section 112 standard, TDEC submitted information intended to satisfy the requirements necessary for ''up front approval'' of the EBP program.

II. Analysis of State's Submittal

The EPA has reviewed TDEC's submittal and has concluded that the State meets the requirements for ''up-front approval'' of its EBP program which are specified at 40 CFR 63.94(b) and 63.91(d). The requirements a State or local agency must meet can be summarized as follows: (1) Identify the source(s) for which the State seeks authority to implement and enforce alternative requirements; (2) request delegation (or have delegation) for any remaining sources that are in the same category as the source(s) for which it wishes to establish alternative requirements; (3) identify all existing

and future CAA section 112 emission standards for which the State is seeking authority to implement and enforce alternative requirements; (4) demonstrate that the State has an approved CAA title V operating permits program that permits the affected source(s); and (5) demonstrate that the State meets the general approval criteria set forth at 40 CFR 63.91(d). The EPA lists each requirement below and after each requirement explains its reasons for concluding that TDEQ meets the requirement:

A. Identify the Source(s) for Which the State Is Seeking Authority To Implement and Enforce Alternative Requirements

TDEC identified Ellison as the source for which it is seeking authority to implement and enforce alternative requirements.

B. Request or Have Delegation for Any Remaining Sources That Are in the Same Category as the Source(s) for Which the State Seeks To Establish Alternative Requirements

Tennessee has an approved 40 CFR part 63 delegation mechanism commonly described as ''automatic delegation'' in which formal delegation of the Federal rules occurs without the need for completing specific state rulemaking actions and is automatically completed upon the promulgation date of each part 63 regulation. *See* 61 FR 9661, 9668 (March 11, 1996); 61 FR 39335, 39342 (July 29,1996); 74 FR 22437, 22438 (May 13, 2009). Therefore, the State has delegated authority to implement and enforce subpart WWWWWW.

C. Identify All Existing and Future Federal Section 112 Rules for Which the State Is Seeking Authority To Implement and Enforce Alternative Requirements

In its submittal, TDEC requested only the authority to implement and enforce State permit requirements for Ellison as alternatives to the Federal requirements applicable to that source under subpart WWWWWW.

D. Demonstrate That the State Has an Approved Title V Permits Program and That the Program Permits the Affected Source(s)

The EPA granted final interim approval to Tennessee's CAA title V operating permits program on July 29, 1996 (61 FR 39342) and final approval on November 14, 2001 (66 FR 56996). Under this approved program, TDEC has the authority to issue title V permits to all major and area stationary NESHAP sources. In its submittal, TDEC confirmed that Ellison will obtain a Title V operating permit.

E. General Approval Criteria Found at 40 CFR Section 63.91(d)

The provisions of 40 CFR 63.91(d)(3) specify that ''[i]nterim or final title V program approval will satisfy the criteria set forth in § 63.91(d), up-front approval criteria.'' As discussed above, the EPA has fully approved Tennessee's title V operating permits program.

III. Final Action

The EPA is granting TDEC ''up-front'' approval of an EBP program under which TDEC may establish and enforce alternative State requirements for Ellison in lieu of those of the NESHAP for Plating and Polishing Operations found at 40 CFR part 63, subpart WWWWWW. TDEC may only establish alternative requirements for Ellison that are at least as stringent as the otherwise applicable Federal requirements. TDEC must, in order to establish alternative requirements for Ellison under its EPA-approved EBP program: (1) Submit to the EPA for review pre-draft title V permit terms specifying alternative requirements that meet the criteria of 40 CFR 63.94(d), including the criterion that the alternative requirements are at least as stringent as the otherwise applicable Federal requirements, (2) obtain the EPA's written approval of the alternative pre-draft title V permit requirements, and (3) issue a title V permit for Ellison that contains the approved alternative requirements. Until the EPA has approved the alternative permit terms and conditions and TDEC has issued a final title V permit incorporating them, Ellison will remain subject to the Federal NESHAP requirements found at 40 CFR part 63, subpart WWWWWW.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve TDEC's request to implement and enforce alternative requirements in the form of title V permit terms and conditions should adverse comments be filed. This rule will be effective August 28, 2017 without further notice unless the Agency receives adverse comments by July 3, 2017.

If the EPA receives such comments, then the EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All adverse comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 28, 2017 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

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

Executive Order 12866 gives the Office of Management and Budget (OMB) the authority to review regulatory actions that are categorized as ''significant'' under section 3(f) of Executive Order 12866. This action is not a ''significant regulatory action'' and was therefore not submitted to OMB for review. This action provides ''up-front'' approval of an EBP program under which TDEC may establish and enforce alternative requirements for one facility in the State that are at least as stringent as the otherwise applicable Federal requirements.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). A ''collection of information'' under the PRA means ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.'' Because this action applies to only one facility, the PRA does not apply.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. I certify that

this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule will not have a significant impact on a substantial number of small entities because it only affects one facility and because approvals under 40 CFR 63.94 do not create any new requirements but simply allow the State to establish and enforce alternative requirements that are at least as stringent as the otherwise applicable Federal requirements.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This rule does not contain an unfunded mandate of $100 million or more as described in UMRA and does not significantly or uniquely affect small governments. This action allows the State to establish and enforce alternative requirements that are at least as stringent as the otherwise applicable Federal requirements, and imposes no new requirements.

E. Executive Order 13132: Federalism

Executive Order 13132, *Federalism* requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This action allows the State to establish and enforce alternative requirements that are at least as stringent as the otherwise applicable Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments,'' requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This action does not have tribal implications as specified in Executive Order 13175 because it will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that 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 allows the State to establish and enforce alternative requirements that are at least as stringent as the otherwise applicable Federal requirements.

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

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

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs the EPA to consider and use ''voluntary consensus standards'' in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. This rulemaking does not involve technical standards.

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

Executive Order 12898 directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 because it allows the State to establish and enforce alternative requirements that are at least as stringent as the otherwise applicable Federal requirements.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* 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. This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

IV. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 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 63

Administrative practice and procedure, air pollution control, National Emission Standards for Hazardous Air Pollutants, hazardous air pollutants.

Dated: June 14, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

40 CFR part 63 is amended as follows:

PART 63—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart E—Approval of State Program and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by adding paragraph (a)(43) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(43) *Tennessee.* (i) The Tennessee Department of Environment and Conservation (TDEC) has ''up-front'' approval to implement an Equivalency by Permit (EBP) program under which TDEC may establish and enforce alternative requirements for the Ellison Surface Technologies, Inc. facility located in Morgan County, Tennessee (Ellison) in lieu of those of the National Emissions Standard for Hazardous Air Pollutants (NESHAP) for Plating and Polishing Operations at 40 CFR part 63, subpart WWWWWW, ''National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.'' TDEC may only establish alternative requirements for Ellison that are at least as stringent as the otherwise applicable Federal requirements. TDEC must, in order to establish alternative requirements for Ellison under its EPA-approved EBP program: submit to the EPA for review pre-draft title V permit terms specifying alternative requirements that meet the criteria of 40 CFR 63.94(d), including the criterion that the alternative requirements are at least as stringent as the otherwise applicable Federal requirements; obtain the EPA's written approval of the alternative pre-draft title V permit requirements; and issue a title V permit for Ellison that contains the approved alternative requirements. Until the EPA has approved the alternative permit terms and conditions and TDEC has issued a final title V permit incorporating them, Ellison will remain subject to the Federal NESHAP requirements found at 40 CFR part 63, subpart WWWWWW.

(ii) Reserved.

* * * * *

[FR Doc. 2017–13665 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2017–0002; Internal Agency Docket No. FEMA–8487]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Patricia Suber, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW., Washington, DC 20472, (202) 646–4149.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required

floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date Certain Federal assistance no longer available in SFHAs
Region I				
Maine: Alexander, Town of, Washington County.	230303	March 2, 1978, Emerg; September 4, 1985, Reg; July 18, 2017, Susp.	July 18, 2017	July 18, 2017
Baring Plantation, Washington County	230468	March 19, 1974, Emerg; March 15, 1982, Reg; July 18, 2017, Susp.	-*do-	-do-
Brookton, Township of, Washington County	230470	March 19, 1974, Emerg; November 1, 1985, Reg; July 18, 2017, Susp.	-do-	-do-
Calais, City of, Washington County	230134	July 31, 1975, Emerg; August 3, 1994, Reg; July 18, 2017, Susp.	-do-	-do-
Charlotte, Town of, Washington County	230437	May 1, 2000, Emerg; August 1, 2008, Reg; July 18, 2017, Susp.	-do-	-do-
Cherryfield, Town of, Washington County	230135	July 23, 1975, Emerg; May 4, 1988, Reg; July 18, 2017, Susp.	-do-	-do-
Columbia, Town of, Washington County	230307	June 24, 2010, Emerg; April 1, 2011, Reg; July 18, 2017, Susp.	-do-	-do-
Danforth, Town of, Washington County	230136	April 14, 1975, Emerg; September 18, 1985, Reg; July 18, 2017, Susp.	-do-	-do-
Dennysville, Town of, Washington County ...	230312	July 23, 1975, Emerg; August 19, 1985, Reg; July 18, 2017, Susp.	-do-	-do-
East Machias, Town of, Washington County	230313	April 8, 1983, Emerg; September 4, 1985, Reg; July 18, 2017, Susp.	-do-	-do-
Eastport, City of, Washington County	230137	June 11, 1975, Emerg; December 3, 1987, Reg; July 18, 2017, Susp.	-do-	-do-
Edmunds, Township of, Washington County	230471	March 19, 1975, Emerg; August 19, 1985, Reg; July 18, 2017, Susp.	-do-	-do-
Grand Lake Stream Plantation, Washington County.	230469	March 19, 1975, Emerg; August 5, 1985, Reg; July 18, 2017, Susp.	-do-	-do-
Jonesboro, Town of, Washington County	230315	February 27, 2006, Emerg; August 1, 2008, Reg; July 18, 2017, Susp.	-do-	-do-
Lambert Lake, Township of, Washington County.	230472	March 19, 1975, Emerg; January 17, 1985, Reg; July 18, 2017, Susp.	-do-	-do-
Machias, Town of, Washington County	230140	April 24, 1975, Emerg; November 18, 1988, Reg; July 18, 2017, Susp.	-do-	-do-
Milbridge, Town of, Washington County	230142	May 14, 1975, Emerg; May 3, 1990, Reg; July 18, 2017, Susp.	-do-	-do-
Pembroke, Town of, Washington County	230143	June 9, 1999, Emerg; April 1, 2009, Reg; July 18, 2017, Susp.	-do-	-do-
Perry, Town of, Washington County	230319	July 30, 1975, Emerg; September 4, 1985, Reg; July 18, 2017, Susp.	-do-	-do-
Princeton, Town of, Washington County	230320	June 11, 1975, Emerg; August 19, 1985, Reg; July 18, 2017, Susp.	-do-	-do-
Robbinston, Town of, Washington County ...	230321	July 23, 1975, Emerg; August 19, 1985, Reg; July 18, 2017, Susp.	-do-	-do-

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date Certain Federal assistance no longer available in SFHAs
Roque Bluffs, Town of, Washington County	230322	July 16, 1975, Emerg; September 18, 1985, Reg; July 18, 2017, Susp.	-do-	-do-
Topsfield, Town of, Washington County	230324	June 22, 2010, Emerg; March 1, 2011, Reg; July 18, 2017, Susp.	-do-	-do-
Trescott, Township of, Washington County	230473	March 19, 1975, Emerg; August 5, 1985, Reg; July 18, 2017, Susp.	-do-	-do-
Wesley, Town of, Washington County	230327	April 1, 1976, Emerg; September 18, 1985, Reg; July 18, 2017, Susp.	-do-	-do-
Whitneyville, Town of, Washington County	230329	N/A, Emerg; February 8, 2001, Reg; July 18, 2017, Susp.	-do-	-do-
Region III				
Pennsylvania: Belle Vernon, Borough of, Fayette County.	420457	July 19, 1974, Emerg; July 16, 1981, Reg; July 18, 2017, Susp.	-do-	-do-
Brownsville, Borough of, Fayette County	420458	July 9, 1975, Emerg; September 16, 1981, Reg; July 18, 2017, Susp.	-do-	-do-
Bullskin, Township of, Fayette County	421622	March 23, 1976, Emerg; April 16, 1991, Reg; July 18, 2017, Susp.	-do-	-do-
Connellsville, City of, Fayette County	420459	July 23, 1973, Emerg; March 1, 1978, Reg; July 18, 2017, Susp.	-do-	-do-
Connellsville, Township of, Fayette County	421623	March 3, 1977, Emerg; July 16, 1991, Reg; July 18, 2017, Susp.	-do-	-do-
Dunbar, Borough of, Fayette County	420461	June 20, 1974, Emerg; July 4, 1988, Reg; July 18, 2017, Susp.	-do-	-do-
Fairchance, Borough of, Fayette County	420463	November 14, 1975, Emerg; April 16, 1991, Reg; July 18, 2017, Susp.	-do-	-do-
Lower Tyrone, Township of, Fayette County	421630	March 16, 1977, Emerg; March 4, 1988, Reg; July 18, 2017, Susp.	-do-	-do-
Markleysburg, Borough of, Fayette County	422606	January 18, 1985, Emerg; June 19, 1985, Reg; July 18, 2017, Susp.	-do-	-do-
Menallen, Township of, Fayette County	421632	July 18, 1974, Emerg; April 16, 1991, Reg; July 18, 2017, Susp.	-do-	-do-
Newell, Borough of, Fayette County	420465	February 20, 1975, Emerg; April 15, 1981, Reg; July 18, 2017, Susp.	-do-	-do-
Ohiopyle, Borough of, Fayette County	421615	March 8, 1985, Emerg; December 1, 1986, Reg; July 18, 2017, Susp.	-do-	-do-
Springhill, Township of, Fayette County	421639	June 15, 1976, Emerg; March 18, 1991, Reg; July 18, 2017, Susp.	-do-	-do-
Uniontown, City of, Fayette County	420466	May 4, 1973, Emerg; May 1, 1978, Reg; July 18, 2017, Susp.	-do-	-do-
Wharton, Township of, Fayette County	421642	November 19, 1975, Emerg; January 1, 1987, Reg; July 18, 2017, Susp.	-do-	-do-
Region IV				
South Carolina: Reevesville, Town of, Dorchester County.	450218	August 11, 2006, Emerg; N/A, Reg; July 18, 2017, Susp.	-do-	-do-
Summerville, Town of, Berkeley, Charleston and Dorchester Counties.	450073	November 5, 1973, Emerg; June 15, 1981, Reg; July 18, 2017, Susp.	-do-	-do-
Region IX				
California: Mendocino County, Unincorporated Areas.	060183	December 17, 1974, Emerg; June 1, 1983, Reg; July 18, 2017, Susp.	-do-	-do-
Point Arena, City of, Mendocino County	060185	June 28, 1976, Emerg; August 3, 1984, Reg; July 18, 2017, Susp.	-do-	-do-

-*do- = Ditto.
Code for reading third column: Emerg. —Emergency; Reg. —Regular; Susp. —Suspension.

Dated: June 20, 2017.

Michael M. Grimm,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2017–13565 Filed 6–28–17; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MB Docket No. 16–161; FCC 17–3]

Revisions to Public Inspection File Requirements—Broadcaster Correspondence File and Cable Principal Headend Location

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, some of the information collections associated with the Commission's decision, in *Report and Order,* Revisions to Public Inspection File Requirements—Broadcaster Correspondence File and Cable Principal Headend Location. Specifically, OMB has approved the Commission's decision to eliminate two public inspection file requirements: the requirement that commercial broadcast stations retain in their public inspection file copies of letters and emails from the public; and the requirement that cable operators maintain for public inspection the designation and location of the cable system's principal headend. This document is consistent with the *Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of these rule changes.

DATES: The amendments to 47 CFR 73.3526; 76.5(pp)(2); 76.1700; and 76.1708, published at 82 FR 11406 on February 23, 2017 are effective June 29, 2017.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on March 24, 2017 and May 25, 2017, OMB approved some of the information collection requirements contained in the Commission's *Report and Order,* FCC 17–3, published at 82 FR 11406, February 23, 2017. The OMB Control Numbers are 3060–0214, 3060–0316, and 3060–0649. The Commission publishes this notice as an announcement of the effective date of the rules. 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, 3060–1207, 3060–0214, and 3060–0316, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *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 OMB approval, on March 24, 2017 and May 25, 2017, for the new information collection requirements contained in the Commission's rules at 47 CFR 73.3526; 76.5(pp)(2); 76.1700; and 76.1708. Under 5 CFR part 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 Numbers are 3060–0214, 3060–0316, and 3060–0649.

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 Number: 3060–0214.

OMB Approval Date: May 25, 2017.

OMB Expiration Date: May 31, 2020.

Title: Sections 73.3526 and 73.3527, Local Public Inspection File, §§ 73.1212, 76.1701 and 73.1943, Political Files.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents and Responses: 41,695 respondents; 63,364 responses.

Estimated Time per Response: 1–52 hours per response.

Frequency of Response: On occasion reporting requirement, Recordkeeping requirement, Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 151, 152, 154(i), 303, 307, and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,073,048 hours.

Total Annual Cost: $3,667,339.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On January 31, 2017, the Commission adopted a Report and Order (''*Public Inspection File R&O*'') in MB Docket No. 16–161, FCC 17–3, eliminating the requirement in §§ 73.1202 and 73.3526(e)(9) of its rules that commercial broadcast stations retain in their public inspection file copies of letters and emails from the public. The Commission concluded that this component of its public inspection file rules involves documents that do not need to be made available to the general public and that eliminating this requirement would reduce the burden of maintaining the public inspection file on commercial broadcasters. The Commission's goal is also to permit commercial television and radio broadcasters to cease maintaining a local public inspection file if they post all public file material to the online public file database and provide online access via their own Web site to back-up political file material. The Commission has previously adopted this option for other entities subject to our online public inspection file requirements. Because the correspondence file cannot be made available online for privacy reasons, removing this requirement would permit commercial broadcasters to elect to make their entire public inspection file available online and cease maintaining a local public file, thereby further reducing overall regulatory burdens on these entities.

OMB Control Number: 3060–0316.

OMB Approval Date: March 24, 2017.

OMB Expiration Date: March 31, 2020.

Title: Section 76.5, Definitions, § 76.1700, Records To Be Maintained Locally by Cable System Operators;

§ 76.1702, Equal Employment Opportunity; § 76.1703, Commercial Records on Children's Programs; § 76.1707, Leased Access; § 76.1711, Emergency Alert System (EAS) Tests and Activation.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 3,000 respondents; 3,000 responses.

Estimated Time per Response: 18 hours.

Frequency of Response: Recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573 of the Communications Act of 1934, as amended.

Total Annual Burden: 54,000 hours.

Total Annual Cost: $591,840.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On January 31, 2017, the Commission adopted a Report and Order (''*Public Inspection File R&O*'') in MB Docket No. 16–161, FCC 17–3, eliminating the requirement in §§ 76.5(pp) and 76.1700(a)(6) of its rules that cable systems retain the location and designation of the principal headend in their public file. This action reduces public inspection file requirements for these entities. However, because principal headend location information must be accessible to the Commission, broadcast television stations, and franchisors, cable systems will be required to provide principal headend location information to these entities upon request. In lieu of responding to individual requests for such information, operators may alternatively elect voluntarily to provide this information to the Commission for inclusion in the Commission's online public inspection file (''OPIF'') database and may elect to make the information publicly available there.

OMB Control Number: 3060–0649.

OMB Approval Date: May 25, 2017.

OMB Expiration Date: May 31, 2020.

Title: Section 76.1601, Deletion or Repositioning of Broadcast Signals; § 76.1617, Initial Must-Carry Notice; § 76.1607, Principal Headend.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; Not for profit institutions.

Number of Respondents and Responses: 3,300 respondents; 3,950 responses.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occasion reporting requirement, Third party disclosure requirement, Recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in section 4(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 2,050 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On January 31, 2017, the Commission adopted a Report and Order (''*Public Inspection File R&O*'') in MB Docket No. 16–161, FCC 17–3, eliminating the requirement in Section 76.1708 of its rules requiring the operators of cable television systems to maintain for public inspection the designation and location of its principal headend. If an operator changed the designation of its principal headend, that new designation was also required to be included in its public file. The R&O removed and reserved this rule section (47 CFR 76.1708).

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–13623 Filed 6–28–17; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 82, No. 124
Thursday, June 29, 2017

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0624; Directorate Identifier 2016–NM–135–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Airbus Model A319 series airplanes, Model A320–211, –212, –214, –231, –232, and –233 airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This proposed AD was prompted by a runway excursion due to an unexpected thrust increase leading to an unstable approach performed using the current flight management and guidance computer (FMGC) standard. This proposed AD would require identification of potentially affected FMGCs, replacement of any affected FMGC, and applicable concurrent actions. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by August 14, 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 Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* 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–2017–0624; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0624; Directorate Identifier 2016–NM–135–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 2016–0122, dated June 21, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A319 series airplanes, Model A320–211, –212, –214, –231, –232, and –233 airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The MCAI states:

> Following an instrument landing system (ILS) approach, during night, in rainy condition, an A321 aeroplane experienced a longitudinal runway excursion. Investigation revealed that the approach was not stabilized with an overspeed of 19 knots (kts) over the runway threshold, followed by a long flare (18 seconds) with touchdown far behind the touchdown zone. The aeroplane exited the runway at 75 kts and came to rest around 300 meters beyond the end of the runway. During the final approach, at 150 feet Radio Altimeter (RA) altitude, the corrected airspeed of the aeroplane was 165 kts (24 kts overspeed). Auto thrust (ATHR) commanded a transient N1 increase up to 70% due to the ATHR speed Mach control law.
>
> The ATHR system on A320 family aeroplane was designed to maintain accurately the aircraft speed/Mach to speed/Mach target by commanding the thrust, featuring also a trade-off at low altitude between thrust corrections to maintain speed equal to speed target and too large thrust corrections destabilizing the aircraft trajectory near the ground. The conclusions of the investigations were that the main contributor to this runway excursion was a non-stabilized approach not followed by a go-around. ATHR misbehaviour in case of large overspeed led to an unexpected thrust increase, which is considered as a contributor to the long flare.
>
> This ATHR characteristic, reported as ''Spurious thrust increase during approach,'' was initially found in 1996 and a modification was developed and introduced in Flight Guidance (FG) 2G standard ''C8 or I8'' (C for CFM engines and I for IAE engines) in 2001.
>
> Prompted by these findings, Airbus introduced a programme to encourage operators to replace the FMGC Legacy with the FMGC equipped with Flight Management System type 2 (FMS2) and FG standard, which introduces additional operational capabilities, including Runway Overrun Protection System/Runway Overrun Warning

(ROPS/ROW) and Autopilot/Traffic Collision Avoidance System (AP/TCAS). It was determined that the ROPS, in a scenario similar to the one described above, would have triggered a ''RUNWAY TOO SHORT'' aural alert before touchdown. Information was made available through Airbus Service Information Letter (SIL) 22–039 (later superseded by Word In Service Experience (WISE) In Service Information 22.83.00003), and EASA published Safety Information Bulletin (SIB) 2013–19, recommending the FMGC upgrade.

Since EASA SIB was published, it was determined that many operators have chosen not to implement the optional upgrade that improves the ATHR behaviour.

More recently, prompted by a recommendation from the BEA (Bureau d'Enquêtes et d'Analyses pour la sécurité de l'aviation civile) of France, to reduce the risk of further runway excursions due to uninterrupted unstable approaches performed with the legacy FMGC standard, EASA decided to require installation of at least the first version of the FMS2 and associated FG for legacy aeroplanes.

DGAC [Direction Générale de l'Aviation Civile] France issued AD 1999–411–140(B)R1 [which corresponds to FAA AD 2000–12–13, Amendment 39–11791 (65 FR 37845, June 19, 2000) (''AD 2000–12–13'')] and AD 1998–226–119(B)R1 [which corresponds to FAA AD 98–19–08, Amendment 39–10750 (63 FR 50503, September 22, 1998)] to address different unsafe conditions, requiring to install a certain previous FMGC standard that may be susceptible to the ''Spurious thrust increase during approach''.

For the reasons described above, this [EASA] AD * * * requires replacement of the affected FMGC units with upgraded units [and applicable concurrent actions].

Concurrent actions include the installation of certain FMGCs, wiring, display management computers, wiring associated with pin programming, and applicable operational program configuration disks. 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–2017–0624.

Other Related Rulemaking

On September 2, 1998, we issued AD 98–19–08, Amendment 39–10750 (63 FR 50503, September 22, 1998) (''AD 98–19–08''), for certain Airbus Model A321 series airplanes. AD 98–19–08 was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. AD 98–19–08 requires revising the airplane flight manual to prohibit automatic landings and Category III operations on runways with a magnetic orientation of 170 through 190 degrees inclusive. We issued AD 98–19–08 to prevent the use of erroneous automatic roll-out guidance generated by the FMGC, which could result in the airplane departing the runway upon landing.

On June 9, 2000, we issued AD 2000–12–13, Amendment 39–11791 (65 FR 37845, June 19, 2000) (''AD 2000–12–13''), for certain Airbus Model A319, A320, and A321 series airplanes. AD 2000–12–13 was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. AD 2000–12–13 requires modification or replacement of all existing FMGC's, as applicable. We issued AD 2000–12–13 to prevent erroneous navigational calculations, which could result in an increased risk of collision with terrain or other airplanes.

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information, which describes procedures for replacement of any affected FMGC with a serviceable FMGC. These documents are distinct since they apply to different airplane configurations.

- Airbus Service Bulletin A320–22–1090, Revision 11, dated July 20, 2004.
- Airbus Service Bulletin A320–22–1103, Revision 04, dated March 12, 2004.
- Airbus Service Bulletin A320–22–1116, Revision 04, dated March 29, 2004.
- Airbus Service Bulletin A320–22–1152, Revision 03, dated February 18, 2005.
- Airbus Service Bulletin A320–22–1243, Revision 05, dated May 31, 2010.
- Airbus Service Bulletin A320–22–1519, Revision 02, dated December 21, 2015.

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.

Differences Between This Proposed AD and the MCAI

The MCAI supersedes two DGAC ADs, which correspond to FAA AD 98–19–08 and AD 2000–12–13. The MCAI does not retain the requirements of the DGAC ADs. This proposed AD is a stand-alone AD that specifies accomplishing the actions required by this proposed AD would terminate all requirements of AD 2000–12–13. We have determined that the actions specified in AD 2000–12–13 must continue to be required until the actions of the proposed AD are accomplished.

This proposed AD does not terminate the actions specified in AD 98–19–08 because it addresses a different unsafe condition relative to installing a certain previous FMGC standard, as stated in EASA AD 2016–0122.

Costs of Compliance

We estimate that this proposed AD affects 1,032 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	1 work-hour × $85 per hour = $85	$0	$85	$87,720

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	9 work-hours × $85 per hour = $765	$30,000	$30,765

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2017–0624; Directorate Identifier 2016–NM–135–AD.

(a) Comments Due Date

We must receive comments by August 14, 2017.

(b) Affected ADs

This AD affects AD 2000–12–13, Amendment 39–11791 (65 FR 37845, June 19, 2000) (''AD 2000–12–13'').

(c) Applicability

This AD applies to the Airbus airplanes, certificated in any category, identified in paragraphs (c)(1) through (c)(3) of this AD, all manufacturer serial numbers.

(1) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(2) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(3) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto Flight.

(e) Reason

This AD was prompted by a report of a runway excursion due to an unexpected thrust increase leading to an unstable approach performed using the current flight management and guidance computer (FMGC) standard. We are issuing this AD to prevent unstable approaches due to an unexpected thrust increase, which could result in reduced controllability of the airplane and runway excursions.

(f) Compliance

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

(g) Inspection and Replacement of Affected FMGC

(1) Within 36 months after the effective date of this AD: Inspect the FMGC to determine if any FMGC with an affected part number identified in Figure 1 to paragraphs (g)(1), (g)(2), (h)(1), (h)(2), and (j) of this AD is installed. A review of airplane maintenance records is acceptable in lieu of inspecting the FMGC, provided those records can be relied upon for that purpose and the part number of the FMGC can be conclusively identified from that review.

(2) If any affected FMGC with an affected part number identified in Figure 1 to paragraphs (g)(1), (g)(2), (h)(1), (h)(2), and (j) of this AD is found during any inspection or review required by paragraph (g)(1) of this AD: Within 36 months after the effective date of this AD, replace the FMGC with a serviceable FMGC having a part number that is not identified in Figure 1 to paragraphs (g)(1), (g)(2), (h)(1), (h)(2), and (j) of this AD, in accordance with the Accomplishment Instructions and paragraph 1.B. (concurrent actions) of the applicable service information specified in paragraphs (g)(2)(i) through (g)(2)(vi) of this AD, or using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). Refer to Figure 2 to paragraph (g)(2) of this AD and Figure 3 to paragraph (g)(2) of this AD for the lists of approved eligible FMGCs certified as of the effective date of this AD.

(i) Airbus Service Bulletin A320–22–1090, Revision 11, dated July 20, 2004 (installation of FMGC part number (P/N) C13042BA01).

(ii) Airbus Service Bulletin A320–22–1103, Revision 04, dated March 12, 2004 (installation of FMGC P/N C13043AA01).

(iii) Airbus Service Bulletin A320–22–1116, Revision 04, dated March 29, 2004 (installation of FMGC P/N C13043BA01).

(iv) Airbus Service Bulletin A320–22–1152, Revision 03, dated February 18, 2005 (installation of FMGC P/N C13043AA02).

(v) Airbus Service Bulletin A320–22–1243, Revision 05, dated May 31, 2010 (installation of FMGC P/N C13043BA04).

(vi) Airbus Service Bulletin A320–22–1519, Revision 02, dated December 21, 2015 (installation of FMGC P/N C13207CA00).

FIGURE 1 TO PARAGRAPHS (g)(1), (g)(2), (h)(1), (h)(2), AND (j) OF THIS AD—AFFECTED FMGCS

Airplanes	FMGC No.			
A319–111	B398AAM0303	B398AAM0304	B398AAM0405	B398AAM0406

FIGURE 1 TO PARAGRAPHS (g)(1), (g)(2), (h)(1), (h)(2), AND (j) OF THIS AD—AFFECTED FMGCS—Continued

Airplanes				
A319–112	B398AAM0407	B398AAM0408	B398AAM0409	B398AAM0410
A319–113	B398AAM0411	B398AAM0412	B398BAM0101	B398BAM0202
A319–114	B398BAM0203	B398BAM0204	B398BAM0205	B398BAM0206
A319–115	B398BAM0207	B398BAM0208	B398BAM0209	B546BAM0101
A320–211	B546BAM0202	B546BAM0203	B546BAM0204	B546BAM0205
A320–212	B546BAM0206	B546CAM0101	B546CAM0102	B546CAM0103
A320–214	B546CAM0104			
A321–111.				
A321–112.				
A321–211.				
A321–212 and A321–213 (all CFM56).				
A319–131	B398BCM0101	B398BCM0102	B398BCM0103	B398BCM0104
A319–132	B398BCM0105	B398BCM0106	B398BCM0107	B398BCM0108
A319–133	B398BCM0109	B546BCM0101	B546BCM0102	B546BCM0203
A320–231	B546BCM0204	B546BCM0205	B546CCM0101	B546CCM0102
A320–232	B546CCM0103	B546CCM0104	B546CCM0105	B546CCM0106
A320–233.				
A321–131.				
A321–231 and A321–232 (all V2500).				

FIGURE 2 TO PARAGRAPH (g)(2) OF THIS AD—LIST OF APPROVED ELIGIBLE FMGCS CERTIFIED AS OF THE EFFECTIVE DATE OF THIS AD

Airplanes	FMGC part No.	
A319–111	C13042AA01	
A319–112	C13042AA02	
A319–113	C13042AA03	
A319–114	C13042AA04	
A319–115	C13042AA05	
A320–211	C13042AA06	
A320–212	C13042AA07	
A320–214	C13043AA01	
A321–111	C13043AA02	
A321–112	C13043AA03	
A321–211	C13043AA04	
A321–212 and	C13043AA05	
A321–213 (all CFM56)	C13043AA06	
	FMGC hardware	Flight Guidance (FG) software
	C13207AA00	G2858AAA01
	C13207CA00	G2858AAA02
	C13207CA00	G2858AAA03
	C13208AA00	G2858AAA01
	C13208AA00	G2858AAA02
	C13208AA00	G2858AAA03

FIGURE 3 TO PARAGRAPH (g)(2) OF THIS AD—LIST OF APPROVED ELIGIBLE FMGCS CERTIFIED AS OF THE EFFECTIVE DATE OF THIS AD

Airplanes	FMGC part No.
A319–131	C13042BA01
A319–132	C13042BA02
A319–133	C13042BA03
A320–231	C13042BA04
A320–232	C13042BA05
A320–233	C13042BA06
A321–131	C13042BA07
A321–231 and	C13042BA08
A321–232 (all V2500)	C13043BA01
	C13043BA02
	C13043BA03
	C13043BA04
	C13043BA05
	C13043BA06
	C13043BA07

FIGURE 3 TO PARAGRAPH (g)(2) OF THIS AD—LIST OF APPROVED ELIGIBLE FMGCS CERTIFIED AS OF THE EFFECTIVE DATE OF THIS AD—Continued

Airplanes		
	C13043BA08	
	FMGC hardware	(FG) software
	C13207BA00	G2859AAA01
	C13207DA00	G2859AAA02
	C13207DA00	G2859AAA03
	C13207DA00	G2859AAA04
	C13208BA00	G2859AAA01
	C13208BA00	G2859AAA02
	C13208BA00	G2859AAA03
	C13208BA00	G2859AAA04

(h) Unaffected Airplanes

(1) An airplane on which Airbus Modification 31896 or Airbus Modification 31897 has been embodied in production is not affected by the requirements of paragraph (g) of this AD, provided it is conclusively determined that no FMGC with an affected part number identified in Figure 1 to paragraphs (g)(1), (g)(2), (h)(1), (h)(2), and (j) of this AD has been installed on that airplane since the date of issuance of the original certificate of airworthiness or the original export certificate of airworthiness. A review of airplane maintenance records is acceptable to make this determination provided those records can be relied upon for that purpose and the part number of the FMGC can be conclusively identified from that review.

(2) An airplane on which the actions specified in paragraph (g)(2) have been done before the effective date of this AD is not affected by the requirements in paragraph (g) of this AD, provided it is conclusively determined that no FMGC with an affected part number identified in Figure 1 to paragraphs (g)(1), (g)(2), (h)(1), (h)(2), and (j) of this AD has been installed on that airplane since accomplishing the actions specified in paragraph (g)(2) of this AD. A review of airplane maintenance records is acceptable to make this determination provided those records can be relied upon for that purpose and the part number of the FMGC can be conclusively identified from that review.

(i) Parts Installation Limitation

Installation of an FMGC standard approved after the effective date of this AD on any airplane, is acceptable for compliance with the actions required by paragraph (g)(2) of this AD, provided the conditions specified in paragraphs (i)(1) and (i)(2) of this AD are accomplished.

(1) The software and hardware standard, as applicable, must be approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

(2) The installation must be accomplished using airplane modification instructions approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

(j) Parts Installation Prohibition

As of the effective date of this AD, no person may install on any airplane an FMGC with an affected part number identified in Figure 1 to paragraphs (g)(1), (g)(2), (h)(1), (h)(2), and (j) of this AD.

(k) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g)(2) of this AD, if those actions were performed before the effective date of this AD using the applicable service information identified in Figure 4 to paragraph (k) of this AD.

FIGURE 4 TO PARAGRAPH (k) OF THIS AD—SERVICE INFORMATION ACCEPTABLE FOR CREDIT FOR ACTIONS IN PARAGRAPH (g)(2) OF THIS AD

FMGC/FG install	Airbus service bulletin	Revision	Date
C13042BA01	A320–22–1090	00	March 5, 2002.
		01	April 15, 2002.
		02	June 14, 2002.
		03	October 1, 2002.
		04	November 26, 2002.
		05	January 13, 2003.
		06	March 3, 2003.
		07	June 26, 2003.
		08	October 15, 2003.
		09	November 7, 2003.
		10	January 22, 2004.
C13043AA01	A320–22–1103	00	October 8, 2002.
		01	April 1, 2003.
		02	August 28, 2003.
		03	October 15, 2003.
C13043BA01	A320–22–1116	00	January 31, 2003.
		01	August 4, 2003.
		02	October 17, 2003.
		03	February 25, 2004.
C13043AA02	A320–22–1152	00	May 5, 2004.
		01	July 6, 2004.
		02	October 15, 2004.
C13043BA04	A320–22–1243	00	October 16, 2007.
		01	April 1, 2008.
		02	September 10, 2008.
		03	February 17, 2009.
		04	March 3, 2010.

FIGURE 4 TO PARAGRAPH (k) OF THIS AD—SERVICE INFORMATION ACCEPTABLE FOR CREDIT FOR ACTIONS IN PARAGRAPH (g)(2) OF THIS AD—Continued

FMGC/FG install	Airbus service bulletin	Revision	Date
C13207CA00	A320–22–1519	00 01	June 26, 2015. August 26, 2015.

(l) Terminating Action for Other ADs

Accomplishing the actions required by paragraph (g)(1) of this AD, and, as applicable, paragraph (g)(2) of this AD, terminates all requirements of AD 2000–12–13.

(m) 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 the attention of the person identified in paragraph (n)(2) of this AD. 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 EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2016–0122, dated June 21, 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–2017–0624.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Branch, ANM 116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227 1405; fax 425–227 1149.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com.* 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 June 16, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–13406 Filed 6–28–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0648; Directorate Identifier 2017–CE–012–AD]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A. Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Piaggio Aero Industries S.p.A. Model P–180 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as disbonding of the upper and lower metal skin from the honeycomb core on the elevator assembly and other flight control surfaces. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by August 14, 2017.

ADDRESSES: You may send 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 Avenue 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 Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Piaggio Aero Industries S.p.A—Continued Airworthiness, Via Pionieri e Aviatori d'Italia snc—16154 Genova, Italy; Telephone: +39 010 0998046; Fax: None; email: *airworthiness@piaggioaerospace.it;* Internet: *www.piaggioaerospace.it/en/customer-support#care.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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–2017–0648; 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 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: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

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–2017–0648; Directorate Identifier 2017–CE–012–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 because of those comments.

We will post all comments we receive, without change, to *http://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 Community, has issued EASA AD No.: 2017–0045, dated March 9, 2017 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During a post flight inspection of a right hand (RH) elevator assembly, disbonding was detected on the upper and lower metal skin from the honeycomb core. Subsequent investigation identified that a manufacturing deficiency caused the detected disbonding and that other flight control surfaces could potentially be affected by the same deficiency.
>
> This condition, if not detected and corrected, could reduce the structural stiffness of the flight control surface and downgrade its aerodynamic characteristics, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Piaggio Aero Industries (PAI) issued Service Bulletin (SB) 80–0455 to provide inspection instructions.
>
> For the reasons described above, this [EASA] AD requires repetitive inspections of the affected flight control assemblies and, depending on findings, repair or replacement. This [EASA] AD also requires reporting of the inspection result to PAI.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0648.

Related Service Information Under 1 CFR Part 51

Piaggio Aero Industries S.p.A has issued Piaggio Aero Industries S.p.A. Mandatory Service Bulletin N.: 80–0455, dated: January 13, 2017. The service information describes procedures for repetitive inspections to verify the structural integrity of the flight control assemblies. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the 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 will affect 103 products of U.S. registry. We also estimate that it will take 9 work-hours per product to comply with the basic requirements of the proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $78,795, or $765 per product.

The scope of damage found in the required inspections could vary significantly from airplane to airplane. We have no way of determining how much damage may be found on each airplane or the cost to repair damaged parts on each airplane.

In addition, we have no way of knowing how many products may need replacement as a result of the required inspections. The following cost estimates were obtained directly from the manufacturer and we estimate that any necessary follow-on replacement actions would cost as follows:

(i) *Control surface repair:* 10 work-hours for a cost of $850 per product.

(ii) *Left Hand (LH) Forward Wing Flap Replacement:* 4 work-hours and require parts costing $30,079, for a total cost of $30,419.

(iii) *Right Hand (RH) Forward Wing Flap Replacement:* 4 work-hours and require parts costing $30,079, for a total cost of $30,419.

(iv) *LH Aileron Assembly:* 7 work-hours and require parts costing $40,715, for a total cost of $41,310.

(v) *RH Aileron Assembly:* 7 work-hours and require parts costing $86,050, for a total cost of $86,645.

(vi) *Main Wing LH Inboard Flap Assembly:* 4 work-hours and require parts costing $22,699, for a total cost of $23,039.

(vii) *Main Wing RH Inboard Flap Assembly:* 4 work-hours and require parts costing $22,699, for a total cost of $23,039.

(viii) *LH Elevator Assembly:* 8 work-hours and require parts costing $59,917, for a total cost of $60,597.

(ix) *RH Elevator Assembly:* 8 work-hours and require parts costing $59,917, for a total cost of $60,597.

There is an additional 10 work-hours that may be required for post-repair or post-installation replacment of flight control surface adjustments and testing, for a total cost of $850.

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 AD:

Piaggio Aero Industries S.p.A.: Docket No. FAA–2017–0648; Directorate Identifier 2017–CE–012–AD.

(a) Comments Due Date

We must receive comments by August 14, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Piaggio Aero Industries S.p.A. P–180 airplanes, serial numbers 1002, 1004 through 1220, that are:

(1) Equipped with flight control surfaces part numbers (P/Ns) and serial numbers (S/Ns) not listed in table 1 of Piaggio Aero Industries S.p.A. Mandatory Service Bulletin N.: 80–0455, dated: January 13, 2017; and

(2) certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as disbonding of the upper and lower metal skin from the honeycomb core on the elevator assembly and other flight control surfaces. We are issuing this proposed AD to prevent structural stiffness of the flight control surface and the downgrade of its aerodynamic characteristics, resulting in reduced control.

(f) Actions and Compliance

Unless already done, do the actions in paragraphs (f)(1) through (8) of this AD. The parts affected by this AD are all left hand (LH) forward flaps, right hand (RH) forward flaps, main wing LH inboard flaps, main wing RH inboard flaps, LH ailerons, RH ailerons, LH elevators, and RH elevators, hereafter referred to as ''affected control surface'' in this AD.

(1) Within the next 50 hours time-in-service (TIS) after the effective date of this AD or within the next 200 hours TIS after the last coin tapping inspection of the affected control surface following PAI Non-Destructive Test Manual (NDTM) 180–MAN–0300–01107, Chapter 51–00–01; whichever occurs later, do a coin tapping inspection of each affected control surface. Repetitively thereafter inspect at the intervals specified in paragraphs (f)(3)(i) and (ii). Follow Part B of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No.: 80–0455, dated January 13, 2017 (PAI SB No. 80–0455).

(i) Do two repetitive inspections at intervals not to exceed 200 hours TIS; and

(ii) Repetitively thereafter inspect at intervals not to exceed 600 hours TIS.

(2) If damage is found during any inspection required in paragraph (f)(1) of this AD, before further flight, repair or replace as necessary each damaged affected control surface following Part B and/or C of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin (SB) No.: 80–0455, dated January 13, 2017.

(3) Within 50 hours TIS after the repair of an affected control surface as required by paragraph (f)(2) of this AD, do a coin tapping inspection of that repaired affected control surface. Repetitively thereafter inspect at the intervals specified in paragraphs (f)(3)(i) and (ii) of this AD. Follow the instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin (SB) No.: 80–0455, dated January 13, 2017.

(i) Do two repetitive inspections at intervals not to exceed 200 hours TIS; and

(ii) Repetitively thereafter inspect at intervals not to exceed 600 hours TIS.

(4) If damage is found during any inspection required in paragraph (f)(3) of this AD, before further flight, repair or replace as necessary each damaged affected control surface following the instructions in Part B and/or C of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin (SB) No.: 80–0455, dated January 13, 2017.

(5) Repair of an affected control surface, as required by paragraph (f)(2) or (4) of this AD, does not constitute terminating action for repetitive inspections as required by this AD for that affected control surface, unless the FAA-approved repair instructions specify otherwise.

(6) Replacement of the affected part on an airplane with a part listed in Table 1 of Piaggio Aero Industries S.p.A. Mandatory Service Bulletin (SB) No.: 80–0455, dated January 13, 2017, constitutes terminating action for the repetitive inspections required by this AD for that part.

(7) You may incorporate the actions of Piaggio Aero Industries S.p.A. Mandatory Service Bulletin (SB) No.: 80–0455, dated January 13, 2017, into your FAA-approved Airplane Inspection Program (AIP) or maintenance program (instructions for continued airworthiness) to ensure the continuing airworthiness of each operated airplane.

(8) After the effective date of this AD, you may install on an airplane an affected control surface not listed in table 1 of Piaggio Aero Industries S.p.A. Mandatory Service Bulletin N.: 80–0455, dated: January 13, 2017, provided that before further flight after installation, the affected control surface has been inspected as specified in this AD and found airworthy.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2017–0045, dated March 9, 2017; and Piaggio Aero Industries S.p.A. Mandatory Service Bulletin (SB) No.: 80–0455, dated January 13, 2017; for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0648. For service information related to this AD, contact Piaggio Aero Industries S.p.A—Continued Airworthiness, Via Pionieri e Aviatori d'Italia snc—16154 Genova, Italy; Telephone: +39 010 0998046; Fax: None; email: *airworthiness@piaggioaerospace.it;* Internet: *www.piaggioaerospace.it/en/customer-support#care.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on June 21, 2017.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–13498 Filed 6–28–17; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0208; FRL–9964–10–Region 4]

Air Plan Approval; Alabama: Infrastructure Requirements for the 2012 $PM_{2.5}$ National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the December 9, 2015, State Implementation Plan (SIP) submission, submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), for inclusion into the Alabama SIP. This proposal pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 annual particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure SIP.'' ADEM certified that the Alabama SIP contains provisions that ensure the 2012 Annual $PM_{2.5}$ NAAQS is implemented, enforced, and maintained in Alabama. EPA is proposing to determine that Alabama's infrastructure SIP submission provided to EPA on December 9, 2015, satisfies certain required infrastructure elements for the 2012 Annual $PM_{2.5}$ NAAQS.

DATES: Written comments must be received on or before July 31, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0208 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, 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. Bell can be reached via telephone at (404) 562–9088 or via electronic mail at *bell.tiereny@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On December 14, 2012 (78 FR 3086, January 15, 2013), EPA promulgated a revised primary annual $PM_{2.5}$ NAAQS. The standard was strengthened from 15.0 micrograms per cubic meter (μg/m^3) to 12.0 μg/m^3. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2012 Annual $PM_{2.5}$ NAAQS to EPA no later than December 14, 2015.[1]

This action is proposing to approve Alabama's infrastructure SIP [2] submission for the applicable requirements of the 2012 Annual $PM_{2.5}$ NAAQS, with the exception of the interstate transport provisions pertaining to contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) and visibility of section 110(a)(2)(D)(i)(II) (prong 4), and the state board requirements of section 110(a)(2)(E)(ii). With respect to the interstate transport provisions pertaining to contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) and visibility of section 110(a)(2)(D)(i)(II) (prong 4), and the state board requirements of section 110(a)(2)(E)(ii), EPA will address these in separate rulemaking actions.

II. What elements are required under sections 110(a)(1) and 110(a)(2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements of section 110(a)(2) are summarized below and in EPA's September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation

[1] In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the term ''ADEM Administrative Code (Admin. Code r).'' indicates that the cited regulation has either been approved, or submitted for approval into Alabama's federally-approved SIP. The term ''Alabama Code'' (Ala. Code) indicates cited Alabama state statutes, which are not a part of the SIP unless otherwise indicated.

[2] Alabama's 2012 Annual $PM_{2.5}$ NAAQS infrastructure SIP submission dated December 9, 2015, is referred to as ''Alabama's infrastructure SIP submission'' in this action.

Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).[3]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)2(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas [4]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

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

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

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[5] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[6] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[7] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states

[3] Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[4] As mentioned above, this element is not relevant to this proposed rulemaking.

[5] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[6] *See, e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[7] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[8] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[9]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[10]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[11] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[12] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[13] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive

[8] *See, e.g.,* ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[9] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[11] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

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

[13] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the United States (U.S.) Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations. On March 17, 2016, EPA released a memorandum titled, ''Information on the Interstate Transport 'Good Neighbor' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)'' to provide guidance to states for interstate transport requirements specific to the $PM_{2.5}$ NAAQS.

statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including greenhouse gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 annual particulate matter ($PM_{2.5}$) NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's implementation plan meets basic structural requirements. For example, section 110(a)(2)(C) includes, among other things, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[14] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's implementation plan is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on

[14] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[15] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. *See* ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639 (April 18, 2011).

[16] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. *See* ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. *See, e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[17]

IV. What is EPA's analysis of how Alabama addressed the elements of the section 110(a)(1) and (2) ''infrastructure'' provisions?

Alabama's infrastructure SIP submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A) *Emission Limits and Other Control Measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Several regulations within Alabama's SIP are relevant to air quality control regulations. The regulations described below have been federally approved in the Alabama SIP and include enforceable emission limitations and other control measures. ADEM Admin. Code r. 335–3–1–.03—*Ambient Air Quality Standards,* authorizes ADEM to adopt rules for the control of air pollution in order to comply with NAAQS, including those necessary to obtain EPA approval under section 110 of the CAA. ADEM Admin. Code r. 335–3–1–.06—*Compliance Schedule,* sets the schedule for compliance with the State's Air Pollution Control rules and regulations to be consistent with the requirements of the CAA. ADEM Admin. Code r. 335–3–1–.05—*Sampling and Testing Methods,* details the authority and means with which ADEM can require testing and emissions verification. Also, the following ADEM Administrative Code rules address this element: 335–3–14–.03(2)—*Stack Heights, subparagraphs (d) and (e), 335–3–15–.02(9)—Stack Heights, subparagraphs (d) and (e), and 335–3–16–.02(10)—General Provisions, subparagraphs (d)* and (e). EPA has made the preliminary determination that Alabama's SIP satisfies Section 110(a)(2)(A) for the 2012 Annual $PM_{2.5}$ NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), and the Agency is addressing such state regulations in a separate action.[18]

Additionally, in this action, EPA is not proposing to approve or disapprove any existing State rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient Air Quality Monitoring/Data System:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to: (i) Monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. ADEM Admin. Code r. 335–3–1–.04—*Monitoring, Records, and Reporting,* requires sources to submit emissions monitoring reports as prescribed by the Director of ADEM. Pursuant to this regulation, these sources collect air monitoring data, quality assure the results, and report the data to EPA. ADEM Admin. Code r. 335–3–1–.05—*Sampling and Testing Methods,* details the authority and means through which ADEM can require testing and emissions verification. ADEM Admin. Code r. 335–3–14–.04—*Air Permits Authorizing Construction in Clean Air: Prevention of Significant Deterioration Permitting (PSD),* describes the State's use of ambient air quality monitoring data for purposes of permitting new facilities and assessing major modifications to existing facilities. Annually, States develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, and includes the annual ambient monitoring network design plan and a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[19] On July 22, 2015, Alabama submitted its plan to EPA. On November 19, 2015, EPA approved Alabama's monitoring network plan. Alabama's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2016–0208. EPA has made the preliminary determination that Alabama's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 2012 Annual $PM_{2.5}$ NAAQS.

3. 110(a)(2)(C) *Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:* This element consists of three sub-elements: Enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program). ADEM's 2012 Annual $PM_{2.5}$ NAAQS infrastructure SIP submission cited a number of SIP provisions to address these requirements. Specifically, the submission cited ADEM Admin. Code r. 335–3–14–.01—*General Provisions,* 335–3–14–.02,—*Permit Procedure,* 335–3–14–.03—*Standards for Granting Permits,* 335–3–14–.04—*Prevention of Significant Deterioration in Permitting* and 335–3–14–.05—*Air Permits Authorizing Construction in or Near Nonattainment Areas.* Collectively, these provisions of Alabama's SIP cover enforcement, and permitting of new and modified major and minor sources.

Enforcement: ADEM's above-described, SIP-approved regulations

[17] *See, e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See, e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

[18] On June 12, 2015, EPA published a final action entitled, ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction.'' *See* 80 FR 33840.

[19] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

provide for enforcement of $PM_{2.5}$ emission limits and control measures through construction permitting for new or modified stationary sources. Note also that ADEM has authority to issue enforcement orders and assess penalties (*see* Ala. Code sections 22–22A–5, 22–28–10 and 22–28–22).

PSD Permitting for Major Sources: EPA interprets the PSD sub-element to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place covering the structural PSD requirements for all regulated NSR pollutants. A state's PSD permitting program is complete for this sub-element (and prong 3 of D(i) and J related to PSD) if EPA has already approved or is simultaneously approving the state's implementation plan with respect to all structural PSD requirements that are due under the EPA regulations or the CAA on or before the date of the EPA's proposed action on the infrastructure SIP submission.

For the 2012 Annual $PM_{2.5}$ NAAQS, Alabama's authority to regulate new and modified sources to assist in the protection of air quality in Alabama is established in the Alabama Administrative Code Chapters 335–3–14–.01—*General Provisions,* 335–3–14–.02—*Permit Procedure,* 335–3–14–.03—*Standards for Granting Permits,* 335–3–14–.04—*Prevention of Significant Deterioration in Permitting,* and 335–3–14–.05—*Air Permits Authorizing Construction in or Near Nonattainment Areas.* Alabama's infrastructure SIP submission demonstrates that new major sources and major modifications in areas of the State designated attainment or unclassifiable for the specified NAAQS are subject to a federally-approved PSD permitting program meeting current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD elements.[20]

Regulation of minor sources and modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source program that regulates emissions of the 2012 Annual $PM_{2.5}$ NAAQS. ADEM Admin. Code r. 335–3–14–.01 *General Provisions,* 335–3–14–.02 *Permit Procedure,* and 335–3–14–.03—*Standards for Granting Permits* govern the preconstruction permitting of modifications and construction of minor stationary sources.

EPA has made the preliminary determination that Alabama's SIP is adequate for enforcement of control measures, the PSD element, and regulation of minor stationary sources and minor modifications of major stationary sources related to the 2012 Annual $PM_{2.5}$ NAAQS.

4. 110(a)(2)(D)(i)(I) and (II) *Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (''prong 1''), and interfering with maintenance of the NAAQS in another state (''prong 2''). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (''prong 3''), or to protect visibility in another state (''prong 4'').

110(a)(2)(D)(i)(I)—*prongs 1 and 2:* EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2). EPA will take action on 110(a)(2)(D)(i)(I) (prongs 1 and 2) in a separate rulemaking.

110(a)(2)(D)(i)(II)—*prong 3:* With regard to section 110(a)(2)(D)(i)(II), the PSD element, referred to as prong 3, this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to: A PSD program meeting current structural requirements of part C of title I of the CAA, or (if the state contains a nonattainment area that has the potential to impact PSD in another state) a NNSR program. As discussed in more detail above under section 110(a)(2)(C), Alabama's SIP contains a PSD program that reflect the required structural PSD requirements to satisfy prong 3 at 335–3–14–.04—*Prevention of Significant Deterioration in Permitting* and a NNSR program at 335–3–14–.05—*Air Permits Authorizing Construction in or Near Nonattainment Areas.* EPA has made the preliminary determination that Alabama's SIP is adequate for interstate transport for PSD permitting of major sources and major modifications related to the 2012 Annual $PM_{2.5}$ NAAQS for section 110(a)(2)(D)(i)(II) (prong 3).

110(a)(2)(D)(i)(II)—*prong 4:* EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to visibility protection of section 110(a)(2)(D)(i)(II) (prong 4) and will consider these requirements in relation to Alabama's 2012 Annual $PM_{2.5}$ NAAQS infrastructure submission in a separate rulemaking.

5. 110(a)(2)(D)(ii) *Interstate and International Transport Provisions:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. ADEM Admin. Code r. 335–3–14–.04—*Prevention of Significant Deterioration in Permitting* describes how Alabama notifies neighboring states of potential emission impacts from new or modified sources applying for PSD permits. This regulation requires ADEM to provide an opportunity for a public hearing to the public, which includes state or local air pollution control agencies, ''whose lands may be affected by emissions from the source or modification.'' Additionally, Alabama does not have any pending obligation under sections 115 and 126 of the CAA. EPA has made the preliminary determination that Alabama's SIP and practices are adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2012 Annual $PM_{2.5}$ NAAQS.

6. 110(a)(2)(E) *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide: (i) Necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Alabama's infrastructure SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i) and (iii). With respect to sub-element 110(a)(2)(E)(ii)

[20] For more information on the structural PSD program requirements that are relevant to EPA's review of Alabama's infrastructure SIP in connection with the current PSD-related infrastructure requirements, see the Technical Support Document in the docket for today's rulemaking.

(regarding state boards), EPA will address this sub-element in a separate action from today. EPA's rationale respecting each sub-element for which EPA is proposing action on today is described below.

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), ADEM's infrastructure submission demonstrates that it is responsible for promulgating rules and regulations for the NAAQS, emissions standards, general policies, a system of permits, fee schedules for the review of plans, and other planning needs as authorized at Ala. Code section 22–28–11 and section 22–28–9. As evidence of the adequacy of ADEM's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Alabama on April 19, 2016, outlining 105 grant commitments and current status of these commitments for fiscal year 2015. The letter EPA submitted to Alabama can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2016–0208–2014–0431. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2015, therefore, Alabama's grants were finalized and closed out. Alabama's funding is also met through the state's title V fee program at ADEM Admin. Code r. 335–1–7—*Air Division Operating Permit Fees*[21] and ADEM Admin. Code r. 335–1–6—*Application Fees.*[22] For 110(a)(2)(E)(iii), requirements dictating the roles of local or regional governments are derived from Ala. Code section 22–28–23, which do not allow local programs to be less strict than the Alabama SIP and allows for oversight from the Alabama Environmental Commission. EPA has made the preliminary determination that Alabama has adequate authority and resources for implementation of the 2012 Annual $PM_{2.5}$ NAAQS.

7. 110(a)(2)(F) *Stationary Source Monitoring and Reporting:* Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. ADEM's infrastructure SIP submission describes the establishment of requirements for compliance testing by emissions sampling and analysis, and for emissions and operation monitoring to ensure the quality of data in the State. The Alabama infrastructure SIP submission also describes how the major source and minor source emission inventory programs collect emission data throughout the State and ensure the quality of such data. Alabama meets these requirements through ADEM Admin. Code r. 335–3–1–.04—*Monitoring, Records, and Reporting,* and 335–3–12—*Continuous Monitoring Requirements for Existing Sources.* ADEM Admin. Code r. 335–3–1–.04, details how sources are required as appropriate to establish and maintain records; make reports; install, use, and maintain such monitoring equipment or methods; and provide periodic emission reports as the regulation requires. Additionally, ADEM Admin. Code r. 335–3–12–.02 requires owners and operators of emissions sources to ''install, calibrate, operate and maintain all monitoring equipment necessary for continuously monitoring the pollutants.''[23] ADEM Admin. Code r. 335–3–1–.13—*Credible Evidence,* makes allowances for owners and/or operators to utilize ''any credible evidence or information relevant'' to demonstrate compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certification and can be used to establish whether or not an owner or operator has violated or is in violation of any rule or standard. Accordingly, EPA is unaware of any provision preventing the use of credible evidence in the Alabama SIP.

Additionally, Alabama is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxides, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Alabama made its latest update to the 2014 NEI on July 8, 2016 and the network plan addendum on October 28, 2016. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *https://www.epa.gov/air-emissions-inventories.* EPA has made the preliminary determination that Alabama's SIP and practices are adequate for the stationary source monitoring systems related to the 2012 Annual $PM_{2.5}$ NAAQS.

8. 110(a)(2)(G) *Emergency Powers:* This section requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Ala. Code sections 22–28–22, 22–28–14 and 22–28–21 grant ADEM authority to adopt regulations for the purpose of protecting human health, welfare and the environment as required by section 303 of the CAA. ADEM Admin. Code r. 335–3–2,—*Air Pollution Emergency,* provides for the identification of air pollution emergency episodes, episode criteria, and emissions reduction plans. Alabama's compliance with section 303 of the CAA and adequate contingency plans to implement such authority is also met by Ala. Code section 22–28–21 *Air Pollution Emergencies.* Ala. Code Section 22–28–21 provides ADEM the authority to order the ''person or persons responsible for the operation or operations of one or more air contaminants sources'' causing ''imminent danger to human health or safety in question to reduce or discontinue emissions immediately.'' The order triggers a hearing no later than 24-hours after issuance before the Environmental Management Commission which can affirm, modify or set aside the Director's order.

[21] Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

[22] This regulation has not been incorporated into the federally-approved SIP.

[23] ADEM Admin. Code r. 335–3–12–.02 establishes that data reporting requirements for sources required to conduct continuous monitoring in the state should comply with data reporting requirements set forth at 40 CFR part 51, Appendix P. Section 40 CFR part 51, Appendix P includes that the averaging period used for data reporting should be established by the state to correspond to the averaging period specified in the emission test method used to determine compliance with an emission standard for the pollutant/source category in question.

Additionally, the Governor can, by proclamation, declare, as to all or any part of said area, that an air pollution emergency exists and exercise certain powers in whole or in part, by the issuance of an order or orders to protect the public health. Under Ala. Code sections 22–28–3(a) and 22–28–10(2), ADEM also has the authority to issue such orders as may be necessary to effectuate the purposes of the Alabama Pollution Control Act, which includes achieving and maintaining such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the social development of this state and facilitate the enjoyment of the natural attractions of the state. EPA has made the preliminary determination that Alabama's SIP, state laws and practices are adequate to satisfy the infrastructure SIP obligations for emergency powers related to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve Alabama's infrastructure SIP submission with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) *SIP Revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan: (i) As may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. As previously discussed, ADEM is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Alabama has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. ADEM Admin. Code r. 335–1–1–.03—*Organization and Duties of the Commission,*[24] provides the Alabama Environmental Management Commission with the authority to establish, adopt, promulgate, modify, repeal and suspend rules, regulations, or environmental standards which may be applicable to Alabama or ''any of its geographic parts.'' Admin. Code r. 335–3–1–.03—*Ambient Air Quality Standards,* incorporates NAAQS, as amended or revised, and provides that the NAAQS apply throughout the State. EPA has made the preliminary determination that Alabama adequately demonstrates a commitment to provide future SIP revisions related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary. Accordingly, EPA is proposing to approve Alabama's infrastructure SIP submission with respect to section 110(a)(2)(H).

10. 110(a)(2)(J) *Consultation with government officials, public notification, and PSD and visibility protection:* EPA is proposing to approve Alabama's infrastructure SIP for the 2012 Annual $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that complies with the applicable consultation requirements of section 121, the public notification requirements of section 127, PSD and visibility protection. EPA's rationale for each sub-element is described below.

Consultation with government officials (121 consultation): Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. ADEM Admin. Code r. 335–3–1–.03—*Ambient Air Quality Standards,* as well as its Regional Haze Implementation Plan (which allows for continued consultation with appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. In addition, Alabama adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development. Required partners covered by Alabama's consultation procedures include federal, state and local transportation and air quality agency officials. EPA has made the preliminary determination that Alabama's SIP and practices adequately demonstrate consultation with government officials related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary.

Public notification (127 public notification): ADEM Admin. Code r. 335–3–14–.01(7)—*Public Participation,* and 335–3–14–.05(13)—*Public Participation,* and Ala. Code section 22–28–21—*Air Pollution Emergencies,* provide for public notification when air pollution episodes occur. Furthermore, ADEM has several public notice mechanisms in place to notify the public of ozone and $PM_{2.5}$ forecasting. Alabama maintains a public Web site on which daily air quality index forecasts are posted for the Birmingham, Huntsville, and Mobile areas. This Web site can be accessed at: *http://adem.alabama.gov/programs/air/airquality.cnt.* Accordingly, EPA is proposing to approve Alabama's infrastructure SIP submission with respect to section 110(a)(2)(J) public notification.

PSD: With regard to the PSD element of section 110(a)(2)(J), this requirement is met by the state's confirmation in an infrastructure SIP submission that it has a complete PSD program meeting current structural requirements of part C of title I of the CAA. As discussed in more detail above under the section discussing 110(a)(2)(C), Alabama's SIP contains a PSD program that reflects the required structural PSD requirements to satisfy the PSD element of section 110(a)(2)(J). EPA has made the preliminary determination that Alabama's SIP is adequate for PSD permitting of major sources and major modifications related to the 2012 Annual $PM_{2.5}$ NAAQS for the PSD element of section 110(a)(2)(J).

Visibility protection: EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. ADEM referenced its regional haze program as germane to the visibility component of section 110(a)(2)(J). EPA recognizes that states are subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals so ADEM does not need to rely on its regional haze program to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that Alabama's submission is approvable for the visibility protection element of section 110(a)(2)(J) and that Alabama does not need to rely on its regional haze program to address this element.

11. 110(a)(2)(K) *Air Quality Modeling and Submission of Modeling Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the EPA can be made. ADEM Admin. Code r. 335–3–14–.04—*Prevention of Significant*

[24] This regulation has not been incorporated into the federally-approved SIP.

Deterioration Permitting, specifically sub-paragraph (11)—*Air Quality Models,* specifies that required air modeling be conducted in accordance with 40 CFR part 51, Appendix W ''Guideline on Air Quality Models''. ADEM Admin. Code r. 335–3–1–.04—*Monitoring, Records, and Reporting* details how sources are required as appropriate to establish and maintain records; make reports; install, use, and maintain such monitoring equipment or methods; and provide periodic emission reports as the regulation requires. These reports and records are required to be compiled, and submitted on forms furnished by the State. These regulations also demonstrate that Alabama has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2012 Annual $PM_{2.5}$ NAAQS. Additionally, Alabama participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2012 Annual $PM_{2.5}$ NAAQS, for the southeastern states. Taken as a whole, Alabama's air quality regulations and practices demonstrate that ADEM has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which a NAAQS has been promulgated, and to provide such information to the EPA Administrator upon request. EPA has made the preliminary determination that Alabama's SIP and practices adequately demonstrate the State's ability to provide for air quality modeling, along with analysis of the associated data, related to the 2012 Annual $PM_{2.5}$ NAAQS. Accordingly, EPA is proposing to approve Alabama's infrastructure SIP submission with respect to section 110(a)(2)(K).

12. 110(a)(2)(L) *Permitting Fees:* This section requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V. ADEM Admin. Code r. 335–1–6—*Application Fees* [25] requires ADEM to charge permit-specific fees to the applicant/source as authorized by Ala. Code section 22–22A–5. ADEM relies on these State requirements to demonstrate that its permitting fee structure is sufficient for the reasonable cost of reviewing and acting upon PSD and NNSR permits. Additionally, Alabama has a fully-approved title V operating permit program—ADEM Admin. Code r. 335–1–7—*Air Division Operating Permit Fees* [26]—that covers the cost of implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Alabama's state rules and practices adequately provide for permitting fees related to the 2012 Annual $PM_{2.5}$ NAAQS, when necessary. Accordingly, EPA is proposing to approve Alabama's infrastructure SIP submission with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) *Consultation and Participation by Affected Local Entities:* Section 110(a)(2)(M) of the Act requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. ADEM coordinates with local governments affected by the SIP. ADEM Administrative Code 335–3–17–.01—*Transportation Conformity* is one way that Alabama provides for consultation with affected local entities. More specifically, Alabama adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development and the requirements that link transportation planning and air quality planning in nonattainment and maintenance areas. Required partners covered by Alabama's consultation procedures include federal, state and local transportation and air quality agency officials. Furthermore, ADEM has worked with the Federal Land Managers as a requirement of the regional haze rule. EPA has made the preliminary determination that Alabama's SIP and practices adequately demonstrate consultation with affected local entities related to the 2012 Annual $PM_{2.5}$ NAAQS when necessary.

V. Proposed Action

With the exception of interstate transport provisions pertaining to contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) and visibility protection requirements of section 110(a)(2)(D)(i)(II) (prong 4), and the state board requirements of section 110(a)(2)(E)(ii), EPA is proposing to approve Alabama's April 23, 2013, SIP submission for the 2012 Annual $PM_{2.5}$ NAAQS for the above described infrastructure SIP requirements. The interstate transport requirements of section 110(a)(2)(D)(i)(I) (prongs 1, 2 and 4) and the state board requirements of section 110(a)(2)(E)(ii) will be addressed by EPA in other actions.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *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 proposed 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 proposed action:

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

[25] This regulation has not been incorporated into the federally-approved SIP.

[26] Title V program regulations are federally approved but not incorporated into the federally-approved SIP.

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: June 14, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

[FR Doc. 2017–13671 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2013–0558; FRL–9964–30–Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ National Ambient Air Quality Standards; North Dakota

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of State Implementation Plan (SIP) revisions from the State of North Dakota to demonstrate the State meets infrastructure requirements of the Clean Air Act (Act or CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for sulfur dioxide (SO_2) on June 2, 2010 (40 CFR 50.17) and fine particulate matter ($PM_{2.5}$) on January 15, 2013 (78 FR 3086). Section 110(a) of the CAA requires that each state submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA.

DATES: Written comments must be received on or before July 31, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2013–0558 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kate Gregory, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6175, *gregory.kate@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. *Submitting Confidential Business Information (CBI).* Do not submit CBI to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

• Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** volume, date, and page number);

• Follow directions and organize your comments;

• Explain why you agree or disagree;

• Suggest alternatives and substitute language for your requested changes;

• Describe any assumptions and provide any technical information and/or data that you used;

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;

• Provide specific examples to illustrate your concerns, and suggest alternatives;

• Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,

• Make sure to submit your comments by the comment period deadline identified.

II. Background

On June 2, 2010, the EPA promulgated a new NAAQS for SO_2, establishing a new one-hour SO_2 standard at a level of 75 parts per billion (ppb) based on the three-year average of the 99th percentile of 1-hour daily maximum concentrations. Additionally, the EPA revoked both the existing 24-hour and annual primary SO_2 standards (75 FR 35520, June 22, 2010). Subsequently, on January 15, 2013, the EPA promulgated a new NAAQS for $PM_{2.5,}$ revising the annual $PM_{2.5}$ NAAQS by lowering the level to 12.0 micrograms per cubic meter ($\mu g/m^3$). Additionally, the EPA retained the 24-hour $PM_{2.5}$ standard at a level of 35 $\mu g/m^3$ and is revising the Air Quality Index (AQI) for $PM_{2.5}$ to be consistent with the revised primary $PM_{2.5}$ standards (78 FR 3086, January 15, 2013).

Under sections 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure their SIPs provide for implementation, maintenance and enforcement of the 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 $PM_{2.5}$, ozone, Pb, $NO_{2,}$ and SO_2 already meet those requirements. The EPA highlighted this statutory requirement in an October 2, 2007, guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (2007 Memo). On September 25, 2009, the

EPA issued an additional guidance document pertaining to the 2006 $PM_{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (2009 Memo), followed by the October 14, 2011, ''Guidance on Infrastructure SIP Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (2011 Memo). Most recently, the EPA issued ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' on September 13, 2013 (2013 Memo).

III. What is the scope of this rulemaking?

The EPA is acting upon the SIP submissions from North Dakota that address the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within three years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

The EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, the EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA; ''regional haze SIP'' submissions required by the EPA rule to address the visibility protection requirements of CAA section 169A; and nonattainment new source review (NSR) permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[1] The EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, the EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

Examples of some of these ambiguities and the context in which the EPA interprets the ambiguous portions of section 110(a)(1) and 110(a)(2) are discussed at length in our notice of proposed rulemaking: Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO_2 National Ambient Air Quality Standards; South Dakota (79 FR 71040, Dec. 1, 2014) under ''III. What is the Scope of this Rulemaking?''

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction (SSM) that may be contrary to the CAA and the EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by the EPA; and (iii) existing provisions for Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of the EPA's ''Final NSR Improvement Rule,'' 67 FR 80186, Dec. 31, 2002, as amended by 72 FR 32526, June 13, 2007 (''NSR Reform'').

As discussed below, CAA section 110(a)(2)(D)(i)(I) covers elements 1 and 2 of ''interstate transport,'' while 110(a)(2)(D)(i)(II) covers interstate transport elements 3 and 4. The EPA is not addressing 110(a)(2)(D)(i)(I) elements 1 and 2 for either the 2010 SO_2 or 2012 $PM_{2.5}$ NAAQS as part of this action. These elements will be addressed in a separate action.

IV. What infrastructure elements are required under sections 110(a)(1) and (2)?

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling, monitoring and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local governments and regional agencies.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements is contained in the next section.

Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and

[1] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

submissions to satisfy them are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (1) Section 110(a)(2)(C) to the extent it refers to permit programs (known as ''nonattainment NSR'') required under part D, and (2) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I). Furthermore, the EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C, title 1 of the CAA are not changed by a new NAAQS.

V. How did North Dakota address the infrastructure elements of sections 110(a)(1) and (2)?

The North Dakota Department of Health (the Department) submitted certifications of North Dakota's infrastructure SIP for the 2010 SO_2 NAAQS on March 7, 2013 and for the 2012 $PM_{2.5}$ NAAQS on August 23, 2015. Infrastructure SIPs were taken out for public notice and North Dakota provided an opportunity for public hearing, as indicated in each certification (available within this docket). North Dakota's infrastructure certifications demonstrate how the State, where applicable, has plans in place that meet the requirements of section 110 for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. These plans reference the North Dakota Century Code (NDCC) and the North Dakota Air Pollution Control Rules (NDAC). These submittals are available within the electronic docket for today's proposed action at *www.regulations.gov.* The NDCC and NDAC referenced in the submittals are publicly available at *http://www.legis.nd.gov/general-information/north-dakota-century-code* and *http://www.legis.nd.gov/cencode/t23c25.html.* Air pollution control regulations and statutes that have been previously approved by the EPA and incorporated into the North Dakota SIP can be found at 40 CFR 52.1820.

VI. Analysis of the State Submittals

1. *Emission limits and other control measures:* Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.

Multiple SIP approved State air quality regulations within the NDAC and cited in North Dakota's certifications provide enforceable emission limitations and other control measures, means of techniques, schedules for compliance, and other related matters necessary to meet the requirements of the CAA section 110(a)(2)(A) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS, subject to the following clarifications.

First, the EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D of Title I of the CAA to be governed by the submission deadline of section 110(a)(1). Furthermore, North Dakota has no areas designated as nonattainment for the 2010 SO_2 or 2012 $PM_{2.5}$ NAAQS. North Dakota's certifications (contained within this docket) generally listed provisions within its SIP which regulate pollutants through various programs, including major and minor source permit programs. This suffices, in the case of North Dakota, to meet the requirements of section 110(a)(2)(A) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

Second, as previously discussed, the EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. A number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, Nov. 24, 1987), and the agency plans to take action in the future to address such state regulations. In the meantime, the EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

Finally, in this action, the EPA is also not proposing to approve or disapprove any existing State provision with regard to excess emissions during SSM of operations at a facility. A number of states have SSM provisions which are contrary to the CAA and existing EPA guidance [2] and the agency is addressing such state regulations separately (80 FR 33840, June 12, 2015).

Therefore, the EPA is proposing to approve North Dakota's infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(A) to include enforceable emission limitations and other control measures, means, or techniques to meet the applicable requirements of this element.

2. *Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to ''provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary'' to ''(i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.''

The State's submissions cite regulatory documents included in Chapters 23–25–03, 23–25–03.2 and 23–25–03.10 of the NDCC. Provisions contained in 23–25–03 of the NDCC provide the legal authority and framework for the Department to require that permit applicants submit adequate monitoring data. Additionally, 23–25–03.10 of the NDCC enables the Department to impose reasonable conditions upon an approval to construct, modify, or operate, including ambient air quality monitoring. Additionally, the State of North Dakota submits data to the EPA's Air Quality System database in accordance with 40 CFR 58.16. Finally, North Dakota's 2016 Annual Monitoring Network Plan was approved through a letter dated December 5, 2016 (available within the docket). The State provides the EPA with prior notification when changes to its monitoring network or plan are being considered.

We find that North Dakota's SIP and practices are adequate for the ambient air quality monitoring and data system requirements and therefore propose to approve the infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS for this element.

3. *Program for enforcement of control measures:* Section 110(a)(2)(C) requires SIPs to ''include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [NAAQS] are achieved, including a permit program as required in parts C and D.''

To generally meet the requirements of section 110(a)(2)(C), the State is required to have SIP-approved PSD, nonattainment NSR, and minor NSR permitting programs that are adequate to implement the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. As explained elsewhere in this action, the EPA is not evaluating nonattainment related provisions, such

[2] Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, Memorandum to the EPA Air Division Directors, ''State Implementation Plans (SIPs): Policy Regarding Emissions During Malfunctions, Startup, and Shutdown.'' (September 20, 1999).

as the nonattainment NSR program required by part D of the Act. The EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by section 110(a)(2)(C).

Enforcement of Control Measures Requirement

NDCC 23–25–10 and NDAC 33–15–01–17 allow the State to enforce applicable laws, regulations, and standards; to seek injunctive relief; and to provide authority to prevent construction, modification, or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard or interfere with prevention of significant deterioration requirements.

PSD Requirements

With respect to Elements (C) and (J), the EPA interprets the CAA to require each state to make an infrastructure SIP submission for a new or revised NAAQS demonstrating that the air agency has a complete PSD permitting program meeting the current requirements for all regulated NSR pollutants. The requirements of Element D(i)(II) prong 3 may also be satisfied by demonstrating the air agency has a complete PSD permitting program that applies to all regulated NSR pollutants. North Dakota has shown that it currently has a PSD program in place that covers all regulated NSR pollutants, including greenhouse gases (GHGs).

North Dakota implements the PSD program by, for the most part, incorporating by reference the federal PSD program as it existed on a specific date. The State periodically updates the PSD program by revising the date of incorporation by reference and submitting the change as a SIP revision. As a result, the SIP revisions generally reflect changes to PSD requirements that the EPA has promulgated prior to the revised date of incorporation by reference.

On June 3, 2010 (75 FR 31291), we approved a North Dakota SIP revision that revised the date of incorporation by reference of the federal PSD program to August 1, 2007. That revision addressed the PSD requirements of the Phase 2 Ozone Implementation Rule promulgated in 2005 (70 FR 71612). As a result, the approved North Dakota PSD program meets current requirements for ozone.

Similarly, on October 23, 2012 (77 FR 64736), we approved a North Dakota SIP revision that revised the date of incorporation by reference of the federal PSD program to July 2, 2010. As explained in the notice for that action, that revision addressed the PSD requirements related to GHGs provided in EPA's June 3, 2010 ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (75 FR 31514). The approved North Dakota PSD program thus also meets current requirements for GHGs.

On June 23, 2014, the United States Supreme Court addressed the application of PSD permitting requirements to GHG emissions. *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S.Ct. 2427 (2014). The Supreme Court held that the EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. The Court also held that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs, (anyway sources) contain limitations on GHG emissions based on the application of Best Available Control Technology (BACT).

In accordance with the Supreme Court decision, on April 10, 2015, the U.S. Court of Appeals for the District of Columbia Circuit (the D.C. Circuit) in *Coalition for Responsible Regulation* v. *EPA,* 606 F. App'x. 6, at *7–8 (D.C. Cir. April 10, 2015), issued an amended judgment vacating the regulations that implemented Step 2 of the EPA's PSD and Title V Greenhouse Gas Tailoring Rule, but not the regulations that implement Step 1 of that rule. Step 1 of the Tailoring Rule covers sources that are required to obtain a PSD permit based on emissions of pollutants other than GHGs. Step 2 applied to sources that emitted only GHGs above the thresholds triggering the requirement to obtain a PSD permit. The amended judgment preserves, without the need for additional rulemaking by the EPA, the application of the BACT requirement to GHG emissions from Step 1 or ''anyway sources.'' [3] With respect to Step 2 sources, the D.C. Circuit's amended judgment vacated the regulations at issue in the litigation, including 40 CFR 51.166(b)(48)(v), ''to the extent they require a stationary source to obtain a PSD permit if greenhouse gases are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emission increase from a modification.''

The EPA is planning to take additional steps to revise the federal PSD rules in light of the Supreme Court and subsequent D.C. Circuit opinion. Some states have begun to revise their existing SIP-approved PSD programs in light of these court decisions, and some states may prefer not to initiate this process until they have more information about the planned revisions to the EPA's PSD regulations. The EPA is not expecting states to have revised their PSD programs in anticipation of the EPA's planned actions to revise its PSD program rules in response to the court decisions.

At present, the EPA has determined that North Dakota's SIP is sufficient to satisfy elements (C), (D)(i)(II) prong 3, and (J) with respect to GHGs because the PSD permitting program previously approved by the EPA into the SIP continues to require that PSD permits (otherwise required based on emissions of pollutants other than GHGs) contain limitations on GHG emissions based on the application of BACT. Although the approved North Dakota PSD permitting program may currently contain provisions that are no longer necessary in light of the Supreme Court decision, this does not render the infrastructure SIP submission inadequate to satisfy elements (C), (D)(i)(II) prong 3, and (J). The SIP contains the necessary PSD requirements at this time, and the application of those requirements is not impeded by the presence of other previously-approved provisions regarding the permitting of sources of GHGs that the EPA does not consider necessary at this time in light of the Supreme Court decision. Accordingly, the Supreme Court decision does not affect the EPA's proposed approval of North Dakota's infrastructure SIP as to the requirements of elements (C), (D)(i)(II) prong 3, and (J). Finally, we evaluate the PSD program with respect to current requirements for $PM_{2.5}$. In particular, on May 16, 2008, the EPA promulgated the rule, ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)'' (73 FR 28321) (2008 Implementation Rule). On October 20, 2010 the EPA promulgated the rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). The EPA regards adoption of these $PM_{2.5}$ rules as a necessary requirement when assessing a PSD program for the purposes of Element (C).

On January 4, 2013, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013), issued a judgment that remanded

[3] *See* 77 FR 41066 (July 12, 2012) (rulemaking for definition of ''anyway'' sources).

the EPA's 2007 and 2008 rules implementing the 1997 $PM_{2.5}$ NAAQS. The court ordered the EPA to ''repromulgate these rules pursuant to Subpart 4 consistent with this opinion.'' *Id.* at 437. Subpart 4 of part D, Title 1 of the CAA establishes additional provisions for particulate matter nonattainment areas.

The 2008 Implementation Rule addressed by *Natural Resources Defense Council,* ''Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' (73 FR 28321, May 16, 2008), promulgated NSR requirements for implementation of $PM_{2.5}$ in nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of Subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 Implementation Rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 Implementation Rule in order to comply with the court's decision. Accordingly, the EPA's proposed approval of North Dakota's infrastructure SIP as to Elements (C), (D)(i)(II) prong 3, and (J) with respect to the PSD requirements promulgated by the 2008 Ozone Implementation rule does not conflict with the court's opinion.

The court's decision with respect to the nonattainment NSR requirements promulgated by the 2008 Implementation Rule also does not affect the EPA's action on the present infrastructure action. The EPA interprets the Act to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program, from infrastructure SIP submissions due three years after adoption or revision of a NAAQS. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which would be due by the dates statutorily prescribed under subpart 2 through 5 under part D, extending as far as 10 years following designations for some elements.

The second PSD requirement for $PM_{2.5}$ is contained in the EPA's October 20, 2010 rule, ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)'' (75 FR 64864). The EPA regards adoption of the $PM_{2.5}$ increments as a necessary requirement when assessing a PSD program for the purposes of Element (C).

As mentioned above, EPA previously approved a North Dakota SIP revision that revised the date of incorporation by reference of the federal PSD program to July 2, 2010 (77 FR 64736, Oct. 23, 2012). This SIP revision also addressed the requirements of the 2008 $PM_{2.5}$ NSR Implementation Rule. On January 1, 2012, the State submitted revisions to chapter 33–15–15–01.2, Scope, of the NDAC that adopted all elements of the 2010 $PM_{2.5}$ Increment Rule by incorporating by reference the federal PSD program at 40 CFR part 52, section 21, as it existed on January 1, 2012. The submitted revisions make North Dakota's PSD program up to date with respect to current requirements for $PM_{2.5}$. EPA approved the necessary portions of North Dakota's January 24, 2013 submission which incorporate the requirements of the 2010 $PM_{2.5}$ Increment Rule on July 30, 2013 (78 FR 45866). North Dakota's SIP-approved PSD program meets current requirements for $PM_{2.5}$.

Therefore, the EPA is proposing to approve North Dakota's infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the requirement in section 110(a)(2)(C) to include a PSD permitting program in the SIP that covers the requirements for all regulated NSR pollutants as required by part C of the Act.

Minor NSR

The State has a SIP-approved minor NSR program, adopted under section 110(a)(2)(C) of the Act. The minor NSR program was originally approved by the EPA on August 21, 1995 (60 FR 43401). Since approval of the minor NSR program, the State and the EPA have relied on the program to assure that new and modified sources not captured by the major NSR permitting programs do not interfere with attainment and maintenance of the NAAQS.

The EPA is proposing to approve North Dakota's infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the enforcement, modification and construction of any stationary source as necessary to assure that the NAAQS are achieved.

4. *Interstate Transport:* The interstate transport provisions in CAA section 110(a)(2)(D)(i) (also called ''good neighbor'' provisions) require each state to submit a SIP that prohibits emissions that will have certain adverse air quality effects in other states. CAA section 110(a)(2)(D)(i) identifies four distinct elements related to the impacts of air pollutants transported across state lines. The two prongs under 110(a)(2)(D)(i)(I) require SIPs to contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will contribute significantly to nonattainment in any other state with respect to any national primary or secondary NAAQS (prong 1), or interfere with maintenance by any other state with respect to the same NAAQS (prong 2). The two elements under 110(a)(2)(D)(i)(II) require SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). In this action, the EPA is only addressing prongs 3 and 4 of CAA section 110(a)(2)(D)(i). We will address prongs 1 and 2 for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS in a separate rulemaking.

A. Evaluation of Interference with Measures To Prevent Significant Deterioration (PSD)

With regard to the PSD portion of section 110(a)(2)(D)(i)(II) (prong 3), this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a comprehensive EPA-approved PSD permitting program in the SIP that applies to all regulated NSR pollutants and that satisfies the requirements of the EPA's PSD implementation rules.[4] As discussed in section VI.3 of this proposed action, North Dakota has such a PSD-permitting program.

As stated in the 2013 Guidance, in-state sources not subject to PSD for any one or more of the pollutants subject to regulation under the CAA because they are in a nonattainment area for a NAAQS related to those particular pollutants may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. North Dakota does not contain any nonattainment areas. The consideration of nonattainment NSR for prong 3 is therefore not relevant as all major sources locating in the State are subject to PSD. As North Dakota's SIP meets structural PSD requirements for all regulated NSR pollutants, and North Dakota does not have any nonattainment areas, the EPA is proposing to approve the infrastructure

[4] *See* 2013 Guidance.

SIP submission as meeting the applicable requirements of prong 3 of section 110(a)(2)(D)(i) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

B. Evaluation of Interference With Measures To Protect Visibility

The 2013 Guidance states that section 110(a)(2)(D)(i)(II)'s prong 4 requirements can be satisfied by approved SIP provisions that the EPA has found to adequately address a state's contribution to visibility impairment in other states. The EPA interprets prong 4 to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies. *See* 2013 Guidance at 33.

The 2013 Guidance lays out two ways in which a state's infrastructure SIP submittal may satisfy prong 4. One way is through a state's confirmation in its infrastructure SIP submittal that it has an EPA-approved regional haze SIP in place that fully meets the requirements of 40 CFR 51.308 or 309. Alternatively, in the absence of a fully approved regional haze SIP, a state can make a demonstration in its infrastructure SIP submittal that emissions within its jurisdiction do not interfere with other states' plans to protect visibility. Such a submittal should point to measures in the SIP that limit visibility-impairing pollutants and ensure that the resulting reductions conform to any mutually agreed emission reductions under the relevant regional haze regional planning organization (RPO) process.[5]

Because of the often significant impacts on visibility from the interstate transport of pollutants, we interpret the provisions of CAA section 110(a)(2)(D)(i)(II) described above as requiring states to include in their SIPs measures to prohibit emissions that would interfere with the reasonable progress goals set under 40 CFR 51.308 or 309 to protect Class I areas in other states. States working together through state-to-state consultations or a regional planning process are required to include in their regional haze SIPs all agreed upon measures or measures that will provide equivalent visibility improvement in the Class I areas of their neighbors. 40 CFR 51.308(f)(2)(ii)(A). Given these requirements in the regional haze program we have concluded that a fully approved regional haze SIP satisfies the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility.

States worked through regional planning organizations (RPOs), such as the Western Regional Air Partnership (WRAP) in the case of North Dakota, to develop strategies to address regional haze. To help states in establishing reasonable progress goals, the RPOs modeled future visibility conditions. The modeling assumed emissions reductions from each state, based on extensive consultation among the states as to appropriate strategies for addressing haze. In setting reasonable progress goals, states generally relied on this modeling. As a result, we generally consider a SIP that ensures emission reductions commensurate with the assumptions underlying the reasonable progress goals to meet the visibility requirement of CAA section 110(a)(2)(D)(i)(II).

In its 2010 SO_2 and 2012 $PM_{2.5}$ infrastructure certifications, the State points to existing portions in the North Dakota SIP, specifically referencing the North Dakota Regional Haze SIP (NDAC 33–15–25), to certify that the State meets the visibility requirements of section 110(a)(2)(D)(i)(II). The State also references the PSD (NDAC 33–15–15) and Visibility Protection (NDAC 33–15–19) portions of its SIP, as well as the EPA's Regional Haze Federal implementation plan (FIP).[6] For the 2012 $PM_{2.5}$ certification, the State also points to its five-year Progress Report for Regional Haze, submitted to the EPA in January 2015, which (per the State) ''indicates that the reasonable progress goals established in the SIP have been met (TRNP) or will likely be met (LWA),'' and that ''the emissions reductions at EGUs required by the SIP. . . will be achieved or exceeded.'' [7]

In this action, we are proposing to find that the emissions reductions approved into North Dakota's Regional Haze SIP are sufficient to ensure that emissions from sources within the State do not interfere with the reasonable progress goals of Class I areas in nearby states. North Dakota participated in a regional planning process with the WRAP. In the regional planning process, North Dakota accepted and incorporated the WRAP-developed visibility modeling into its Regional Haze SIP, and the SIP included the controls and associated emission reductions assumed in the modeling.

However, the EPA did not fully approve the North Dakota Regional Haze SIP, as we partially disapproved, among other elements, the State's selection of NO_X Best Available Retrofit Technology (BART) controls for Great River Energy's Coal Creek Station. 77 FR 20894 (April 6, 2012). As a result of our partial disapproval, North Dakota's SIP does not ensure the NO_X emission reductions from Coal Creek Station that were assumed in the WRAP's visibility modeling, which nearby states relied on in setting their reasonable progress goals.[8] This is relevant to the 2012 $PM_{2.5}$ NAAQS, as NO_X is a precursor for $PM_{2.5}$. We note, however, that the North Dakota Regional Haze SIP also adopted reasonable progress NO_X controls that were not included in the WRAP's modeling for Otter Tail Power Company's Coyote Station,[9] as these controls were added as an amendment to the SIP over a year after the original SIP was submitted. *See* 77 FR 20944 (April 6, 2012). The EPA approved these controls into the North Dakota Regional Haze SIP as part of our April 6, 2012 final action. This SIP provision will reduce NO_X emissions at Coyote Station by approximately 4,213 tons per year, a larger decrease in emissions than the assumed NO_X BART reductions for Coal Creek Station of approximately 3,214 tons per year. *See* 76 FR 58603 and 58628 (September 21, 2011). As the Coal Creek and Coyote stations are roughly 32 miles apart, and the Coyote Station is about 15–20 miles closer than Coal Creek to the nearest out of state Class I areas, the visibility impacts from NO_X emission reductions at Coyote on out-of-state Class I areas would be similar and potentially greater than those from Coal Creek.[10] The State can rely on the Coyote reasonable progress reductions to demonstrate that emissions within the jurisdiction conform to the mutually-agreed regional haze reductions and associated reasonable progress goals because they are approved into the SIP.

Because the reductions in North Dakota's approved Regional Haze SIP are greater than those assumed by the WRAP modeling, and it is reasonable to

[5] *See* 2013 Guidance at 34, and also 76 FR 22036 (April 20, 2011) containing EPA's approval of the visibility requirement of 110(a)(2)(D)(i)(II) based on a demonstration by Colorado that did not rely on the Colorado Regional Haze SIP.

[6] The EPA's final action including a partial approval, partial disapproval and FIP of the North Dakota Regional Haze SIP was published in the **Federal Register** April 6, 2012 (77 FR 20894).

[7] The EPA notes that Theodore Roosevelt National Park (TRNP) and Lostwood Wilderness Area (LWA) are both located within North Dakota, and are therefore would not be included in a prong 4 transport analysis. To date, the EPA has not taken any action on North Dakota's January 2015 Progress Report.

[8] The EPA notes that we also disapproved and promulgated a FIP for the State's reasonable progress determination for Basin Electric's Antelope Valley Station.

[9] *http://www.wrapair.org/forums/ssjf/pivot.html.*

[10] Medicine Lake Wilderness, in Montana, is roughly 144 miles from Coyote and roughly 164 miles from Coal Creek. The Badlands/Sage Creek Wilderness in South Dakota is roughly 230 miles from Coyote and roughly 245 miles from Coal Creek.

find that the emission reductions provide the agreed upon visibility improvements in affected Class I areas, the EPA is proposing to find that North Dakota's SIP includes controls sufficient to address the relevant requirements related to impacts on Class I areas in other states for the 2012 $PM_{2.5}$ NAAQS.

With regard to the 2010 SO_2 NAAQS, it is appropriate for the State to rely on the Regional Haze SIP approval for the purposes of prong 4, as the EPA approved all of the State's SO_2 BART and reasonable progress determinations. The EPA is therefore proposing to find that North Dakota's SIP includes controls sufficient to address the relevant requirements related to impacts on Class I areas in other states for the 2010 SO_2 NAAQS.

5. *Interstate and International transport provisions:* CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

Section 126(a) of the CAA requires notification to affected, nearby states of major proposed new (or modified) sources. Sections 126(b) and (c) pertain to petitions by affected states to the Administrator of the EPA (Administrator) regarding sources violating the ''interstate transport'' provisions of section 110(a)(2)(D)(i). Section 115 of the CAA similarly pertains to international transport of air pollution.

With regard to section 126(a), North Dakota's SIP-approved PSD program requires notice of proposed new sources or modifications to states whose lands may be significantly affected by emissions from the source or modification (see NDAC 33–15–15–01.2(q)(2)(d)). This provision satisfies the notice requirement of section 126(a).

North Dakota has no pending obligations under sections 126(c) or 115(b); therefore, its SIP currently meets the requirements of those sections. In summary, the SIP meets the requirements of CAA section 110(a)(2)(D)(ii) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

6. *Adequate resources:* Section 110(a)(2)(E)(i) requires states to provide ''necessary assurances that the state [. . .] will have adequate personnel, funding, and authority under State law to carry out [the SIP] (and is not prohibited by any provision of Federal or State law from carrying out the SIP or portion thereof).'' Section 110(a)(2)(E)(ii) also requires each state to ''comply with the requirements respecting state boards'' under CAA section 128. Section 110(a)(2)(E)(iii) requires states to provide ''necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any [SIP] provision, the State has responsibility for ensuring adequate implementation of such [SIP] provision.''

a. Sub-Elements (i) and (iii): Adequate Personnel, Funding, and Legal Authority Under State Law To Carry Out Its SIP, and Related Issues

NDCC 23–25–03 provides adequate authority for the State of North Dakota and the Department to carry out its SIP obligations with respect to the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS. The State receives section 103 and 105 grant funds through its Performance Partnership Grant from the EPA along with required state matching funds to provide funding necessary to carry out North Dakota's SIP requirements. North Dakota's resources meet the requirements of CAA section 110(a)(2)(E).

With respect to section 110(a)(2)(E)(iii), the regulations cited by North Dakota in their certifications and verified through additional communication [11] (NDCC 23–25–02(01), 33–15–04–02, 23–01–05(02), 23–25–03(5), and 23–25–10) and contained within this docket also provide the necessary assurances that the State has responsibility for adequate implementation of SIP provisions. Therefore, we propose to approve North Dakota's SIP as meeting the requirements of section 110(a)(2)(E)(i) and (E)(iii) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

b. Sub-Element (ii): State Boards

Section 110(a)(2)(E)(ii) requires each state's SIP to contain provisions that comply with the requirements of section 128 of the CAA. That provision contains two explicit requirements: (i) That any board or body which approves permits or enforcement orders under the CAA shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income from persons subject to such permits and enforcement orders; and (ii) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

On July 30, 2013 (78 FR 45866) the EPA approved revised language in North Dakota's SIP, chapter 2, section 15, Respecting Boards to include provisions for addressing conflict of interest requirements. Details on how this portion of chapter 2, section 15 rules meet the requirements of section 128 are provided in our May 13, 2013 proposal notice (78 FR 27898). North Dakota's SIP continues to meet the requirements of section 110(a)(2)(E)(ii), and we propose to approve the infrastructure SIP for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS for this element.

7. *Stationary source monitoring system:* Section 110(a)(2)(F) requires: (i) ''the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources; (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources; and (iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to [the Act], which reports shall be available at reasonable times for public inspection.''

Furthermore, North Dakota is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar-year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. North Dakota made its latest update to the NEI on January 10 2017. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *https://www.epa.gov/air-emissions-inventories*.

Based on the analysis above, we propose to approve the North Dakota SIP as meeting the requirements of CAA

[11] *See* Email from Tom Bachman ''Request for Clarifications_ND iSIP 2008 ozone, 2008 Pb, and 2010 NO_2 NAAAQS'' April 13, 2015, available within docket.

section 110(a)(2)(F) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

8. *Emergency powers:* Section 110(a)(2)(G) of the CAA requires infrastructure SIPs to ''provide for authority comparable to that in [CAA section 303] and adequate contingency plans to implement such authority.''

Under CAA section 303, the EPA Administrator has authority to bring suit to immediately restrain an air pollution source that presents an imminent and substantial endangerment to public health or welfare, or the environment.[12] If such action may not practicably assure prompt protection, then the Administrator has authority to issue temporary administrative orders to protect the public health or welfare, or the environment, and such orders can be extended if the EPA subsequently files a civil suit.

Chapter 23–25 of the NDCC provides relevant language and authority for ''Air Pollution Control.'' The purpose of this chapter is ''to achieve and maintain the best air quality possible'' and to ''protect human health, welfare and property, [and] prevent injury to plant and animal life'' (NDCC 23–25–01(2)). NDCC 23–25–01 defines ''air pollution'' as ''the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property, animal or plant life, or which unreasonably interferes with the enjoyment of life or property.'' As such, the chapter aims to protect all three areas required by section 303; human health, welfare, and environment. The ''Air Pollution Control'' chapter provides general grants of authority to maintain actions in certain situations. We find these grants provide comparable authority to that provided in Section 303. Furthermore, the NDAC 33–15–01–15(1) makes it unlawful to ''permit or cause air pollution'' as defined in NDCC 23–25–01. A person causing or contributing to emissions that endanger public health, welfare, or the environment, would be causing ''air pollution'' within the meaning of North Dakota law, and would therefore be in violation of NDAC 33–15–01–15(1). This could occur in either an emergency or non-emergency situation.[13]

NDCC 23–25–10(5) provides that ''the department has the authority to maintain an action in the name of the state against any person to enjoin any threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter.'' Under NDCC 23–25–10(5), the Department has the authority to bring an action to enjoin a violation of NDCC 23–25 or its rules. The Department may seek a court order to restrain a source from causing or contributing to emissions that endanger public health, welfare, or the environment. In an emergency, this may take the form of an injunction or temporary restraining order (*see* NDCC 32–06–02).[14] Therefore, the NDDH has the authority to seek judicial actions during emergency situations.

North Dakota's statutes also provide the NDDH with the authority to issue administrative orders and emergency rules to protect the public health, welfare, and the environment under certain circumstances. NDCC 23–25–08, as cited in North Dakota's SIP submittals, authorizes that in the event of ''an emergency requiring immediate action to protect the public health and safety,'' the NDDH has the authority to ''issue an order reciting the existence of such emergency and requiring that such action be taken as is necessary'' to meet the emergency. The emergency order is effective immediately. Any person who violates the order is subject to enforcement, penalties, and injunctions under NDCC 23–25–10.

Furthermore, as cited in North Dakota's SIP submittals, the NDDH has the authority to ''use an emergency adjudicative proceeding, in its discretion, in an emergency situation involving imminent peril to the public health, safety, or welfare'' (NDCC 28–32–32). Accordingly, ''in an emergency, the administrative agency may take action pursuant to a specific statute as is necessary to prevent or avoid imminent peril to the public health, safety, or welfare'' (NDCC–28–32–32.1). In the absence of a specific statute requiring other administrative action, ''the administrative agency shall issue an order'' (NDCC 28–32–32(4)).

Further supplemental authority is found in a broad provision, cited by the State in their SIP submittals, granting additional authority to the NDDH. The NDDH has the authority to ''[i]ssue such orders as may be necessary to effectuate the purposes'' of the ''Air Pollution Control'' chapter NDCC 23–25–03.5. These orders can be enforced ''by all appropriate administrative and judicial procedures'' (NDCC 23–25–03.5). Thus, this broad grant of authority includes the authority to issue administrative orders during air pollution emergencies which would disrupt protection of human health, welfare, and animal and plant life.

The combination of NDCC and NDAC provisions discussed above provide for authority comparable to section 303 to immediately bring suit to restrain, issue emergency orders against, and use special rule adoption procedures for applicable emergencies to take prompt administrative action against, any person causing or contributing to air pollution that presents an imminent and substantial endangerment to public health or welfare, or the environment. We propose that they are sufficient to meet the authority requirement of CAA section 110(a)(2)(G).

States must also have adequate contingency plans adopted into their SIP to implement the air agency's emergency episode authority (as discussed above). This can be done by submitting a plan that meets the applicable requirements of 40 CFR part 51, subpart H for the relevant NAAQS if the NAAQS is covered by those regulations.

Subpart H of 40 CFR part 51 requires states to classify regions and to develop contingency plans (also known as emergency episode plans) after ambient concentrations of certain criteria pollutants in an area have exceeded specified levels. For example, if ambient concentrations of nitrogen dioxide in an area have exceeded 0.06 ppm (annual arithmetic mean), then the area is classified as a Priority I region, and the state must develop a contingency plan that meets the requirements of sections 51.151 and 51.152. North Dakota has not monitored any values above the priority cut point for $PM_{2.5}$.

Prevention of air pollution emergency episodes is addressed in Section 5 of North Dakota's SIP and was approved on May 31, 1972 (37 FR 10842). We find that North Dakota's air pollution emergency provisions establish stages of episode criteria (Section 5.2), provide for public announcement whenever any episode stage has been determined to exist (Section 5.3), and specify emission control actions to be taken at each episode stage (Section 5.5) consistent with the EPA emergency episode SIP requirements set forth at 40 CFR part 51, subpart H (prevention of air pollution emergency episode).

[12] A discussion of the requirements for meeting CAA section 303 is provided in our notice of proposed rulemaking: Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 $PM_{2.5}$, 2008 Lead, 2008 Ozone, and 2010 NO_2 National Ambient Air Quality Standards; South Dakota (79 FR 71040, Dec. 1, 2014) under ''VI. Analysis of State Submittals, 8. Emergency powers.''

[13] *See* Email from Tom Bachman ''Request for Clarifications_ND iSIP 2008 ozone, 2008 Pb, and 2010 NO_2 NAAAQS'' April 13, 2015, available within docket.

[14] *See* Email from Tom Bachman ''Request for Clarifications_ND iSIP 2008 ozone, 2008 Pb, and 2010 NO_2 NAAAQS'' April 13, 2015, available within docket.

Based on the above analysis, we propose approval of North Dakota's SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

9. *Future SIP revisions:* Section 110(a)(2)(H) requires that SIPs provide for revision of such plan: (i) ''[f]rom time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard[;] and (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the [SIP] is substantially inadequate to attain the [NAAQS] which it implements or to otherwise comply with any additional requirements under this [Act].''

Chapters 23–25–03.8 and 23–25–03.12 of the NDCC and section 1.14 of the North Dakota SIP, give the Department sufficient authority to meet the requirements of CAA section 110(a)(2)(H). Therefore, we propose to approve North Dakota's SIP as meeting the requirements of CAA section 110(a)(2)(H).

10. *Consultation with government officials, public notification, PSD and visibility protection:* Section 110(a)(2)(J) requires that each SIP ''meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to PSD of air quality and visibility protection).''

The State has demonstrated it has the authority and rules in place through its certifications (contained within this docket) to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121. Furthermore, the EPA previously addressed the requirements of CAA section 127 for the North Dakota SIP and determined public notification requirements are appropriate (45 FR 53475, Aug. 12, 1980).

As discussed above, the State has a SIP-approved PSD program that incorporates by reference the Federal program at 40 CFR 52.21. The EPA has further evaluated North Dakota's SIP approved PSD program in this proposed action under element (C) and determined the State has satisfied the requirements of element 110(a)(2)(C), as noted above. Therefore, the State has also satisfied the requirements of element 110(a)(2)(J).

Finally, with regard to the applicable requirements for visibility protection, the EPA recognizes states are subject to visibility and regional haze program requirements under part C of the Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there are no applicable visibility requirements under section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above analysis, we propose to approve the North Dakota SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

11. *Air quality and modeling/data:* Section 110(a)(2)(K) requires each SIP to provide for: (i) ''the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a [NAAQS]; and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.''

North Dakota's PSD program requires estimates of ambient air concentrations be based on applicable air quality models specified in Appendix W of 40 CFR part 51, and incorporates by reference the provisions at 40 CFR 52.21(I)(2) requiring that modification or substitution of a model specified in Appendix W must be approved by the Administrator (see NDAC 33–15–14–02.4 and NDAC 33–15–15–01.2). Section 7.7, Air Quality Modeling, of North Dakota's SIP commits the Department to performing air quality modeling to predict the impact of a source on air quality, and providing data to the EPA upon request. As a result, the SIP provides for such air quality modeling as the Administrator has prescribed. Therefore, we propose to approve the North Dakota SIP as meeting CAA section 110(a)(2)(K) for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

12. *Permitting fees:* Section 110(a)(2)(L) requires ''the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this [Act], a fee sufficient to cover[:] (i) The reasonable costs of reviewing and acting upon any application for such a permit[;] and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under [title] V.''

NDAC 33–15–23 and NDCC 23–25–04.2, require applicants of construction permits to pay the costs for the Department to review and act on the permit applications. We also note that fees collected under North Dakota's approved title V permit program (64 FR 32433, Aug. 16, 1999) are sufficient to implement and enforce the program. Therefore, we propose to approve the submissions as submitted by the State for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

13. *Consultation/participation by affected local entities:* Section 110(a)(2)(M) requires states to ''provide for consultation and participation [in SIP development] by local political subdivisions affected by [the SIP].''

The nonregulatory provision in Chapter 10 of North Dakota's SIP, Intergovernmental Cooperation, meets the requirements of CAA section 110(a)(2)(M). We propose to approve North Dakota's SIP as meeting these requirements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS.

VII. What action is the EPA taking?

In this action, the EPA is proposing to approve infrastructure elements for the 2010 SO_2 and 2012 $PM_{2.5}$ NAAQS from the State's certifications as shown in Table 1. Elements we propose no action on are reflected in Table 2.

TABLE 1—LIST OF NORTH DAKOTA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS PROPOSING TO APPROVE

Proposed for approval
March 7, 2013 submittal—2010 SO_2 NAAQS: (A), (B), (C), (D)(i)(II) prongs 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
August 23, 2015 submittal—2012 $PM_{2.5}$ NAAQS: (A), (B), (C), (D)(i)(II) prongs 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).

TABLE 2—LIST OF NORTH DAKOTA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS PROPOSING TO TAKE NO ACTION ON

Proposed for no action (Revision to be made in separate rulemaking action)
March 7, 2013 submittal—2010 SO_2 NAAQS: (D)(i)(I) prongs 1 and 2.
August 23, 2015 submittal—2012 $PM_{2.5}$ NAAQS: (D)(i)(I) prongs 1 and 2.

VIII. Statutory and Executive Orders Review

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 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, Aug. 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 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, Feb. 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the 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).

List of Subjects in 40 CFR Part 52

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

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

Dated: June 14, 2017.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

[FR Doc. 2017–13667 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0504; FRL–9964–08–Region 4]

Air Plan Approval; GA and SC: Changes to Ambient Air Standards and Definitions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of revisions to the Georgia State Implementation Plan (SIP) submitted by the Georgia Department of Natural Resources, Environmental Protection Division, on August 30, 2010, and on July 25, 2014; and portions of revisions to the South Carolina SIP, submitted by the Department of Health and Environmental Control on December 15, 2014, August 12, 2015, and November 4, 2016. The Georgia SIP revisions incorporate definitions relating to fine particulate matter ($PM_{2.5}$), and amend state rules to reflect the 2008 national ambient air quality standard (NAAQS) for lead. The South Carolina SIP revisions incorporates the 2010 sulfur dioxide NAAQS, 2010 nitrogen dioxide NAAQS, 2012 $PM_{2.5}$ NAAQS, 2015 8-hour ozone NAAQS, removes the 1997 8-hour ozone NAAQS, and removes the standard for gaseous fluorides from the SIP. This action is being proposed because Georgia and South Carolina have demonstrated that these changes are consistent with the Clean Air Act.

DATES: Written comments must be received on or before July 31, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0504 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, 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. Mr. Akers can be reached via telephone at (404)

562–9089 or via electronic mail at *akers.brad@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the SIP revisions for Georgia and South Carolina as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: June 13, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

[FR Doc. 2017–13546 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2017–0004; FRL–9964–07–Region 4]

Air Plan Approval; Kentucky; Revisions to Jefferson County Emissions Monitoring and Reporting

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On March 22, 2011, and April 20, 2011, the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), submitted revisions to the Kentucky State Implementation Plan (SIP) on behalf of the Louisville Metro Air Pollution Control District (District). The Environmental Protection Agency (EPA) is proposing to approve the April 20, 2011, submittal and the portions of the March 22, 2011, submittal concerning revisions to the District's stationary source emissions monitoring and reporting requirements because the Commonwealth has demonstrated that these changes are consistent with the Clean Air Act (CAA or Act).

DATES: Written comments must be received on or before July 31, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2017–0004 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Richard Wong, 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. Mr. Wong can be reached by telephone at (404) 562–8726 or via electronic mail at *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In this rulemaking, EPA is proposing to approve only certain changes related to the District's stationary source emissions monitoring and reporting requirements in Regulation 1.06 [1] in the March 22, 2011, and April 20, 2011, SIP revisions. This regulation provides the District with the authority to require emissions monitoring at stationary sources and requires certain sources to maintain emissions records and provide annual emissions statements to the District. It does not impose any emissions limits or control requirements on any emissions source. The March 22, 2011, submission also included changes to Jefferson County Regulation 1.02—*Definitions;* Regulation 3.01—*Ambient Air Quality Standards;* Regulation 3.02—*Applicability of Ambient Air Quality Standards;* Regulation 3.03—*Definitions;* Regulation 3.04—*Ambient Air Quality Standards;* and Regulation 3.05—*Methods of Measurement.* EPA approved these changes, with the exception of the requested addition of certain definitions in Regulation 1.02, on December 6, 2016 (81 FR 87815).[2] In addition, the March 22, 2011, submission also included changes to Regulation 1.07—*Emissions During Startups, Shutdowns, Malfunctions and Emergencies.* EPA approved the change to Regulation 1.07 on June 10, 2014 (79 FR 33101). The April 20, 2011, submission revises only Regulation 1.06.

II. EPA's Analysis of Kentucky's SIP Revisions

A. March 22, 2011, Submittal

The March 22, 2011, SIP submission contains a version of Regulation 1.06 adopted by the District on June 21, 2005 (referred to as ''Version 7'' by the District) and a version of Regulation 1.06 adopted by the District on September 21, 2005 (referred to as ''Version 8''). The version currently incorporated into the SIP is referred to as ''Version 6'' (District effective on December 15, 1993). *See* 65 FR 53660 (October 23, 2001). Collectively, Versions 7 and 8 change the heading of Regulation 1.06 to ''Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting,'' and change aspects of Section 1—''In Stack Self-Monitoring and Reporting'' (including a change in the title to ''In-Stack Self-Monitoring and Reporting); Section 2—''Ambient Air Monitoring''; and Section 3—''Emissions and Related Data Reporting'' (including a change in the title to ''Provisions for Section 4 and Section 5 Emissions Data''). The submission adds four new sections: Section 4—''Emissions Data for Criteria Pollutants, HAPs, and Ammonia''; Section 5—''Enhanced Emissions Data for Toxic Air Contaminants''; Section 6—''Certification by a Responsible Official''; and Section 7—''Confidentiality and Open Records Requirements.'' The changes to the heading of Regulation 1.06, the changes to Sections 1 and 2, and the addition of Sections 6 and 7 are administrative in

[1] In 2003, the City of Louisville and Jefferson County governments merged and the ''Jefferson County Air Pollution Control District'' was renamed the ''Louisville Metro Air Pollution Control District.'' However, each of the regulations in the Jefferson County portion of the Kentucky SIP still has the subheading ''Air Pollution Control District of Jefferson County.'' Thus, to be consistent with the terminology used in the SIP, EPA refers throughout this notice to regulations contained in Jefferson County portion of the Kentucky SIP as the ''Jefferson County'' regulations.

[2] EPA did not approve the addition of definitions for the terms ''acute noncancer effect,'' ''cancer,'' ''carcinogen,'' and ''chronic noncancer effect,'' because these definitions are not related to the National Ambient Air Quality Standards (NAAQS). *See* 81 FR 87815.

nature. The changes to Section 3 modify and add provisions regarding emissions reporting data requirements, methods of emissions calculations, and stationary source emissions statements, and remove outdated reporting dates; the addition of Section 4 details requirements for submitting emissions statements on an annual basis for particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide, lead, ozone precursor emissions of volatile organic compounds and oxides of nitrogen, ammonia, and hazardous air pollutants; and Section 5 contains requirements for enhanced emissions statements for listed ''toxic air contaminants.'' Because the reporting of toxic air contaminants is not related to the National Ambient Air Quality Standards (NAAQS) for the criteria pollutants, EPA is not proposing to act on Section 5.[3] EPA is proposing to approve the changes to Regulation 1.06 contained in the March 22, 2011, SIP revision, with the exception of Section 5 and references to Section 5 located in Section 3, to the extent that these changes are not superseded by the changes in the April 20, 2011, submittal discussed below.

B. April 20, 2011, Submittal

The April 20, 2011, SIP submission contains a version of Regulation 1.06 adopted by the District on January 19, 2011 (referred to as ''Version 9'' by the District). After acknowledging that the District had sent Versions 7 and 8 to Kentucky for submittal to EPA, the District requests that EPA incorporate Version 9 into the SIP and identifies changes in Regulation 1.06 between Version 8 and Version 9. Version 9 revises Version 8 by changing aspects of Section 1 (including a change in the title to ''Stack Monitoring and Reporting''); Section 2 (including a change in title to ''Ambient Air Monitoring and Reporting''); Section 3 (including a change in the title to ''Requirements for Section 4 and Section 5 Emissions Statements''); Section 4 (including a change in the title to ''Emissions Statements for Criteria Pollutants, HAPs, and Ammonia''); Section 5 (including a change to the title to ''Emissions Statements for Toxic Air Contaminants''); and Section 6. Version 9 also eliminates Section 7. The submitted changes clarify and streamline the monitoring, recordkeeping, and reporting requirements for stationary sources by deleting and combining redundant and outdated provisions. The changes to Section 4 also modify the emissions threshold for sources to submit annual emissions statements to the District. For the reasons discussed above, EPA is not proposing to act on Section 5 or on the references to Section 5 located in Section 3.

EPA has reviewed the changes to Regulation 1.06 in the March 22, 2011, and April 20, 2011, SIP submissions, and has made the preliminary determination that the changes that EPA proposes to incorporate into the SIP are consistent with the CAA. EPA has preliminarily determined that these changes will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA, and therefore satisfy section 110(l), because they are either administrative or modify requirements that do not have an air quality impact such that removal will interfere with attainment or maintenance of the NAAQS. If EPA's proposed approval of changes to Regulation 1.06 is finalized, the text of the regulation in the SIP will reflect Version 9, with the exception of Section 5 and any references to Section 5 located in Section 3.

III. Incorporation by Reference

EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Louisville Metro Air Pollution Control District Regulation 1.06—*Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting,* District effective on January 19, 2011, with the exception of Section 5 and any references to Section 5 located in Section 3. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve Kentucky's March 22, 2011, and April 20, 2011, SIP revisions as discussed in section II, above. If this proposal is finalized, the text of Jefferson County Regulation 1.06 in the SIP will reflect the version of the rule effective on January 19, 2011 (Version 9) with the exception of Section 5 and any references to Section 5 located in Section 3. EPA is not proposing to act on Section 5 for the reasons discussed above.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *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 proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive

[3] The criteria pollutants are particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide, lead, and ground-level ozone.

Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Sulfur dioxide, Reporting and recordkeeping requirements.

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

Dated: June 14, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

[FR Doc. 2017–13670 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0113; FRL–9964–05–Region 4]

Air Plan Approval; Georgia: Permit Exemptions and Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Georgia, through the Georgia Department of Natural Resources' Environmental Protection Division, on September 19, 2006, with a clarifying revision submitted on November 6, 2006. This proposed action seeks to approve changes to existing minor source permitting exemptions and to approve a definition related to minor source permitting exemptions. EPA is approving this SIP revision because the State has demonstrated that it is consistent with the Clean Air Act.

DATES: Written comments must be received on or before July 31, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0113 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, 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. Mr. Akers can be reached via telephone at (404) 562–9089 or via electronic mail at *akers.brad@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: June 14, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

[FR Doc. 2017–13537 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R06–OAR–2009–0750; FRL–9963–46–Region–6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Redesignation of the Collin County Area to Attainment the 2008 Lead Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine the Collin County Lead (Pb) Nonattainment Area (comprising the part of Collin County bounded to the north by latitude 33.153 North, to the east by longitude 96.822 West, to the south by latitude 33.131 North, and to the West by longitude 96.837 West, which surrounds the Exide Technologies property), hereinafter referenced to as Non-Attainment Area or NAA, as attainment for the 2008 Pb NAAQS. We are also proposing to approve two SIP revision requests made by the TCEQ in 2009 and 2012. These two requests include one made in 2009 requesting approval of the state's second 10-year maintenance plan for the 1978 Pb National Ambient Air Quality Standard (NAAQS) and one made in 2012 to approve the state's plan to demonstrate compliance with the 2008 Pb NAAQS. These two revisions represent a change in the Texas State Implementation Plan (SIP) for Pb. The details of all three proposals, and our complete analysis of the requirements for each and how the state's submission meets those requirements can be found in the accompanying direct final notice and technical support document (TSD) to this proposal. The TSD is available in the docket at *http://www.regulations.gov,* Docket ID No. EPA–R06–OAR–2009–0750.

DATES: Written comments should be received on or before July 31, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2009–0750, at *http://www.regulations.gov* or via email to *todd.robert@epa.gov.* For additional information on how to submit comments see the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert M. Todd, (214) 665–2156, *todd.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct rule without prior proposal because the Agency views this as noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action no further activity is contemplated. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: June 14, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2017–13478 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–R04–OAR–2017–0209; FRL–9964–31-Region 4]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants; Plating and Polishing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 12, 2016, pursuant to section 112(l) of the Clean Air Act (CAA), the Tennessee Department of Environment and Conservation (TDEC) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants (NESHAP) from Plating and Polishing Operations with respect to the operation of the Ellison Surface Technologies, Inc. facility in Morgan County, Tennessee (Ellison). The Environmental Protection Agency is proposing to approve this request, and thus, proposing to grant TDEC the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after the EPA has approved the State's alternative requirements.

DATES: Written comments must be received on or before July 31, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2017–0209 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

Copies of all comments should also be sent to the Tennessee Department of Environment and Conservation, 312 Rosa L. Parks Avenue, Floor 15, Nashville, Tennessee, 37243–1102. Copies of electronic comments should be sent to *michelle.b.walker@tn.gov.*

FOR FURTHER INFORMATION CONTACT: Lee Page, South Air Enforcement and Toxics Section, Air Enforcement Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Page can be reached via telephone at (404) 562–9131 or via electronic mail at *page.lee@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this issue of the **Federal Register**, the EPA is approving the State's program revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated herein by reference. If no adverse comments are received in response to this rule, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn and all adverse comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: June 14, 2017.

V. Anne Heard,

Acting Regional Administrator, Region 4.

[FR Doc. 2017–13668 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170301213–7213–01]

RIN 0648–BG70

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; State Waters Exemption

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to allow an exemption to enable vessels with Federal Limited Access General Category Individual Fishing Quota permits from the State of Maine and Commonwealth of Massachusetts to continue fishing in their respective state waters once NMFS has announced that the Federal Northern Gulf of Maine total allowable catch has been fully harvested in a given year. Additionally, Massachusetts has requested that Federal Limited Access General Category Northern Gulf of Maine permits also be included in its exemption. Both states have requested this exemption as part of the Scallop State Water Exemption Program. This proposed rule is necessary to solicit comments on the state requests and to inform the public that NMFS is considering granting the requests.

DATES: Comments must be received by 5 p.m., local time, on July 14, 2017.

ADDRESSES: Documents supporting this action, including the State of Maine's and Commonwealth of Massachusetts' requests for the exemption and Framework Adjustment 28 to the Atlantic Sea Scallop Fishery Management Plan (FMP) are available upon request from John K. Bullard, Regional Administrator, NMFS, Greater

Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930.

You may submit comments on this document, identified by NOAA–NMFS-2017–0042, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2017–0042,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Maine and Massachusetts State Waters Exemption Program.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Management Specialist, 978–282–8456.

SUPPLEMENTARY INFORMATION:

Background

The Scallop State Waters Exemption Program has been in place as an element of the Scallop FMP since 1994 (Amendment 4 to the FMP, Final Rule published January 19, 1994, 59 FR 2757). At that time, the purpose of the program was to allow Federal permit holders to fish in the state waters fishery (where Federal and state laws are inconsistent) and alongside state-only permitted vessels. The program specifies that a state with a scallop fishery may be eligible for state waters exemptions if it has a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP. Amendment 11 to the FMP (April 14, 2008, 73 FR 20089) and Framework 26 to the FMP (April 21, 2015, 80 FR 22119) expanded the program to include the Northern Gulf of Maine (NGOM) measures. If we find that a state is eligible for the Program, we can exempt federally permitted scallop vessels fishing in state waters from a limited number of Federal scallop regulations as follows: Limited access scallop vessels may fish in state waters outside of scallop days-at-sea; limited access and limited access general category (LAGC) individual fishing quota (IFQ) vessels may be exempt from Federal gear and possession limit restrictions; and vessels with selected scallop permit types may be exempted from regulations pertaining to the NGOM management area.

Originally, we authorized exemptions for Maine, New Hampshire, and Massachusetts under Amendment 4 to the Scallop FMP. When we implemented Amendment 11 to the FMP in 2008, we suspended the original exemptions pending additional information from the states regarding their state waters fisheries. Maine was the only state to request a new exemption, and has received the state waters exemptions from gear and effort control restrictions for vessels issued Federal scallop permits and fishing exclusively in Maine waters since August of 2009.

Framework 26 to the FMP specifically added the exemption that would enable some scallop vessels to continue to fish in state waters within the NGOM management area after the Federal NGOM total allowable catch (TAC) is reached. Any state interested in applying for this new exemption must identify the scallop-permitted vessels to which this would apply (*i.e.,* limited access, LAGC IFQ, LAGC incidental, or LAGC NGOM). Vessels would still not be able to fish for scallops in the Federal portion of the NGOM once the TAC is harvested. Maine subsequently revised its exemption in 2015 to allow NGOM vessels to fish in state waters after the NGOM closes. This exemption was issued in November 2015, and will remain in place for the foreseeable future. Maine has requested an additional exemption for the upcoming season. Massachusetts has requested its first state waters exemption since we suspended it with the implementation of Amendment 11.

We received a request from Maine on December 9, 2016, to expand its current exemption to allow the four IFQ-permitted vessels with Maine state-waters permits to fish in the Maine state-waters portion of the NGOM management area. Maine's scallop fishery restrictions have not changed from 2015; therefore, they remain either equally or more restrictive than Federal scallop fishing regulations and would still limit mortality and effort.

Massachusetts also sent a request on November 10, 2016, to exempt LAGC IFQ federally permitted vessels that also hold a state permit. Massachusetts also requested that NGOM federally permitted vessels be exempt as well; this is the same exemption that was granted to Maine in 2015. Only the northern portion of Massachusetts state waters, approximately Boston and north, fall within the NGOM management area. The fishery in this area has traditionally been split between a handful of state-only vessels and 12 vessels with both Federal and state permits to fish for scallops. Of these vessels with dual permits, six traditionally fish in both Federal and state waters while the other six only fish in Federal waters.

After reviewing Massachusetts's request, we required some additional information, which we received on December 19, 2016. After further review, we determined that Massachusetts has a robust management program with controls in place that are equal to or more restrictive than Federal regulations when fishing for scallops in state waters. Massachusetts restricts scallop fishing activity in its waters with limited entry by requiring the state Coastal Access Permit, for which there is currently a moratorium and is only transferrable with the State Director of Marine Fisheries approval. Therefore, increased fishing effort in the future is not a significant concern. Vessels fishing for scallops in Massachusetts state waters also have a daily scallop possession limit of 200 lb (90.7kg). This possession limit is equivalent to the NGOM management area, but more restrictive than the 600-lb (272.1-kg) Federal possession limit for IFQ vessels south of the NGOM area in Federal waters.

Scallop effort has increased in the NGOM in recent years as the stock has improved in both state and Federal waters. In 2016, the NGOM management area TAC was fully harvested and was closed for the first time since the management area was created in 2008. In 2017, the area was closed on March 23, just over three weeks into the new fishing year and approximately two months earlier than in 2016. State-only permitted scallop vessels are able to fish in state waters after the Federal closure, and this provision would allow those vessels with the requested Federal permit to continue to fish in state waters along with vessels without Federal permits. Based on the information Maine and Massachusetts have submitted regarding their scallop conservation programs, NMFS has preliminarily determined that

Massachusetts qualifies for the NGOM state waters exemptions under the Scallop FMP as requested and Maine qualifies for the expansion of the state waters exemption for Maine waters. As required by the scallop fishery regulations, exemptions can only be granted if the state's scallop fishery would not jeopardize the biomass and fishing mortality/effort limit objectives of the FMP.

Allowing for this NGOM exemption would have no impact on the effectiveness of Federal management measures for the scallop fishery overall or within the NGOM management area because the NGOM Federal TAC is set based only on the Federal portion of the resource. Maine and Massachusetts are the only states that have requested a NGOM closure exemption, and only for state permit holders that also hold a Federal LAGC IFQ or NGOM scallop permit. As such, all other federally permitted scallop vessels would be prohibited from retaining, possessing, and landing scallops from within the NGOM management area, in both Federal and state waters, once the NGOM hard TAC is fully harvested.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The ability for states with territorial waters located within the NGOM management area to apply for this specific exemption was included into the Scallop FMP through Framework 26, which was implemented in May 2015.

Entities that own vessels with Federal LAGC NGOM and IFQ permits are the business entities affected by this action. The Small Business Administration (SBA) defines a small business in shellfish fishery as a firm that is independently owned and operated with receipts of less than $11 million annually (see NMFS final rule revising the small business size standard for commercial fishing, 80 FR 81194, December 29, 2015). NMFS issued 217 LAGC IFQ permits in 2015, and 119 of these vessels actively fished for scallops that year. Of the 217 vessels issued LAGC IFQ permits, 88 are homeported in Massachusetts and 6 are homeported in Maine. NMFS issued 99 LAGC NGOM permits in 2015, and 24 of these vessels actively fished. However, out of the 99 LAGC NGOM permitted vessels, 44 are homeported in Massachusetts and 40 are homeported in Maine. NMFS has determined that all 84 LAGC NGOM permitted vessels and 94 LAGC IFQ permitted vessels from both states could benefit from this action. Fishing year 2015 data were used for this certification because these data are the most recent complete data set for a fishing year. Although any of these 119 LAGC IFQ and 44 LAGC NGOM vessels could be impacted, Maine and Massachusetts estimated that the action would impact 4 Maine vessels and 12 Massachusetts vessels. The discussion therefore focuses on the impacts to these 16 vessels, but the impacts described below would increase with additional vessels.

Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different fishery management plans, even beyond those impacted by the proposed action. Furthermore, multiple permitted vessels and/or permits may be owned by entities with various personal and business affiliations. For the purposes of this certification, ''ownership entities'' are defined as those entities with common ownership as listed on the permit application. Only permits with identical ownership are categorized as an ''ownership entity.'' For example, if five permits have the same seven persons listed as co-owners on their permit applications, those seven persons would form one ''ownership entity,'' that holds those five permits. If two of those seven owners also co-own additional vessels, that ownership arrangement would be considered a separate ''ownership entity'' for the purpose of this certification.

On June 1 of each year, ownership entities are identified based on a list of all permits for the most recent complete calendar year. Matching the potentially impacted 2015 fishing year LAGC IFQ permits to calendar year 2015 ownership data results in 87 distinct ownership entities for the LAGC IFQ fleet. Of these, and based on the SBA guidelines, 84 of the LAGC IFQ entities are categorized as small. The remaining 3 entities were determined to be large businesses classified as a shellfish business. Based on available information for LAGC NGOM permits, NMFS has determined that all 44 NGOM permitted vessels from Massachusetts that would be impacted by this rule are small entities under the SBA guidelines.

If vessels harvest the full NGOM TAC before the end of a given fishing year, this exemption allowing vessels to continue to fish in their state's respective waters would positively impact 4 LAGC IFQ-permitted vessels home ported in Maine, and up to 12 vessels home ported in Massachusetts that have either an LAGC IFQ or NGOM Federal permit. When Framework 26 added the exemption in 2015, using fishing year 2013 data the average landings value was determined to be $240,159 per LAGC IFQ permit and $39,693 per LAGC NGOM permit. These values include scallops that were landed in state waters because both LAGC IFQ and NGOM vessels have the option to fish in state waters when the NGOM management area is open. When the NGOM TAC is reached and the area closes, the LAGC NGOM permitted vessels can no longer fish and the LAGC IFQ vessels must travel further from home in order to harvest scallops; therefore, the vessel's individual income is affected. Massachusetts estimates that with this exemption, vessels could harvest up to an additional 100,000 lb worth an estimated $1.23 million dollars at a 2015 average price of $12.26/lb. Maine estimates that with this exemption, the four vessels would save on fuel, food, and maintenance costs associated with steaming to fishing grounds outside of the NGOM management area by fishing closer to individual homeports. These cost savings would vary by individual vessel, but would have an overall positive economic benefit. If additional vessels take advantage of the proposed exemption (*e.g.,* more of the potentially impacted small business entities as described above), the positive impacts would only increase. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: June 23, 2017.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.54, paragraph (a)(4) is revised to read as follows:

§ 648.54 State waters exemption.

(a) * * *

(4) The Regional Administrator has determined that the State of Maine and Commonwealth of Massachusetts both have a scallop fishery conservation program for its scallop fishery that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. A vessel fishing in State of Maine waters may fish under the State of Maine state waters exemption, subject to the exemptions specified in paragraphs (b) and (c) of this section, provided the vessel is in compliance with paragraphs (e) through (g) of this section. In addition, a vessel issued a Federal Northern Gulf of Maine or Limited Access General Category Individual Fishing Quota permit fishing in State of Maine or Commonwealth of Massachusetts waters may fish under their respective state waters exemption specified in paragraph (d) of this section, provided the vessel is in compliance with paragraphs (e) through (g) of this section.

* * * * *

[FR Doc. 2017–13579 Filed 6–28–17; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 82, No. 124
Thursday, June 29, 2017

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

June 26, 2017.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by July 31, 2017. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: National Research, Promotion, and Consumer Information Programs.

OMB Control Number: 0581–0093.

Summary of Collection: The U.S. Department of Agriculture has the responsibility for implementing and overseeing programs for a variety of commodities including beef, blueberries, cotton, dairy, eggs, fluid milk, Hass avocados, honey, lamb, mangos, mushrooms, paper and paper-based packaging, peanuts, popcorn, pork, potatoes, softwood lumber, sorghum, soybeans, and watermelons. Various Acts authorizes these programs to carry out projects relating to research, consumer information, advertising, sales promotion, producer information, market development and product research to assist, improve, or promote the marketing, distribution, and utilization of their respective commodities. The Agricultural Marketing Service (AMS) has the responsibility to appoint board members and approve the boards' budgets, plans, and projects and for foreign projects, the Foreign Agricultural Service. AMS' objective in carrying out this responsibility is to assure the following: (1) Collection of funds are properly accounted for; (2) expenditures of all funds are for the purposes authorized by enabling legislation; and (3) the board's administration of the programs conforms to USDA policy.

Need and Use of the Information: The boards administer the various programs using a variety of forms to carry out their responsibilities. Only authorized employees of the various boards and USDA employees will use the information collected. Were the data collected less frequently, (1) it would hinder data needed to collect and refund assessments in a timely manner and result in delayed or even lost revenue; (2) boards would be unable to carry out the responsibilities of their respective Acts; and (3) requiring reports less frequently than monthly would impose additional record keeping requirements.

Description of Respondents: Business or other for profit, Farms.

Number of Respondents: 162,231.

Frequency of Responses: Reporting: On occasion, Weekly, Monthly, Semi-annually, Annually; Recordkeeping.

Total Burden Hours: 150,918.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–13607 Filed 6–28–17; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 26, 2017.

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 July 31, 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: Third Access, Participation, Eligibility and Certification Study Series (APEC III).

OMB Control Number: 0584–0530.

Summary of Collection: The National School Lunch Program (NSLP) and the School Breakfast Program (SBP), administered by the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA), are authorized under sections 10 and 4, respectively, of the Richard B. Russell National School Lunch Act of 1966 (42 U.S.C. 1766). The Improper Payment Information Act (IPIA) of 2002 (Pub. L. 107–300), the Improper Payments Elimination and Recovery Act (IPERA) of 2010 (Pub. L. 111–204), the Improper Payments Elimination and Recovery Improvement Act (IPERIA) of 2012 (Pub. L.112–248), and Executive Order 13520—Reducing Improper Payments set forth the priority, mandate, and requirements for FNS to identify, estimate, and reduce erroneous payments in these programs, including both underpayments and overpayments. The APEC III study will provide FNS with the information needed to reduce improper payments in the school meals programs.

Need and Use of the Information: This study will survey a nationally representative sample of School Food Authorities (SFAs) in the contiguous 48 states and the District of Columbia, a stratified sample of schools within each SFA, and a random sample of students within each sampled school that applied for free and reduced-price meals, were categorically eligible for free meals or were directly certified for free meals. FNS will use the data to develop national estimates of the annual error rates and erroneous payments for the NSLP and SBP in school year 2017–2018, to identify characteristics that may be related to the error rates, and to identify strategies and guidance for reducing these errors.

Description of Respondents: State, Local, or Tribal Government; Individuals and Households.

Number of Respondents: 9,452.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 13,042.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2017–13605 Filed 6–28–17; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Supplemental Nutrition Assistance Program Repayment Demand and Program Disqualification

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. This collection is a revision of currently approved information collection requirements associated with initiating collection actions against households who have received an overissuance in the Supplemental Nutrition Assistance Program (SNAP).

DATES: Written comments must be submitted on or before August 28, 2017 to be assured consideration.

ADDRESSES: 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 of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Jane Duffield, Chief, State Administration Branch, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 822, Alexandria, VA 22302. Comments may also be submitted via email to *SNAPSAB@fns.usda.gov,* or through the federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 822, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Ralph Badette at 703–457–7717.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Nutrition Assistance Program Repayment Demand and Program Disqualification.

OMB Number: 0584–0492.

Form Number: None.

Expiration Date: August 31, 2017.

Type of Request: Revision of a currently approved collection.

Abstract: Section 13(b) of the Food and Nutrition Act of 2008, as amended (7 U.S.C. 2022(b)), and Supplemental Nutrition Assistance Program (SNAP) regulations at 7 CFR 273.18 require State agencies to initiate collection action against households that have been overissued benefits. To initiate collection action, State agencies must provide an affected household with written notification informing the household of the claim and demanding repayment. This process is automated in most State agencies. Note that for overissuance claims, this information collection only covers the activities associated with initiating collection. The burden associated with reporting collections and other claims management information on the FNS–209 form is covered under currently approved under the Food Program Reporting System OMB number 0584–0594, expiration date 6/30/2019. The burden associated with referring delinquent claims and receiving collections through the Treasury Offset Program is covered under currently approved OMB number 0584–0446, expiration date 9/30/2019.

SNAP regulations at 7 CFR 273.16(e)(3) require State agencies to investigate any case of suspected fraud and, where applicable, make an intentional Program violation (IPV) determination either administratively or judicially. Notifications and activities involved in the IPV process include:

- The State agency providing written notification informing an individual

suspected of committing an IPV of an impending administrative disqualification hearing or court action;

• An individual opting to accept the disqualification and waiving the right to an administrative disqualification hearing or court action by signing either a waiver to an administrative disqualification hearing or a disqualification consent agreement in cases of deferred adjudication and returning it to the State agency; and

• Once a determination is made regarding an IPV, the State agency sending notification to the affected individual of the action taken on the administrative disqualification hearing or court decision.

SNAP regulations at 7 CFR 273.16 require State agencies to use disqualified recipient data to ascertain the correct penalty for IPVs, based on prior disqualifications. State agencies determine this by accessing and reviewing records located in the Electronic Disqualified Recipient System (eDRS). eDRS is an automated system developed by FNS that contains records of disqualifications in every State. State agencies are also responsible for updating the system, as required at 7 CFR 237.16, which includes reporting disqualifications in eDRS as they occur and updating eDRS when records are no longer accurate, relevant, or complete.

Summary of Estimated Burden

The burden consists of two major components: The initiation of overissuance collection and actions associated with IPV determinations. The estimated total annual burden for this collection is 203, 079.82 hours (139,052.851 SA reporting hours + 32,372.096 SA recordkeeping hours + 31,654.835 household reporting hours). The net aggregate change to this collection is a decrease of 4,753.18 total burden hours from the currently approved burden of 207,833 hours. The estimated total annual responses for this collection is 3,046,653.32 responses (1,083,671.320 SA reporting total annual response + 971,260.00 SA recordkeeping total annual records + 991,722.00 household reporting total annual responses). The burden hours associated with overissuance collection initiation have increased due to an increase in the amount of claims established in fiscal year (FY) 2015. The burden hours associated with IPV activity have decreased slightly as a result of a decreased number of SNAP households that States initiated IPV activity against in FY2015.

Affected Public: State, Local and Tribal government (SA); Individual/ Households (I/H).

Respondent Type: SNAP participants.

SA Reporting Burden

Estimated Number of Respondents: 53.

Estimate Total Number of Responses per Respondent: 38,772.289.

Estimated Total Annual Responses: 2, 054,931.32.

Estimated Time per Response: 0.08342.

Estimated Total Annual Reporting Burden: 203, 079.82.

Initiation of Overissuance Collection CFR 273.18 (a)(2)

For activities related to initiating collection on an overissuance, the estimated annual burden for State agency reporting is decreased by 4,406.557 hours (117,932.518 − 122,339.075 = 4,406.557).

IPV Determinations CFR 273.16(i)(2)(i)

The State agencies' annual reporting burden for activities related to IPV hearing and disqualification notices decreased by 679.513 hours (7,752.488 − 7,072.975 = 679.513), and activities associated with accessing and updating eDRS increased by 1251.95 hours (4,788.225 − 3,536.275 = 1251.95).

SA Recordkeeping Burden

Estimated Number of Recordkeepers: 53.

Estimated Total Records per Recordkeeper: 16,688.98.

Estimated Total Annual Records: 971,260.

Estimated Average # of Hours per Response: 0.03333.

Estimated Total Recordkeeping Hours: 32,372.096.

Initiation of Overissuance Collection CFR 272.1(f)

For activities related to initiating collection on an overissuance, we are increasing the estimated annual burden for State agency recordkeeping by 6,550.414 hours (29,480.918 − 22,930.504 = 6,550.414).

IPV Determinations CFR 272.1(f)

States' annual recordkeeping burden for the IPV related activities decreased by −504.52 burden hours (2,891.178 − 3,395.699 = −504.52).

I/H Reporting Burden

Estimated Number of Respondents: 917,566.

Estimated Number of Responses per Respondent: 1.0.

Total Number of Annual Responses: 991,722.

Estimated Time per Response: 0.03192.

Estimated Total Annual Reporting Burden: 31,654.835.

Initiation of Overissuance Collection CFR 273.18(a)(2).

For activities related to initiating collection on an overissuance, we are increasing the household reporting burden by 7,652 hours (29,480.918 − 22,930.504 = 6,550.414).

IPV Hearing Notices and Disqualifications CFR 273.16(e)(9)

The household annual reporting burden for the activities related to IPV disqualifications has also decreased by −420 hours (707.281 − 836.297 = −129.016).

Grand Total Burden Reporting and Recordkeeping Burden: 203, 079.782 and the total annual responses 3,046,653.320.

Title	CFR section of regulations	Estimated number respondents	Responses per respondent	Total annual responses (Col. D × E)	Estimated avg. number of hours per response	Estimated total hours (Col. F × G)	Previously approved	Due to program change	Due to an adjustment	Total difference
STATE AGENCY										
Reporting Burden										
Demand Letter for Overissuance	273.18(a)(2) ...	53	17,312.57	884,516.000	0.13333	117,932.518	122,339.075	0.000	−4,406.557	−4,406.557
Notice for Hearing or Prosecution	273.16(e)(3) ...	53	825.34	40,230.000	0.13333	5,363.866	5,832.540	0.000	−468.674	−468.674
Action Taken on Hearing or Court Decision: For IPV Findings.	273.16(e)(9) ...	53	800.70	46,514.000	0.16667	7,752.488	7,072.975	0.000	679.513	679.513
Action Taken on Hearing or Court Decision: For No IPV Findings.	273.16(e)(9) ...	53	24.64	1,541.000	0.08333	128.412	108.829	0.000	19.583	19.583
Electronic Disqualified Recipient System Breakout: For eDRS Reporting.	273.16(i)(2)(i)	53	800.70	57,461.000	0.08333	4,788.225	3,536.275	0.000	1,251.950	1,251.950

Title	CFR section of regulations	Estimated number respondents	Responses per respondent	Total annual responses (Col. D × E)	Estimated avg. number of hours per response	Estimated total hours (Col. F × G)	Previously approved	Due to program change	Due to an adjustment	Total difference
Electronic Disqualified Recipient System Breakout: For Editing and Resubmission.	272.1(f)(3)	53	96.08	6,895.320	0.16667	1,149.243	848.684	0.000	300.559	300.559
Electronic Disqualified Recipient System Breakout: For Penalty Checks using Mainframe.	273.16(i)(4)	53	800.70	46,514.000	0.04167	1,938.099	1,768.222	0.000	169.877	169.877
Total State Agency Reporting Burden.	.....	53	20,660.730	1,083,671.320	0.12832	139,052.851	19,167,239.00	0.000	−2,453.749	−2,453.749

Title		Estimated number record-keepers	Records per recordkeeper	Annual records	Estimated avg. number of hours per records	Estimated total annual records	Previously approved	Due to program change	Due to an adjust-ment	Total difference
Recordkeeping										
Recordkeeping Breakout: For initiating Collection Action.	*272.1(f)*	53	16,688.98	884,516.000	0.03333	29,480.918	22,930.504	0.000	6,550.414	6,550.414
Recordkeeping Breakout: For IPVs.	*272.1(f)*	53	1,626.04	86,744.000	0.03333	2,891.178	3,395.699	0.000	−504.521	−504.521
Total State Agency Recordkeeping Burden.	.....	53	18,315.021	971,260.000	0.03333	32,372.096	26,326.203	0.000	6,045.893	6,045.893

	CFR section of regulations	Estimated number respond-ents	Responses per respondent	Total annual responses	Estimated avg. num-ber of hours per pesponse	Estimated total hours	Previously approved	Due to program change	Due to an adjust-ment	Total difference
Total state agency burden	.....	53	38,772.289	2,054,931.32	0.08342	171,424.947	19,193,565.20	0.000	3,592.144	3,592.144

Title		Estimated number respondents	Responses per respondent	Total annual responses (Col. D × E)	Estimated avg. number of hours per response	Estimated total hours (Col. F × G)	Previously approved	Due to program change	Due to an adjustment	Total difference
HOUSEHOLD										
Reporting Burden										
Demand Letter for Overissuance.	273.18(a)(2)	917,566.00	1.00	884,516.000	0.03333	29,480.918	22,930.504	0.000	6,550.414	6,550.414
Notice for Hearing or Prosecution.	273.16(e)(3)	43,743.00	1.00	40,230.000	0.016667	670.513	861.532	0.000	−191.019	−191.019
Administrative Disqualification Hearing Waiver.	273.16(i)(2)	18,112.00	1.00	20,320.000	0.03333	677.266	711.062	0.000	−33.796	−33.796
Disqualification Consent Agreement.	273.16(i)(2)	6,849.00	1.00	2,913.000	0.03333	97.090	275.706	0.000	−178.616	−178.616
Action Taken on Hearing or Court Decision: For IPV Findings.	273.16(e)(9)	42,437.00	1.00	42,437.000	0.016667	707.281	836.297	0.000	−129.016	−129.016
Action Taken on Hearing or Court Decision: For No IPV Findings.	273.16(e)(9)	1,306.00	1.00	1,306.000	0.016667	21.767	25.266	0.000	−3.499	−3.499
Total Household Reporting Burden.	.....	917,566	1.08082	991,722.000	0.03192	31,654.835	25,640.367	0.000	6,014.468	6,014.468
SUMMARY OF BURDEN										
State Agency Level	.....	53	.....	2,054,931.320	.....	171,424.947	19,193,565.20	0.000	3,592.144	3,592.144
Household	.....	917,566	.....	991,722.000	.....	31,654.835	25,640.367	0.000	6,014.468	6,014.468
Total Burden This Collection.	.....	917,619	3.32017	3,046,653.320	0.06666	203,079.782	19,219,205.57	0.000	9,606.612	9,606.612

Dated: June 15, 2017.

Jessica Shahin,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2017–13574 Filed 6–28–17; 8:45 am]

BILLING CODE 3410–30–P

ARCTIC RESEARCH COMMISSION

Notice of 107th Commission Meeting

A notice by the U.S. Arctic Research Commission on 07/17/2017.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 107th meeting in Washington, DC, on July 17, 2017. The business sessions, open to the public, will convene at 8:30 a.m. at the Naval Heritage Center, 701 Pennsylvania Ave. NW., Washington, DC 20004.

The Agenda items include:

(1) Call to order and approval of the agenda
(2) Approval of the minutes from the 106th meeting
(3) Commissioners and staff reports
(4) Discussion and presentations concerning Arctic research activities

The meeting will focus on reports and updates relating to programs and research projects affecting Alaska and the greater Arctic.

The Arctic Research and Policy Act of 1984 (Title I Pub. L. 98–373) and the Presidential Executive Order on Arctic Research (Executive Order 12501) dated January 28, 1985, established the United States Arctic Research Commission.

If you plan to attend this meeting, please notify us via the contact

information below. Any person planning to attend who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission of those needs in advance of the meeting.

Contact person for further information: Kathy Farrow, Communications Specialist, U.S. Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Kathy Farrow,

Communications Specialist.

[FR Doc. 2017–13578 Filed 6–28–17; 8:45 am]

BILLING CODE 7555–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Oregon Advisory Committee

AGENCY: U.S. Commission on Civil Rights

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Oregon Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (Pacific Time) Tuesday, August 1, 2017. The purpose of the meeting is for the Committee to review a proposal on human trafficking in Oregon.

DATES: The meeting will be held on Tuesday, August 1, 2017, at 1:00 p.m. PDT.

PUBLIC CALL INFORMATION:

Dial: 888–576–4397.

Conference ID: 1815025.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 888–576–4397, conference ID number: 1815025. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=270.*

Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda:

I. Introductions
II. Review of Proposal on Human Trafficking
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: June 26, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–13653 Filed 6–28–17; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 03–3A008]

Export Trade Certificate of Review

ACTION: Notice of Application to Amend the Export Trade Certificate of Review Issued to California Pistachio Export Council, Application Number 03–3A008.

SUMMARY: The Office of Trade and Economic Analysis (OTEA) of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (Certificate). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) (the Act) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its application.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the amended Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 03–3A008.''

Summary of the Application

Applicant: CPEC, 512 C. St. NE., Washington, DC 20002.

Contact: Robert Schramm, Telephone: (202) 543–4455.

Application No.: 03–3A008.

Date Deemed Submitted: June 15, 2017.

Proposed Amendment: CPEC seeks to amend its Certificate as follows:

- Remove Horizon Marketing Agency in Common Cooperative Inc. as a Member
- Add the following new Members:
  - Arizona Nut Company, LLC (controlling entity A&P Ranch, L.P.)
  - Horizon Growers Cooperative, Inc.

CPEC's proposed amendment of its Certificate would result in the following Members list:

Arizona Nut Company, LLC
ARO Pistachios, Inc.
Horizon Growers Cooperative, Inc.
Keenan Farms, Inc.
Monarch Nut Company
Nichols Pistachio
Primex Farms, LLC
Setton Pistachio of Terra Bella, Inc.
Zymex Industries, Inc.

Dated: June 23, 2017.

Joseph E. Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2017–13577 Filed 6–28–17; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–872]

Finished Carbon Steel Flanges From India: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) determines that countervailable subsidies are being provided to producers and exporters of finished carbon steel flanges (flanges) from India. The period of investigation is April 1, 2015, through March 31, 2016.

DATES: Effective June 29, 2017.

FOR FURTHER INFORMATION CONTACT: Emily Maloof or Davina Friedmann, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5649, or (202) 482–0698, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2016, the Department published the *Preliminary Determination* in the **Federal Register**.[1]

A summary of the events that occurred since the Department published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the accompanying Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document, and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope Comments

In accordance with the *Preliminary Determination,* the Department set aside a period of time for parties to address scope issues in case briefs or other written comments on scope issues.[3] In the *Preliminary Determination,* we did not modify the scope language as it appeared in the *Initiation Notice.*[4] No interested party submitted scope comments in case or rebuttal briefs. However, the scope description that was published in the *Initiation Notice* and in the *Preliminary Determination* contained typographical errors, which have been corrected in the scope description provided in Appendix I of this notice.[5] Other than the correction of typographical errors, the scope of this investigation remains unchanged for this final determination.

Scope of the Investigation

The products covered by this investigation are finished carbon steel flanges from India. For a complete description of the scope of the investigation, *see* ''Scope of the Investigation,'' in Appendix I of this notice.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs submitted by the parties, are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice at Appendix II.

Verification

The Department conducted verification of the questionnaire responses submitted by the Government of India, USK Group, and RNG between January 30, and February 10, 2017.[6]

Use of Adverse Facts Available

If necessary information is not available on the record, or an interested party withholds information, fails to provide requested information in a timely manner, significantly impedes a proceeding by not providing information, or information provided cannot be verified, the Department will apply facts available, pursuant to section 776(a)(1) & (2) of the Tariff Act of 1930, as amended (the Act). For purposes of this final determination, the Department relied, in part, on facts available. For USK Group Ltd. (Norma) [7] and R.N. Gupta & Co. (RNG), we are basing certain countervailing duty rates on facts otherwise available. Further, because USK Group and RNG did not act to the best of their ability in this investigation by not providing necessary

[1] *See Finished Carbon Steel Flanges from India: Preliminary Affirmative Countervailing Duty Determination,* 81 FR 85928 (November 29, 2016) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance ''Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Finished Carbon Steel Flanges from India,'' dated concurrently with this determination and hereby adopted by this notice (Issues and Decision Memorandum).

[3] *See Preliminary Determination* and PDM at ''Scope Comments.''

[4] *Id.; see also, Finished Carbon Steel Flanges from India: Initiation of Countervailing Duty Investigation,* 81 FR 49625 (July 28, 2016) (*Initiation Notice*).

[5] Specifically, the Department incorrectly referenced the ASME specifications as ''ASME 816.5 or ASME 816.47 series A or series B.'' The corrected scope description properly references these specifications at ''ASME B16.5 or ASME B16.47 series A or series B.''

[6] *See* Memoranda, ''Verification Report of Norma (India) Ltd., Uma Shanker Khandelwal & Co., USK Exports Private Limited, and Bansidhar Chiranjilal,'' dated March 29, 2017 (USK Group Verification Report); ''Verification Report of R.N. Gupta & Co., Ltd.,'' dated March 29, 2017 (RNG Verification Report); and ''Verification Report of the Government of India,'' dated March 29, 2017 (Government of India Verification Report).

[7] Norma (India) Limited includes its cross-owned affiliates USK Exports Private Limited (USK), UMA Shanker Khandelwal & Co. (UMA), and Bansidhar Chiranjilal (BDCL) (collectively, USK Group). For further discussion, *see* the accompanying Issues and Decision Memorandum.

information requested by the Department, we determine that an adverse inference in selecting from the facts available is warranted with respect to certain countervailable subsidy programs, pursuant to section 776(b) of the Act. The Department has, therefore, relied, in part, on adverse facts available (AFA) in calculating the subsidy rates for both mandatory respondents.

Regarding USK Group, we determine that application of AFA is warranted with regard to one lending program for importing capital equipment.[8] Concerning RNG, we determine that the application of AFA is warranted with regard to two programs, *i.e.,* capital equipment purchases and export financing. Because the Government of India did not provide the requested information, as AFA, we find that each of the programs meet the financial contribution and specificity criteria outlined under sections 771(5)(D) and 771(5A) of the Act, respectively.[9] As AFA, we also find that these subsidy programs confer a benefit under section 771(5)(E) of the Act and 19 CFR 351.519.

For further information on the Department's application of AFA, as summarized above, *see* the section titled, ''Use of Facts Otherwise Available and Adverse Inferences,'' in the Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our analysis of the comments received from parties and the minor corrections presented, as well as additional items discovered at verification, we made certain changes to the respondent's subsidy rate calculations set forth in the *Preliminary Determination.* For a discussion of these changes, *see* the Issues and Decision Memorandum and the Final Calculation Memoranda.[10]

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we calculated a rate for each exporter/producer of the subject merchandise individually investigated, *i.e.,* Norma (India), Ltd. and R.N. Gupta & Co. In accordance with section 705(c)(5)(A) of the Act, for companies not individually investigated, we apply an ''all-others'' rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as mandatory respondents by those companies' exports of the subject merchandise to the United States. Under section 705(c)(5)(A)(i) of the Act, the ''all-others'' rate excludes zero and *de minimis* rates calculated for the exporters and producers individually investigated as well as rates based entirely on facts otherwise available. Where the rates for the individually investigated companies are all zero or *de minimis,* or determined entirely using facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an ''all-others'' rate using ''any reasonable method.'' Where the countervailable subsidy rates for all of the individually investigated respondents are zero or *de minimis* or are based on total AFA, the Department's practice, pursuant to 705(c)(5)(A)(ii), is to calculate the all others rate based on a simple average of the zero or *de minimis* margins and the margins based on total AFA.

Pursuant to section 705(c)(5)(A)(i) of the Act, we have calculated the ''all-others'' rate using the subsidy rates of the two individually investigated respondents. However, we have not calculated the ''all-others'' rate by weight-averaging the rates because doing so risks disclosure of proprietary information. Therefore, consistent with the Department's practice,[11] for the ''all others'' rate, we calculated a simple average of the two mandatory respondents' subsidy rates.

The final subsidy rates are as follows:

Exporter/producer	Subsidy rate (percent)
Norma (India), Ltd[12]	5.66
R.N. Gupta & Co	9.11
All-Others	7.39

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination,* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of any entries of merchandise under consideration from India that were entered or withdrawn from warehouse, for consumption, on or after November 29, 2016, which is the publication date in the **Federal Register** of the *Preliminary Determination.* Therefore, in accordance with section 703(d) of the Act, we issued instructions to CBP to suspend liquidation of all entries of steel flanges from India that are entered, or withdrawn from warehouse, for consumption, on or after November 29, 2017 through March 28, 2017. Additionally, we instructed CBP to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered, or withdrawn from warehouse, on or after March 29, 2017 in accordance with section 703(d)(3) of the Act.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order, instruct CBP to reinstate suspension of liquidation under section 706(a) of the Act, and will require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited as a result of the suspension of liquidation will be refunded or canceled.

U.S. International Trade Commission Notification

In accordance with section 705(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Acting Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an administrative

[8] For further discussion, *see* USK Group's Final Calculation Memorandum.

[9] *See, e.g., Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination,* 80 FR 63535 (October 20, 2015), and accompanying IDM at 17–20, 153–154.

[10] *See* Issues and Decision Memorandum; *see also* Memorandum, ''Final Determination Calculations for Norma (India) Ltd.,'' dated June 23, 2017 (Norma's Final Calculation Memorandum); *see also* Memorandum, ''Final Determination Calculation Memorandum of RNG,'' dated June 23, 2017 (RNG's Final Calculation Memorandum).

[11] *See e.g., Countervailing Duty Investigations of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination,* 82 FR 8405 (January 25, 2016).

[12] As discussed in the Preliminary Determination, the Department found the following companies to be cross-owned with Norma (India), Ltd.: Uma Shanker Khandelwal & Co. (UMA), USK Exports Private Limited (USK), and Bansidhar Chiranjilal (BDCL).

protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i)(1) of the Act and 19 CFR 351.210.

Dated: June 23, 2017

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance .

Appendix I

Scope of the Investigation

The scope of this investigation covers finished carbon steel flanges. Finished carbon steel flanges differ from unfinished carbon steel flanges (also known as carbon steel flange forgings) in that they have undergone further processing after forging, including, but not limited to, beveling, bore threading, center or step boring, face machining, taper boring, machining ends or surfaces, drilling bolt holes, and/or deburring or shot blasting. Any one of these post-forging processes suffices to render the forging into a finished carbon steel flange for purposes of this investigation. However, mere heat treatment of a carbon steel flange forging (without any other further processing after forging) does not render the forging into a finished carbon steel flange for purposes of this investigation.

While these finished carbon steel flanges are generally manufactured to specification ASME B16.5 or ASME B16.47 series A or series B, the scope is not limited to flanges produced under those specifications. All types of finished carbon steel flanges are included in the scope regardless of pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class (usually, but not necessarily, expressed in pounds of pressure, *e.g.,* 150, 300, 400, 600, 900, 1500, 2500, *etc.*), type of face (*e.g.,* flat face, full face, raised face, *etc.*), configuration (*e.g.,* weld neck, slip on, socket weld, lap joint, threaded, *etc.*), wall thickness (usually, but not necessarily, expressed in inches), normalization, or whether or not heat treated. These carbon steel flanges either meet or exceed the requirements of the ASTM A105, ASTM A694, ASTM A181, ASTM A350 and ASTM A707 standards (or comparable foreign specifications). The scope includes any flanges produced to the above-referenced ASTM standards as currently stated or as may be amended. The term ''carbon steel'' under this scope is steel in which: (a) Iron predominates, by weight, over each of the other contained elements: (b) The carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 0.87 percent of aluminum;
(ii) 0.0105 percent of boron;
(iii) 10.10 percent of chromium;
(iv) 1.55 percent of columbium;
(v) 3.10 percent of copper;
(vi) 0.38 percent of lead;
(vii) 3.04 percent of manganese;
(viii) 2.05 percent of molybdenum;
(ix) 20.15 percent of nickel;
(x) 1.55 percent of niobium;
(xi) 0.20 percent of nitrogen;
(xii) 0.21 percent of phosphorus;
(xiii) 3.10 percent of silicon;
(xiv) 0.21 percent of sulfur;
(xv) 1.05 percent of titanium;
(xvi) 4.06 percent of tungsten;
(xvii) 0.53 percent of vanadium; or
(xviii) 0.015 percent of zirconium.

Finished carbon steel flanges are currently classified under subheadings 7307.91.5010 and 7307.91.5050 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also be entered under HTSUS subheadings 7307.91.5030 and 7307.91.5070. The HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2017–13628 Filed 6–28–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–835]

Finished Carbon Steel Flanges From Italy: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) determines that imports of finished carbon steel flanges (flanges) from Italy are being, or are likely to be, sold in the United States at less than fair value (LTFV). The final estimated weighted-average dumping margins of sales at LTFV are listed below in the section entitled ''Final Determination.'' The period of investigation is April 1, 2015, through March 31, 2016.

DATES: Effective June 29, 2017.

FOR FURTHER INFORMATION CONTACT: Moses Song or Edythe Artman, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5041, or (202) 482–3931, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2017, the Department published the *Preliminary Determination* in the **Federal Register**.[1] In the *Preliminary Determination,* we postponed the final determination until no later than 135 days after the date of publication of the *Preliminary Determination,* in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act).[2]

The petitioners in this investigation are Weldbend Corporation and Boltex Manufacturing Co., L.P. The two mandatory respondents in this investigation are: (1) Metalfar Prodotti Industriali S.p.A. (Metalfar); and (2) Officine Ambrogio Melesi & C. S.r.l.

[1] *See Finished Carbon Steel Flanges from Italy: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 82 FR 9711 (February 8, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Preliminary Determination,* 82 FR at 9713.

(Melesi)/ASFO S.p.A. (ASFO) (collectively, Melesi/ASFO).

A summary of the events that occurred since the Department published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the accompanying Issues and Decision Memorandum.[3] 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 Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are finished carbon steel flanges from Italy. The Department did not receive any scope comments and has not updated the scope of the investigation since the *Preliminary Determination.* For a complete description of the scope of the investigation, *see* Appendix I of this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by interested parties in this investigation are addressed in the Issues and Decision Memorandum. A list of these issues is attached to this notice at Appendix II.

Verification

Because the mandatory respondents in this investigation did not provide the information requested, the Department did not conduct verification.

Changes Since the Preliminary Determination and Use of Adverse Facts Available

The Department has made no changes to the *Preliminary Determination.* As stated in the *Preliminary Determination,* we found that the application of facts available with an adverse inference with respect to both mandatory respondents in this investigation, Metalfar and Melesi/ASFO, was warranted, in accordance with sections 776(a)(1), 776(a)(2)(A)–(C), and 776(b) of the Act.[4]

All-Others Rate

As discussed in the *Preliminary Determination,* the Department based the selection of the all-others rate on the simple average of the three dumping margins calculated for subject merchandise from Italy alleged in the petition,[5] in accordance with section 735(c)(5)(B) of the Act, and determined a rate of 79.17 percent. We made no changes to the all-others rate for this final determination.[6]

Final Determination

The final estimated weighted-average dumping margins are as follows:

Producer or exporter	Weighted-average dumping margins (percent)
Metalfar Prodotti Industriali S.p.A	204.53
Officine Ambrogio Melesi & C. S.r.l./ASFO S.p.A	204.53
All Other Producers and Exporters	79.17

Disclosure

The estimated weighted-average dumping margins assigned to the mandatory respondents in this investigation in the *Preliminary Determination* were based on adverse facts available and the Department described the method it used to determine the adverse facts available rate in the *Preliminary Determination.* As we made no changes to this margin since the *Preliminary Determination,* no additional disclosure of calculations is necessary for this final determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of flanges from Italy, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after February 8, 2017, the date of publication of the *Preliminary Determination.* Furthermore, the Department will instruct CBP to require a cash deposit for such entries of merchandise. Pursuant to section 735(c)(1)(B)(ii) of the Act, CBP shall require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, as follows: (1) For Metalfar and Melesi/ASFO, the cash deposit rates will be equal to the estimated weighted-average dumping margin which the Department determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, then the cash deposit rate will be equal to the estimated weighted-average dumping margin established for the producer of the subject merchandise; (3) the cash deposit rate for all other producers and exporters will be 79.17 percent, as discussed in the ''All-Others Rate'' section and as listed in the chart, above.

The instructions suspending liquidation will remain in effect until further notice.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of our final determination. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of finished carbon steel flanges from Italy no later than 45 days after this final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice will serve as a reminder to parties subject to administrative

[3] *See* Memorandum, ''Finished Carbon Steel Flanges from Italy: Issues and Decision Memorandum for the Final Determination of Sales at Less Than Fair Value,'' dated concurrently with this determination and hereby adopted by this notice.

[4] *See Preliminary Determination,* 82 FR at 9712 and PDM at 4–9.

[5] *See* Petitions for the Imposition of Antidumping Duties on Imports of Finished Carbon Steel Flanges from India, Italy and Spain and Countervailing Duties on Imports from India, dated June 30, 2016 (the Petition) at Volume III; *see also* Letter from Petitioners to the Department, regarding ''Finished Carbon Steel Flanges from Italy: Second Supplemental Questionnaire Response,'' dated July 13, 2016; *see also* Antidumping Duty Investigation Initiation Checklist: Finished Carbon Steel Flanges from Italy, dated July 20, 2016.

[6] *See Preliminary Determination,* 82 FR at 9712.

protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination and notice are issued and published in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: June 23, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers finished carbon steel flanges. Finished carbon steel flanges differ from unfinished carbon steel flanges (also known as carbon steel flange forgings) in that they have undergone further processing after forging, including, but not limited to, beveling, bore threading, center or step boring, face machining, taper boring, machining ends or surfaces, drilling bolt holes, and/or de-burring or shot blasting. Any one of these post-forging processes suffices to render the forging into a finished carbon steel flange for purposes of this investigation. However, mere heat treatment of a carbon steel flange forging (without any other further processing after forging) does not render the forging into a finished carbon steel flange for purposes of this investigation.

While these finished carbon steel flanges are generally manufactured to specification ASME B16.5 or ASME B16.47 series A or series B, the scope is not limited to flanges produced under those specifications. All types of finished carbon steel flanges are included in the scope regardless of pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class (usually, but not necessarily, expressed in pounds of pressure, *e.g.,* 150, 300, 400, 600, 900, 1500, 2500, *etc.*), type of face (*e.g.,* flat face, full face, raised face, *etc.*), configuration (*e.g.,* weld neck, slip on, socket weld, lap joint, threaded, *etc.*), wall thickness (usually, but not necessarily, expressed in inches), normalization, or whether or not heat treated. These carbon steel flanges either meet or exceed the requirements of the ASTM A105, ASTM A694, ASTM A181, ASTM A350 and ASTM A707 standards (or comparable foreign specifications). The scope includes any flanges produced to the above-referenced ASTM standards as currently stated or as may be amended. The term ''carbon steel'' under this scope is steel in which:

(a) Iron predominates, by weight, over each of the other contained elements:

(b) The carbon content is 2 percent or less, by weight; and

(c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 0.87 percent of aluminum;
(ii) 0.0105 percent of boron;
(iii) 10.10 percent of chromium;
(iv) 1.55 percent of columbium;
(v) 3.10 percent of copper;
(vi) 0.38 percent of lead;
(vii) 3.04 percent of manganese;
(viii) 2.05 percent of molybdenum;
(ix) 20.15 percent of nickel;
(x) 1.55 percent of niobium;
(xi) 0.20 percent of nitrogen;
(xii) 0.21 percent of phosphorus;
(xiii) 3.10 percent of silicon;
(xiv) 0.21 percent of sulfur;
(xv) 1.05 percent of titanium;
(xvi) 4.06 percent of tungsten;
(xvii) 0.53 percent of vanadium; or
(xviii) 0.015 percent of zirconium.

Finished carbon steel flanges are currently classified under subheadings 7307.91.5010 and 7307.91.5050 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also be entered under HTSUS subheadings 7307.91.5030 and 7307.91.5070. The HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2017–13629 Filed 6–28–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–871]

Finished Carbon Steel Flanges From India: Final Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) determines that imports of finished carbon steel flanges (flanges) from India are being, or are likely to be, sold in the United States at less than fair value (LTFV). The final estimated weighted-average dumping margins of sales at LTFV are listed below in the section entitled ''Final Determination.'' The period of investigation is April 1, 2015, through March 31, 2016.

DATES: Effective June 29, 2017.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2924, or (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2017, the Department published the *Preliminary Determination* in the **Federal Register**.[1] In the *Preliminary Determination,* we postponed the final determination until no later than 135 days after the date of publication of the *Preliminary Determination,* in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act).[2]

The petitioners in this investigation are Weldbend Corporation and Boltex Manufacturing Co., L.P. The two mandatory respondents in this investigation are: R. N. Gupta & Co., Ltd. (Gupta); and Norma (India) Limited (Norma).

A summary of the events that occurred since the Department published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the accompanying Issues and Decision Memorandum.[3] 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 is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov.* The signed and electronic versions of

[1] *See Finished Carbon Steel Flanges from India: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 82 FR 9719 (February 8, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Preliminary Determination,* 82 FR at 9721.

[3] *See* Memorandum, ''Finished Carbon Steel Flanges from India: Issues and Decision Memorandum for the Final Determination of Sales at Less Than Fair Value,'' dated concurrently with this determination and hereby adopted by this notice.

the Issues and Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are finished carbon steel flanges from India. The Department did not receive any scope comments, and has not updated the scope of the investigation since the *Preliminary Determination.* For a complete description of the scope of the investigation, *see* Appendix I of this notice.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by interested parties in this investigation are addressed in the Issues and Decision Memorandum. A list of these issues is attached to this notice at Appendix II.

Verification

As provided in section 782(i) of the Act, in February 2017, we conducted sales and cost verifications of the questionnaire responses submitted by Gupta and Norma. We used standard verification procedures, including an examination of relevant accounting and production records, as well as original source documents provided by both respondents.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verification, we made certain changes to the dumping margin calculations for each respondent, Gupta and Norma. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

Sections 735(c)(1)(B)(i)(II) and 735(c)(5) of the Act provide that in the final determination the Department shall determine an estimated all-others rate for all exporters and producers not individually investigated. Section 735(c)(5)(A) of the Act states that, generally, the estimated rate for all others shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act. In this investigation, we calculated weighted-average dumping margins for both mandatory respondents that are above *de minimis* and which are not based on section 776 of the Act. However, because there are only two weighted-average dumping margins for this final determination, using a weighted-average of these two rates risks disclosure of business proprietary data. Therefore, the Department assigned a margin to the all-others rate companies based on the simple average of the two mandatory respondents' rates.[4]

Final Determination

The Department determines, as provided in section 735 of the Act, the following weighted-average dumping margins for the period April 1, 2015 through March 31, 2016:

Exporter/producer	Weighted-average margins (percent)	Cash deposit adjusted for subsidy offset (percent)
Norma (India) Limited/USK Exports Private Limited/Uma Shanker Khandelwal & Co./Bansidhar Chiranjilal	11.32	8.56
R. N. Gupta & Co., Ltd	12.58	9.27
All-Others	11.95	8.91

Disclosure

We intend to disclose the calculations performed to interested parties in this proceeding within five days of the date of announcement, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of flanges from India, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after February 8, 2017, the date of publication of the *Preliminary Determination.* Furthermore, the Department will instruct CBP to require a cash deposit for such entries of merchandise. The Department normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. Accordingly, where the Department made an affirmative determination for countervailable export subsidies, the Department has offset the estimated weighted-average dumping margin by the appropriate CVD rate.[5] Any such adjusted cash deposit rate may be found in the ''Final Determination'' section, above. Pursuant to section 735(c)(1)(B)(ii) of the Act, CBP shall require a cash deposit equal to the weighted-average amount by which normal value exceeds U.S. price, as follows: (1) For Gupta and Norma, the cash deposit rates will be the cash deposit rates adjusted for export subsidies listed above; (2) if the exporter is not a firm identified in this investigation but the producer is, then the cash deposit rate will be equal to the adjusted cash deposit rate established for the producer of the subject merchandise; (3) the cash deposit rate for all other producers or exporters will be 8.91 percent, as discussed in the ''All-Others Rate'' section and as listed in the chart, above.

U.S. International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of our final determination. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation of finished carbon steel flanges from India no later than 45 days after our final determination. If the ITC determines that material injury or threat

[4] We calculated a simple average because the record does not contain usable publicly ranged data for both respondents.

[5] *See* Memorandum, ''Analysis for the Final Determination of the Antidumping Duty Investigation of Finished Carbon Steel Flanges (Flanges) from Turkey: R. N. Gupta & Co., Ltd. (Gupta)'' dated June 23, 2017; *see also* Memorandum, ''Analysis for the Final Determination of the Antidumping Duty Investigation of Finished Carbon Steel Flanges (Flanges) from Turkey: Norma (India) Limited (Norma),'' dated June 23, 2017.

of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

This notice will serve as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination and notice are issued and published in accordance with sections 735(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: June 23, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The scope of this investigation covers finished carbon steel flanges. Finished carbon steel flanges differ from unfinished carbon steel flanges (also known as carbon steel flange forgings) in that they have undergone further processing after forging, including, but not limited to, beveling, bore threading, center or step boring, face machining, taper boring, machining ends or surfaces, drilling bolt holes, and/or de-burring or shot blasting. Any one of these post-forging processes suffices to render the forging into a finished carbon steel flange for purposes of this investigation. However, mere heat treatment of a carbon steel flange forging (without any other further processing after forging) does not render the forging into a finished carbon steel flange for purposes of this investigation.

While these finished carbon steel flanges are generally manufactured to specification ASME B16.5 or ASME B16.47 series A or series B, the scope is not limited to flanges produced under those specifications. All types of finished carbon steel flanges are included in the scope regardless of pipe size (which may or may not be expressed in inches of nominal pipe size), pressure class (usually, but not necessarily, expressed in pounds of pressure, *e.g.,* 150, 300, 400, 600, 900, 1500, 2500, *etc.*), type of face (*e.g.,* flat face, full face, raised face, *etc.*), configuration (*e.g.,* weld neck, slip on, socket weld, lap joint, threaded, *etc.*), wall thickness (usually, but not necessarily, expressed in inches), normalization, or whether or not heat treated. These carbon steel flanges either meet or exceed the requirements of the ASTM A105, ASTM A694, ASTM A181, ASTM A350 and ASTM A707 standards (or comparable foreign specifications). The scope includes any flanges produced to the above-referenced ASTM standards as currently stated or as may be amended. The term ''carbon steel'' under this scope is steel in which:

(a) Iron predominates, by weight, over each of the other contained elements:

(b) The carbon content is 2 percent or less, by weight; and

(c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 0.87 percent of aluminum;
(ii) 0.0105 percent of boron;
(iii) 10.10 percent of chromium;
(iv) 1.55 percent of columbium;
(v) 3.10 percent of copper;
(vi) 0.38 percent of lead;
(vii) 3.04 percent of manganese;
(viii) 2.05 percent of molybdenum;
(ix) 20.15 percent of nickel;
(x) 1.55 percent of niobium;
(xi) 0.20 percent of nitrogen;
(xii) 0.21 percent of phosphorus;
(xiii) 3.10 percent of silicon;
(xiv) 0.21 percent of sulfur;
(xv) 1.05 percent of titanium;
(xvi) 4.06 percent of tungsten;
(xvii) 0.53 percent of vanadium; or
(xviii) 0.015 percent of zirconium.

Finished carbon steel flanges are currently classified under subheadings 7307.91.5010 and 7307.91.5050 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also be entered under HTSUS subheadings 7307.91.5030 and 7307.91.5070. The HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2017–13627 Filed 6–28–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF504

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, July 19, 2017 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Holiday Inn, 700 Myles Standish Boulevard, Taunton, MA 02780: (508) 823–0430.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Research Steering Committee will discuss how recently set priorities may be accomplished and potential improvements to the priority setting process. The Committee will receive an update on recent Northeast Cooperative Research Program (NCRP) activities, discuss the recent programmatic review and develop recommendations for how the program may help address Council research priorities and other improvements. They will also receive a presentation on creating a vision for the future of stock assessment using technologies currently in development as well as review completed research

projects on the topics of recreational discard mortality, the commercial redfish fishery, and fishing gear conservation engineering. The Committee will discuss the NCRP network approach to funding research and develop recommendations. The Committee will also address other business as necessary.

Although other non-emergency issues not on the agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 23, 2017.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–13620 Filed 6–28–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF457

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Central Bay Operations and Maintenance Facility Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the San Francisco Bay Area Water Emergency Transportation Authority (WETA) for authorization to take marine mammals incidental to construction activities as part of its Central Bay Operations and Maintenance Facility project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting public comment on its proposal to issue an incidental harassment authorization (IHA) to WETA to incidentally take marine mammals, by Level A and Level B harassment only, during the specified activity. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than July 31, 2017.

ADDRESSES: Comments on this proposal should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910, and electronic comments should be sent to *ITP.mccue@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *www.nmfs.noaa.gov/pr/permits/incidental/construction.html* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Laura McCue, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the applications and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to environmental consequences on the human environment.

This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical

exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On May 3, 2017, NMFS received a request from WETA for an IHA to take marine mammals incidental to pile driving and removal in association with the Central Bay Operations and Maintenance Facility Project (Project) in Alameda, California. WETA's request is for take of seven species by Level A and Level B harassment. Neither WETA nor NMFS expect mortality to result from this activity and, therefore, an IHA is appropriate.

This is the second year of a 2-year project. In-water work associated with the second year of construction is expected to be completed within 22 days. This proposed IHA is for the second phase of construction activities (August 1, 2017 through November 30, 2017). WETA received authorization for take of marine mammals incidental to these same activities for the first phase of construction in 2016 (80 FR 10060; February 25, 2015). In addition, similar construction and pile driving activities in San Francisco Bay have been authorized by NMFS in the past. These projects include construction activities at the San Francisco Ferry Terminal (81 FR 43993, July 6, 2016); Exploratorium (75 FR 66065, October 27, 2010); Pier 36 (77 FR 20361, April 4, 2012); and the San Francisco-Oakland Bay Bridge (71 FR 26750, May 8, 2006; 72 FR 25748, August 9, 2007; 74 FR 41684, August 18, 2009; 76 FR 7156, February 9, 2011; 78 FR 2371, January 11, 2013; 79 FR 2421, January 14, 2014; and 80 FR 43710, July 23, 2015). This IHA would be valid from August 1, 2017, through July 31, 2018.

Description of the Specified Activity

Overview

WETA is constructing a Central Bay Operations and Maintenance Facility to serve as the central San Francisco Bay base for WETA's ferry fleet, Operations Control Center (OCC), and Emergency Operations Center (EOC). The Project will provide maintenance services such as fueling, engine oil changes, concession supply, and light repair work for WETA ferry boats operating in the central San Francisco Bay. In addition, the project will be the location for operational activities of WETA, including day-to-day management and oversight of services, crew, and facilities. In the event of a regional disaster, the facility will also function as an EOC, serving passengers and sustaining water transit service for emergency response and recovery.

The first year of the Project included construction to the landside facility, marine facility, berthing floats, gangway, fueling facility, utilities, stormwater drainage, and site access. Construction occurred over 4 months in 2016 and included seawall construction and floating marina pile removal.

Dates and Duration

The total project is expected to require a maximum of 22 days of in-water pile driving. In-water activities are limited to occurring between August 1 and November 30 of any year to minimize impacts to special-status and commercially important fish species, as established in WETA's Long-Term Management Strategy. This proposed authorization would be effective from August 1, 2017 through July 31, 2018.

Specific Geographic Region

The Central Bay operations and maintenance facility is located at Alameda Point in San Francisco Bay, Alameda, CA (see Figure 1 of WETA's application). The project site is bounded on the east by the Bay Trail and an undeveloped park; and on the north by a paved open area and West Hornet Avenue (presently not a public right-of-way), which is defined by curbs and pavement stripes. Pier 3 lies to the west of the site, along with the USS Hornet, a functioning museum and designated national historic landmark. The United States Department of Transportation Maritime Administration leases the property west and north of the site, including a landside building and several piers from the City of Alameda. A concrete seawall delineates the southern edge of the landside portion; the seawall is tilted and cracked, and riprap and broken concrete span the area between the seawall and the water. Ambient sound levels are not available near Alameda Point; however, in this industrial area, ambient sound levels may exceed 120 dB RMS as a result of the nearly continuous noise from recreational and commercial boat traffic.

Detailed Description of Activities

The second phase of the project includes construction of berthing slips and a system of platforms and access ramps. In 2017, the project activities will include both the removal and installation of steel piles as summarized in Table 1. Demolition and construction could be completed within 22 days. Structural piles in the water will be driven in place by a diesel impact hammer or with a vibratory hammer. Vibratory driving is the preferred method and will be used unless a pile encounters harder substrate that requires the use of an impact hammer to complete installation. Vibratory driving would require 200 to 320 seconds of driving per pile. For impact driving, each pile will require approximately 450 to 600 hammer strikes to put each pile in place. It is estimated that two to three piles will be driven per day during in-water pile-driving operations. Temporary template piles will be installed to guide pile installation. These template piles will consist of steel H-piles and would be installed and extracted using vibratory methods.

A total of 29 steel pipe piles, ranging from 24 inches to 42 inches in diameter, will be driven in 2017; 20 (14-inch) H-piles will temporarily be installed and then removed in 2017 (Table 1).

TABLE 1—SUMMARY OF PILE REMOVAL AND INSTALLATION FOR 2017 ACTIVITIES

Project element	Pile diameter	Pile type	Method	Total number of piles/days
Float Guide Pile Installation.	42 inches	Steel Pipe	Impact Driver, 600 blows/pile OR Vibratory Driver, 320 seconds/pile.	15 piles/8 days (2 piles per day).
Donut Pile Installation	36 inches	Steel Pipe	Impact Driver, 600 blows/pile OR Vibratory Driver, 300 seconds/pile.	6 piles/3 days (2 piles per day).
Dolphin Pile Installation	24 inches	Steel Pipe	Impact Driver, 450 blows/pile OR Vibratory Driver, 205 seconds/pile.	8 piles/3 days (3 piles per day).
Template Pile Installation and Extraction.	14 inches	Steel H-piles	Vibratory Driver, 120 seconds/pile	20 piles/days (5 piles per day, installation and extraction).

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of the Specified Activity

There are seven marine mammal species that may inhabit or may likely transit through the waters nearby the project area, and are expected to potentially be taken by the specified activity. These include the Pacific harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), northern elephant seal (*Mirounga angustirostris*), northern fur seal (*Callorhinus ursinus*), harbor porpoise (*Phocoena phocoena*), gray whale (*Eschrichtius robustus*), and bottlenose dolphin (*Tursiops truncatus*). Multiple additional marine mammal species may occasionally enter the activity area in San Francisco Bay but would not be expected to occur in shallow nearshore waters of the action area. Guadalupe fur seals (*Arctocephalus philippii townsendi*) generally do not occur in San Francisco Bay, however, there have been recent sightings of this species due to an El Niño event. Only single individuals of this species have occasionally been sighted inside San Francisco Bay, and their presence near the action area is considered unlikely. No takes are requested for this species, and a shutdown zone will be in effect for this species if observed approaching the Level B harassment zone. Although it is possible that a humpback whale (*Megaptera novaeangliae*) may enter San Francisco Bay and find its way into the project area during construction activities, their occurrence is unlikely, since humpback whales very rarely enter the San Francisco Bay area. No takes are requested for this species, and a delay and shutdown procedure will be in effect for this species if observed approaching the Level B harassment zone.

Sections 4 and 5 of WETA's application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; *www.nmfs.noaa.gov/pr/sars/*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's Web site (*www.nmfs.noaa.gov/pr/species/mammals/*).

Table 2 lists all species with expected potential for occurrence in San Francisco Bay near Alameda Point and summarizes information related to the population or stock, including potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality are included here as gross indicators of the status of the species and other threats.

Species that could potentially occur in the proposed survey areas, but are not expected to have reasonable potential to be harassed by in-water construction, are described briefly but omitted from further analysis. These include extralimital species, which are species that do not normally occur in a given area but for which there are one or more occurrence records that are considered beyond the normal range of the species (*e.g.* humpback whales and Guadalupe fur seal). For status of species, we provide information regarding U.S. regulatory status under the MMPA and ESA.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's draft U.S. Pacific SARs (*e.g.,* NMFS 2016). All values presented in Table 2 are the most recent available at the time of publication and are available in the draft 2016 SARs (NMFS 2016).

TABLE 2—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF ALAMEDA POINT

Species	Stock	ESA/ MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Relative occurrence in San Francisco Bay; season of occurrence
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family Phocoenidae (porpoises): Harbor porpoise (*Phocoena phocoena*).	San Francisco-Russian River.	-; N	9,886 (0.51; 6,625; 2011)	66	Common.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family Delphinidae (dolphins): Bottlenose dolphin [4] (*Tursiops truncatus*).	California coastal.	-; N	453 (0.06; 346; 2011)	2.4	Rare.
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family Eschrichtiidae: Gray whale (*Eschrichtius robustus*).	Eastern N. Pacific.	-; N	20,990 (0.05; 20,125; 2011)	624	Rare.

TABLE 2—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF ALAMEDA POINT—Continued

Species	Stock	ESA/ MMPA status; Strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Relative occurrence in San Francisco Bay; season of occurrence
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)					
Family Balaenopteridae: Humpback whale (*Megaptera novaeangliae*).	California/Oregon/Washington stock.	T [5]; S	1,918 (0.05; 1,876; 2014)	11	Unlikely.
Order Carnivora—Superfamily Pinnipedia					
Family Otariidae (eared seals and sea lions):					
California sea lion (*Zalophus californianus*).	U.S.	-; N	296,750 (n/a; 153,337; 2011)	9,200	Common.
Guadalupe fur seal [5] (*Arctocephalus philippii townsendi*).	Mexico to California.	T; S	20,000 (n/a; 15,830; 2010)	91	Unlikely.
Northern fur seal (*Callorhinus ursinus*).	California stock.	-; N	14,050 (n/a; 7,524; 2013)	451	Unlikely.
Family Phocidae (earless seals):					
Harbor seal (*Phoca vitulina*).	California	-; N	30,968 (n/a; 27,348; 2012)	1,641	Common; Year-round resident.
Northern elephant seal (*Mirounga angustirostris*).	California breeding stock.	-; N	179,000 (n/a; 81,368; 2010)	4,882	Rare.

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] Abundance estimates for these stocks are greater than eight years old and are, therefore, not considered current. PBR is considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates and PBR values, as these represent the best available information for use in this document.

[5] The humpback whales considered under the MMPA to be part of this stock could be from any of three different DPSs. In CA, it would be expected to primarily be whales from the Mexico DPS but could also be whales from the Central America DPS.

Below, for those species that are likely to be taken by the activities described, we offer a brief introduction to the species and relevant stock. We also provide information regarding population trends and threats, and describe any information regarding local occurrence.

Harbor Seal

The Pacific harbor seal is one of five subspecies of *Phoca vitulina,* or the common harbor seal. There are five species of harbor seal in the Pacific EEZ: (1) California stock; (2) Oregon/Washington coast stock; (3) Washington Northern inland waters stock; (4) Southern Puget Sound stock; and (5) Hood Canal stock. Only the California stock occurs in the action area and is analyzed in this document. The current abundance estimate for this stock is 30,968. This stock is not considered strategic or designated as depleted under the MMPA and is not listed under the ESA. PBR is 1,641 animals per year. The average annual rate of incidental commercial fishery mortality (30 animals) is less than 10 percent of the calculated PBR (1,641 animals); therefore, fishery mortality is considered insignificant (Carretta *et al.,* 2016).

Although generally solitary in the water, harbor seals congregate at haulouts to rest, socialize, breed, and molt. Habitats used as haul-out sites include tidal rocks, bayflats, sandbars, and sandy beaches (Zeiner *et al.,* 1990). Haul-out sites are relatively consistent from year-to-year (Kopec and Harvey 1995), and females have been recorded returning to their own natal haul-out when breeding (Cunningham *et al.,* 2009).

Long-term monitoring studies have been conducted at the largest harbor seal colonies in Point Reyes National Seashore and Golden Gate National Recreation Area since 1976. Castro Rocks and other haulouts in San Francisco Bay are part of the regional survey area for this study and have been included in annual survey efforts. Between 2007 and 2012, the average number of adults observed ranged from 126 to 166 during the breeding season (March through May), and from 92 to 129 during the molting season (June through July) (Truchinski *et al.,* 2008; Flynn *et al.,* 2009; Codde *et al.,* 2010; Codde *et al.,* 2011; Codde *et al.,* 2012; Codde and Allen 2015). Marine mammal monitoring at multiple locations inside San Francisco Bay was conducted by Caltrans from May 1998 to February 2002, and determined that at least 500 harbor seals populate San Francisco Bay (Green *et al.,* 2002). This estimate is consistent with previous seal counts in the San Francisco Bay, which ranged from 524 to 641 seals from 1987

to 1999 (Goals Project 2000). Although harbor seals haul-out at approximately 20 locations in San Francisco Bay, there are three locations that serve as primary locations: Mowry Slough in the south Bay, Corte Madera Marsh and Castro Rocks in the north Bay, and Yerba Buena Island in the central Bay (Grigg 2008; Gibble 2011). The main pupping areas in the San Francisco Bay are at Mowry Slough and Castro Rocks (Caltrans 2012). Pupping season for harbor seals in San Francisco Bay spans from approximately March 15 through May 31, with pup numbers generally peaking in late April or May (Carretta *et al.,* 2016). Births of harbor seals have not been observed at Corte Madera Marsh and Yerba Buena Island, but a few pups have been seen at these sites.

Harbor seals occasionally use the westernmost tip of Breakwater Island as a haul-out site and forage in the Breakwater Gap area. The tip is approximately one mile west of the project site. Aerial surveys of seal haul-outs conducted in 1995–97 and incidental counts made during summer tern foraging studies conducted in 1984–93 usually counted fewer than 10 seals present at any one time. There is some evidence that more harbor seals have been using the westernmost tip of Breakwater Island in recent years, or that it is more important as a winter haul-out. Seventy-three seals were counted on Breakwater Island in January 1997, and 20 were observed hauled-out on April 4, 1998. A small pup was observed during May 1997; however, site characteristics are not ideal for the island to be a major pupping area (USFWS, 1998). Recent observations indicate that as many as 32 harbor seals irregularly haul out on Breakwater Island (Klein 2017).

WETA constructed a floating haul-out platform to replace the deteriorating dock that hosted hauled out harbor seals since 2010, which was removed at the project site. This new platform is approximately 1,000 feet (305 meters (m)) southwest of the project site and was constructed in June 2016. Use of the platform by seals has increased steadily since its installation, with as many as 70 seals observed on the platform at once (Bay Nature 2017). Volunteer monitoring of harbor seal use of the haul-out platform has been conducted since its installation. The average number of animals hauled out from June 2016 to April 2017 is 15 seals. Monitoring during pile driving work in September 2016 found that approximately 0.5 harbor seal per day were observed within 130 meters of the point source. During dredging monitoring in November 2016, approximately 1.6 harbor seals per day were observed within 130 meters of the source (*i.e.,* the dredge bucket). The increase in seal observations may be due to seasonal changes, or may be due to increased visitation of the platform as more seals became aware and familiar with the structure that was installed in June of 2016. Using the higher (November 2016) average, it is estimated that up to 18 harbor seals (1.6 seals per day on 11 anticipated days of impact driving) may enter the 130 meter Level A zone during impact pile driving of the 42- and 36-in steel piles.

The nearest harbor seal pupping location is Yerba Buena Island, approximately 4.5 miles from the project vicinity. Harbor seals use Yerba Buena Island year-round, with the largest numbers seen during winter months, when Pacific Herring spawn (Grigg 2008). During marine mammal monitoring for construction of the new Bay Bridge, harbor seal counts at Yerba Buena Island ranged from zero to a maximum of 188 individuals (Caltrans 2012). Higher numbers also occur during molting and breeding seasons. Foraging areas in the vicinity are concentrated between Yerba Buena Island and Treasure Island, and an area southeast of Yerba Buena Island (Caltrans 2015b).

California Sea Lion

California sea lions range all along the western border of North America. The breeding areas of the California sea lion are on islands located in southern California, western Baja California, and the Gulf of California (Allen and Angliss 2015). Although California sea lions forage and conduct many activities in the water, they also use haul-outs. California sea lions breed in Southern California and along the Channel Islands during the spring. The current population estimate for California sea lions is 296,750 animals. This species is not considered strategic under the MMPA, and is not designated as depleted. This species is also not listed under the ESA. PBR is 9,200 (Carretta *et al.,* 2016). Interactions with fisheries, boat collisions, human interactions, and entanglement are the main threats to this species (Carretta *et al.,* 2016).

El Niño affects California sea lion populations, with increased observations and strandings of this species in the area. Current observations of this species in CA have increased significantly over the past few years. Additionally, as a result of the large numbers of sea lion strandings in 2013, NOAA declared an unusual mortality event (UME). Although the exact causes of this UME are unknown, two hypotheses meriting further study include nutritional stress of pups resulting from a lack of forage fish available to lactating mothers and unknown disease agents during that time period.

In San Francisco Bay, sea lions haul out primarily on floating K docks at Pier 39 in the Fisherman's Wharf area of the San Francisco Marina. The Pier 39 haul out is approximately 6.5 miles from the project vicinity. The Marine Mammal Center (TMMC) in Sausalito, California has performed monitoring surveys at this location since 1991. A maximum of 1,706 sea lions was seen hauled out during one survey effort in 2009 (TMMC 2015). Winter numbers are generally over 500 animals (Goals Project 2000). In August to September, counts average from 350 to 850 (NMFS 2004). Of the California sea lions observed, approximately 85 percent were male. No pupping activity has been observed at this site or at other locations in the San Francisco Bay (Caltrans 2012). The California sea lions usually frequent Pier 39 in August after returning from the Channel Islands (Caltrans 2013). In addition to the Pier 39 haul-out, California sea lions haul out on buoys and similar structures throughout San Francisco Bay. They mainly are seen swimming off the San Francisco and Marin shorelines within San Francisco Bay, but may occasionally enter the project area to forage.

California sea lions have not been documented using the Alameda breakwater or haul-out platform, though it is anticipated that they may occasionally use the structures in Alameda Harbor that are known to be used by harbor seals.

Although there is little information regarding the foraging behavior of the California sea lion in the San Francisco Bay, they have been observed foraging on a regular basis in the shipping channel south of Yerba Buena Island. Foraging grounds have also been identified for pinnipeds, including sea lions, between Yerba Buena Island and Treasure Island, as well as off the Tiburon Peninsula (Caltrans 2001).

Northern Elephant Seal

Northern elephant seals breed and give birth in California (U.S.) and Baja California (Mexico), primarily on offshore islands (Stewart *et al.,* 1994), from December to March (Stewart and Huber 1993). Although movement and genetic exchange continues between rookeries, most elephant seals return to natal rookeries when they start breeding (Huber *et al.,* 1991). The California breeding population is now demographically isolated from the Baja

California population, and is the only stock to occur near the action area. The current abundance estimate for this stock is 179,000 animals, with PBR at 4,882 animals (Carretta *et al.,* 2016). The population is reported to have grown at 3.8 percent annually since 1988 (Lowry *et al.,* 2014). Fishery interactions and marine debris entanglement are the biggest threats to this species (Carretta *et al.,* 2016). Northern elephant seals are not listed under the Endangered Species Act, nor are they designated as depleted, or considered strategic under the MMPA.

Northern elephant seals are common on California coastal mainland and island sites where they pup, breed, rest, and molt. The largest rookeries are on San Nicolas and San Miguel islands in the Northern Channel Islands. In the vicinity of San Francisco Bay, elephant seals breed, molt, and haul out at Año Nuevo Island, the Farallon Islands, and Point Reyes National Seashore (Lowry *et al.,* 2014). Adults reside in offshore pelagic waters when not breeding or molting. Northern elephant seals haul out to give birth and breed from December through March, and pups remain onshore or in adjacent shallow water through May, when they may occasionally make brief stops in San Francisco Bay (Caltrans 2015b). The most recent sighting was in 2012 on the beach at Clipper Cove on Treasure Island, when a healthy yearling elephant seal hauled out for approximately one day. Approximately 100 juvenile northern elephant seals strand in San Francisco Bay each year, including individual strandings at Yerba Buena Island and Treasure Island (fewer than 10 strandings per year) (Caltrans 2015b). When pups of the year return in the late summer and fall to haul out at rookery sites, they may also occasionally make brief stops in San Francisco Bay.

Northern Fur Seal

Northern fur seals *(Callorhinus ursinus*) occur from southern California north to the Bering Sea and west to the Okhotsk Sea and Honshu Island, Japan. During the breeding season, approximately 74 percent of the worldwide population is found on the Pribilof Islands in the southern Bering Sea, with the remaining animals spread throughout the North Pacific Ocean (Lander and Kajimura 1982). Of the seals in U.S. waters outside of the Pribilofs, approximately one percent of the population is found on Bogoslof Island in the southern Bering Sea, San Miguel Island off southern California (NMFS 2007), and the Farallon Islands off central California. Two separate stocks of northern fur seals are recognized within U.S. waters: an Eastern Pacific stock and a California stock (including San Miguel Island and the Farallon Islands). Only the California breeding stock is considered here since it is the only stock to occur near the action area. The current abundance estimate for this stock is 14,050 and PBR is set at 451 animals (Carretta *et al.,* 2015). This stock has grown exponentially during the past several years. Interaction with fisheries remains the top threat to this species (Carretta *et al.,* 2015). This stock is not considered depleted or classified as strategic under the MMPA, and is not listed under the ESA.

Harbor Porpoise

In the Pacific, harbor porpoise are found in coastal and inland waters from Point Conception, California to Alaska and across to Kamchatka and Japan (Gaskin 1984). Harbor porpoise appear to have more restricted movements along the western coast of the continental U.S. than along the eastern coast. Regional differences in pollutant residues in harbor porpoise indicate that they do not move extensively between California, Oregon, and Washington (Calambokidis and Barlow 1991). That study also showed some regional differences within California (Allen and Angliss 2014). Of the 10 stocks of Pacific harbor porpoise, only the San Francisco-Russian River stock is considered here since it is the only stock to occur near the action area. This current abundance estimate for this stock is 9,886 animals, with a PBR of 66 animals (Carretta *et al.,* 2015). Current population trends are not available for this stock. The main threats to this stock include fishery interactions. This stock is not designated as strategic or considered depleted under the MMPA, and is not listed under the ESA.

In recent years, however, there have been increasingly common observations of harbor porpoises in central, north, and south San Francisco Bay. According to observations by the Golden Gate Cetacean Research team as part of their multi-year assessment, more than 100 porpoises may be seen at one time entering San Francisco Bay; and more than 600 individual animals are documented in a photo-ID database. Porpoise activity inside San Francisco Bay is thought to be related to foraging and mating behaviors (Keener 2011; Duffy 2015). Sightings are concentrated in the vicinity of the Golden Gate Bridge and Angel Island, with lesser numbers sighted south of Alcatraz and west of Treasure Island (Keener 2011) and near the project area.

Gray Whale

Once common throughout the Northern Hemisphere, the gray whale was extinct in the Atlantic by the early 1700s. Gray whales are now only commonly found in the North Pacific. Genetic comparisons indicate there are distinct ''Eastern North Pacific'' (ENP) and ''Western North Pacific'' (WNP) population stocks, with differentiation in both mitochondrial DNA (mtDNA) haplotype and microsatellite allele frequencies (LeDuc *et al.,* 2002; Lang *et al.,* 2011a; Weller *et al.,* 2013). Only the ENP stock occurs in the action area and is considered in this document. The current population estimate for this stock is 20,990 animals, with PBR at 624 animals (Carretta *et al.,* 2015). The population size of the ENP gray whale stock has increased over several decades despite an UME in 1999 and 2000 and has been relatively stable since the mid-1990s. Interactions with fisheries, ship strikes, entanglement in marine debris, and habitat degradation are the main concerns for the gray whale population (Carretta *et al.,* 2015). This stock is not listed under the ESA, and is not considered a strategic stock or designated as depleted under the MMPA.

Marine Mammal Monitors (MMO) with the Caltrans Richmond-San Rafael Bridge project recorded 12 living and two dead gray whales in the surveys performed in 2012. All sightings were in either the central or north Bay; and all but two sightings occurred during the months of April and May. One gray whale was sighted in June, and one in October (the specific years were unreported). The Oceanic Society has tracked gray whale sightings since they began returning to San Francisco Bay regularly in the late 1990s. The Oceanic Society data show that all age classes of gray whales are entering San Francisco Bay, and that they enter as singles or in groups of as many as five individuals. However, the data do not distinguish between sightings of gray whales and number of individual whales (Winning, 2008). It is estimated that two to six gray whales enter San Francisco Bay in any given year.

Bottlenose Dolphin

Bottlenose dolphins are distributed worldwide in tropical and warm-temperate waters. In many regions, including California, separate coastal and offshore populations are known (Walker 1981; Ross and Cockcroft 1990; Van Waerebeek *et al.,* 1990). The California coastal stock is distinct from the offshore stock based on significant differences in cranial morphology and

genetics, where the two stocks only share one of 56 haplotypes (Carretta *et al.,* 2016). California coastal bottlenose dolphins are found within about one kilometer of shore (Hansen 1990; Carretta *et al.,* 1998; Defran and Weller 1999) from central California south into Mexican waters, at least as far south as San Quintin, Mexico, and the area between Ensenada and San Quintin, Mexico may represent a southern boundary for the California coastal population (Carretta *et al.,* 2016). Oceanographic events appear to influence the distribution of animals along the coasts of California and Baja California, Mexico, as indicated by El Niño events. There are seven stocks of bottlenose dolphins in the Pacific; however, only the California coastal stock may occur in the action area, and is analyzed in this proposed IHA. The current stock abundance estimate for the California coastal stock is 453 animals, with PBR at 3.3 animals (Carretta *et al.,* 2016). Pollutant levels in California are a threat to this species, and this stock may be vulnerable to disease outbreaks, particularly morbillivirus (Carretta *et al.,* 2008). This stock is not listed under the ESA, and is not considered strategic or designated as depleted under the MMPA.

Since the 1982–83 El Niño, which increased water temperatures off California, bottlenose dolphins have been consistently sighted along the central California coast (NMFS 2008). The northern limit of their regular range is currently the Pacific coast off San Francisco and Marin County, and they occasionally enter San Francisco Bay, sometimes foraging for fish in Fort Point Cove, just east of the Golden Gate Bridge, but are most often seen just within the Golden Gate when they are present (GGCR, 2016).

In the summer of 2015, a lone bottlenose dolphin was seen swimming in the Oyster Point area of South San Francisco (GGCR 2016) and west of Breakwater Island near a navigational buoy (Perlman 2017). It is believed that this is the same individual that regularly frequents the area (Perlman 2017). Such behavior may be considered abnormal as bottlenose dolphins almost always live in social groups.

Members of the California Coastal Stock are transient and make movements up and down the coast, and into some estuaries, throughout the year. This stock is highly transitory in nature, and is generally not expected to spend extended periods of time in San Francisco Bay. Incidental take of this species is being requested in the rare event they are present in San Francisco Bay during pile driving.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity (*e.g.,* sound produced by pile driving and removal) may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis* section will consider the content of this section, the *Estimated Take by Incidental Harassment* section and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave; lower frequency sounds have longer wavelengths than higher frequency sounds. Amplitude is the height of the sound pressure wave or the 'loudness' of a sound and is typically measured using the decibel (dB) scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 microPascal (μPa). One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position. Note that all underwater sound levels in this document are referenced to a pressure of 1 μPa and all airborne sound levels in this document are referenced to a pressure of 20 μPa.

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- *Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.
- *Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and

possibly down to 100 Hz during quiet times.

• *Biological:* Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.

• *Anthropogenic:* Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.,* 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

The underwater acoustic environment near Alameda Point is likely to be dominated by noise from day-to-day port and vessel activities. This is a highly industrialized area with high-use from small- to medium-sized vessels, and larger vessels that use the nearby major shipping channel.

In-water construction activities associated with the project would include impact pile driving and vibratory pile driving and removal. The sounds produced by these activities fall into one of two general sound types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.,* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI 1986; Harris 1998; NIOSH 1998; ISO 2003; ANSI 2005) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI 1995; NIOSH 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak SPLs may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.,* 2005).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals, and exposure to sound can have deleterious effects. To appropriately assess these potential effects, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on measured or estimated hearing ranges on the basis of available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. The lower and/or upper frequencies for some of these functional hearing groups have been modified from those designated by Southall *et al.* (2007). The marine mammal hearing groups and the associated frequencies are indicated below in Table 3 (note that these frequency ranges do not necessarily correspond to the range of best hearing, which varies by species).

TABLE 3—MARINE MAMMAL HEARING GROUPS AND THEIR GENERALIZED HEARING RANGE

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* and *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.

TABLE 3—MARINE MAMMAL HEARING GROUPS AND THEIR GENERALIZED HEARING RANGE—Continued

Hearing group	Generalized hearing range *
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

As mentioned previously in this document, seven marine mammal species (three cetaceans and four pinnipeds) may occur in the project area. Of these three cetaceans, one is classified as a low-frequency cetacean (*i.e.,* gray whale), one is classified as a mid-frequency cetacean (*i.e.,* bottlenose dolphin), and one is classified as a high-frequency cetaceans (*i.e.,* harbor porpoise) (Southall *et al.,* 2007). Additionally, harbor seals, Northern fur seals, and Northern elephant seals are classified as members of the phocid pinnipeds in water functional hearing group while California sea lions are grouped under the Otariid pinnipeds in water functional hearing group. A species' functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

Acoustic Impacts

Please refer to the information given previously (*Description of Sound Sources*) regarding sound, characteristics of sound types, and metrics used in this document. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following; temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Gotz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to WETA's construction activities.

Richardson *et al.,* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects (*i.e.,* permanent hearing impairment, certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that WETA's activities may result in such effects (see below for further discussion). Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.,* 1999; Schlundt *et al.,* 2000; Finneran *et al.,* 2002, 2005b). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals—PTS data exists only for a single harbor seal (Kastak *et al.,* 2008)—but are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dB above a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.,* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack 2007). WETA's activities do not involve the use of devices such as explosives or mid-frequency active sonar that are associated with these types of effects.

When a live or dead marine mammal swims or floats onto shore and is incapable of returning to sea, the event is termed a ''stranding'' (16 U.S.C. 1421h(3)). Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series (*e.g.,* Geraci *et al.,* 1999). However, the cause or causes of most strandings are unknown (*e.g.,* Best 1982). Combinations of dissimilar stressors may combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other would not be expected to produce the same outcome (*e.g.,* Sih *et al.,* 2004). For further description of stranding events see, *e.g.,* Southall *et al.,* 2006; Jepson *et al.,* 2013; Wright *et al.,* 2013.

1. *Temporary threshold shift*—TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*) and three species of pinnipeds (northern elephant seal, harbor seal, and California sea lion) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (*e.g.,* Finneran *et al.,* 2002; Nachtigall *et al.,* 2004; Kastak *et al.,* 2005; Lucke *et al.,* 2009; Popov *et al.,* 2011). In general, harbor seals (Kastak *et al.,* 2005; Kastelein *et al.,* 2012a) and harbor porpoises (Lucke *et al.,* 2009; Kastelein *et al.,* 2012b) have a lower TTS onset than other measured pinniped or cetacean species. Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.,* (2007) and Finneran and Jenkins (2012).

2. *Behavioral effects*—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.,* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007; NRC 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark 2000; Costa *et al.,* 2003; Ng and Leung 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a,b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at

the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005b, 2006; Gailey *et al.,* 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007b). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil 1997; Fritz *et al.,* 2002; Purser and Radford 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

3. *Stress responses*—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg 1987; Blecha 2000).

Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

4. *Auditory masking*—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007b; Di Iorio and Clark 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore 2014). Masking can be tested directly in captive species (*e.g.,* Erbe 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Acoustic Effects, Underwater

Potential Effects of Pile Driving and Removal Sound—The effects of sounds from pile driving and removal might include one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2003; Nowacek *et al.,* 2007; Southall *et al.,* 2007). The effects of pile driving and removal on marine mammals are dependent on several factors, including the type and depth of the animal; the pile size and type, and the intensity and duration of the pile driving/removal sound; the substrate; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving and removal activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the frequency, received level, and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the environment. In addition, substrates that are soft (*e.g.,* sand) would absorb or attenuate the sound more readily than hard substrates (*e.g.,* rock), which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source.

In the absence of mitigation, impacts to marine species could be expected to include physiological and behavioral responses to the acoustic signature (Viada *et al.,* 2008). Potential effects from impulsive sound sources like pile driving can range in severity from effects such as behavioral disturbance to

temporary or permanent hearing impairment (Yelverton *et al.,* 1973).

Hearing Impairment and Other Physical Effects—Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shifts. PTS constitutes injury, but TTS does not (Southall *et al.,* 2007). Based on the best scientific information available, the SPLs for the construction activities in this project are below the thresholds that could cause TTS or the onset of PTS (Table 5).

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving or removal to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially unlikely to incur auditory impairment or non-auditory physical effects.

Disturbance Reactions

Responses to continuous sound, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds. With both types of pile driving, it is likely that the onset of pile driving could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haul-outs or rookeries). Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). If a marine mammal responds to a stimulus by changing its behavior (*e.g.,* through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals, and if so potentially on the stock or species, could potentially be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to cause beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Longer-term habitat abandonment due to loss of desirable acoustic environment; and
- Longer-term cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.,* 2007).

Auditory Masking

Natural and artificial sounds can disrupt behavior by masking. The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Because sound generated from in-water pile driving and removal is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds made by porpoises. The most intense underwater sounds in the proposed action are those produced by impact pile driving. Given that the energy distribution of pile driving covers a broad frequency spectrum, sound from these sources would likely be within the audible range of marine mammals present in the project area. Impact pile driving activity is relatively short-term, with rapid pulses occurring for approximately fifteen minutes per pile. The probability for impact pile driving resulting from this proposed action masking acoustic signals important to the behavior and survival of marine mammal species is low. Vibratory pile driving is also relatively short-term, with rapid oscillations occurring for approximately one and a half hours per pile. It is possible that vibratory pile driving resulting from this proposed action may mask acoustic signals important to the behavior and survival of marine mammal species, but the short-term duration and limited affected area would result in insignificant impacts from masking. Any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis.

Acoustic Effects, Airborne—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise will primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been 'taken' as a result of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Multiple instances of exposure to sound

above NMFS' thresholds for behavioral harassment are not believed to result in increased behavioral disturbance, in either nature or intensity of disturbance reaction. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Anticipated Effects on Habitat

The proposed activities at the Project area would not result in permanent negative impacts to habitats used directly by marine mammals, but may have potential short-term impacts to food sources such as forage fish and may affect acoustic habitat (see masking discussion above). There are no known foraging hotspots or other ocean bottom structure of significant biological importance to marine mammals present in the marine waters of the project area. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The primary potential acoustic impacts to marine mammal habitat are associated with elevated sound levels produced by vibratory and impact pile driving and removal in the area. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

Pile Driving Effects on Potential Prey (Fish)

Construction activities would produce continuous (*i.e.,* vibratory pile driving sounds) and pulsed (*i.e.* impact driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan 2001, 2002; Popper and Hastings 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality.

The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

Pile Driving Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat in San Francisco Bay. Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity in San Francisco Bay.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Estimated Take by Incidental Harassment

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level A and Level B harassment, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to vibratory and impact pile driving and removal, and potential permanent threshold shift (PTS) for harbor seals that may transit through the Level A zone to their haulout. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* bubble curtain, soft start, etc.—discussed in detail below in *Proposed Mitigation* section), Level A harassment is neither anticipated nor proposed to be authorized for all other species.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. Below, we describe these components in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison et al., 2011). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to

underwater anthropogenic noise above received levels of 120 dB re 1 µPa (rms) for continuous (*e.g.* vibratory pile-driving, drilling) and above 160 dB re 1 µPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

WETA's proposed activities include the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 µPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Technical Guidance 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). WETA's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers to inform the final product, and are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *http://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-frequency cetaceans	*Cell 1*: Lpk,flat: 219 dB; LE,LF,24h: 183 dB	*Cell 2*: LI,LE,LF,24h: 199 dB.
Mid-frequency cetaceans	*Cell 3*: Lpk,flat: 230 dB; LE,MF,24h: 185 dB	*Cell 4*: LE,MF,24h: 198 dB.
High-frequency cetaceans	*Cell 5*: Lpk,flat: 202 dB; LE,HF,24h: 155 dB	*Cell 6*: LE,HF,24h: 173 dB.
Phocid Pinnipeds (underwaters)	*Cell 7*: Lpk,flat: 218 dB; LE,PW,24h: 185 dB	*Cell 8*: LE,PW,24h: 201 dB.
Otariid Pinnipeds (underwater)	*Cell 9*: Lpk,flat: 232 dB; LE,OW,24h: 203 dB	*Cell 10*: LE,OW,24h: 219 dB.

[1] NMFS 2016.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds.

Pile driving and removal generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$TL = B * \log_{10}(R_1/R_2)$,

Where:

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20 * log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10 * log[range]). A practical spreading value of 15 is often used under conditions, such as at the Central Bay operations and maintenance facility, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss (4.5 dB reduction in sound level for each doubling of distance) is assumed here.

Underwater Sound—The intensity of pile driving and removal sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. A number of studies, primarily on the west coast, have measured sound produced during underwater pile driving projects. These data are largely for impact driving of steel pipe piles and concrete piles as well as vibratory driving of steel pipe piles.

In order to determine reasonable source levels and their associated effects on marine mammals that are likely to result from vibratory or impact pile driving or removal at the Project area, we considered existing measurements from similar physical environments (*e.g.* substrate of bay mud and water depths ranging from 14 to 38 ft).

Level A Isopleths (Table 5)

The values used to calculate distances at which sound would be expected to exceed the Level A thresholds for impact driving of and 36 in and 42 in piles include peak values of 185 dB and anticipated SELs for unattenuated impact pile-driving of 175 dB, and peak values of 193 dB and SEL values of 167 for 24 in piles (Caltrans 2015a). Bubble curtains will be used during the installation of these piles, which is expected to reduce noise levels by about 10 dB rms (Caltrans 2015a), which are the values used in Table 5. Vibratory driving source levels include 175 dB RMS for 42-in piles, 170 dB RMS for 36-in piles, 165 dB RMS for 24 in piles, and 150 dB RMS for 14 in H piles (Caltrans 2015a). The inputs for the user spreadsheet from NMFS' Guidance are as follows: For impact driving, 450 strikes per pile with 3 piles per day for 24 in piles, and 600 strikes per pile with 2 piles per day for 36 in and 42 in piles. The total duration for vibratory driving of 14-in, 24-in, 36-in, and 42-in piles were all approximately 10 minutes (0.166666, 0.1708333 hours, 0.16666 hours, and 0.177777 hours, respectively).

TABLE 5—EXPECTED PILE-DRIVING NOISE LEVELS AND DISTANCES OF LEVEL A THRESHOLD EXCEEDANCE WITH IMPACT AND VIBRATORY DRIVER

Project element requiring pile installation	Source levels at 10 meters (dB)			Distance to level A threshold in meters				
	Peak [1]	SEL	RMS	Phocids	Otariids	LF * Cetaceans	MF * Cetaceans	HF * Cetaceans
42 in steel piles—Vibratory Driver	.....	.....	175	11.3	0.8	18.5	1.6	27.4
42 in steel piles—Impact Driver (BCA)[1]	200	173	.....	130	9.5	243	8.6	289.4
36-Inch Steel Piles—Vibratory Driver	.....	.....	170	5	0.4	8.2	0.7	12.2
36-Inch Steel Piles—Impact Driver (BCA)[1]	200	173	.....	130	9.5	243	8.6	289.4
24-Inch Steel Piles—Vibratory Driver	.....	.....	160	1.1	0.1	1.8	0.2	2.7
24-Inch Steel Piles—Impact Driver (BCA) [1]	193 [2]	167 [2]	.....	56	4.1	104.6	3.7	124.6
14 in H-piles—Vibratory Driver	.....	.....	150	0.2	0	0.4	0	0.6
14 in H-piles Vibratory Extraction	.....	.....	150	0.2	0	0.4	0	0.6

* Low frequency (LF) cetaceans, Mid frequency (MF) cetaceans, High frequency (HF) cetaceans.
[1] Bubble curtain attenuation (BCA). A bubble curtain will be used for impact driving and is assumed to reduce the source level by 10dB. Therefore, source levels were reduced by this amount for take calculations.

Level B Isopleths (Table 6)

Approximately 15 steel piles, 42-in in diameter, will be installed, with approximately 2 installed per day over 8 days. The source level for this pile size during impact driving came from the Caltrans summary table (Caltrans 2015a) for 36 in piles at approximately 10 m depth. The source level for this pile size during vibratory driving came from the Caltrans summary table for the ''loudest values'' for 36 in piles.

Approximately 6 steel piles, 36-in in diameter, will be installed, with approximately 2 installed per day over 3 days. The source level for this pile size during impact driving came from the Caltrans summary table (Caltrans 2015a) for 36 in piles at approximately 10 m depth. The source level for this pile size during vibratory driving came from the Caltrans summary table for the ''typical values'' for 36 in piles.

Approximately 8 steel piles, 24-in in diameter, will be installed, with approximately 3 installed per day over 3 days. The source level for this pile size during impact driving came from the Caltrans summary table (Caltrans 2015a) for 24 in piles at approximately 5 m depth. The source level for this pile size during vibratory driving came from the Caltrans table for the Trinidad Pier Reconstruction project (Caltrans 2015a).

Approximately 20 14-in H piles (10 temporary and 10 permanent), with approximately 5 installed or removed per day over 8 days. The source level for this pile size during impact and vibratory driving came from the Caltrans summary table (Caltrans 2015a) for 10 in H piles.

Tables 6 and 7 show the expected underwater sound levels for pile driving activities and the estimated distances to the Level A (Table 5) and Level B (Table 6) thresholds.

When NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which will result in some degree of overestimate of Level A take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D-modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources (such as WETA's Project), NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below.

TABLE 6—EXPECTED PILE-DRIVING NOISE LEVELS AND DISTANCES OF LEVEL B THRESHOLD EXCEEDANCE WITH IMPACT AND VIBRATORY DRIVER

Project element requiring pile installation	Source levels at 10 meters (33 feet) (dB rms)	Distance to level B threshold, in meters	Area of potential level B threshold exceedance (in square kilometers) [1]
		160/120 dB RMS (level B) [2]	
42 in steel piles—Vibratory Driver	175	46,416	12.97
42 in steel piles—Impact Driver (BCA) [1]	[1] 200	341	0.27

TABLE 6—EXPECTED PILE-DRIVING NOISE LEVELS AND DISTANCES OF LEVEL B THRESHOLD EXCEEDANCE WITH IMPACT AND VIBRATORY DRIVER—Continued

Project element requiring pile installation	Source levels at 10 meters (33 feet) (dB rms)	Distance to level B threshold, in meters	Area of potential level B threshold exceedance (in square kilometers) [1]
		160/120 dB RMS (level B) [2]	
36-Inch Steel Piles—Vibratory Driver	170	21,544	12.97
36-Inch Steel Piles—Impact Driver (BCA) [1]	[1] 200	341	0.27
24-Inch Steel Piles—Vibratory Driver	160	4,642	4.92
24-Inch Steel Piles—Impact Driver (BCA) [1]	[1] 193	215	0.13
14-Inch H Piles—Vibratory Driver	150	1,000	1.01
14-Inch H Piles—Vibratory Extraction	150	1,000	1.01

[1] For underwater noise, the Level B harassment (disturbance) threshold is 160 dB for impulsive noise and 120 dB for continuous noise.
[2] Bubble curtain attenuation (BCA). A bubble curtain will be used for impact driving and is expected to reduce the source level by 10dB.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

At-sea densities for marine mammal species have been determined for harbor seals and California sea lions in San Francisco Bay based on marine mammal monitoring by Caltrans for the San Francisco-Oakland Bay Bridge Project from 2000 to 2015 (Caltrans 2016); all other estimates here are determined by using observational data taken during marine mammal monitoring associated with the Richmond-San Rafael Bridge retrofit project, the San Francisco-Oakland Bay Bridge (SFOBB), which has been ongoing for the past 15 years, and anecdotal observational reports from local entities.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

All estimates are conservative and include the following assumptions:

- All pilings installed at each site would have an underwater noise disturbance equal to the piling that causes the greatest noise disturbance *(i.e.,* the piling farthest from shore) installed with the method that has the largest zone of influence (ZOI). The largest underwater disturbance (Level B) ZOI would be produced by vibratory driving steel piles; therefore take estimates were calculated using the vibratory pile-driving ZOIs. The ZOIs for each threshold are not spherical and are truncated by land masses on either side of the project area, which would dissipate sound pressure waves.
- Exposures were based on an estimated total of 22 work days. Each activity ranges in amount of days needed to be completed (Table 1).
- In the absence of site specific underwater acoustic propagation modeling, the practical spreading loss model was used to determine the ZOI.
- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-hour period; and,
- Exposures to sound levels at or above the relevant thresholds equate to take, as defined by the MMPA.

The estimation of marine mammal takes typically uses the following calculation:

For California sea lions: Level B exposure estimate = D (density) * Area of ensonification * Number of days of noise generating activities.

For harbor seals: Level B exposure estimate = ((D * area of ensonification) + 15) * number of days of noise generating activities.

For all other marine mammal species: Level B exposure estimate = N (number of animals) in the area * Number of days of noise generating activities.

To account for the increase in California sea lion density due to El Niño, the daily take estimated from the observed density has been increased by a factor of 10 for each day that pile driving or removal occurs.

There are a number of reasons why estimates of potential instances of take may be overestimates of the number of individuals taken, assuming that available density or abundance estimates and estimated ZOI areas are accurate. We assume, in the absence of information supporting a more refined conclusion, that the output of the calculation represents the number of individuals that may be taken by the specified activity. In fact, in the context of stationary activities such as pile driving and in areas where resident animals may be present, this number represents the number of instances of take that may accrue to a smaller number of individuals, with some number of animals being exposed more than once per individual. While pile driving and removal can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving/removal. The potential effectiveness of mitigation measures in reducing the number of takes is typically not quantified in the take estimation process. For these reasons, these take estimates may be conservative, especially if each take is considered a separate individual animal, and especially for pinnipeds.

Description of Marine Mammals in the Area of the Specified Activity

Harbor Seals

Monitoring of marine mammals in the vicinity of the SFOBB has been ongoing for 15 years; from those data, Caltrans has produced at-sea density estimates for Pacific harbor seal of 0.83 animals per square kilometer for the fall season (Caltrans 2016). Since the construction of the new pier that is currently being used as a haul out for harbor seals, there are additional seals that need to be taken into account for the take calculation. The average number of seals that use the haulout at any given time is 15 animals; therefore, we would add an additional 15 seals per day. Using this density and the additional 15 animals per day, the potential average daily take for the areas over which the Level B harassment thresholds may be exceeded are estimated in Table 7.

TABLE 7—TAKE CALCULATION FOR HARBOR SEAL

Activity	Pile type	Density	Area (km^2)	Number of days of activity	Take estimate
Vibratory driving	36-in and 42-in steel pile	0.83 animal/km^2	12.97	3; 8	77; 206
Vibratory driving	24-in steel pile	0.83 animal/km^2	4.92	3	57
Vibratory driving and removal	14-in steel H piles	0.83 animal/km^2	1.01	8	127

A total of 467 harbor seal takes are estimated for 2017 (Table 9). Because seals may traverse the Level A zone when going to and from the healout that is approximately 300 m from the project area, it would not be practicable to shutdown every time. Therefore 18 Level A takes are requested for this species by assuming 1.6 harbor seals per day over 11 days of impact driving of 36 in and 42 in piles may enter the zone (see the *Description of Marine Mammals in the Area of the Specified Activity* for information on seal occurrence per day). While the Level A zone is relatively large for this hearing group (approximately 290 m), there will be 2 MMOs monitoring the zone in the most advantageous locations to spot marine mammals to initiate a shutdown to avoid take by Level A harassment.

California Sea Lion

Monitoring of marine mammals in the vicinity of the SFOBB has been ongoing for 15 years; from those data, Caltrans has produced at-sea density estimates for California sea lion of 0.09 animal per square kilometer for the post-breeding season (Caltrans 2016). Using this density, the potential average daily take for the areas over which the Level B harassment thresholds may be exceeded is estimated in Table 8.

TABLE 8—TAKE CALCULATION FOR CALIFORNIA SEA LION

Activity	Pile type	Density	Area (km^2)	Number of days of activity	Take Estimate ^
Vibratory driving	36-in and 42-in steel pile	0.09 animal/km^2	12.97	3; 8	35; 93
Vibratory driving	24-in steel pile	0.09 animal/km^2	4.92	3	13
Vibratory driving	14-in steel H piles	0.09 animal/km^2	1.01	8	7

* All California sea lion estimates were multiplied by 10 to account for the increased occurrence of this species due to El Niño.
^ Total take number is 149, not 148 because we round at the end, whereas here, it shows rounding per day.

All California sea lion estimates were multiplied by 10 to account for the increased occurrence of this species due to El Niño. A total of 149 California sea lion takes is estimated for 2017 (Table 9). Level A take is not expected for California sea lion based on area of ensonification and density of the animals in that area.

Northern Elephant Seal

Monitoring of marine mammals in the vicinity of the SFOBB has been ongoing for 15 years; from those data, Caltrans has produced an estimated at-sea density for northern elephant seal of 0.03 animal per square kilometer (Caltrans 2016). Most sightings of northern elephant seal in San Francisco Bay occur in spring or early summer, and are less likely to occur during the periods of in-water work for this project (June through November). As a result, densities during pile driving and removal for the proposed action would be much lower. Therefore, we estimate that it is possible that a lone northern elephant seal may enter the Level B harassment area once per week during pile driving or removal, for a total of 18 takes in 2017 (Table 9). Level A take of Northern elephant seal is not requested, nor is it proposed to be authorized because although one animal may approach the large Level B zones, it is not expected that it will continue in the area of ensonification into the Level A zone. Further, if the animal does approach the Level A zone, construction will be shut down.

Northern Fur Seal

During the breeding season, the majority of the worldwide population is found on the Pribilof Islands in the southern Bering Sea, with the remaining animals spread throughout the North Pacific Ocean. On the coast of California, small breeding colonies are present at San Miguel Island off southern California, and the Farallon Islands off central California (Carretta *et al.,* 2014). Northern fur seal are a pelagic species and are rarely seen near the shore away from breeding areas. Juveniles of this species occasionally strand in San Francisco Bay, particularly during El Niño events, for example, during the 2006 El Niño event, 33 fur seals were admitted to the Marine Mammal Center (TMMC 2016). Some of these stranded animals were collected from shorelines in San Francisco Bay. Due to the recent El Niño event, northern fur seals were observed in San Francisco bay more frequently, as well as strandings all along the California coast and inside San Francisco Bay (TMMC, personal communication); a trend that may continue this summer through winter if El Niño conditions occur. Because sightings are normally rare; instances recently have been observed, but are not common, and based on estimates from local observations (TMMC, personal communication), it is estimated that ten northern fur seals will be taken in 2017 (Table 9). Level A take is not requested or proposed to be authorized for this species.

Harbor Porpoise

In the last six decades, harbor porpoises were observed outside of San Francisco Bay. The few harbor porpoises that entered were not sighted past central Bay close to the Golden Gate Bridge. In recent years, however, there have been increasingly common observations of harbor porpoises in central, north, and south San Francisco Bay. Porpoise activity inside San Francisco Bay is thought to be related to foraging and mating behaviors (Keener 2011; Duffy 2015). According to observations by the Golden Gate Cetacean Research team as part of their multi-year assessment, over 100

porpoises may be seen at one time entering San Francisco Bay; and over 600 individual animals are documented in a photo-ID database. However, sightings are concentrated in the vicinity of the Golden Gate Bridge and Angel Island, north of the project area, with lesser numbers sighted south of Alcatraz and west of Treasure Island (Keener 2011). Harbor porpoise generally travel individually or in small groups of two or three (Sekiguchi 1995).

Monitoring of marine mammals in the vicinity of the SFOBB has been ongoing for 15 years; from those data, Caltrans has produced an estimated at-sea density for harbor porpoise of 0.021 animal per square kilometer (Caltrans 2016). However, this estimate would be an overestimate of what would actually be seen in the project area since it is a smaller area than the monitoring area of SFOBB. In order to estimate a more realistic take number, we assume it is possible that a small group of individuals (five harbor porpoises) may enter the Level B harassment area on as many as two days of pile driving or removal, for a total of ten harbor porpoise takes per year (Table 9). It is possible that harbor porpoise may enter the Level A harassment zone for high frequency cetaceans; however, 2 MMOs will be monitoring the area and WETA would implement a shutdown for the entire zone if a harbor porpoise (or any other marine mammal) approaches the Level A zone; therefore Level A take is not being requested, nor authorized for this species.

Gray Whale

Historically, gray whales were not common in San Francisco Bay. The Oceanic Society has tracked gray whale sightings since they began returning to San Francisco Bay regularly in the late 1990s. The Oceanic Society data show that all age classes of gray whales are entering San Francisco Bay, and that they enter as singles or in groups of up to five individuals. However, the data do not distinguish between sightings of gray whales and number of individual whales (Winning 2008). Caltrans Richmond-San Rafael Bridge project monitors recorded 12 living and two dead gray whales in the surveys performed in 2012. All sightings were in either the central or north Bay; and all but two sightings occurred during the months of April and May. One gray whale was sighted in June, and one in October (the specific years were unreported). It is estimated that two to six gray whales enter San Francisco Bay in any given year. Because construction activities are only occurring during a maximum of 22 days in 2017, it is estimated that two gray whales may potentially enter the area during the construction period, for a total of 2 gray whale takes in 2017 (Table 9).

Bottlenose Dolphin

Since the 1982–83 El Niño, which increased water temperatures off California, bottlenose dolphins have been consistently sighted along the central California coast (Carretta *et al.,* 2008). The northern limit of their regular range is currently the Pacific coast off San Francisco and Marin County, and they occasionally enter San Francisco Bay, sometimes foraging for fish in Fort Point Cove, just east of the Golden Gate Bridge. Members of this stock are transient and make movements up and down the coast, and into some estuaries, throughout the year. Bottlenose dolphins are being observed in San Francisco bay more frequently in recent years (TMMC, personal communication). Groups with an average group size of five animals enter the bay and occur near Yerba Buena Island once per week for a two week stint and then depart the bay (TMMC, personal communication). Assuming groups of five individuals may enter San Francisco Bay approximately three times during the construction activities, and may enter the ensonified area once per week over the two week stint, for a total of 30 takes of bottlenose dolphins. Additionally, in the summer of 2015, a lone bottlenose dolphin was seen swimming in the Oyster Point area of South San Francisco (GGCR 2016). We estimate that this lone bottlenose dolphin may be present in the project area each day of construction, an additional 22 takes. The 30 takes for a small group, and the 22 takes for the lone bottlenose dolphin equate to 52 bottlenose dolphin takes for 2017 (Table 9).

TABLE 9—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION

Pile type	Pile-driver type	Number of driving days	Estimated take by Level B harassment						
			Harbor seal	CA sea lion [1]	Northern elephant seal [2]	Harbor porpoise [2]	Gray whale [2]	Northern fur seal [2]	Bottlenose dolphin
42-in steel pile.	Vibratory [3] ...	8	77	35	NA	NA	NA	NA	8
36-in steel	Vibratory [3] ...	3	206	93	NA	NA	NA	NA	3
24-in steel piles.	Vibratory [3] ...	3	57	13	NA	NA	NA	NA	3
14-in steel H pile.	Vibratory	8	127	7	NA	NA	NA	NA	8
Project Total (2017).	.....	22	467	^149	[2] 18	[2] 10	[2] 2	[2] 10	*52

[1] To account for potential El Niño conditions, take calculated from at-sea densities for California sea lion has been increased by a factor of 10.
[2] Take is not calculated by activity type for these species with a low potential to occur, only a yearly total is given.
[3] Piles of this type may also be installed with an impact hammer, which would reduce the estimated take.
* Total take includes an additional 30 takes to account for a transitory group of dolphins that may occur in the project area over the course of the project.
^ Total take number is 149, not 148 because we round at the end, whereas here, it shows rounding per day.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock

for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully balance two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat—which considers the nature of the potential adverse impact being mitigated (likelihood, scope, range), as well as the likelihood that the measure will be effective if implemented; and the likelihood of effective implementation, and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Measurements from similar pile driving events were coupled with practical spreading loss to estimate zones of influence (ZOI; see *Estimated Take by Incidental Harassment*); these values were used to develop mitigation measures for pile driving and removal activities at the Project area. The ZOIs effectively represent the mitigation zone that would be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In addition to the specific measures described later in this section, WETA would conduct briefings between construction supervisors and crews, marine mammal monitoring team, and WETA staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Monitoring and Shutdown for Construction Activities

The following measures would apply to WETA's mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving activities, WETA will establish a shutdown zone intended to contain the area in which SPLs equal or exceed the auditory injury criteria for cetaceans and pinnipeds. The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals (as described previously under *Potential Effects of the Specified Activity on Marine Mammals,* serious injury or death are unlikely outcomes even in the absence of mitigation measures). Modeled radial distances for shutdown zones are shown in Table 5. However, a minimum shutdown zone of 30 m will be established during all pile driving activities, regardless of the estimated zone.

Disturbance Zone—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for impulse and continuous sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting instances of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see *Proposed Monitoring and Reporting*). Nominal radial distances for disturbance zones are shown in Table 6.

Given the size of the disturbance zone for vibratory pile driving, it is impossible to guarantee that all animals would be observed or to make comprehensive observations of fine-scale behavioral reactions to sound, and only a portion of the zone (*e.g.,* what may be reasonably observed by visual observers stationed within the turning basin) would be observed. In order to document observed instances of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. It may then be estimated whether the animal was exposed to sound levels constituting incidental harassment on the basis of predicted distances to relevant thresholds in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. This information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Monitoring Protocols—Monitoring would be conducted before, during, and after pile driving and vibratory removal activities. In addition, observers shall record all instances of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities would be halted. Monitoring will take place from 30 minutes prior to initiation through thirty minutes post-completion of pile driving and removal activities. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes. Please see the Monitoring Plan (*www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*), developed by WETA in agreement with NMFS, for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. A minimum of two observers will be required for all pile driving/removal activities. Marine Mammal Observer (MMO) requirements for construction actions are as follows:

(a) Independent observers (*i.e.,* not construction personnel) are required;

(b) At least one observer must have prior experience working as an observer;

(c) Other observers (that do not have prior experience) may substitute education (undergraduate degree in biological science or related field) or training for experience;

(d) Where a team of three or more observers are required, one observer

should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

(e) NMFS will require submission and approval of observer CVs.

(2) Qualified MMOs are trained biologists, and need the following additional minimum qualifications:

(a) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

(b) Ability to conduct field observations and collect data according to assigned protocols;

(c) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(d) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

(e) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and

(f) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(3) Prior to the start of pile driving activity, the shutdown zone will be monitored for thirty minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (*i.e.,* when not obscured by dark, rain, fog, *etc.*). In addition, if such conditions should arise during impact pile driving that is already underway, the activity would be halted.

(4) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of small cetaceans and pinnipeds, and thirty minutes for gray whales. Monitoring will be conducted throughout the time required to drive a pile.

(5) Using delay and shut-down procedures, if a species for which authorization has not been granted (including but not limited to Guadalupe fur seals and humpback whales) or if a species for which authorization has been granted but the authorized takes are met, approaches or is observed within the Level B harassment zone, activities will shut down immediately and not restart until the animals have been confirmed to have left the area.

Soft Start

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. This procedure is repeated two additional times. It is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in ''bouncing'' of the hammer as it strikes the pile, resulting in multiple ''strikes.'' For impact driving, we require an initial set of three strikes from the impact hammer at reduced energy, followed by a 30-second waiting period, then two subsequent 3 strike sets. Soft start will be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of 30 minutes or longer.

Sound Attenuation Devices

Two types of sound attenuation devices would be used during impact pile-driving: Bubble curtains and pile cushions. WETA would employ the use of a bubble curtain during impact pile-driving, which is assumed to reduce the source level by 10 dB. WETA would also employ the use of 12-inch-thick wood cushion block on impact hammers to attenuate underwater sound levels.

We have carefully evaluated WETA's proposed mitigation measures and considered their effectiveness in past implementation to preliminarily determine whether they are likely to effect the least practicable impact on the affected marine mammal species and stocks and their habitat.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal);

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only);

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only);

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only);

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time; and

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of WETA's proposed measures, as well as any other potential measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of

accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical to both compliance and ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species in action area (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- *How anticipated responses to stressors impact either:* (1) Long-term fitness and survival of individual marine mammals; or (2) population, species, or stock;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

WETA's proposed monitoring and reporting is also described in their Marine Mammal Monitoring Plan, on the Internet at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

Visual Marine Mammal Observations

WETA will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All marine mammal observers (MMOs) will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. A minimum of two MMOs will be required for all pile driving/removal activities. WETA will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on our requirements, WETA would implement the following procedures for pile driving and removal:

- MMOs would be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible;
- During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals;
- If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity would be halted; and
- The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. The monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and WETA.

In additions, the MMO(s) will survey the potential Level A and nearby Level B harassment zones (areas within approximately 2,000 feet of the pile-driving area observable from the shore) on 2 separate days—no earlier than 7 days before the first day of construction—to establish baseline observations. Special attention will be given to the harbor seal haul-out sites in proximity to the project (*i.e.,* the harbor seal platform and Breakwater Island). Monitoring will be timed to occur during various tides (preferably low and high tides) during daylight hours from locations that provide the best vantage point available, including the pier, breakwater, and adjacent docks within the harbor. The information collected from baseline monitoring will be used for comparison with results of monitoring during pile-driving activities.

Data Collection

We require that observers use approved data forms. Among other pieces of information, WETA will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, WETA will attempt to distinguish between the number of individual animals taken and the number of incidences of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel, and if possible, the correlation to SPLs;
- Distance from pile driving or removal activities to marine mammals and distance from the marine mammals to the observation point;
- Description of implementation of mitigation measures (*e.g.,* shutdown or delay);
- Locations of all marine mammal observations; and
- Other human activity in the area.

Hydroacousting Monitoring

The monitoring will be done in accordance with the methodology outlined in this Hydroacoustic Monitoring Plan (see Appendix B of WETA's application for more information on this Plan, including the methodology, equipment, and reporting information). The monitoring is based on dual metric criteria that will include: The following:

- Establish the distance to the 206-dB peak sound pressure criteria;
- Verify the extent of Level A harassment zones for marine mammals; and
- Verify the attenuation provided by bubble curtains.
- Provide all monitoring data to NMFS.

Reporting

A draft report would be submitted to NMFS within 90 days of the completion of marine mammal monitoring, or sixty days prior to the requested date of issuance of any future IHA for projects at the same location, whichever comes first. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving and removal days, and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation

shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within 30 days following resolution of comments on the draft report.

Negligible Impact Analysis and Determinations

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving and removal activities associated with the facility construction project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A and Level B harassment (PTS and behavioral disturbance), from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving and removal occurs.

No injury, serious injury, or mortality is anticipated given the nature of the activities and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, vibratory hammers will be the primary method of installation (impact driving is included only as a contingency). Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. If impact driving is necessary, implementation of soft start and shutdown zones significantly reduces any possibility of injury. Given sufficient ''notice'' through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to it becoming potentially injurious. WETA will also employ the use of 12-inch-thick wood cushion block on impact hammers, and a bubble curtain as sound attenuation devices. Environmental conditions at Alameda Point mean that marine mammal detection ability by trained observers is high, enabling a high rate of success in implementation of shutdowns to avoid injury.

WETA's proposed activities are localized and of relatively short duration (a maximum of 22 days for pile driving and removal). The entire project area is limited to the Central Bay operations and maintenance facility area and its immediate surroundings. These localized and short-term noise exposures may cause short-term behavioral modifications in harbor seals, northern fur seals, northern elephant seals, California sea lions, harbor porpoises, bottlenose dolphins, and gray whales. Moreover, the proposed mitigation and monitoring measures are expected to reduce the likelihood of injury and behavior exposures. Additionally, no important feeding and/or reproductive areas for marine mammals are known to be within the ensonified area during the construction time frame.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range. However, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; Lerma 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. For harbor seals that may transit through the ensonified area to get to their haul out located approximately 300 m from the project area, Level A harassment may occur. However, harbor seals are not expected to be in the injurious ensonified area for long periods of time; therefore, the potential for those seals to actually have PTS is considered unlikely.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized;
- Level B harassment may consist of, at worst, temporary modifications in behavior (*e.g.* temporary avoidance of habitat or changes in behavior);
- The lack of important feeding, pupping, or other areas in the action area;
- The high level of ambient noise already in the Alameda Point area; and
- The small percentage of the stock that may be affected by project activities (<11.479 percent for all species).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from WETA's construction activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA

for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 10 details the number of instances that animals could be exposed to received noise levels that could cause Level B behavioral harassment for the proposed work at the project site relative to the total stock abundance. The numbers of animals authorized to be taken for all species would be considered small relative to the relevant stocks or populations even if each estimated instance of take occurred to a new individual—an extremely unlikely scenario. The total percent of the population (if each instance was a separate individual) for which take is requested is approximately 1.5 percent for harbor seals, approximately 11 percent for bottlenose dolphins, and less than 1 percent for all other species (Table 10). For pinnipeds, especially harbor seals occurring in the vicinity of the project area, there will almost certainly be some overlap in individuals present day-to-day, and the number of individuals taken is expected to be notably lower.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

TABLE 10—ESTIMATED NUMBERS AND PERCENTAGE OF STOCK THAT MAY BE EXPOSED TO LEVEL B HARASSMENT

Species	Proposed authorized takes	Stock(s) abundance estimate [1]	Percentage of total stock (percent)
Harbor Seal (*Phoca vitulina*) *California stock*	467	30,968	1.5
California sea lion (*Zalophus californianus*) *U.S. Stock*	149	296,750	0.05
Northern elephant seal (*Mirounga angustirostris*) *California breeding stock*	18	179,000	0.010
Northern fur seal (*Callorhinus ursinus*) *California stock*	10	14,050	0.071
Harbor Porpoise (*Phocoena phocoena*) *San Francisco-Russian River Stock*	10	9,886	0.101
Gray whale (*Eschrichtius robustus*) *Eastern North Pacific stock*	2	20,990	0.009
Bottlenose dolphin (*Tursiops truncatus) California coastal stock*	52	453	11.479

[1] All stock abundance estimates presented here are from the 2015 Pacific Stock Assessment Report.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast regional Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed marine mammal species is proposed for authorization or expected to result from these activities. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to WETA for conducting their Central Bay Operations and Maintenance Facility Project, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

1. This Incidental Harassment Authorization (IHA) is valid for 1 year from August 1, 2017 through July 31, 2018.

2. This IHA is valid only for pile driving and removal activities associated with the Central Bay Operations and Maintenance Facility Project in San Francisco Bay, CA.

3. General Conditions.

(a) A copy of this IHA must be in the possession of WETA, its designees, and work crew personnel operating under the authority of this IHA.

(b) The species authorized for taking are summarized in Table 1.

(c) The taking, by Level B harassment only, is limited to the species listed in condition 3(b). See Table 1 for numbers of take authorized.

TABLE 1—AUTHORIZED TAKE NUMBERS

Species	Authorized take	
	Level A	Level B
Harbor seal	18	467
California sea lion	0	149
Northern elephant seal	0	18
Northern fur seal	0	10
Harbor porpoise	0	10
Gray whale	0	2

TABLE 1—AUTHORIZED TAKE NUMBERS—Continued

Species	Authorized take	
	Level A	Level B
Bottlenose dolphin	0	52

(d) The taking by injury (Level A harassment), serious injury, or death of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this IHA, unless authorization of take by Level A harassment is listed in condition 3(b) of this Authorization.

(e) WETA shall conduct briefings between construction supervisors and crews, marine mammal monitoring team, and WETA staff prior to the start of all pile driving and removal activities, and when new personnel join the work.

4. Mitigation Measures.

The holder of this Authorization is required to implement the following mitigation measures.

(a) For all pile driving and removal, WETA shall implement a minimum shutdown zone of 30 m radius around the pile. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease.

(b) For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, tug boats, barge-mounted excavators, or clamshell equipment used to place or remove material), if a marine mammal comes within 10 meters, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

(c) WETA shall establish monitoring locations as described below. Please also refer to the Marine Mammal Monitoring Plan (see *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm).*

i. For all pile driving and removal activities, a minimum of two observers shall be deployed, with one positioned to achieve optimal monitoring of the shutdown zone and the second positioned to achieve optimal monitoring of surrounding waters of Alameda Point and portions of San Francisco Bay. If practicable, the second observer should be deployed to an elevated position with clear sight lines to the Project area.

ii. These observers shall record all observations of marine mammals, regardless of distance from the pile being driven, as well as behavior and potential behavioral reactions of the animals. Observations near Alameda Point shall be distinguished from those in the nearshore waters of San Francisco Bay.

iii. All observers shall be equipped for communication of marine mammal observations amongst themselves and to other relevant personnel (*e.g.,* those necessary to effect activity delay or shutdown).

(d) Monitoring shall take place from thirty minutes prior to initiation of pile driving and removal activity through thirty minutes post-completion of pile driving and removal activity. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. The shutdown zone must be determined to be clear during periods of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

(e) If a marine mammal approaches or enters the shutdown zone, all pile driving and removal activities at that location shall be halted. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of small cetaceans and pinnipeds and 30 minutes for gray whales.

(f) Level A and Level B zones may be modified if additional hydroacoustic measurements of construction activities have been conducted and NMFS has approved of the revised zones.

(g) Using delay and shut-down procedures, if a species for which authorization has not been granted (including but not limited to Guadalupe fur seals and humpback whales) or if a species for which authorization has been granted but the authorized takes are met, approaches or is observed within the Level B harassment zone, activities will shut down immediately and not restart until the animals have been confirmed to have left the area.

(h) Monitoring shall be conducted by qualified observers, as described in the Monitoring Plan. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start and in accordance with the monitoring plan, and shall include instruction on species identification (sufficient to distinguish the species listed in 3(b)), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

(i) WETA shall use soft start techniques recommended by NMFS for impact pile driving. Soft start requires contractors to provide an initial set of strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

(j) Sound attenuation devices—Approved sound attenuation devices (*e.g.* bubble curtain, pile cushion) shall be used during impact pile driving operations. WETA shall implement the necessary contractual requirements to ensure that such devices are capable of achieving optimal performance, and that deployment of the device is implemented properly such that no reduction in performance may be attributable to faulty deployment.

(k) Pile driving shall only be conducted during daylight hours.

5. Monitoring.

The holder of this Authorization is required to conduct marine mammal monitoring during pile driving and removal activities. Marine mammal monitoring and reporting shall be conducted in accordance with the Monitoring Plan.

(a) WETA shall collect sighting data and behavioral responses to pile driving and removal for marine mammal species

observed in the region of activity during the period of activity. All observers shall be trained in marine mammal identification and behaviors, and shall have no other construction-related tasks while conducting monitoring.

(b) For all marine mammal monitoring, the information shall be recorded as described in the Monitoring Plan.

6. Reporting.

The holder of this Authorization is required to:

(a) Submit a draft report on all monitoring conducted under the IHA within ninety days of the completion of marine mammal monitoring, or sixty days prior to the issuance of any subsequent IHA for projects at the Project area, whichever comes first. A final report shall be prepared and submitted within thirty days following resolution of comments on the draft report from NMFS. This report must contain the informational elements described in the Monitoring Plan, at minimum (see *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*), and shall also include:

i. Detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any.

ii. Description of attempts to distinguish between the number of individual animals taken and the number of incidents of take, such as ability to track groups or individuals.

iii. An estimated total take estimate extrapolated from the number of marine mammals observed during the course of construction activities, if necessary.

(b) Reporting injured or dead marine mammals:

i. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as a serious injury or mortality, WETA shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the following information:

A. Time and date of the incident;

B. Description of the incident;

C. Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

D. Description of all marine mammal observations in the 24 hours preceding the incident;

E. Species identification or description of the animal(s) involved;

F. Fate of the animal(s); and

G. Photographs or video footage of the animal(s).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with WETA to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. WETA may not resume their activities until notified by NMFS.

ii. In the event that WETA discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), WETA shall immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS.

The report must include the same information identified in 6(b)(i) of this IHA. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with WETA to determine whether additional mitigation measures or modifications to the activities are appropriate.

iii. In the event that WETA discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), WETA shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. WETA shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

7. This Authorization may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

We request comment on our analyses, the draft authorization, and any other aspect of this Notice of Proposed IHAs for WETA's Central Bay construction activities. Please include with your comments any supporting data or literature citations to help inform our final decision on WETA's request for MMPA authorization.

Dated: June 23, 2017.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–13580 Filed 6–28–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF319

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Coast Boulevard Improvements Project, La Jolla, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the City of San Diego to incidentally harass, by Level B harassment only, marine mammals during construction and demolition activities associated with a public parking lot and sidewalk improvements project in La Jolla, California.

DATES: This Authorization is effective from June 1, 2017, through December 14, 2017.

FOR FURTHER INFORMATION CONTACT: Jordan Carduner, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to

harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

Summary of Request

NMFS received a request from the City of San Diego (City) for an IHA to take marine mammals incidental to Coast Boulevard improvements in La Jolla, California. The City's request was for harassment only and NMFS concurs that mortality is not expected to result from this activity. Therefore, an IHA is appropriate.

The City's application for incidental take authorization was received on December 16, 2016. On March 1, 2017, we deemed the City's application for authorization to be adequate and complete. The planned activity is not expected to exceed one year, hence we do not expect subsequent MMPA incidental harassment authorizations would be issued for this particular activity.

The planned activities include improvements to an existing public parking lot, sidewalk, and landscaping areas located on the bluff tops above Children's Pool, a public beach located in La Jolla, California. Species that are expected to be taken by the planned activity include harbor seal, California sea lion, and northern elephant seal. Take by Level B harassment only is expected; no injury or mortality of marine mammals is expected to result from the planned activity. This represents the first IHA issued for this activity. The City applied for, and was granted, IHAs in 2013 2014 and 2015 (NMFS 2013; 2014; 2015) for a lifeguard station demolition and construction project at Children's Pool beach. NMFS published notices in the **Federal Register** announcing the issuance of these IHAs on July 8, 2013 (78 FR 40705), June 6, 2014 (79 FR 32699), and July 13, 2015 (80 FR 39999), respectively. The City also applied for, and was granted, an IHA in 2016 (NMFS 2016) for a sand sampling project at Children's Pool beach. NMFS published a notice in the **Federal Register** announcing the issuance of the IHA on June 3, 2016 (81 FR 35739).

Description of Specified Activity

A detailed description of the planned demolition and construction project is provided in the **Federal Register** notice for the proposed IHA (82 FR 19221, April 26, 2017). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS's proposal to issue an IHA to the City was published in the **Federal Register** on April 26, 2017 (82 FR 19221). That notice described, in detail, the City's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received one comment letter from the Marine Mammal Commission. The Marine Mammal Commission recommended that NMFS issue the IHA, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

Description of Marine Mammals in the Area of Specified Activities

Three species are considered to co-occur with the City's planned activities: Harbor seals (*Phoca vitulina*), which are, by far, the dominant observed marine mammal in the project area, as well as California sea lions (*Zalophus californianus*) and northern elephant seals *(Mirounga angustirostris)* which also occasionally haul out in the project area, in far lower numbers. A detailed description of the species likely to be affected by the City's planned project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (82 FR 19221, April 26, 2017); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to Sections 3 and 4 of the City's IHA application, as well as to NMFS's Stock Assessment Reports (SAR; *www.nmfs.noaa.gov/pr/sars/*). Additional general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's Web site (*www.nmfs.noaa.gov/pr/species/mammals/*).

Table 1 lists all species with expected potential for occurrence in the project location and summarizes information related to the population or stock, including potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). For status of species, we provide information regarding U.S. regulatory status under the MMPA and ESA. Abundance estimates presented here represent the total number of individuals that make up a given stock or the total number estimated within a particular study area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. PBR, defined by the MMPA as the maximum

number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, is considered in concert with known sources of ongoing anthropogenic mortality to assess the population-level effects of the anticipated mortality from a specific project (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality are included here as gross indicators of the status of the species and other threats.

All values presented in Table 1 are the most recent available at the time of publication and are available in NMFS's SARs (*e.g.,* Carretta *et al.,* 2016). Please see the SARs, available at *www.nmfs.noaa.gov/pr/sars,* for more detailed accounts of these stocks' status and abundance.

TABLE 1—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PROJECT AREA

Species	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Annual M/SI [4]	Relative occurrence in project area; season of occurrence
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
California sea lion	U.S.	-; N	296,750 (n/a; 153,337; 2011).	9,200	389	Abundant; year-round.
Family Phocidae (earless seals)						
Harbor seal	California	-; N	30,968 (n/a; 27,348; 2012).	1,641	43	Rare; year-round.
Northern elephant seal ...	California breeding	-; N	179,000 (n/a; 81,368; 2010).	4,882	8.8	Rare; year-round.

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] PBR, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of noise from construction and demolition activities for the planned project have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (82 FR 19221, April 26, 2017) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat, therefore that information is not repeated here; please refer to that **Federal Register** notice for further information. The main impact associated with the City's planned project would be temporarily elevated sound levels and the associated direct effects on marine mammals. No instances of hearing threshold shifts, injury, serious injury, or mortality are expected as a result of the planned activities. The project is not expected to not result in permanent impacts to habitats used directly by marine mammals, such as haulouts and rookeries, nor is expected to result in impacts to food sources or impacts to substrate.

Estimated Take by Incidental Harassment

This section provides an estimate of the number of incidental takes authorized through this IHA, which informs both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination.

Harassment is the only type of take expected to result from the planned activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

All authorized takes are expected to be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to sounds associated with the planned construction and demolition activities. Based on the nature of the activity, Level A harassment is neither anticipated nor authorized. The death of a marine mammal is also a type of incidental take. However, in the case of the planned project it is unlikely that injurious or lethal takes would occur even in the absence of the planned mitigation and monitoring measures, and no mortality is anticipated or authorized for this activity. The current NMFS thresholds for behavioral harassment of pinnipeds from airborne noise are shown in Table 2.

TABLE 2—CURRENT NMFS CRITERIA FOR PINNIPED HARASSMENT RESULTING FROM EXPOSURE TO AIRBORNE SOUND

Species	Level B harassment threshold	Level A harassment threshold
Harbor seals	90 dB re 20 μPa	Not defined.
Other pinniped species	100 dB re 20 μPa	Not defined.

NMFS currently uses a three-tiered scale to determine whether the response of a pinniped on land to acoustic or visual stimuli is considered an alert, a movement, or a flush. NMFS considers the behaviors that meet the definitions of both movements and flushes to qualify as behavioral harassment. Thus a pinniped on land is considered by NMFS to have been behaviorally harassed if it moves greater than two times its body length, or if the animal is already moving and changes direction and/or speed, or if the animal flushes from land into the water. Animals that become alert without such movements are not considered harassed. See Table 3 for a summary of the pinniped disturbance scale.

TABLE 3—LEVELS OF PINNIPED BEHAVIORAL DISTURBANCE ON LAND

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3	Flush	All retreats (flushes) to the water.

Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound. In practice, depending on the amount of information available to characterize daily and seasonal movement and distribution of affected marine mammals, it can be difficult to distinguish between the number of individuals harassed and the instances of harassment and, when duration of the activity is considered, it can result in a take estimate that overestimates the number of individuals harassed. In particular, for stationary activities such as the planned project, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site is stronger than the deterrence presented by the harassing activity.

The take calculations presented here rely on the best information currently available for marine mammal populations in the Children's Pool area. Below we describe how the take was estimated for the planned project.

Pacific Harbor Seal

The take estimate for harbor seal was based on the following steps:

(1) Estimate the total area in square meters (m^2) of harbor seal haulout habitat available at Children's Pool;

(2) Estimate the total area of available haulout habitat expected to be ensonified to the airborne Level B harassment threshold for harbor seals (90 decibels (dB) re 20 micropascals (μPa)) based on total haulout area and the percentage of total haulout area expected to be ensonified to the Level B harassment threshold;

(3) Estimate the daily number of seals exposed to sounds above Level B harassment threshold by multiplying the total area of haulout habitat expected to be ensonified to the Level B threshold by the expected daily number of seals on Children's Pool;

(4) Estimate the total number of anticipated harbor seals taken over the duration of the project by multiplying the daily number of seals exposed to noise above the Level B harassment threshold by the number of total project days in which project-related sounds may exceed the Level B harassment threshold.

As described above, Children's Pool is designated as a shared-use beach. The beach and surrounding waters are used for swimming, surfing, kayaking, diving, tide pooling, and nature watching, thus the beach is shared between humans and pinnipeds. To discourage people from harassing pinnipeds hauled out on the beach, a guideline rope, oriented parallel to the water, bisects the beach into upper (western) and lower (eastern) beach areas; people are encouraged to stay on the western side of the guideline rope, allowing seals to use the eastern section of beach that provides access to the water. The City's estimate of available pinniped habitat was based on the total area of the beach between the guideline rope and the mean lower low water line. Thus, the area considered for this analysis to be available as haulout habitat is the total area east of the rope and west of the mean lower low water line, while the area west of the rope is assumed to be unavailable as pinniped habitat (See Figure 5 in the IHA application for the location of the guideline rope, and the area assumed to be available haulout habitat). The City estimated that there are 2,509 m^2 east of the guideline rope; therefore it is assumed that there is a total of 2,509 m^2 of available pinniped habitat on Children's Pool (Figure 5 in IHA application).

The City estimated the area of available harbor seal habitat at Children's Pool beach that would be ensonified to the Level B harassment threshold by estimating the distance to the Level B harassment threshold from sounds associated with the planned activities, then calculating the percentage of available haulout habitat at Children's Pool that would be ensonified to that threshold based on the total available habitat and the distance to the Level B harassment threshold.

To estimate the distance to the in-air Level B harassment threshold for harbor seals (90 dB root mean square (rms)) for the planned project, the City first used a spherical spreading loss model, assuming average atmospheric conditions. The spreading loss model predicted that the 90 dB isopleth would be reached at 10 m (33 feet (ft)). However, data from in situ recordings conducted during the lifeguard station project at Children's Pool indicated that peak sound levels of 90 to 103 dB were recorded at distances of 15 m to 20 m (49 to 66 ft) from the source when the loudest construction equipment (source levels ranging from 100 to 110 dB) was operating. The City estimated that the loudest potential sound sources associated with the planned project would be approximately 110 dB rms (See Table 2 in IHA application), based on manufacturer specifications and previous recordings of similar equipment used during the lifeguard station project at Children's Pool (Hanan & Associates 2014; 2015; 2016). Therefore, the City estimated that for the sound sources expected to result in the largest isopleths (those with SLs estimated at up to 110 dB), the area expected to be ensonified to the in-air Level B harassment threshold for harbor seals (90 dB rms) would extend to approximately 20 m from the sound source. To be conservative, the City used this distance (20 m) based on the data from previous site-specific monitoring, rather than the results of the spherical spreading loss model, to estimate the predicted distance to the in-air Level B harassment threshold for harbor seals.

Based on the estimated distance to the in-air Level B harassment threshold for harbor seals (20 m from the sound source), the City estimated 647 m^2 of total available harbor seal habitat at Children's Pool beach would be ensonified to the Level B harassment threshold, the City therefore estimated that approximately 25.8 percent (647/2,509) of available harbor seal haulout habitat at Children's Pool beach would be ensonified to the Level B harassment threshold (Figure 5 in IHA application). This information has been used to derive the take estimate only; the entire beach would be observed in order to document potential actual take.

The estimated daily take of harbor seals was based on the number of harbor seals expected to occur daily in the area ensonified to the Level B harassment threshold. In their IHA application, the City estimated that 200 harbor seals would be present on Children's Pool beach per day, based on literature that reported this number as the maximum number of seals recorded at Children's Pool (Linder 2011). However, NMFS believes it is more appropriate to use the average number of seals observed on Children's Pool beach, as opposed to the maximum number of seals, to estimate the likely number of takes of harbor seals as a result of the planned project. During 3,376 hourly counts associated with monitoring for IHAs issued for construction and demolition at the lifeguard station at Children's Pool in 2013–14, 2014–15, and 2015–16, there was an average of 54.5 harbor seals (including pups) recorded daily on Children's Pool beach (pers. comm., D. Hanan, Hanan & Associates, to J. Carduner, NMFS, April 4, 2017). We therefore estimated that 55 harbor seals would occur on Children's Pool per day, and used this number to estimate take of harbor seals as a result of the planned project. Based on an estimate of 55 total harbor seals on Children's Pool per day, and an estimated 25.8 percent of total haulout habitat ensonified to the Level B harassment threshold for harbor seals, we estimated that an average of 14.2 (rounded to 15) takes of harbor seals by Level B harassment would occur per day.

The City estimated that the total duration of the project would be 164 days. However, activities involving equipment that could result in sound source levels of 101–110 dB would occur on a maximum of 108 project days (pers. comm., D. Langsford, Tierra Data, to J. Carduner, NMFS, April 3, 2017). Based on the distance of the project to Children's Pool and previous monitoring reports, we believe it is unlikely that project-related activities with expected source levels at or below 100 dB rms would result in sound exposure levels at or above 90 dB among any pinnipeds at Children's Pool. Planned project-related activities will occur on top of a natural cliff in an area of increasing elevation above the beach, therefore we do not believe visual stimuli from the project will result in behavioral harassment of any marine mammals. Therefore, we do not expect that activities with expected source levels of 100 dB and below will result in take of marine mammals. Thus, our take estimate is based on the number of days in which source levels associated with the planned project could be between 100 and 110 dB rms. Based on an estimate of 15 takes of harbor seals per day by Level B harassment, over a total of 108 days the project is expected to result in a total of 1,620 takes of harbor seals by Level B harassment. We therefore authorize a total of 1,620 incidental takes of harbor seals by Level B harassment only.

California Sea Lion

As described above, California sea lions are occasional visitors to Children's Pool. The most reliable estimates of likely California sea lion occurrence in the project area come from monitoring reports associated with IHAs issued previously for demolition and construction of the lifeguard station at Children's Pool. In 2015–16 there were 71 observations of California sea lions on Children's Pool over 209 days of monitoring, for an average of one California sea lion observed on Children's Pool approximately every three days. Based on this ratio, we estimate that a total of 55 observations of California sea lions on Children's Pool during the entire duration of the project (164 days); however as described above we do not think take is likely to occur on days in which source levels are below 100 dB. We expect one take of California sea lion will occur for every 3 days of the project in which source levels are anticipated to be between 101–110 dB (108 total days). We therefore authorize 36 incidental takes of California sea lions by Level B harassment only.

Northern Elephant Seal

As described above, northern elephant seals are occasional visitors to Children's Pool. The most reliable estimates of likely northern elephant seal occurrence in the project area come from monitoring reports associated with IHAs issued previously for demolition and construction of the lifeguard station at Children's Pool. In 2015–16 there were 26 observations of northern elephant seals on Children's Pool over 209 days of monitoring, for an average of one northern elephant seal observed on Children's Pool approximately every eight days. Based on this ratio, we estimate a total of 20 northern elephant seals will be observed on Children's Pool during the entire duration of the project (164 days); however as described above we do not think take is likely to occur on days in which source levels are below 100 dB. We expect one northern elephant seal take will occur for every eight days of the project in which source levels are anticipated to be between 101–110 dB (108 total days). We therefore authorize 14 incidental takes of northern elephant seals by Level B harassment only.

TABLE 4—SUMMARY OF NUMBERS OF MARINE MAMMALS AUTHORIZED TO BE INCIDENTALLY TAKEN BY THE CITY DURING THE PLANNED PROJECT

Species	Level A takes	Level B takes	Total
Harbor seal	0	1,620	1,620
California sea lion	0	36	36
Northern elephant seal	0	14	14

Effects of Specified Activities on Subsistence Uses of Marine Mammals

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Mitigation Measures

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully balance two primary factors: (1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat—which considers the nature of the potential adverse impact being mitigated (likelihood, scope, range), as well as the likelihood that the measure will be effective if implemented; and the likelihood of effective implementation, and; (2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal);

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only);

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only);

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only);

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time; and

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Mitigation for Marine Mammals and Their Habitat

The City proposed several mitigation measures. These measures include the following:

- Moratorium during harbor seal pupping season: Demolition and construction will be prohibited during the Pacific harbor seal pupping season (December 15th to May 15th) and for an additional two weeks to accommodate lactation and weaning of late season pups. Thus construction will be prohibited from December 15th to May 29th. This measure is designed to avoid any potential adverse impacts to pups that may otherwise occur, such as abandonment by mothers as a result of harassment;
- Activities limited to daylight hours only: Construction and demolition will be limited to daylight hours only (7 a.m. to 7 p.m., or 30 minutes before sunset depending on time of year). This measure is designed to facilitate the ability of MMOs to effectively monitor potential instances of harassment and to accurately document behavioral responses of pinnipeds to project-related activities;
- Timing constraints for very loud equipment: To minimize potential impacts to marine mammals, construction and demolition activity involving use of very loud equipment (*e.g.,* jackhammers) will be scheduled during the daily period of lowest pinniped haul-out occurrence, between the hours of 8:30 a.m. to 3:30 p.m., to the maximum extent practical. This measure is designed to minimize the number of pinnipeds exposed to sounds that may result in harassment. Construction and demolition may be extended from 7 a.m. to 7 p.m. (daylight hours only) to help ensure the project is completed in 2017, prior to the moratorium during the harbor seal pupping season starting December 15th, so as to reduce the overall duration of the project; and
- Marine mammal observers (MMO): Trained MMOs will be used to detect and document project-related impacts to marine mammals, including any behavioral responses to the project. This measure is designed to facilitate the City's ability to increase the understanding of the effects of the action on marine mammal species and stocks. More information about this measure is contained in the ''Monitoring and Reporting'' section below.

Based on our evaluation of the applicant's proposed measures, NMFS has determined that the mitigation measures described above provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Monitoring

The City has developed a Monitoring Plan specific to the project which establishes protocols for both acoustic and marine mammal monitoring. The objectives of the Monitoring Plan are to observe and document real-time sound levels in the project area, to document observed behavioral responses to project activities, and to record instances of marine mammal harassment. Monitoring will be conducted before, during, and after project activities to evaluate the impacts of the project on marine mammals. The Monitoring Plan can be found in Appendix C of the City's IHA application.

The Monitoring Plan encompasses both acoustic monitoring and marine mammal monitoring. Marine mammal monitoring will be conducted to assess the number and species, behavior, and responses of marine mammals to project-related activities as well as other sources of disturbance, as applicable. Acoustic monitoring will measure in-air sound pressure levels during ambient conditions and during project activities to measure sound levels associated with the project and to determine distances within which Level B acoustic harassment disturbance are expected to occur. More details are provided below.

Acoustic Monitoring

Monitors will collect real-time acoustic data of construction activities to determine sound pressure levels (SPL) values during demolition and construction activities, and to determine distances to zones within which SPLs are expected to meet or exceed airborne Level B harassment thresholds for harbor seals and other pinnipeds. Environmental data will also be collected to provide information on the weather, visibility, sea state, and tide conditions during monitoring surveys.

Sound level meters will be used to document SPLs at near-field and far-field locations during all surveys, and to determine the distances to Level B harassment thresholds. Far-field locations will include the western end of the beach, the middle of the guideline rope and the eastern edge of the beach. The total number and locations of the monitoring stations will be determined during each survey based on the location of construction activities and likelihood for sound levels to meet or exceed in-air SPL harassment thresholds in areas where marine mammals are observed at Children's Pool. Refer to Section 3 of the Monitoring Plan for further details on the acoustic monitoring plan.

Marine Mammal Monitoring

Marine mammal monitoring will be conducted by qualified MMOs to document behavioral responses of marine mammals to the planned project. Monitors will document the behavior of marine mammals, the number and types of responses to disturbance, and the apparent cause of any reactions. Marine mammals displaying behavioral responses to disturbance will be assessed for the apparent cause of disturbance. All responses to stimuli related to the project will be documented; responses that rise to the level of behavioral harassment (Table 4) will be documented as takes.

Marine mammal observations may be made from vantage points on the beach or from overlook areas that provide an unobstructed view of the beach. Monitoring on the beach will be behind the guideline rope to minimize potential disturbance to hauled out marine mammals.

The following data will be collected during the marine mammal monitoring surveys:

- Dates and times of marine mammal observations;
- Location of observations;
- Construction activities occurring during each observation period. Any substantial change in construction activities (especially cessation) during observation periods should be noted;
- Human activity in the area; number of people on the beach, adjacent overlooks, and in the water;
- Counts by species of pinnipeds, and if possible sex and age class;
- Number and type of responses to disturbance, such as alert, flush, vocalization, or other with a description; and
- Apparent cause of reaction.

In the **Federal Register** notice of the proposed IHA (82 FR 19221, April 26, 2017) we proposed that the extent of marine mammal monitoring would depend on recorded sound levels of the activities performed. However, since that time, the City has agreed that marine mammal monitoring will be carried out every day during construction and demolition. Monitoring will include a Pre-Construction Activity Survey, hourly Construction Activity Surveys, and a Post-Construction Activity Survey. Pre-Construction Activity Surveys will include recordings of the times of observations, environmental conditions, and maximum ambient SPLs at the recording location at the top of the bluff adjacent to the project site, and at the

three far-field locations, and will occur at least 30 minutes prior to the start of construction activities. Hourly Construction Activity Surveys will record times of observations, environmental conditions, and maximum SPLs at near-field and far-field locations. Post-Construction Activity Surveys will record times of observations, environmental conditions, and maximum ambient SPLs at all monitoring locations surveyed during the Construction Activity Surveys. Marine mammal monitoring data will be collected, as noted above.

Marine mammal monitoring will be conducted by a qualified marine mammal observer (MMO) with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface, with the ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- A minimum of a Bachelor's degree in biological science, wildlife management, mammalogy, or related field;
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- Experience or training in the field identification of marine mammals, and identification of marine mammal behavior;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area, as needed; and
- Writing skills sufficient to prepare a report of observations.

Guadalupe and northern fur seals would be considered extralimital to the project area, however, as fur seals have been occasionally observed in the area, the MMO will ensure that take of fur seals is avoided. In the event that a fur seal or another species of marine mammal for which take is not authorized in the IHA are observed either on the rocks, beach, or in the water at Children's Pool prior to commencement of activities or during project activities, the MMO will alert the stranding network, as the occurrence of these species would typically indicate a sick/injured animal, and activities will be postponed until coordination with the stranding network is complete (including any potential 24-hour or 48-hour wait/observation period) and the animal either leaves or is collected by the stranding network.

Marine mammal monitoring protocols are described in greater detail in Section 4 of the City's Monitoring Plan.

Reporting

A final monitoring report will include data collected during marine mammal monitoring and acoustic and environmental monitoring as described above. The monitoring report will include a narrative description of project related activities, counts of marine mammals by species, sex and age class, a summary of marine mammal species/count data, a summary of marine mammal responses to project-related disturbance, and responses to other types of disturbances. The monitoring report will also include a discussion of seasonal and daily variations in the abundance of marine mammals at Children's Pool, the relative percentage of marine mammals observed to react to construction activities and their observed reactions, and the number of marine mammals taken as a result of the project based on the criteria shown in Table 3.

A draft report will be submitted to NMFS within 60 calendar days of the completion of acoustic measurements and marine mammal monitoring. The results will be summarized in tabular/graphical forms and include descriptions of acoustic sound levels and marine mammal observations according to type of construction activity and equipment. A final report will be prepared and submitted to NMFS within 30 days following receipt of comments on the draft report from NMFS. Reporting measures are described in greater detail in Section 6 of the City's Monitoring Plan.

Monitoring reports from IHAs issued to the City in 2013, 2014, and 2015 for the lifeguard station construction project at Children's Pool reported that pinniped responses to that project ranged from no response to heads-up alerts, from startle responses to some movements on land, and some movements into the water (Hanan & Associates 2014; 2015; 2016). There were no documented occurrences of Level A takes throughout the three years of monitoring (Hanan & Associates 2014; 2015; 2016). Data from the three years of monitoring indicates no site abandonment by harbor seals a result of the project (Hanan & Associates 2014; 2015; 2016). Monitoring reports from previous IHAs issued to the City for lifeguard tower construction at Children's Pool can be found on our Web site at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.* The monitoring report from the previous IHA issued to the City for a sand quality study at Children's Pool can be found on our Web site at: *www.nmfs.noaa.gov/pr/permits/incidental/research.htm.*

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects).

An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

If a marine mammal responds to a stimulus by changing its behavior (*e.g.,* through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals or on the stock or species could potentially be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007).

Although the City's planned activities may disturb pinnipeds hauled out at Children's Pool, any project-related impacts are expected to occur to a small, localized group of marine mammals, in relation to the overall stocks of marine

mammals considered here. Pinnipeds will likely become alert or, at most, flush into the water in response to sounds from the planned project. Disturbance is not expected to occur during particularly sensitive times for any marine mammal species, as mitigation measures have been specifically designed to avoid project-related activity during harbor seal pupping season to eliminate the possibility for pup injury or mother-pup separation. No injury, serious injury, or mortality is anticipated, nor is the planned action likely to result in long-term impacts such as permanent abandonment of the haulout (Hanan & Associates 2016).

Children's Pool is not known as an important feeding area for harbor seals, but does serve as a harbor seal rookery. Therefore, if displacement of seals or adverse effects to pups were an expected outcome of the planned activity, impacts to the stock could potentially result. However, site abandonment is not expected to occur as a result of the planned project. We base this expectation on results of previous monitoring reports from the three consecutive IHAs issued to the City for construction and demolition of the lifeguard station at Children's Pool. Over three-plus years of consecutive monitoring (2013–2016) there was no site abandonment by harbor seals a result of the project (Hanan & Associates 2014; 2015; 2016). Adverse effects to pups are not expected to occur. The moratorium on project-related activity during the harbor seal pupping season (December 15–May 15) is expected to minimize any potential adverse effects to pups such as mother-pup separation. Takes of harbor seal as a result of the project are expected to be low relative to stock size (approximately five percent). Additionally, as there are an estimated 600 harbor seals using Children's Pool beach during a year (Linder 2011), authorized takes of harbor seals (Table 4) are expected to be repeated incidences of take to a smaller number of individuals, and not individuals taken, as described above. These takes are not expected to interfere with breeding, sheltering or feeding. For the reasons stated above, we do not expect the planned project to affect annual rates of recruitment or survival for harbor seals.

Children's Pool does not represent an important feeding or breeding area for either northern elephant seals or California sea lion, and neither species uses the project location as a pupping site. Takes of both species are expected to be very low relative to the stock sizes (less than one percent of the stock for each species) and no take by Level A harassment is anticipated to occur as a result of the project for either northern elephant seals or California sea lions. Takes that occur are expected to be in the form of behavioral harassment, specifically changes in direction or possibly flushing to the water. These takes are not expected to interfere with breeding, sheltering or feeding. For the reasons stated above, we do not expect the planned project to affect annual rates of recruitment or survival for northern elephant seals or California sea lions.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival.

- No mortality is anticipated or authorized.
- No injury is expected. Over the course of 3,376 hourly counts associated with monitoring for IHAs issued to the City for construction and demolition of the lifeguard station at Children's Pool in 2013–14, 2014–15, and 2015–16, no takes by Level A harassment were documented. As the planned project will entail equipment with similar expected sound levels to those that occurred during the lifeguard station project at Children's Pool, but will occur further from the haulout location than the lifeguard station project, we do not expect take by Level A harassment to occur as a result of the planned project.
- Behavioral disturbance—Takes are expected to be in the form of behavioral disturbance only. Based on the sound levels anticipated and based on the monitoring reports from previous IHAs issued for similar activities at the same location, behavioral responses are expected to range from no response to alerts, to movements or changes in direction, to possible movements into the water (flushes). Mitigation as described above is expected to limit the number and/or severity of behavioral responses, and those that occur are not expected to be severe.
- Important Areas—As described above, there are no important feeding, breeding or pupping areas that will be affected by the planned project for northern elephant seals and California sea lions. For harbor seal, Children's Pool represents a pupping location. However, as described above, mitigation measures including the moratorium during pupping season (December 15 to May 15) are expected to avoid any potential impacts to pups, such as mother-pup separation. Data from the three years of monitoring suggests that despite documented instances of harassment resulting from the lifeguard station project, there was no site abandonment a result of the project (Hanan & Associates 2014; 2015; 2016). Therefore, the planned project is not expected to negatively affect pups of any species, and is not expected to result in any impacts to annual rates of recruitment or survival.
- Species/Stock scale—As described above, the planned project will impact only a very small percentage of the stocks (approximately five percent for harbor seal, less than one percent for northern elephant seal and California sea lion) and will only impact all marine mammal stocks over a very small portion of their ranges.
- Species/stock status—No marine mammal species for which take is authorized are listed as threatened or endangered under the ESA and no marine mammal stocks for which take is authorized are determined to be strategic or depleted under the MMPA.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals.

The numbers of marine mammals authorized to be taken for harbor seal, California sea lion, and northern elephant seal, are considered small relative to the relevant stocks or populations (approximately five percent for harbor seal and less than one percent for northern elephant seal and California sea lion) even if each estimated take occurred to a new individual. However, we believe it is extremely unlikely that each estimated take will occur to a new individual, and more likely that multiple takes will accrue to the same individuals.

As described above, depending on the amount of information available to

characterize daily and seasonal movement and distribution of affected marine mammals, it can be difficult to distinguish between the number of individuals harassed and the instances of harassment, and this can result in a take estimate that overestimates the number of individuals harassed. In particular, for stationary activities, such as the planned project, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual. This is especially true for those individuals display some degree of residency or site fidelity and the impetus to use the site is stronger than the deterrence presented by the harassing activity, as is the case with harbor seals that use Children's Pool as a haulout.

For the reasons described above, we expect that there will almost certainly be some overlap in individuals present day-to-day at the project site, and the total numbers of authorized takes are expected to occur only within a small portion of the overall regional stocks. Thus while we authorize the instances of incidental take shown in Table 5, we believe that the number of individual marine mammals that will be incidentally taken by the project will be substantially lower than these numbers.

TABLE 5—ESTIMATED NUMBERS OF TAKE AND PERCENTAGES OF MARINE MAMMAL STOCKS THAT MAY BE TAKEN

Species	Level B take authorized	Stock abundance estimate [1]	Percentage of stock or population
Harbor seal	1,620	30,968	5
California sea lion	36	296,750	<1
Northern elephant seal	14	179,000	<1

[1] NMFS 2015 marine mammal stock assessment reports (Carretta *et al.,* 2016) available online at: *www.nmfs.noaa.gov/pr/sars/.*

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally with our ESA Interagency Cooperation Division whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Authorization

NMFS has issued an IHA to the City of San Diego for the take of small numbers of three marine mammal species incidental to conducting demolition and construction activities at Coast Boulevard, La Jolla, California, from June 1, 2017 through December 14, 2017, provided the previously mentioned mitigation, monitoring, and reporting requirements.

Dated: June 23, 2017.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2017–13581 Filed 6–28–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF503

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Science and Statistical Committee (SSC) of the Mid-Atlantic Fishery Management Council's (Council) will hold a meeting.

DATES: The meeting will be held on Wednesday and Thursday, July 19–20, 2017, beginning at 1 p.m. on July 19 and concluding by 12:30 p.m. on July 20. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place at the Royal Sonesta Harbor Court Baltimore, 550 Light Street, Baltimore, MD 21202; telephone: (410) 234–0550.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; Web site: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to make multi-year (2018–19) ABC recommendations for scup based on updated stock assessment information. The SSC will also review the currently implemented 2018 ABCs for summer flounder, black sea bass and bluefish based on the most recent fishery and survey data for each of these species. In addition, topics to be discussed include a discussion on the potential development of chub mackerel reference points, a review of the current generic Terms of Reference used for setting specifications and an SSC OFL Working Group progress report.

A detailed agenda and background documents will be made available on the Council's Web site (*www.mafmc.org*) prior to the meeting.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: June 23, 2017.

Jeffrey N. Lonergan,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2017–13621 Filed 6–28–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF318

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the San Francisco Ferry Terminal Expansion Project, South Basin Improvements Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; Issuance of an Incidental Harassment Authorization.

SUMMARY: NMFS received a request from the San Francisco Bay Area Water Emergency Transportation Authority (WETA) for authorization to take marine mammals incidental to construction activities as part of a ferry terminal expansion and improvements project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is announcing our issuance of an incidental harassment authorization (IHA) to WETA to incidentally take marine mammals, by Level B harassment only, during the specified activity.

DATES: This Authorization is effective from June 1, 2017 through May 31, 2018.

FOR FURTHER INFORMATION CONTACT: Laura McCue, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the applications and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

NMFS published an Environmental Assessment (EA) in 2016 on WETA's ferry terminal construction activities. NMFS found that there would be no significant impacts to the human environment and signed a finding of no significant impact (FONSI) on June 28, 2016. Because the activities and analysis are the same as WETA's 2016 activities, NMFS used the existing EA and signed a FONSI in May 2017 for WETA's 2017 activities.

Summary of Request

NMFS received a request from WETA for an IHA to take marine mammals incidental to pile driving and removal in association with the San Francisco Ferry Terminal Expansion Project, South Basin Improvements Project (Project) in San Francisco Bay, California. In-water work associated with the project is expected to be completed within 23 months. This IHA is for the first phase of construction activities (June 1, 2017–May 31, 2018).

The use of both vibratory and impact pile driving and removal is expected to produce underwater sound at levels that have the potential to result in behavioral harassment of marine mammals. Seven species of marine mammals have the potential to be affected by the specified activities: Harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), Northern elephant seal (*Mirounga angustirostris*), Northern fur seal (*Callorhinus ursinus*), harbor porpoise (*Phocoena phocoena*), gray whale (*Eschrichtius robustus*), and bottlenose dolphin (*Tursiops truncatus*). These species may occur year round in the action area.

WETA received authorization for take of marine mammals incidental to these same activities in 2016 (81 FR 43993; July 6, 2016); however construction activities did not occur. Therefore, the specified activities described in the previous IHA are identical to the activities described here. In addition, similar construction and pile driving activities in San Francisco Bay have been authorized by NMFS in the past. These projects include construction activities at the Exploratorium (75 FR 66065; October 27, 2010), Pier 36 (77 FR 20361; April 4, 2012), and the San Francisco-Oakland Bay Bridge (71 FR 26750; May 8, 2006, 72 FR 25748; August 9, 2007, 74 FR 41684; August 18, 2009, 76 FR 7156; February 9, 2011, 78 FR 2371; January 11, 2013, 79 FR 2421; January 14, 2014, and 80 FR 43710; July 23, 2015).

Description of the Specified Activity

Overview

The WETA is expanding berthing capacity at the Downtown San Francisco Ferry Terminal (Ferry Terminal), located at the San Francisco Ferry Building (Ferry Building), to support existing and future planned water transit services operated on San Francisco Bay by WETA and WETA's emergency operations. A detailed description of the planned construction project is provided in the **Federal Register** notice for the proposed IHA (82 FR 17799; April 13, 2017). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please

refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS's proposal to issue an IHA to WETA was published in the **Federal Register** on April 13, 2017 (82 FR 17799). That notice described, in detail, WETA's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) and one private citizen.

Comment 1: The Commission recommends that NMFS consult with both internal and external scientists and acousticians to determine the appropriate accumulation time that action proponents should use to determine the extent of the Level A harassment zones based on the associated Permanent Threshold Shift (PTS) cumulative sound exposure level (SELcum) thresholds for stationary sound sources.

Response: NMFS will take the Commission's recommendation into consideration and will consult with internal scientists on this issue in the future; however it does not change our isopleths or the number of takes for this specific action. We also welcome the Commission and its Committee of Scientific Advisors on Marine Mammals to provide guidance on this issue.

Comment 2: One private citizen requested clarification on Level B harassment.

Response: NMFS defines Level B harassment in the *Background* and *Estimated Take by Incidental Harassment* sections. Level B harassment is defined, under the MMPA, as any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Description of Marine Mammals in the Area of the Specified Activity

We have reviewed WETA's species information—which summarizes available information regarding status and trends, distribution and habitat preferences, behavior and life history, and auditory capabilities of the potentially affected species—for accuracy and completeness and refer the reader to Sections 4 and 5 of the applications, as well as to NMFS's Stock Assessment Reports (SAR; *www.nmfs.noaa.gov/pr/sars/*), instead of reprinting all of the information here. Additional general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's Web site *www.nmfs.noaa.gov/pr/species/mammals/.* Table 1 lists all species with expected potential for occurrence in San Francisco Bay and summarizes information related to the population or stock, including potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). A detailed description of the of the species likely to be affected by WETA's project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (82 FR 17799; April 13, 2017); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' Web site *www.nmfs.noaa.gov/pr/species/mammals/* for generalized species accounts.

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF SAN FRANCISCO FERRY TERMINAL

Species	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Relative occurrence in San Francisco Bay; season of occurrence
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family Phocoenidae (porpoises)					
Harbor porpoise (*Phocoena phocoena*).	San Francisco-Russian River.	-; N	9,886 (0.51; 6,625; 2011) ..	66	Common
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family Delphinidae (dolphins)					
Bottlenose dolphin [4] (*Tursiops truncatus*).	California coastal	-; N	453 (0.06; 346; 2011)	2.4	Rare
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales, dolphins, and porpoises)					
Family Eschrichtiidae					
Gray whale (*Eschrichtius robustus).*	Eastern N. Pacific	-; N	20,990 (0.05; 20,125; 2011).	624	Rare
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)					
Family Balaenopteridae					
Humpback whale (*Megaptera novaeangliae*).	California/Oregon/ ..... Washington stock	T [5]; S	1,918 (0.05; 1,876; 2014) ..	11	Unlikely

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF SAN FRANCISCO FERRY TERMINAL—Continued

Species	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR [3]	Relative occurrence in San Francisco Bay; season of occurrence
Order Carnivora—Superfamily Pinnipedia					
Family Otariidae (eared seals and sea lions)					
California sea lion (*Zalophus californianus*).	U.S.	-; N	296,750 (n/a; 153,337; 2011).	9,200	Common
Guadalupe fur seal [5] (*Arctocephalus philippii townsendi*).	Mexico to California	T; S	20,000 (n/a; 15,830; 2010)	91	Unlikely
Northern fur seal (*Callorhinus ursinus*).	California stock	-; N	14,050 (n/a; 7,524; 2013)	451	Unlikely
Family Phocidae (earless seals)					
Harbor seal (*Phoca vitulina*)	California	-; N	30,968 (n/a; 27,348; 2012)	1,641	Common; Year-round resident
Northern elephant seal (*Mirounga angustirostris*).	California breeding stock	-; N	179,000 (n/a; 81,368; 2010).	4,882	Rare

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate.

[3] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP).

[4] Abundance estimates for these stocks are greater than eight years old and are, therefore, not considered current. PBR is considered undetermined for these stocks, as there is no current minimum abundance estimate for use in calculation. We nevertheless present the most recent abundance estimates and PBR values, as these represent the best available information for use in this document.

[5] The humpback whales considered under the MMPA to be part of this stock could be from any of three different DPSs. In CA, it would be expected to primarily be whales from the Mexico DPS but could also be whales from the Central America DPS.

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

The effects of underwater noise from WETA's pile-driving and removal activities for the San Francisco Ferry Terminal, South Basin Improvements project have the potential to result in behavioral harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (82 FR 17799; April 13, 2017) included a discussion of the effects of anthropogenic noise on marine mammals, therefore that information is not repeated here; please refer to that **Federal Register** notice for that information.

Estimated Take by Incidental Harassment

This section provides an estimate of the number of incidental takes authorized through this IHA, which informed both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, Section 3(18) of the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to vibratory and impact pile driving and removal. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* bubble curtain, soft start, *etc.*—discussed in detail below in *Mitigation Measures* section), Level A harassment is neither anticipated nor authorized. The death of a marine mammal is also a type of incidental take. However, as described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Given the many uncertainties in predicting the quantity and types of impacts of sound on marine mammals, it is common practice to estimate how many animals are likely to be present within a particular distance of a given activity, or exposed to a particular level of sound. In practice, depending on the amount of information available to characterize daily and seasonal movement and distribution of affected marine mammals, it can be difficult to distinguish between the number of individuals harassed and the instances of harassment and, when duration of the activity is considered, it can result in a take estimate that overestimates the number of individuals harassed. In particular, for stationary activities, it is more likely that some smaller number of individuals may accrue a number of incidences of harassment per individual than for each incidence to accrue to a new individual, especially if those individuals display some degree of residency or site fidelity and the impetus to use the site (*e.g.,* because of foraging opportunities) is stronger than the deterrence presented by the harassing activity.

The area where the ferry terminal is located is not considered important habitat for marine mammals, as it is a highly industrial area with high levels

of vessel traffic and background noise. While there are harbor seal haul outs within 2 miles of the construction activity at Yerba Buena Island, and a California sea lion haul out approximately 1.5 miles away at Pier 39, behavioral disturbances that could result from anthropogenic sound associated with these activities are expected to affect only a relatively small number of individual marine mammals that may venture near the ferry terminal, although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity. WETA has requested authorization for the incidental taking of small numbers of harbor seals, northern elephant seals, northern fur seals, California sea lions, harbor porpoise, bottlenose dolphin, and gray whales near the San Francisco Ferry Terminal that may result from construction activities associated with the project described previously in this document.

In order to estimate the potential instances of take that may occur incidental to the specified activity, we must first estimate the extent of the sound field that may be produced by the activity and then consider in combination with information about marine mammal density or abundance in the project area. We first provide information on applicable sound thresholds for determining effects to marine mammals before describing the information used in estimating the sound fields, the available marine mammal density or abundance information, and the method of estimating instances of take.

Sound Thresholds

We use generic sound exposure thresholds to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by Level B harassment might occur. These thresholds (Table 2) are used to estimate when harassment may occur (*i.e.,* when an animal is exposed to levels equal to or exceeding the relevant criterion) in specific contexts; however, useful contextual information that may inform our assessment of effects is typically lacking and we consider these thresholds as step functions.

TABLE 2—CURRENT ACOUSTIC EXPOSURE CRITERIA

Criterion	Definition	Threshold
Level B harassment (underwater) ...	Behavioral disruption	160 dB (impulsive source)/120 dB (continuous source) (rms).
Level B harassment (airborne)	Behavioral disruption	90 dB (harbor seals)/100 dB (other pinnipeds) (unweighted).

On August 4, 2016, NMFS released its Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Guidance) (NMFS 2016, 81 FR 51694). This new Guidance established new thresholds for predicting auditory injury, which equates to Level A harassment under the MMPA. WETA used this new Guidance to determine sound exposure thresholds to determine when an activity that produces sound might result in impacts to a marine mammal such that a take by injury, in the form of permanent threshold shift (PTS), might occur. These acoustic thresholds are presented using dual metrics of cumulative sound exposure level (SEL_{cum}) and peak sound level (PK) (Table 3). The lower and/or upper frequencies for some of these functional hearing groups have been modified from those designated by Southall *et al.* (2007), and the revised generalized hearing ranges are presented in the new Guidance. The functional hearing groups and the associated frequencies are indicated in Table 3 below.

TABLE 3—SUMMARY OF PTS ONSET ACOUSTIC THRESHOLDS [1]

Hearing group	PTS Onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-frequency cetaceans	*Cell 1:* Lpk,flat: 219 dB; LE,LF,24h: 183 dB.	*Cell 2:* LE,LF,24h: 199 dB.
Mid-frequency cetaceans	*Cell 3:* Lpk,flat: 230 dB; LE,MF,24h: 185 dB.	*Cell 4;* LE,MF,24h: 198 dB.
High-frequency cetaceans	*Cell 5:* Lpk,flat: 202 dB; LE,HF,24h: 155 dB.	*Cell 6:* LE,HF,24h: 173 dB.
Phocid Pinnipeds (underwaters)	*Cell 7:* Lpk,flat: 218 dB; LE,PW,24h: 185 dB.	*Cell 8:* LE,PW,24h: 201 dB.
Otariid Pinnipeds (underwater)	*Cell 9:* Lpk,flat: 232 dB; LE,OW,24h: 203 dB.	*Cell 10:* LE,OW,24h: 219 dB.

[1] NMFS 2016.

Distance to Sound Thresholds

Underwater Sound Propagation Formula—Pile driving and removal generates underwater noise that can potentially result in disturbance to marine mammals in the project area. Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$TL = B * \log_{10}(R_1/R_2)$, where

R_1 = the distance of the modeled sound pressure level (SPL) from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive

conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of 15 is often used under conditions, such as at the San Francisco Ferry Terminal, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss (4.5 dB reduction in sound level for each doubling of distance) is assumed here.

Underwater Sound—The intensity of pile driving and removal sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. A number of studies, primarily on the west coast, have measured sound produced during underwater pile driving projects. These data are largely for impact driving of steel pipe piles and concrete piles as well as vibratory driving of steel pipe piles.

In order to determine reasonable SPLs and their associated effects on marine mammals that are likely to result from vibratory or impact pile driving or removal at the ferry terminal, we considered existing measurements from similar physical environments (*e.g.* estuarine areas of soft substrate where water depths are less than 16 feet).

Level A Thresholds (Table 4)

The values used to calculate distances at which sound would be expected to exceed the Level A thresholds for impact driving of 24-inch (in) and 36-in piles include peak values of 210 dB for 36-in piles and 207 dB for 24-in piles (Caltrans 2015a). Anticipated SELs for unattenuated impact pile-driving would be 183 dB for 36-in pile driving and 178 dB for 24-in piles (Caltrans 2015a). Bubble curtains will be used during the installation of these piles, which is expected to reduce noise levels by about 10 dB rms (Caltrans 2015a). Vibratory driving source levels include 165 dB RMS for 24-in piles and 175 dB RMS for 36-in piles (Caltrans 2015a). In the user spreadsheet from NMFS' Guidance, 1800 strikes per pile with 2 piles per day was used for impact driving of 36-in piles, and 1800 strikes per pile with 3 piles per day was used for impact driving of 24-in piles. Total duration for vibratory driving of 24-in or 36-in piles is one hour. Both pile sizes are analyzed, but only 36-in piles are used to conservatively calculate take.

The values used to calculate distances at which sound would be expected to exceed the Level A thresholds for impact driving of 14-in wood piles include a peak value of 180 dB and SEL value of 148 dB (Caltrans 2015a). Vibratory driving source level is assumed to be 150 dB RMS (Caltrans 2015a). In the user spreadsheet from NMFS' Guidance, 200 strikes per pile and 6 piles per day were used. Total duration for vibratory driving of 14-in wood piles is one hour.

The most applicable noise values for 12- to 18- in wooden pile removal from which to base estimates for the terminal expansion project are derived from measurements taken at the Port Townsend dolphin pile removal in the State of Washington. During vibratory pile extraction associated with this project, measured peak noise levels were approximately 164 decibel (dB) at 16 m, and the root mean square (rms) was approximately 150 dB (WSDOT 2011). In the user spreadsheet from NMFS' Guidance, activity duration is estimated at 1.33 hours, pulse duration of 1 second, and 1/repetition rate of 1 second.

TABLE 4—EXPECTED PILE-DRIVING NOISE LEVELS AND DISTANCES OF LEVEL A THRESHOLD EXCEEDANCE WITH IMPACT AND VIBRATORY DRIVER

Project element requiring pile installation	Source levels at 10 meters (dB) [1]			Distance to level A threshold in meters				
	Peak [1]	SEL	RMS	Phocids	Otariids	LF * Cetaceans	MF * Cetaceans	HF * Cetaceans
18-In Wood Piles—Vibratory Extraction	.....	.....	[1] 150	1.5	0.1	2.4	0.2	3.6
18-In Concrete Piles—Vibratory Extraction	.....	.....	[1] 150	1.5	0.1	2.4	0.2	3.6
24-In Steel Piles—Vibratory Driver [3]*	.....	.....	* 175	35.6	2.5	58.6	5.2	86.6
24-In Steel Piles—Impact Driver (BCA) [2 3]	[2] 207	[2] 178	.....	164.5	12.0	307.4	10.9	366.1
36-In Steel Piles—Vibratory Extraction	.....	.....	175	35.6	2.5	58.6	5.2	86.6
36-In Steel Piles—Vibratory Driver	.....	.....	175	35.6	2.5	58.6	5.2	86.6
36-In Steel Piles—Impact Driver (BCA) [2]	[2] 210	[2] 183	.....	270.4	19.7	505.4	18.0	602.0
14-In Wood Piles—Vibratory Driver	.....	.....	[1] 150	1.5	0.1	2.4	0.2	3.6
14-In Wood Piles—Impact Driver	180	148	.....	2.8	0.2	5.2	0.2	6.2

*Low frequency (LF) cetaceans, Mid frequency (MF) cetaceans, High frequency (HF) cetaceans.

[1] All distances to the peak Level A thresholds are less than 33 feet (10 meters) except 18-in wood and concrete piles, which were measured at 16 feet.

[2] Bubble curtain attenuation (BCA). A bubble curtain will be used for impact driving and is assumed to reduce the source level by 10dB. Therefore, source levels were reduced by this amount for take calculations.

[3] Either 24-in or 36-in piles will be used for the Embarcadero Plaza and East Bayside Promenade, but not both. Source levels used for 36-in piles using a vibratory hammer are also conservatively used for 24 in piles using a vibratory hammer.

Level B Thresholds (Table 5)

Impact Pile Driving

Measured source levels for 24- and 36-in steel piles using an impact hammer were found in a summary table for near-source unattenuated SPLs from Caltrans (2015). The average SPL for 24-in steel pipe piles was 178 dB SEL and peak at 207 dB (Caltrans 2015). The average SPL for 36-in steel pipe piles was 183 dB and peak at 210 dB (Caltrans 2015). Projects conducted under similar circumstances with similar piles were reviewed to approximate the noise effects of the 14-in wood piles. The best match for estimated noise levels is from the impact driving of timber piles at the Port of Benicia. Noise levels produced during this installation were an average of 148 dB SEL and 180 dB peak at 33 feet (10 meters) from the pile (Caltrans 2015).

Vibratory Pile-Driving

Measured source levels for 36-in steel piles using an impact hammer were found in a summary table for near-source unattenuated SPLs from Caltrans (2015). Because there are no representative 24-in steel pipe piles installed with a vibratory hammer, the 36-in steel pipe piles were used as a proxy. The average SPL for 36-in steel pipe piles (and 24-in steel pipe piles) was 175 dB rms (Caltrans 2015). This value was also used for 36-in steel pipe pile vibratory extraction.

Approximately 350 wood and concrete piles, 12- to 18-in in diameter, will be removed using a vibratory pile-driver. With the vibratory hammer activated, an upward force would be applied to the pile to remove it from the sediment. On average, 12 of these piles will be extracted per work day. Extraction time needed for each pile may vary greatly, but could require approximately 400 seconds (approximately 7 minutes) from an APE 400B King Kong or similar driver. The most applicable noise values for wooden pile removal from which to base estimates for the terminal expansion project are derived from measurements taken at the Port Townsend dolphin pile removal in the State of Washington. During vibratory pile extraction associated with this project, measured peak noise levels were approximately 164 dB at 16 m, and the rms was approximately 150 dB (WSDOT 2011). Applicable sound values for the removal of concrete piles could not be located, but they are expected to be similar to the levels produced by wooden piles described above, because they are similarly sized, nonmetallic, and will be removed using the same methods. These same values will be used as a proxy for the vibratory driving of 14-in wood piles. It is estimated that an average of four of these piles will be installed per day with a vibratory hammer.

Tables 4 and 5 show the expected underwater sound levels for pile driving activities and the estimated distances to the Level A (Table 4) and Level B (Table 5) thresholds.

TABLE 5—EXPECTED PILE-DRIVING NOISE LEVELS AND DISTANCES OF LEVEL B THRESHOLD EXCEEDANCE WITH IMPACT AND VIBRATORY DRIVER

Project element requiring pile installation	Source levels at 10 meters (dB rms)	Distance to level B threshold, in meters [1]	Area of potential level B threshold exceedance in square kilometers [1]
		160/120 dB RMS (level B) [2]	
South Basin Pile Demolition and Removal			
18-In Wood Piles—Vibratory Extraction	*150	1,600	2.98
18-In Concrete Piles—Vibratory Extraction	*150	1,600	2.98
36-In Steel Piles—Vibratory Extraction	175	46,416	115.27
Embarcadero Plaza and East Bayside Promenade [3]			
36-In Steel Piles—Vibratory Driver	175	46,416	115.27
36-In Steel Piles—Impact Driver (BCA)	[4] 193	341	0.18
24-In Steel Piles—Vibratory Driver	175	46,416	115.27
24-In Steel Piles—Impact Driver (BCA)	[4] 194	398	0.23
Fender Piles			
14-In Wood Piles—Vibratory Driver	*150	1,600	2.98
14-In Wood Piles—Impact Driver	165	22	0.002

*This value was measured at 16m (not 10m).
[1] Where noise will not be blocked by land masses or other solid structures.
[2] For underwater noise, the Level B harassment (disturbance) threshold is 160 dB for impulsive noise and 120 dB for continuous noise.
[3] Either 24-in or 36-in piles will be used for the Embarcadero Plaza and East Bayside Promenade, but not both. To be conservative, 36-in piles were used in the take estimation.
[4] Bubble curtain attenuation (BCA). A bubble curtain will be used for impact driving and is expected to reduce the source level by 10dB.

Marine Mammal Densities

At-sea densities for marine mammal species have been determined for harbor seals and California sea lions in San Francisco Bay based on marine mammal monitoring by Caltrans for the San Francisco-Oakland Bay Bridge Project from 2000 to 2015 (Caltrans 2016); all other estimates here are determined by using observational data taken during marine mammal monitoring associated with the Richmond-San Rafael Bridge retrofit project, the San Francisco-Oakland Bay Bridge (SFOBB), which has been ongoing for the past 15 years, and anecdotal observational reports from local entities.

Description of Take Calculation

All estimates are conservative and include the following assumptions:

- All pilings installed at each site would have an underwater noise

disturbance equal to the piling that causes the greatest noise disturbance *(i.e.,* the piling farthest from shore) installed with the method that has the largest zone of influence (ZOI). The largest underwater disturbance (Level B) ZOI would be produced by vibratory driving steel piles; therefore take estimates were calculated using the vibratory pile-driving ZOIs. The ZOIs for each threshold are not spherical and are truncated by land masses on either side of the channel which would dissipate sound pressure waves.

- Exposures were based on estimated total of 106 work days. Each activity ranges in amount of days needed to be completed.
- In absence of site specific underwater acoustic propagation modeling, the practical spreading loss model was used to determine the ZOI.
- All marine mammal individuals potentially available are assumed to be present within the relevant area, and thus incidentally taken;
- An individual can only be taken once during a 24-hour period; and,
- Exposures to sound levels at or above the relevant thresholds equate to take, as defined by the MMPA.

The estimation of marine mammal takes typically uses the following calculation:

For harbor seals and California sea lions: Level B exposure estimate = D (density) * Area of ensonification) * Number of days of noise generating activities.

For all other marine mammal species: Level B exposure estimate = N (number of animals) in the area * Number of days of noise generating activities.

To account for the increase in California sea lion density due to El Niño, the daily take estimated from the observed density has been increased by a factor of 10 for each day that pile driving or removal occurs.

There are a number of reasons why estimates of potential instances of take may be overestimates of the number of individuals taken, assuming that available density or abundance estimates and estimated ZOI areas are accurate. We assume, in the absence of information supporting a more refined conclusion, that the output of the calculation represents the number of individuals that may be taken by the specified activity. In fact, in the context of stationary activities such as pile driving and in areas where resident animals may be present, this number represents the number of instances of take that may accrue to a smaller number of individuals, with some number of animals being exposed more than once per individual. While pile driving and removal can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time (typically a matter of hours on any given day) is actually spent pile driving/removal. The potential effectiveness of mitigation measures in reducing the number of takes is typically not quantified in the take estimation process. For these reasons, these take estimates may be conservative, especially if each take is considered a separate individual animal, and especially for pinnipeds.

Table 6 lists the total estimated instances of expected take.

TABLE 6—CALCULATIONS FOR INCIDENTAL TAKE ESTIMATION

Pile type	Pile-driver type	Number of driving days	Authorized take by level B harassment						
			Harbor seal	CA sea lion [1]	Northern elephant seal [2]	Harbor porpoise [2]	Gray whale [2]	Northern fur seal [2]	Bottlenose dolphin [2]
Wood/concrete pile removal.	Vibratory	30	74	80	NA	NA	NA	NA	NA.
36-in dolphin pile removal.	Vibratory	1	96	100	NA	NA	NA	NA	NA.
Embarcadero Plaza 36-in steel piles.	Vibratory [3]	65	6,219	6,743	NA	NA	NA	NA	NA.
14-in wood pile	Vibratory [3]	10	25	27	NA	NA	NA	NA	NA.
Project Total (2016) [4].		106	6,414	6,950	26	9	2	10	30.

[1] To account for potential El Niño conditions, take calculated from at-sea densities for California sea lion has been increased by a factor of 10.
[2] Take is not calculated by activity type for these species with a low potential to occur, only a yearly total is given.
[3] Piles of this type may also be installed with an impact hammer, which would reduce the estimated take.
[4] This total assumes the more conservative use of 36-in steel piles used for the Embarcadero Plaza; however, an alternative would be to use 24-in steel piles, which would result in smaller take numbers.

Description of Marine Mammals in the Area of the Specified Activity

Harbor Seals

Monitoring of marine mammals in the vicinity of the SFOBB has been ongoing for 15 years; from those data, Caltrans has produced at-sea density estimates for Pacific harbor seal of 0.83 animals per square kilometer for the fall season (Caltrans 2016). Using this density, the potential average daily take for the areas over which the Level B harassment thresholds may be exceeded are estimated in Table 7.

TABLE 7—TAKE CALCULATION FOR HARBOR SEAL

Activity	Pile type	Density	Area (km^2)	Number of days of activity	Take estimate
Vibratory driving and extraction.	36-in steel pile [1]	0.83 animal/km^2	115.27	65; 1	6,219; 96
Vibratory extraction	18-in Wood and concrete piles.	0.83 animal/km^2	2.98	30	74

TABLE 7—TAKE CALCULATION FOR HARBOR SEAL—Continued

Activity	Pile type	Density	Area (km^2)	Number of days of activity	Take estimate
Vibratory driving	14-in Wood piles	0.83 animal/km^2	2.98	10	25

[1] The more conservative use of 36-in steel piles for the Embarcadero Plaza was used here; however, an alternative would be to use 24-in steel piles, which would result in smaller take numbers (2,054 vs 4,668).

A total of 6,414 harbor seal takes are estimated for 2017 (Table 6). This take number changed from the proposed rule based on changes to the source levels used for equipment type. Level A take is not expected for harbor seal based on area of ensonification and density of the animals in that area. While the Level A zone is relatively large for this hearing group (approximately 270 m), there will be 2 MMOs monitoring the zone in the most advantageous locations to spot marine mammals. If a harbor seal (or any other marine mammal) is seen approaching the Level A zone, a shutdown will be in place. We do not anticipate that Level A harassment will occur.

California Sea Lion

Monitoring of marine mammals in the vicinity of the SFOBB has been ongoing for 15 years; from those data, Caltrans has produced at-sea density estimates for California sea lion of 0.09 animal per square kilometer for the post-breeding season (Caltrans 2016). Using this density, the potential average daily take for the areas over which the Level B harassment thresholds may be exceeded is estimated in Table 8.

TABLE 8—TAKE CALCULATION FOR CALIFORNIA SEA LION

Activity	Pile type	Density	Area (km^2)	Number of days of activity	Take estimate
Vibratory driving and extraction.	36-in steel pile [1]	0. 09 animal/km^2	115.27	65; 1	*6,743; *100
Vibratory extraction	18-in Wood and concrete piles.	0.09 animal/km^2	2.98	30	*80
Vibratory driving	14-in Wood piles	0.09 animal/km^2	2.98	10	*27

* All California sea lion estimates were multiplied by 10 to account for the increased occurrence of this species due to El Niño.
[1] The more conservative use of 36-in steel piles for the Embarcadero Plaza was used here; however, an alternative would be to use 24 in steel piles, which would result in smaller take numbers (2,230 vs 5,060).

All California sea lion estimates were multiplied by 10 to account for the increased occurrence of this species due to El Niño. A total of 6,950 California sea lion takes is estimated for 2017 (Table 6). This take number changed from the proposed rule based on changes to the source levels used for equipment type. Level A take is not expected for California sea lion based on area of ensonification and density of the animals in that area.

Northern Elephant Seal

Monitoring of marine mammals in the vicinity of the SFOBB has been ongoing for 15 years; from those data, Caltrans has produced an estimated at-sea density for northern elephant seal of 0.03 animal per square kilometer (Caltrans, 2016). Most sightings of northern elephant seal in San Francisco Bay occur in spring or early summer, and are less likely to occur during the periods of in-water work for this project (June through November). As a result, densities during pile driving and removal for the planned action would be much lower. Therefore, we estimate that it is possible that a lone northern elephant seal may enter the Level B harassment area once per week during pile driving or removal, for a total of 26 takes in 2017 (Table 6). Level A take of Northern elephant seal is not requested, nor is it authorized because although one animal may approach the large Level B zones, it is not expected that it will continue in the area of ensonification into the Level A zone. Further, if the animal does approach the Level A zone, construction will be shut down. We do not anticipate that Level A harassment will occur.

Northern Fur Seal

During the breeding season, the majority of the worldwide population is found on the Pribilof Islands in the southern Bering Sea, with the remaining animals spread throughout the North Pacific Ocean. On the coast of California, small breeding colonies are present at San Miguel Island off southern California, and the Farallon Islands off central California (Carretta *et al.,* 2014). Northern fur seal are a pelagic species and are rarely seen near the shore away from breeding areas. Juveniles of this species occasionally strand in San Francisco Bay, particularly during El Niño events, for example, during the 2006 El Niño event, 33 fur seals were admitted to the Marine Mammal Center (TMMC 2016). Some of these stranded animals were collected from shorelines in San Francisco Bay. Due to the recent El Niño event, northern fur seals were observed in San Francisco bay more frequently, as well as strandings all along the California coast and inside San Francisco Bay (TMMC, personal communication); a trend that may continue this summer through winter if El Niño conditions occur. Because sightings are normally rare; instances recently have been observed, but are not common, and based on estimates from local observations (TMMC, personal communication), it is estimated that ten northern fur seals will be taken in 2017 (Table 6). Level A take is not requested or authorized for this species.

Harbor Porpoise

In the last six decades, harbor porpoises were observed outside of San Francisco Bay. The few harbor porpoises that entered were not sighted past central Bay close to the Golden Gate Bridge. In recent years, however, there have been increasingly common

observations of harbor porpoises in central, north, and south San Francisco Bay. Porpoise activity inside San Francisco Bay is thought to be related to foraging and mating behaviors (Keener 2011; Duffy 2015). According to observations by the Golden Gate Cetacean Research team as part of their multi-year assessment, over 100 porpoises may be seen at one time entering San Francisco Bay; and over 600 individual animals are documented in a photo-ID database. However, sightings are concentrated in the vicinity of the Golden Gate Bridge and Angel Island, north of the project area, with lesser numbers sighted south of Alcatraz and west of Treasure Island (Keener 2011). Harbor porpoise generally travel individually or in small groups of two or three (Sekiguchi 1995).

Monitoring of marine mammals in the vicinity of the SFOBB has been ongoing for 15 years. From those data, Caltrans has produced an estimated at-sea density for harbor porpoise of 0.021 animal per square kilometer (Caltrans 2016). However, this estimate would be an overestimate of what would actually be seen in the project area. In order to estimate a more realistic take number, we assume it is possible that a small group of individuals (three harbor porpoises) may enter the Level B harassment area on as many as three days of pile driving or removal, for a total of nine harbor porpoise takes per year (Table 6). It is possible that harbor porpoise may enter the Level A harassment zone for high frequency cetaceans. However, two MMOs will be monitoring the area and WETA will implement a shutdown for the entire zone if a harbor porpoise (or any other marine mammal) approaches the Level A zone, therefore, Level A take is not being requested, nor authorized for this species.

Gray Whale

Historically, gray whales were not common in San Francisco Bay. The Oceanic Society has tracked gray whale sightings since they began returning to San Francisco Bay regularly in the late 1990s. The Oceanic Society data show that all age classes of gray whales are entering San Francisco Bay, and that they enter as singles or in groups of up to five individuals. However, the data do not distinguish between sightings of gray whales and number of individual whales (Winning 2008). Caltrans Richmond-San Rafael Bridge project monitors recorded 12 living and two dead gray whales in the surveys performed in 2012. All sightings were in either the central or north Bay; and all but two sightings occurred during the months of April and May. One gray whale was sighted in June, and one in October (the specific years were unreported). It is estimated that two to six gray whales enter San Francisco Bay in any given year. Because construction activities are only occurring during a maximum of 106 days in 2017, it is estimated that two gray whales may potentially enter the area during the construction period, for a total of 2 gray whale takes in 2017 (Table 6).

Bottlenose Dolphin

Since the 1982–83 El Niño, which increased water temperatures off California, bottlenose dolphins have been consistently sighted along the central California coast (Carretta *et al.,* 2008). The northern limit of their regular range is currently the Pacific coast off San Francisco and Marin County, and they occasionally enter San Francisco Bay, sometimes foraging for fish in Fort Point Cove, just east of the Golden Gate Bridge. In the summer of 2015, a lone bottlenose dolphin was seen swimming in the Oyster Point area of South San Francisco (GGCR 2016). Members of this stock are transient and make movements up and down the coast, and into some estuaries, throughout the year. Bottlenose dolphins are being observed in San Francisco bay more frequently in recent years (TMMC, personal communication). Groups with an average group size of five animals enter the bay and occur near Yerba Buena Island once per week for a two week stint and then depart the bay (TMMC, personal communication). Assuming groups of five individuals may enter San Francisco Bay approximately three times during the construction activities, and may enter the ensonified area once per week over the two week stint, we estimate 30 takes of bottlenose dolphins for 2017 (Table 6).

Mitigation Measures

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully balance two primary factors: (1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat—which considers the nature of the potential adverse impact being mitigated (likelihood, scope, range), as well as the likelihood that the measure will be effective if implemented; and the likelihood of effective implementation, and; (2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Measurements from similar pile driving events were coupled with practical spreading loss to estimate zones of influence (ZOI; see *Estimated Take by Incidental Harassment*); these values were used to develop mitigation measures for pile driving and removal activities at the ferry terminal. The ZOIs effectively represent the mitigation zone that will be established around each pile to prevent Level A harassment to marine mammals, while providing estimates of the areas within which Level B harassment might occur. In addition to the specific measures described later in this section, WETA will conduct briefings between construction supervisors and crews, marine mammal monitoring team, and WETA staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Monitoring and Shutdown for Construction Activities

The following measures will apply to WETA's mitigation through shutdown and disturbance zones:

Shutdown Zone—For all pile driving activities, WETA will establish a shutdown zone intended to contain the area in which SPLs equal or exceed the auditory injury criteria for cetaceans and pinnipeds. The purpose of a

shutdown zone is to define an area within which shutdown of activity will occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing injury of marine mammals (as described previously under *Potential Effects of the Specified Activity on Marine Mammals,* serious injury or death are unlikely outcomes even in the absence of mitigation measures). Modeled radial distances for shutdown zones are shown in Table 4. However, a minimum shutdown zone of 10 m will be established during all pile driving activities, regardless of the estimated zone.

Disturbance Zone—Disturbance zones are the areas in which SPLs equal or exceed 160 and 120 dB rms (for impulse and continuous sound, respectively). Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone and thus prepare for potential shutdowns of activity. However, the primary purpose of disturbance zone monitoring is for documenting instances of Level B harassment; disturbance zone monitoring is discussed in greater detail later (see *Monitoring and Reporting*). Nominal radial distances for disturbance zones are shown in Table 5.

Given the size of the disturbance zone for vibratory pile driving, it is impossible to guarantee that all animals will be observed or to make comprehensive observations of fine-scale behavioral reactions to sound, and only a portion of the zone (*e.g.,* what may be reasonably observed by visual observers stationed within the turning basin) may be observed. In order to document observed instances of harassment, monitors record all marine mammal observations, regardless of location. The observer's location, as well as the location of the pile being driven, is known from a GPS. The location of the animal is estimated as a distance from the observer, which is then compared to the location from the pile. It may then be estimated whether the animal was exposed to sound levels constituting incidental harassment on the basis of predicted distances to relevant thresholds in post-processing of observational and acoustic data, and a precise accounting of observed incidences of harassment created. This information may then be used to extrapolate observed takes to reach an approximate understanding of actual total takes.

Monitoring Protocols—Monitoring will be conducted before, during, and after pile driving and vibratory removal activities. In addition, observers shall record all instances of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment would be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities will be halted. Monitoring will take place from 15 minutes prior to initiation through thirty minutes post-completion of pile driving and removal activities. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes. Please see the Monitoring Plan (*www.nmfs.noaa.gov/pr/permits/incidental/construction.htm*), developed by WETA in agreement with NMFS, for full details of the monitoring protocols.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. A minimum of two observers will be required for all pile driving/removal activities. Marine Mammal Observer (MMO) requirements for construction actions are as follows:

(a) Independent observers (*i.e.,* not construction personnel) are required;

(b) At least one observer must have prior experience working as an observer;

(c) Other observers (that do not have prior experience) may substitute education (undergraduate degree in biological science or related field) or training for experience;

(d) Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

(e) NMFS will require submission and approval of observer CVs.

Qualified MMOs are trained biologists, and need the following additional minimum qualifications:

(a) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

(b) Ability to conduct field observations and collect data according to assigned protocols;

(c) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(d) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

(e) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and

(f) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for thirty minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (*i.e.,* when not obscured by dark, rain, fog, *etc.*). In addition, if such conditions should arise during impact pile driving that is already underway, the activity will be halted.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, the activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of small cetaceans and pinnipeds, and thirty minutes for gray whales. Monitoring will be conducted throughout the time required to drive a pile.

(4) Using delay and shut-down procedures, if a species for which authorization has not been granted (including but not limited to Guadalupe fur seals and humpback whales) or if a

species for which authorization has been granted but the authorized takes are met, approaches or is observed within the Level B harassment zone, activities will shut down immediately and not restart until the animals have been confirmed to have left the area.

Soft Start

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning or providing a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. This procedure is repeated two additional times. It is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in ''bouncing'' of the hammer as it strikes the pile, resulting in multiple ''strikes.'' For impact driving, we require an initial set of three strikes from the impact hammer at reduced energy, followed by a thirty-second waiting period, then two subsequent three strike sets. Soft start will be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer.

Sound Attenuation Devices

Two types of sound attenuation devices will be used during impact pile-driving: Bubble curtains and pile cushions. WETA will employ the use of a bubble curtain during impact pile-driving, which is assumed to reduce the source level by 10 dB. Bubble curtains will not be used during impact driving of wood piles because the sound levels produced would be significantly less than those from steel piles. WETA will also employ the use of 12-in-thick wood cushion block on impact hammers to attenuate underwater sound levels.

We have carefully evaluated WETA's planned mitigation measures and considered their effectiveness in past implementation to determine whether they are likely to effect the least practicable impact on the affected marine mammal species and stocks and their habitat.

Any mitigation measure(s) we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal);

(2) A reduction in the number (total number or number at biologically important time or location) of individual marine mammals exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only);

(3) A reduction in the number (total number or number at biologically important time or location) of times any individual marine mammal would be exposed to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing takes by behavioral harassment only);

(4) A reduction in the intensity of exposure to stimuli expected to result in incidental take (this goal may contribute to 1, above, or to reducing the severity of behavioral harassment only);

(5) Avoidance or minimization of adverse effects to marine mammal habitat, paying particular attention to the prey base, blockage or limitation of passage to or from biologically important areas, permanent destruction of habitat, or temporary disturbance of habitat during a biologically important time; and

(6) For monitoring directly related to mitigation, an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of WETA's planned measures, as well as any other potential measures that may be relevant to the specified activity, we have determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as to ensure that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species in action area (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) population, species, or stock;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

WETA's monitoring and reporting measures are also described in their Marine Mammal Monitoring Plan, online at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

Hydroacousting Monitoring

Hydroacoustic monitoring will be conducted in consultation with the California Department of Fish and Wildlife (CDFW) during a minimum of ten percent of all pile driving activities. The monitoring will be done in accordance with the methodology outlined in this Hydroacoustic Monitoring Plan (see WETA's Hydroacoustic Monitoring Plan online at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* for more information on this plan, including the methodology, equipment, and reporting information). The monitoring will be conducted based on the following:

- Be based on the dual metric criteria (Popper *et al.,* 2006) and the accumulated SEL;

• Establish field locations that will be used to document the extent of the area experiencing 187 dB SEL accumulated;
• Establish the distance to the Marine Mammal Level A and Level B shutdown and Harassment zones;
• Describe the methods necessary to continuously measure underwater noise on a real-time basis, including details on the number, location, distance and depth of hydrophones, and associated monitoring equipment;
• Provide a means of recording the time and number of pile strikes, the peak sound energy per strike, and interval between strikes; and
• Provide all monitoring data to the CDFW and NMFS.

Visual Marine Mammal Observations

WETA will collect sighting data and behavioral responses to construction for marine mammal species observed in the region of activity during the period of activity. All marine mammal observers (MMOs) will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. A minimum of two MMOs will be required for all pile driving/removal activities. WETA will monitor the shutdown zone and disturbance zone before, during, and after pile driving, with observers located at the best practicable vantage points. Based on our requirements, WETA will implement the following procedures for pile driving and removal:
• MMOs will be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible;
• During all observation periods, observers will use binoculars and the naked eye to search continuously for marine mammals;
• If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity will be halted; and
• The shutdown and disturbance zones around the pile will be monitored for the presence of marine mammals before, during, and after any pile driving or removal activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. The monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to protocol will be coordinated between NMFS and WETA.

In additions, the MMO(s) will survey the potential Level A and nearby Level B harassment zones (areas within approximately 2,000 feet of the pile-driving area observable from the shore) on 2 separate days—no earlier than 7 days before the first day of construction—to establish baseline observations. Monitoring will be timed to occur during various tides (preferably low and high tides) during daylight hours from locations that are publicly accessible (*e.g.,* Pier 14 or the Ferry Plaza). The information collected from baseline monitoring will be used for comparison with results of monitoring during pile-driving activities.

Data Collection

We require that observers use approved data forms. Among other pieces of information, WETA will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, WETA will attempt to distinguish between the number of individual animals taken and the number of incidences of take. We require that, at a minimum, the following information be collected on the sighting forms:
• Date and time that monitored activity begins or ends;
• Construction activities occurring during each observation period;
• Weather parameters (*e.g.,* percent cover, visibility);
• Water conditions (*e.g.,* sea state, tide state);
• Species, numbers, and, if possible, sex and age class of marine mammals;
• Description of any observable marine mammal behavior patterns, including bearing and direction of travel, and if possible, the correlation to SPLs;
• Distance from pile driving or removal activities to marine mammals and distance from the marine mammals to the observation point;
• Description of implementation of mitigation measures (*e.g.,* shutdown or delay);
• Locations of all marine mammal observations; and
• Other human activity in the area.

Hydroacousting Monitoring

Hydroacoustic monitoring will be conducted in consultation with the CDFW during a minimum of ten percent of all pile driving activities (*i.e.,* the first two piles of the 24-in and 36-in piles). The monitoring will be done in accordance with the methodology outlined in this Hydroacoustic Monitoring Plan. The monitoring will be conducted based on the following:
• Be based on the dual metric criteria (Popper *et al.,* 2006) and the accumulated SEL;
• Establish field locations that will be used to document the extent of the area experiencing 187 dB SEL accumulated;
• Establish the distance to the Marine Mammal Level A and Level B shutdown and Harassment zones;
• Describe the methods necessary to continuously measure underwater noise on a real-time basis, including details on the number, location, distance and depth of hydrophones, and associated monitoring equipment;
• Provide a means of recording the time and number of pile strikes, the peak sound energy per strike, and interval between strikes; and
• Provide all monitoring data to the CDFW and NMFS.

Reporting

A draft report will be submitted to NMFS within 90 days of the completion of marine mammal monitoring, or sixty days prior to the requested date of issuance of any future IHA for projects at the same location, whichever comes first. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving and removal days, and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within 30 days following resolution of comments on the draft report.

Analyses and Determinations

Negligible Impact Analysis

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers

other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving and removal activities associated with the ferry terminal construction project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in the ensonified zone when pile driving and removal occurs.

No injury, serious injury, or mortality is anticipated given the nature of the activities and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, vibratory hammers will be the primary method of installation (impact driving is included only as a contingency). Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. If impact driving is necessary, implementation of soft start and shutdown zones significantly reduces any possibility of injury. Given sufficient ''notice'' through use of soft start (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to it becoming potentially injurious. WETA will also employ the use of 12-in-thick wood cushion block on impact hammers, and a bubble curtain as sound attenuation devices. Environmental conditions in San Francisco Ferry Terminal mean that marine mammal detection ability by trained observers is high, enabling a high rate of success in implementation of shutdowns to avoid injury.

WETA's activities are localized and of relatively short duration (a maximum of 106 days for pile driving and removal in the first year). The entire project area is limited to the San Francisco ferry terminal area and its immediate surroundings. These localized and short-term noise exposures may cause short-term behavioral modifications in harbor seals, northern fur seals, northern elephant seals, California sea lions, harbor porpoises, bottlenose dolphins, and gray whales. Moreover, the planned mitigation and monitoring measures are expected to reduce the likelihood of injury and behavior exposures. Additionally, no important feeding and/or reproductive areas for marine mammals are known to be within the ensonified area during the construction time frame.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat. The project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; Lerma 2014). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in fitness for the affected individuals, and thus will not result in any adverse impact to the stock as a whole.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized;
- Injurious takes are not expected due to the presumed efficacy of the planned mitigation measures in reducing the effects of the specified activity to the level of least practicable impact;
- Level B harassment may consist of, at worst, temporary modifications in behavior (*e.g.,* temporary avoidance of habitat or changes in behavior);
- The lack of important feeding, pupping, or other areas in the action area;
- The high level of ambient noise already in the ferry terminal area; and
- The small percentage of the stock that may be affected by project activities (<21 percent for all species).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the planned monitoring and mitigation measures, NMFS finds that the total marine mammal take from WETA's ferry terminal construction activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers Analysis

Table 9 details the number of instances that animals could be exposed to received noise levels that could cause Level B behavioral harassment for the planned work at the ferry terminal project site relative to the total stock abundance. The numbers of animals authorized to be taken for all species are considered small relative to the relevant stocks or populations even if each estimated instance of take occurred to a new individual—an extremely unlikely scenario. The total percent of the population (if each instance was a separate individual) for which take is requested is approximately 21 percent for harbor seals, approximately 7 percent for bottlenose dolphins, less than 3 percent for California sea lions, and less than 1 percent for all other species (Table 9). For pinnipeds, especially harbor seals occurring in the vicinity of the ferry terminal, there will almost certainly be some overlap in individuals present day-to-day, and the number of individuals taken is expected to be notably lower. We find that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

TABLE 9—ESTIMATED NUMBERS AND PERCENTAGE OF STOCK THAT MAY BE EXPOSED TO LEVEL B HARASSMENT

Species	Authorized takes	Stock(s) abundance estimate [1]	Percentage of total stock (%)
Harbor Seal (*Phoca vitulina*) *California stock*	6,414	30,968	20.7
California sea lion (*Zalophus californianus*) *U.S. Stock*	6,950	296,750	2.34
Northern elephant seal (*Mirounga angustirostris*) *California breeding stock*	26	179,000	0.015
Northern fur seal (*Callorhinus ursinus*) *California stock*	10	14,050	0.07
Harbor Porpoise (*Phocoena phocoena*) *San Francisco-Russian River Stock*	9	9,886	0.09
Gray whale (*Eschrichtius robustus*) *Eastern North Pacific stock*	2	20,990	0.01
Bottlenose dolphin (*Tursiops truncatus) California coastal stock*	30	453	6.6

[1] All stock abundance estimates presented here are from the 2015 Pacific Stock Assessment Report.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No incidental take of ESA-listed marine mammal species is authorized or expected to result from these activities. Therefore, NMFS has determined that formal consultation under Section 7 of the ESA is not required for this action.

National Environmental Policy Act (NEPA)

NMFS published an EA in 2016 on WETA's ferry terminal construction activities. NMFS found that there would be no significant impacts to the human environment and signed a finding of no significant impact (FONSI) on June 28, 2016. Because the activities and analysis are the same as WETA's 2016 activities, NMFS determined that a new or supplemental EA is not required for WETA's 2017 activities.

Authorization

NMFS has issued an IHA to WETA for the potential harassment of small numbers of seven species of marine mammals incidental to the San Francisco Ferry Terminal, South Basin Improvements Project in San Francisco, CA, provided the previously mentioned mitigation, monitoring, and reporting.

Dated: June 26, 2017.

Catherine Marzin,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–T–2017–0027]

Notice of Roundtable Related to Fraudulent Solicitations

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of public roundtable regarding fraudulent solicitations to trademark owners.

SUMMARY: The United States Patent and Trademark Office (''USPTO'') and its Trademark Public Advisory Committee will host a free public roundtable on fraudulent and misleading solicitations that are directed to trademark holders, to further public awareness of the problem, to provide U.S. Government officials with more information about its scope, and to facilitate a discussion among members of the public about how to address the problem.

DATES: The public roundtable will be held on July 26, 2017, from 2 p.m. to 4 p.m. (EDT). Individuals wishing to speak at the roundtable must complete the on-line registration no later than July 17, 2017 (EDT). Please see **ADDRESSES** for further instructions.

ADDRESSES: The public roundtable will be held at the United States Patent and Trademark Office, Global Intellectual Property Academy, Madison Building (East), Second Floor, 600 Dulany Street, Alexandria, Virginia 22314, and via webcast at the Midwest Regional Office, 300 River Place Drive, Suite 2900, Detroit, Michigan 48207; the Rocky Mountain Regional Office, 1961 Stout Street, Denver, Colorado 80294; the West Coast Regional Office, 26 S. Fourth Street, San Jose, California 95113; or the Texas Regional Office, 207 South Houston Street, Suite 159, Dallas, Texas 75202.

Roundtable Registration: To register to attend the roundtable, please go to the USPTO Web site (*https://www.uspto.gov/learning-and-resources/ip-policy/fraudulent-solicitations-trademark-owners*). The agenda will be available a week before the meeting at the same URL. Attendees may also register at the door one half-hour prior to the beginning of the meeting.

Roundtable Speaker Registration: To register to speak at the roundtable, please go to the USPTO Web site (*https://www.uspto.gov/learning-and-resources/ip-policy/fraudulent-solicitations-trademark-owners*).

All members of the public are encouraged to submit written feedback regarding fraudulent solicitations by electronic mail message via the Internet addressed to *tmpolicy@uspto.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding registration should be directed to the attention of Hollis Robinson, by telephone at 571–272–9300, or by email at *hollis.robinson@uspto.gov.* Requests for additional information regarding the topics for discussion at the Fraudulent Solicitations to Trademark Owners Roundtable should be directed to Leigh Lowry, by telephone at 571–272–9300, by email at *tmpolicy@uspto.gov,* or by postal mail addressed to: Mail Stop OPIA, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, ATTN: Leigh Lowry or Hollis Robinson. Please direct all media inquiries to the Office of the Chief Communications Officer, USPTO, at (571) 272–8400.

SUPPLEMENTARY INFORMATION: Numerous owners of U.S. trademark registrations, as well as applicants for such registrations, have been targeted by unscrupulous parties who extract their names from United States Patent and Trademark Office (''USPTO'') databases and offer them services, often trying to create the impression that they are acting on behalf of the USPTO. In many instances, the services are never performed. In other instances, they are performed in an incorrect manner that puts the registration at risk of

cancellation. In addition, inflated fees may be charged for the alleged services.

The USPTO has taken a number of steps to help raise awareness of these schemes. First, it provides information about the problem together with various official documents that it issues to registrants and applicants for registration. In addition, it maintains a Web page that describes the problem (please see *https://www.uspto.gov/trademarks-getting-started/non-uspto-solicitations*), provides a list of entities that are known to make fraudulent solicitations, and lists an email address (*TMFeedback@uspto.gov*) through which parties can send suggested additions to the list. Finally, the USPTO also produced a video that highlights the potential harm posed by non-USPTO solicitations, which is available at *https://www.uspto.gov/trademarks-getting-started/process-overview/trademark-information-network.*

The USPTO has worked closely with other Federal agencies, including the U.S. Department of Justice, the Federal Trade Commission, and the United States Postal Inspection Service, to combat the fraudulent solicitations. Recently, the U.S. Department of Justice secured five criminal convictions in federal court in California related to one of these scams, including convictions on charges of mail fraud, money laundering, conspiracy, and other crimes, all arising out of a scheme that defrauded more than 4,400 trademark owners out of $1.66 million. The USPTO continues to provide its full support to U.S. law enforcement officials working on this matter.

To provide U.S. Government officials with more information about the scope of this problem, and to continue to raise public awareness about it, the USPTO encourages parties who have been victimized by these scams, or attorneys whose clients have been victimized by them, to speak at the roundtable. The USPTO has invited the U.S. Department of Justice, U.S. Postal Inspection Service, Federal Trade Commission, U.S. Customs and Border Protection, and the Small Business Administration to hear about experiences with these scams and offer their insights.

The roundtable will provide an opportunity for interested parties to share ideas about how to address the problem. The USPTO has invited various intellectual property law organizations to participate, including the Intellectual Property section of the American Bar Association (ABA), the Association of Corporate Counsel (ACC), the American Intellectual Property Law Association (AIPLA), the Federation Internationale des Conseils en Propriete Intellectuelle (FICPI–US), the Intellectual Property Owners Association (IPO), and the International Trademark Association (INTA). The USPTO encourages all interested members of the public to attend.

Requests To Speak at the Roundtable: Individuals wishing to speak at the roundtable must complete the on-line registration no later than July 17, 2017, and include their name, contact information (telephone number and email address), the organization(s) the person represents, if any, the topics they wish to address, and the approximate length of the presentation. To ensure a balanced array of views, there is the possibility that not all persons who wish to make a presentation will be able to do so given time constraints; however, the USPTO will do its best to try to accommodate as many as possible. Selected speakers will be notified thereafter. Nonetheless, all members of the public are encouraged to submit written feedback regarding fraudulent solicitations by electronic mail message via the Internet addressed to *tmpolicy@uspto.gov.*

Parties who have been selected to speak may do so either at USPTO main campus in Alexandria, Virginia, or via webcast at one of the following USPTO Regional Offices: the Midwest Regional Office, 300 River Place Drive, Suite 2900, Detroit, Michigan 48207; the Rocky Mountain Regional Office, 1961 Stout Street, Denver, Colorado 80294; the West Coast Regional Office, 26 S. Fourth Street, San Jose, California 95113; or the Texas Regional Office, 207 South Houston Street, Suite 159, Dallas, Texas 75202. Please check the appropriate location when completing the on-line registration.

Public Availability of Transcripts: The transcript of the roundtable will be made available for public inspection upon request at the Office of the Commissioner for Trademarks, located at 600 Dulany Street, Madison East Building, Tenth Floor, Alexandria, Virginia, and via address: *http://www.uspto.gov.*

Accessibility for People With Disabilities: The roundtable meeting will be physically accessible to people with disabilities. All major entrances to the USPTO Madison Building (East) at 600 Dulany Street, Alexandria, Virginia 22314 are accessible to people with disabilities. Individuals requiring accommodation, such as sign language interpretation or other ancillary aids, should communicate their needs to Hollis Robinson at the Office of Policy and International Affairs, by telephone at (571) 272–9300, by email at *hollis.robinson@uspto.gov,* or by postal mail addressed to: Mail Stop OPIA, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, ATTN: Hollis Robinson, at least seven (7) business days prior to the roundtable.

Dated: June 23, 2017.

Joseph Matal,

Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2017–13612 Filed 6–28–17; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors National Defense University; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Chairman Joint Chiefs of Staff, Department of Defense.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Board of Visitors National Defense University will take place.

DATES: Day 1—Open to the public Tuesday, July 11, 2017 from 1:00 p.m. to 4:45 p.m. Day 2—Open to the public Wednesday, July 12, 2017 from 8:30 a.m. to 12:00 p.m.

ADDRESSES: Marshall Hall, Building 62, Room 155B, the National Defense University, 300 5th Avenue SW., Fort McNair, Washington, DC 20319–5066.

FOR FURTHER INFORMATION CONTACT: Richard Cabrey; Joycelyn Stevens, (703) 283–7604 (Voice), (202) 685–3920 (Facsimile), *richard.m.cabrey.civ@mail.mil; richard.cabrey@ndu.edu; joycelyn.a.stevens.civ@mail.mil; stevensj7@ndu.edu* (Email). Mailing address is National Defense University, Fort McNair, Washington, DC 20319–5066. Web site: *http://www.ndu.edu/About/Board-of-Visitors/.* The most up-to-date changes to the meeting agenda can be found on the Web site.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the Board of Visitors National Defense University was unable to provide public notification concerning its meeting on July 11 through 12, 2017, as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense,

pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150. Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public.

Purpose of the Meeting: The purpose of the meeting will include discussion on accreditation compliance, organizational management, strategic planning, resource management, and other matters of interest to the National Defense University.

Agenda

Tuesday, July 11, 2017
Room 155A/B, Marshall Hall

1:00 p.m.—Call to Order
Mr. Richard Cabrey, Designated Federal Officer

1:00 p.m. to 1:15 p.m.—Administrative Notes
Mr. Cabrey; General Lloyd ''Fig'' Newton, USAF (Retired), BOV Chair

1:15 p.m. to 1:45 p.m.—Video and State of the University Address
Major General Frederick M. Padilla, NDU President

1:45 p.m. to 2:30 p.m.—State of the NDU Budget
Major General Robert Kane, USAF (Retired), Chief Operating Officer; Mr. Jay Helming, Chief Financial Officer

2:30 p.m. to 3:00 p.m.—Review of the Process for the Accreditation of Joint Education (PAJE) Visits for NDU Programs
Dr. John Yaeger, NDU Provost

3:00 p.m. to 3:15 p.m.—BREAK

3:15 p.m. to 4:15 p.m.—College Value Propositions
Rear Admiral Janice Hamby, USN (Ret), Chancellor, College of Information and Cyberspace; Dr. Charles Cushman, Jr., Interim Chancellor, College of International Security Affairs; Rear Admiral Jeffrey Ruth, Commandant, Joint Forces Staff College; Brigadier General Chad Manske, Commandant, National War College; Brigadier General Paul Fredenburgh III, Commandant, the Eisenhower School

4:15 p.m. to 4:30 p.m.—Industry Fellows Recruitment Strategy
Brigadier General Fredenburgh III

4:30 p.m. to 4:45 p.m.—Day One Wrap Up
General Newton and Major General Padilla

4:45 p.m.—Meeting Ends for the Day
Mr. Cabrey

Wednesday, July 12, 2017
Room 155A/B, Marshall Hall

8:30 a.m.—Call to Order
Mr. Cabrey

8:30 a.m. to 9:00 a.m.—Information Technology/Academic Technology Migration Progress Update
Rear Admiral Diane Webber, USN (Retired), Chief Information Officer

9:00 a.m. to 9:30 a.m.—Cyber Curriculum Review
Rear Admiral Hamby

9:30 a.m. to 10:00 a.m.—Faculty and Staff Command Climate Survey Results and Analysis
Dr. B.J. Miller, NDU Director of Institutional Research, Planning and Assessment

10:00 a.m. to 10:45 a.m.—Planning Process for Strategic Plan AY 2018–2019 to AY 2023–2024
Dr. Yaeger and Major General Kane

10:45 a.m. to 11:00 a.m.—BREAK

11:00 a.m. to 11:45 a.m.—BOV Member Feedback
Board Members

11:45 a.m. to 12:00 p.m.—Wrap-up and Closing Remarks
General Newton and Major General Padilla

Meeting Accessibility: Limited space made available for observers will be allocated on a first come, first served basis. Meeting location is handicap accessible.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, written statements to the committee may be submitted to the committee at any time or in response to a stated planned meeting agenda by FAX or email to Ms. Joycelyn Stevens at (202) 685–0079, Fax (202) 685–3920 or *StevensJ7@ndu.edu.*

Dated: June 26, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–13637 Filed 6–28–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Government-Industry Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), Department of Defense (DoD).

ACTION: Federal advisory committee meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Government-Industry Advisory Panel. This meeting is open to the public.

DATES: The meetings will be held from 9:00 a.m. to 5:00 p.m. on Wednesday and Thursday, July 19–20 and August 23–24, 2017, respectively. Public registration will begin at 8:45 a.m. on each day. For entrance into the meeting, you must meet the necessary requirements for entrance into the Pentagon. For more detailed information, please see the following link: *http://www.pfpa.mil/access.html.*

The panel will also hold a teleconference meeting with the same agenda to prepare for future meetings from 1:00 p.m. to 5:00 p.m. Eastern Standard Time on Wednesday, July 12 and August 2, 2017. Teleconference and direct connect information will be provided by the Designated Federal Officer and support staff at the contact information in the **FOR FURTHER INFORMATION CONTACT** section.

ADDRESSES: Pentagon Library, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155. The meeting room will be displayed on the information screen for both days. The Pentagon Library and Conference Center (PLC2) is located across the Corridor 8 Bridge.

FOR FURTHER INFORMATION CONTACT: LTC Robert L. McDonald Jr., Office of the Assistant Secretary of Defense (Acquisition), 3090 Defense Pentagon, Washington, DC 20301–3090, email: *Robert.L.McDonald.mil@mail.mil,* phone: 703–614–3811 or Peter Nash, email: *peter.b.nash3.ctr@mail.mil,* phone: 703–693–5111.

SUPPLEMENTARY INFORMATION:

Purpose of the Meetings: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The Government-Industry Advisory Panel will review sections 2320 and 2321 of

title 10, United States Code (U.S.C.), regarding rights in technical data and the validation of proprietary data restrictions and the regulations implementing such sections, for the purpose of ensuring that such statutory and regulatory requirements are best structured to serve the interest of the taxpayers and the national defense. The scope of the panel is as follows: (1) Ensuring that the Department of Defense (DoD) does not pay more than once for the same work, (2) Ensuring that the DoD contractors are appropriately rewarded for their innovation and invention, (3) Providing for cost-effective reprocurement, sustainment, modification, and upgrades to the DoD systems, (4) Encouraging the private sector to invest in new products, technologies, and processes relevant to the missions of the DoD, and (5) Ensuring that the DoD has appropriate access to innovative products, technologies, and processes developed by the private sector for commercial use.

Agenda: This will be the eighteenth and nineteenth meeting, respectively, of the Government-Industry Advisory Panel and continued recurring teleconference meetings. The panel will cover details of 10 U.S.C. 2320 and 2321, begin understanding the implementing regulations and detail the necessary groups within the private sector and government to provide supporting documentation for their review of these codes and regulations during follow-on meetings. Agenda items for this meeting will include the following: (1) Final review of tension point information papers; (2) Rewrite FY17 NDAA 2320 and 2321 language; (3) Review Report Framework and Format for Publishing; (4) Comment Adjudication & Planning for follow-on meeting.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the July 19–20 and August 23–24, 2017 meetings will be available as requested or at the following site: *https://database.faca.gov/committee/meetings.aspx?cid=2561.* It will also be distributed upon request.

Minor changes to the agenda will be announced at the meeting. All materials will be posted to the FACA database after the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, the meetings are open to the public. Registration of members of the public who wish to attend the meetings will begin upon publication of this meeting notice and end three business days (July 16 and August 20 respectively) prior to the start of the meetings. All members of the public must contact LTC McDonald or Mr. Nash at the phone number or email listed in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements for Pentagon escort, if necessary. Public attendees should arrive at the Pentagon's Visitor's Center, located near the Pentagon Metro Station's south exit and adjacent to the Pentagon Transit Center bus terminal with sufficient time to complete security screening no later than 8:30 a.m. on July 19–20 and August 23–24 respectively. To complete security screening, please come prepared to present two forms of identification of which one must be a pictured identification card. Government and military DoD CAC holders are not required to have an escort, but are still required to pass through the Visitor's Center to gain access to the building. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number to the Designated Federal Officer (DFO) listed in the **FOR FURTHER INFORMATION CONTACT** section. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access.

Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact LTC McDonald, the committee DFO, or Mr. Nash at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Government-Industry Advisory Panel about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to LTC McDonald, the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO at least five (5) business days prior to the meeting so that they may be made available to the Government-Industry Advisory Panel for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the panel until its next meeting. Please note that because the panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the panel's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described in this paragraph, will be allotted no more than five (5) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

Dated: June 26, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–13613 Filed 6–28–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–1883–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Mineral Point Energy LLC

This is a supplemental notice in the above-referenced proceeding of Mineral Point Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 13, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 23, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–13600 Filed 6–28–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–10–000; Docket No. CP16–13–000]

Notice of Availability of the Final Environmental Impact Statement for the Proposed Mountain Valley Project and Equitrans Expansion Project: Mountain Valley Pipeline LLC, Equitrans LP

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the projects proposed by Mountain Valley Pipeline LLC (Mountain Valley) and Equitrans LP (Equitrans) in the above-referenced dockets. Mountain Valley requests authorization to construct and operate certain interstate natural gas facilities in West Virginia and Virginia, known as the Mountain Valley Project (MVP) in Docket Number CP16–10–000. The MVP is designed to transport about 2 billion cubic feet per day (Bcf/d) of natural gas from production areas in the Appalachian Basin to markets in the Mid-Atlantic and Southeastern United States. Equitrans requests authorization to construct and operate certain natural gas facilities in Pennsylvania and West Virginia, known as the Equitrans Expansion Project (EEP) in Docket No. CP16–13–000. The EEP is designed to transport about 0.4 Bcf/d of natural gas, to improve system flexibility and reliability, and serve markets in the Northeast, Mid-Atlantic, and Southeast, through interconnections with various other interstate systems, including the proposed MVP.

The final EIS assesses the potential environmental effects of the construction and operation of the MVP and EEP in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). The FERC staff concludes that construction and operation of the projects would result in some adverse environmental impacts. In the case of the clearing of forest, effects may be long-term and significant. However, for most other environmental resources, effects should be temporary or short-term, and impacts would be reduced to less-than-significant levels with the implementation of the applicants' proposed mitigation measures and the additional measures recommended in the final EIS.

The United States (U.S.) Department of Agriculture Forest Service (FS); U.S. Army Corps of Engineers (COE); U.S. Environmental Protection Agency (EPA); U.S. Department of the Interior Bureau of Land Management (BLM); the U.S. Fish and Wildlife Service (FWS), West Virginia Field Office; U.S. Department of Transportation; West Virginia Department of Environmental Protection; and West Virginia Division of Natural Resources participated as cooperating agencies in the preparation of the final EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposals and participated in the NEPA analysis.

Proposed Facilities

The final EIS addresses the potential environmental effects of the construction and operation of the proposed facilities. For the MVP, facilities include:

- About 304 miles of new 42-inch-diameter pipeline extending from the new Mobley Interconnect in Wetzel County, West Virginia to the existing Transcontinental Gas Pipe Line Company LLC (Transco) Station 165 in Pittsylvania County, Virginia;
- 3 new compressor stations (Bradshaw, Harris, Stallworth) in West Virginia, totaling about 171,600 horsepower (hp);
- 4 new meter and regulation stations and interconnections (Mobley, Sherwood, WB, and Transco);
- 3 new taps (Webster, Roanoke Gas Lafayette, and Roanoke Gas Franklin);
- 8 pig [1] launchers and receivers at 5 locations; and
- 36 mainline block valves.

For the EEP, facilities include:

- About 7 miles total of new various diameter pipelines in six segments;
- new Redhook Compressor Station, in Greene County, Pennsylvania, with 31,300 hp of compression;
- 4 new taps (Mobley, H–148, H–302, H–306) and 1 new interconnection (Webster);
- 4 pig launchers and receivers; and
- decommissioning and abandonment of the existing 4,800 hp Pratt Compressor Station in Greene County, Pennsylvania.

[1] A pig is a device used to clean or inspect the interior of a pipeline.

Actions of the Federal Agencies Informed by the Environmental Impact Statement

Under Section 7 of the Natural Gas Act, the Commission determines whether interstate natural gas transportation facilities are in the public convenience and necessity and, if so, grants a Certificate to construct and operate them. The Commission bases its decisions on technical competence, financing, rates, market demand, gas supply, environmental impact, long-term feasibility, and other issues concerning a proposed project. The final EIS summarizes the environmental impacts and includes recommended conditions to the prospective Commission orders that would further reduce the impacts of the proposed actions.

The BLM's purpose and need for the proposed action is to respond to a Right-of-Way Grant application submitted by Mountain Valley. Under the Mineral Leasing Act, the Secretary of the Interior has delegated authority to the BLM to grant a right-of-way on federal lands under the jurisdiction of two or more federal agencies. Before issuing the Right-of-Way Grant, the BLM must receive the written concurrence of the other surface managing federal agencies (*i.e.,* FS and COE) in accordance with 43 CFR 2882.3(i).

The FS's purpose and need for the proposed action is to consider issuing a concurrence to the BLM for the Right-of-Way Grant and to evaluate an amendment to the Land and Resource Management Plan (LRMP) for the Jefferson National Forest that would make provision for the MVP pipeline's construction and operation. The FS amendment to the Jefferson National Forest LRMP is analyzed in the EIS.

The BLM may adopt and use the final EIS when considering the issuance of a Right-of-Way Grant to Mountain Valley for the portion of the MVP that would cross federal lands; with the concurrence of the FS and COE. Further, the FS may use the final EIS when it considers amending its LRMP for the proposed MVP crossing of the Jefferson National Forest. Although the cooperating agencies provided input to the conclusions and recommendations presented in the final EIS, the agencies will present their own conclusions and recommendations in their respective Records of Decision (ROD) for the projects.

Forest Service's Draft Record of Decision

The MVP may be implemented across National Forest System (NFS) land if the BLM grants the rights-of-way for the MVP pipeline to cross the Jefferson National Forest and the FS amends the Jefferson National Forest LRMP (Forest Plan). The Forest Supervisor of the George Washington and Jefferson National Forests has adopted the environmental analysis conducted by FERC (in accordance with 40 CFR 1506.3(a) and (c)) to support his decision to amend the Jefferson National Forest LRMP. He has determined that five parts of the Jefferson National Forest LRMP, where 11 standards would be modified by a Forest Plan amendment (section 4.8 of the final EIS), meet the substantive requirements of the FS planning regulations (36 CFR part 219); and can be implemented without impairing the long-term productivity of NFS lands. With the amended LRMP, the MVP would be consistent with the Forest Plan. The draft decision is based on a review of the environmental analysis disclosed in the final EIS, the project record, Mountain Valley's proposed Plan of Development, comments from the public, partners, and other agencies, and a consideration of the 36 CFR part 219 requirements for amending a Forest Plan.

The FS decision is subject to objection pursuant to the provisions available at 36 CFR part 218, subparts A and B (published in the **Federal Register** Vol. 78, No. 59 at 18481 [March 27, 2013]). Objections to the FS decision must be filed within 45 calendar days from the publication date of the legal notice of the opportunity to object in the *Roanoke Times,* which is the newspaper of record for the George Washington and Jefferson National Forests. The legal notice contains the details of the objection process. The FS must respond to all objections received before it makes a final decision on the proposed Forest Plan amendments. The final decision on the Forest Plan amendments and the final EIS analysis will inform the FS concurrence to the BLM for its Right-of-Way Grant.

A copy of the FS draft ROD and of the legal notice for objections can be obtained by any of the following methods: Internet Web site: *http://www.fs.usda.gov/gwj;* email: *kovercash@fs.fed.us@fs.fed.us;* or regular mail: Karen Overcash, George Washington-Jefferson Environmental Coordinator, 5162 Valleypointe Parkway, Roanoke, VA 24019; telephone: (540) 265–5100.

Comments on the Bureau of Land Management Record of Decision

The BLM is soliciting comments specific to MVP impacts on federal lands managed by the COE and FS for consideration in its ROD. If you wish to submit written comments to the BLM, they must be submitted within thirty (30) calendar days from the date that the EPA publishes the *Notice of Availability of the Environmental Impact Statement for the Proposed Mountain Valley Project and Equitrans Expansion Project* in the **Federal Register**. You may use any of the following methods to submit comments to the BLM: E-planning MVP Comment Submission Web page at *http://bit.ly/2qByLlw;* or mail to: Vicki Craft, U.S. Bureau of Land Management, Southeastern State District Office, 273 Market Street, Flowood, MS 39232.

Distribution of the Final Environmental Impact Statement

The FERC staff mailed copies of the final EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. Paper copy versions of this EIS were mailed to those specifically requesting them; all others received a compact-disc version. In addition, the EIS is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP16–10 or CP16–13). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the

documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: June 23, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–13598 Filed 6–28–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 7387–068–9222–033]

Erie Boulevard Hydropower, L.P.; Notice of Application Accepted for Filing, Soliciting Comments, Protests and Motions To Intervene

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Proceeding: Amendment of License Terms.

b. Project Nos.: P–7387–068 & P–9222–033.

c. Date Filed: May 12, 2017.

d. Licensee: Erie Boulevard Hydropower, L.P.

e. Names and Locations of Projects: Piercefield Hydroelectric Project No. 7387, located on the Raquette River in St. Lawrence and Franklin counties, New York. Yaleville Hydroelectric Project No. 9222, located on the Raquette River, in St. Lawrence County, New York.

f. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791a–825r.

g. Licensee Contact Information: Mr. Steven P. Murphy, Director, U.S. Licensing, Brookfield Renewable, 33 West 1st Street South, Fulton, New York 13069, Phone: (315) 598–6130, Email: *steven.murphy@brookfieldrenewable.com*

h. FERC Contact: Mr. Ashish Desai, (202) 502–8370, *Ashish.Desai@ferc.gov*.

i. Deadline for filing comments, motions to intervene and protests, is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, and recommendations, using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket numbers P–7387–068 and P–9222–033.

j. Description of Proceeding: The licensee, Erie Boulevard Hydropower, L.P., requests that the Commission amend the license terms for two of its projects to synchronize the license expiration dates with the licensee's four other projects, so that they can be relicensed concurrently. The other four projects' licenses expire on December 31, 2033. All six projects are located on the Raquette River.

In order to align the expiration dates, the licensee requests that the Commission extend the license for the Yaleville Project No. 9222, approximately 12 years, from January 31, 2022 to December 31, 2033. In addition, the licensee requests that the Commission accelerate the license expiration term for the Piercefield Project No. 7387 by 10 years, from October 31, 2045 to October 31, 2035.

The licensee states that amending the license terms for the two projects would allow for better coordination during project relicensing for all of its projects on the Raquette River. The licensee's request includes letters of support for the amendments of the license terms from the U.S. Fish and Wildlife Service, New York State Department of Environmental Conservation, and Adirondack Mountain Club.

k. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the Docket number (P–7387–068 or P–9222–033) excluding the last three digits in the docket number field to access the notice. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. Filing and Service of Responsive Documents: Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the request for the amendment of the license terms. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: June 23, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–13603 Filed 6–28–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3079–013; ER10–3078–004; ER11–3861–014.

Applicants: Tyr Energy, LLC, Commonwealth Chesapeake Company, LLC, Empire Generating Co, LLC.

Description: Updated Market Power Analysis for the Northeast Region of Tyr Energy, LLC, et al. under ER10–3079, et al.

Filed Date: 6/23/17.

Accession Number: 20170623–5083.

Comments Due: 5 p.m. ET 8/22/17.

Docket Numbers: ER10–3145–008; ER10–1728–008; ER10–1800–009; ER10–3116–008; ER10–3120–008; ER10–3128–008; ER10–3136–008; ER11–2036–008; ER11–2701–010; ER13–1544–005; ER16–930–002.

Applicants: AES Alamitos, LLC, AES Energy Storage, LLC, AES Huntington Beach, L.L.C., AES Laurel Mountain, LLC, AES ES Tait, LLC, AES Redondo Beach, L.L.C., Indianapolis Power & Light Company, Mountain View Power Partners, LLC, Mountain View Power Partners IV, LLC, The Dayton Power and Light Company, AES Ohio Generation, LLC.

Description: Supplement to December 21, 2016 Triennial Market Power Analysis for Northeast Region of AES MBR Affiliates; also filed was an Amended Supplement to December 21, 2016 Triennial Market Power Analysis for Northeast Region of AES MBR Affiliates.

Filed Dates: 6/6/17; 6/21/17.

Accession Number: 20170606–5163; 20170621–5138.

Comments Due: 5 p.m. ET 7/12/17.

Docket Numbers: ER17–1888–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2017–06–22_SA 3023 Air Liquide-Entergy GIA (Project QF) to be effective 6/22/2017.

Filed Date: 6/22/17.

Accession Number: 20170622–5153.

Comments Due: 5 p.m. ET 7/13/17.

Docket Numbers: ER17–1889–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2017–06–22_SA 758 Termination of ATC-Wisconsin River GTIA to be effective 8/22/2017.

Filed Date: 6/22/17.

Accession Number: 20170622–5156.

Comments Due: 5 p.m. ET 7/13/17.

Docket Numbers: ER17–1890–000.

Applicants: ITC Midwest LLC.

Description: § 205(d) Rate Filing: Filing of Joint Use Pole Agreement with Dairyland to be effective 8/22/2017.

Filed Date: 6/22/17.

Accession Number: 20170622–5176.

Comments Due: 5 p.m. ET 7/13/17.

Docket Numbers: ER17–1891–000.

Applicants: Summit Farms Solar, LLC.

Description: Compliance filing: Compliance Filing—Addition of Docket No. to MBR Tariff to be effective 6/23/2017.

Filed Date: 6/22/17.

Accession Number: 20170622–5186.

Comments Due: 5 p.m. ET 7/13/17.

Docket Numbers: ER17–1892–000.

Applicants: PacifiCorp.

Description: Tariff Cancellation: Termination of PAC Energy Carbon Decommissioning Construct Agmt Rev 2 to be effective 6/26/2017.

Filed Date: 6/23/17.

Accession Number: 20170623–5094.

Comments Due: 5 p.m. ET 7/14/17.

Docket Numbers: ER17–1894–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original Service Agreement No. 4730, Queue Position #AC1–039 to be effective 5/31/2017.

Filed Date: 6/23/17.

Accession Number: 20170623–5110.

Comments Due: 5 p.m. ET 7/14/17.

Docket Numbers: ER17–1895–000.

Applicants: Southwestern Electric Power Company.

Description: § 205(d) Rate Filing: SWEPCO-Minden PSA Amendment T&D Losses to be effective 8/1/2016.

Filed Date: 6/23/17.

Accession Number: 20170623–5111.

Comments Due: 5 p.m. ET 7/14/17.

Docket Numbers: ER17–1896–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2017–06–23_SA 3022 Trigen-Ameren GIA (Project Trigen) to be effective 6/23/2017.

Filed Date: 6/23/17.

Accession Number: 20170623–5143.

Comments Due: 5 p.m. ET 7/14/17.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES17–38–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Application of Midcontinent Independent System Operator, Inc. to Issue Securities Under Section 204 of the Federal Power Act.

Filed Date: 6/23/17.

Accession Number: 20170623–5099.

Comments Due: 5 p.m. ET 7/14/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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.

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: June 23, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–13597 Filed 6–28–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–463–000]

Notice of Request Under Blanket Authorization: Florida Southeast Connection, LLC

Take notice that on June 14, 2017, Florida Southeast Connection, LLC (FSC), 700 Universe Boulevard, Juno Beach, Florida 33408, filed in Docket No. CP17–463–000 a prior notice request pursuant to sections 157.205 and 157.208 of the Commission's regulations under the Natural Gas Act (NGA), and FSC's blanket certificate issued in Docket No. CP14–554–000, to construct and operate certain natural gas facilities in Okeechobee County, Florida. The facilities will allow FSC to provide up to 400,000 dekatherms (Dth) per day of natural gas to the Okeechobee Clean Energy Center (OCEC), currently under construction by Florida Power & Light Company (FPL) and planned to be in service by mid-2019.

FSC proposes to construct and operate an approximately 5.2 mile, 20-inch diameter natural gas pipeline lateral starting at milepost 77.2 of the FSC mainline along US 441 and terminating at the FPL OCEC in Okeechobee County, Florida. Upon completion and start of commercial operation of the project, FSC will add Okeechobee as a delivery point on its system, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the

last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Halli Nicoloso, Florida Southeast Connection, LLC, 700 Universe Boulevard, Juno Beach, Florida 33408, by telephone at (561) 304–5708, by facsimile at (412) 553–7781, or by email at *halli.nicoloso@nee.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: June 23, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–13599 Filed 6–28–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–1884–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Wrighter Energy LLC

This is a supplemental notice in the above-referenced proceeding of Wrighter Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 13, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 23, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–13601 Filed 6–28–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2337–077]

Notice of Intent To Prepare a Draft and Final Environmental Assessment and Revised Procedural Schedule: PacifiCorp

On December 30, 2016, PacifiCorp filed an application for the continued operation of the 7.2-megawatt Prospect No. 3 Hydroelectric Project No. 2337. On March 15, 2017, the Commission issued a *Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions* (REA Notice). The REA notice included a procedural schedule that included preparation of a single Environmental Assessment (EA).

Based on the comments received in response to the REA notice, Commission staff has determined that its analysis of

the proposed relicensing action will require preparation of a Draft and Final EA. Thus the application will be processed according to the following revised procedural schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue Draft EA	October 2017.
Comments on Draft EA due.	November 2017.
Modified terms and conditions due.	January 2018.
Commission issues Final EA.	April 2018.

Any questions regarding this notice may be directed to Dianne Rodman at (202) 502–6077, or by email at *dianne.rodman@ferc.gov.*

Dated: June 23, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–13602 Filed 6–28–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0246; FRL–9964–43–OAR]

Proposed Information Collection Request; Comment Request; Engine Emission Defect Information Reports and Voluntary Emission Recall Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Engine Emission Defect Information Reports and Voluntary Emission Recall Reports'' (EPA ICR Number 0282.16, OMB Control Number 2060–0048) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through November 30, 2016. 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.

DATES: Comments must be submitted on or before August 28, 2017.

ADDRESSES: Submit your comments, referencing the Docket ID No. EPA–HQ–OAR–2013–0246, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Nydia Yanira Reyes-Morales, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Mail Code 6405A, Washington, DC 20460; telephone number: 202–343–9264; fax number: 202–343–2804; email address: *reyes-morales.nydia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: For this ICR, EPA is seeking a revision to an existing package with a three-year extension. Under the provisions of the Clean Air Act (CAA), the Administrator is required to promulgate regulations to control air pollutant emissions from motor vehicles and nonroad engines, as defined in the CAA. Per Sections 207(c)(1) and 213 of the CAA, when a substantial number of properly maintained and used engines produced by a manufacturer do not conform to emission standards, the manufacturer is required to recall the engines. Engine manufacturers are required to submit Defect Information Reports (DIRs) if emission-related defects that may cause the engines' emissions to exceed the standards are found on a number of engines of the same model year. EPA uses these reports to target potentially nonconforming classes of engines for future testing, to monitor compliance with applicable regulations and to order a recall, if necessary. Manufacturers can also initiate a recall voluntarily by submitting a Voluntary Emission Recall Report (VERR). VERRs and VERR updates allow EPA to determine whether the manufacturer conducting the recall is acting in accordance with the CAA and to examine and monitor the effectiveness of the recall campaign.

Forms: 5900–300 (Voluntary Emissions Recall Report); 5900–301 (Emissions Defect Information Report); and 5900–302 (Voluntary Emission Recall Quarterly Progress Report). These forms are available at *https://www.epa.gov/vehicle-and-engine-certification/report-forms-and-guidance-defects-and-recalls-under-40-cfr-part-85.*

Respondents/affected entities: Manufacturers of heavy-duty highway and nonroad engines.

Respondent's obligation to respond: Mandatory under 40 CFR parts 85, 89, 90, 91, 92, 94, 1035, 1039, 1042, 1045, 1048, 1051, 1054, and 1068.

Estimated number of respondents: 40 (total).

Frequency of response: Quarterly.

Total estimated burden: 15,084 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,042,252 (per year), includes $9,800 annualized capital or operation & maintenance costs.

Changes in estimates: To date, there are no changes in the total estimated respondent burden compared with the ICR currently approved by OMB. However, EPA is evaluating information

that may lead to a change in the estimates. After EPA has evaluated this information, burden estimates may slightly decrease due to the fact that EPA has received fewer applications for certification of Category 3 engine families than previously estimated. Cost estimates may increase due to inflation and labor rate changes.

Dated: June 22, 2017.

Byron J. Bunker,

Director, Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2017–13661 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2003–0033; FRL–9962–35–OW]

Proposed Information Collection Request; Comment Request; Modification of Secondary Treatment Requirements for Discharges Into Marine Waters (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Modification of Secondary Treatment Requirements for Discharges into Marine Waters (Renewal)'' (EPA ICR No. 0138.11, OMB Control No. 2040–0088) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a ''proposed extension of the Information Collection Request (ICR), which is currently approved through 06/30/2017''. 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.

DATES: Comments must be submitted on or before August 28, 2017.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–2003–0033, online using *https://www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Virginia Fox-Norse, Oceans and Coastal Protection Division, Office of Water, (4504T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202 566–1266; fax number: 202–566–1337; email address: *fox-norse.virginia@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Regulations implementing section 301(h) of the Clean Water Act (CWA) are found at 40 CFR part 125, subpart G. The section 301(h) program involves collecting information from two sources: (1) The municipal wastewater treatment facility, commonly called a publicly owned treatment works (POTW), and (2) the state in which the POTW is located. Municipalities had the opportunity to apply for a waiver from secondary treatment requirements, but that opportunity closed in December, 1982. A POTW holding a current waiver or reapplying for a waiver provides application, monitoring, and toxic control program information. The state provides information on its determination whether the discharge under the proposed conditions of the waiver ensures the protection of water quality, biological habitats, and beneficial uses of receiving waters and whether the discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. The state also provides information to certify that the discharge will meet all applicable state laws and that the state accepts all permit conditions.

There are 4 situations where information will be required under the section 301(h) program: (1) A POTW reapplying for a section 301(h) waiver. As the permits with section 301(h) waivers reach their expiration dates, EPA must have updated information on the discharge to determine whether the section 301(h) criteria are still being met and whether the section 301(h) waiver should be reissued. Under 40 CFR 125.59(f), each section 301(h) permittee is required to submit an application for a new section 301(h) modified permit within 180 days of the existing permit's expiration date. 40 CFR 125.59(c) lists the information required for a modified permit. The information that EPA needs to determine whether the POTW's reapplication meets the section 301(h) criteria is outlined in the questionnaire attached to 40 CFR part 125, subpart G.

(2) Monitoring and toxic control program information: Once a waiver has been granted, EPA must continue to assess whether the discharge is meeting section 301(h) criteria, and that the receiving water quality, biological habitats, and beneficial uses of the receiving waters are protected. To do this, EPA needs monitoring information furnished by the permittee. According to 40 CFR 125.68(d), any permit issued with a section 301(h) waiver must contain the monitoring requirements of 40 CFR 125.63(b), (c), and (d) for biomonitoring, water quality criteria and standards monitoring, and effluent monitoring, respectively. Section 125.68(d) also requires reporting at the frequency specified in the monitoring

program. In addition to monitoring information, EPA needs information on the toxics control program required by section 125.66 to ensure that the permittee is effectively minimizing industrial and nonindustrial toxic pollutant and pesticide discharges into the treatment works.

(3) Application revision information: Section 125.59(d) of 40 CFR allows a POTW to revise its application one time only, following a tentative decision by EPA to deny the waiver request. In its application revision, the POTW usually corrects deficiencies and changes proposed treatment levels as well as outfall and diffuser locations. The application revision is a voluntary submission for the applicant, and a letter of intent to revise the application must be submitted within 45 days of EPA's tentative decision (40 CFR 125.59(f)). EPA needs this information to evaluate revised applications to determine whether the modified discharge will ensure protection of water quality, biological habitats, and beneficial uses of receiving waters.

(4) State determination and state certification information: For revised or renewal applications for section 301(h) waivers, EPA needs a state determination. The state determines whether all state laws (including water quality standards) are satisfied. This helps ensure that water quality, biological habitats, and beneficial uses of receiving waters are protected. Additionally, the state must determine if the applicant's discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. This process allows the state's views to be taken into account when EPA reviews the section 301(h) application and develops permit conditions. For revised and renewed section 301(h) waiver applications, EPA also needs the CWA section 401(a)(1) certification information to ensure that all state water quality laws are met by any permit it issues with a section 301(h) modification, and the state accepts all the permit conditions. This information is the means by which the state can exercise its authority to concur with or deny a section 301(h) decision made by the EPA Regional Office.

Form Numbers: ''None.''

Respondents/affected entities: Entities potentially affected by this action are those municipalities that currently have section 301(h) waivers from secondary treatment, or have applied for a renewal of a section 301(h) waiver, and the states within which these municipalities are located.

Respondent's obligation to respond: Voluntary, required to obtain or retain a benefit.

Estimated number of respondents: Est. 50 (total).

Frequency of response: From once every five years, to varies case-by-case, depending on the category of information.

Total estimated burden: 59,370 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $1.3 million (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease of hours in the total estimated respondent burden compared with the ICR currently approved by OMB. EPA expects the numbers will decrease due to changes in respondent universe, use of technology, etc.

Dated: May 2, 2017.

John Goodin,

Acting Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 2017–13677 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2013–0315; FRL–9964–17–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Commercial and Industrial Solid Waste Incineration (CISWI) Units (40 CFR Part 60, Subpart CCCC) (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NSPS for Commercial and Industrial Solid Waste Incineration (CISWI) Units (Renewal)'' to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through June 30, 2017. Public comments were previously requested via the **Federal Register** on May 3, 2016 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before July 31, 2017.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2013–0315, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents for this ICR (NSPS for Commercial and Industrial Solid Waste Incineration (CISWI) Units (40 CFR part 60, subpart CCCC) (Renewal); EPA ICR No. 2384.04; OMB Control No. 2060–0662), which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and recordkeeping requirements for the general provisions of 40 CFR part 60, subpart A, as well as the specific requirements at 40 CFR part 60, subpart CCCC. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are

used by EPA to determine compliance with the standards.

Form numbers: None.

Respondents/affected entities: Commercial and industrial solid waste incineration units.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart CCCC).

Estimated number of respondents: 8 (total).

Frequency of response: Initially, occasionally, semiannually and annually.

Total estimated burden: 1,450 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $779,000 (per year), includes $630,000 annualized capital or operation & maintenance costs.

Changes in the estimates: There is an adjustment increase in the total estimated burden, labor costs and capital and O&M costs as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The change in the burden and cost estimates occurred because the respondent universe has increased since the most recently approved ICR.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2017–13591 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–OAR–2017–0345; FRL–9964–02–Region 9]

Adequacy Status of Motor Vehicle Emission Budgets in Submitted Ozone Attainment Plan for San Joaquin Valley, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Adequacy.

SUMMARY: The Environmental Protection Agency (EPA) is notifying the public that the Agency has found that the motor vehicle emission budgets (MVEBs or ''budgets'') for ozone for the years 2018, 2021, 2024, 2027, 2030, and 2031 in the San Joaquin Valley *2016 Plan for the 2008 8-Hour Ozone Standard* (''2016 Ozone Plan'') are adequate for transportation conformity purposes for the 2008 8-hour ozone national ambient air quality standards (NAAQS). The California Air Resources Board (CARB) submitted the 2016 Ozone Plan to the EPA on August 24, 2016, as a revision to the California State Implementation Plan (SIP). Upon the effective date of this notice of adequacy, the previously-approved budgets for the 1997 8-hour ozone standards will no longer be applicable for transportation conformity purposes, and the metropolitan planning organizations in the San Joaquin Valley and the U.S. Department of Transportation must use these budgets for future transportation conformity determinations.

DATES: This rule is effective on July 14, 2017.

ADDRESSES: The EPA has established a docket for this action, identified by Docket ID Number EPA–R09–OAR–2017–0345. The index to the docket is available electronically at *http://www.regulations.gov* or in hard copy at the EPA Region IX office, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed below.

FOR FURTHER INFORMATION CONTACT: Anita Lee, (415) 972–3958, or by email at *lee.anita@epa.gov.*

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

This notice is simply an announcement of a finding that we have already made. On June 13, 2017, the Region IX office of the EPA sent a letter to CARB stating that the MVEBs in the San Joaquin Valley Unified Air Pollution Control District's 2016 Ozone Plan for the reasonable further progress milestone years of 2018, 2021, 2024, 2027, and 2030, and the attainment year of 2031, are adequate.[1]

We announced the availability of the budgets on the EPA's adequacy review Web page from February 23, 2017, through March 27, 2017.[2] We did not receive any comments on the budgets. The MVEBs are provided in the following table:

ADEQUATE MVEBS IN THE 2016 PLAN FOR THE 2008 8-HOUR OZONE STANDARD [a]

[Tons per summer planning day]

	2018		2021		2024		2027		2030		2031	
County	ROG	NO_X	ROG	NO_X	ROG	NO_X	ROG	NO_X	ROG	NO_X	ROG	NO_X
Fresno	8.0	27.7	6.4	22.2	5.4	14.1	4.9	13.2	4.5	12.6	4.3	12.5
Kern [b] ...	6.6	25.4	5.5	20.4	4.8	12.6	4.5	11.7	4.2	10.9	4.1	10.8
Kings ...	1.3	5.1	1.1	4.2	0.9	2.6	0.9	2.5	0.8	2.3	0.8	2.3
Madera	1.9	5.1	1.5	4.1	1.2	2.6	1.1	2.3	0.9	2.0	0.9	2.0
Merced	2.5	9.4	2.0	7.8	1.6	4.8	1.5	4.4	1.3	4.2	1.3	4.1
San Joaquin ..	5.9	13.0	4.9	10.3	4.2	6.9	3.8	6.2	3.5	5.7	3.3	5.5
Stanislaus	3.8	10.5	3.0	8.3	2.6	5.6	2.3	5.1	2.1	4.7	2.0	4.7
Tulare ..	3.7	9.5	2.9	7.2	2.4	4.7	2.2	4.1	1.9	3.8	1.9	3.7

[a] CARB calculated the MVEBs by taking each county's emissions results from EMFAC2014 (short for EMission FACtor 2014 version) and then rounding each county's emissions up to the nearest tenth of a ton. The EPA approved EMFAC2014 for use in SIP revisions and transportation conformity at 80 FR 77337 (December 14, 2015).

[b] San Joaquin Valley portion.

[1] *See* letter from Richard Corey, CARB, to Alexis Strauss, EPA, dated August 24, 2016, and letter from Elizabeth Adams, EPA, to Richard Corey, CARB dated June 13, 2017.

[2] *See https://www.epa.gov/state-and-local-transportation/state-implementation-plans-sip-submissions-currently-under-epa#Sanjoquin2017.*

Transportation conformity is required by Clean Air Act section 176(c). The EPA's conformity rule requires that transportation plans, transportation improvement programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS.

The criteria by which we determine whether a SIP's MVEBs are adequate for conformity purposes are outlined in the Code of Federal Regulations (CFR) at 40 CFR 93.118(e)(4), which was promulgated on August 15, 1997.[3] We have further described our process for determining the adequacy of submitted SIP MVEBs in our final rule dated July 1, 2004, and we used the information in these resources in making our adequacy determination.[4] Please note that an adequacy review is separate from the EPA's completeness review and should not be used to prejudge EPA's ultimate action on the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

Pursuant to 40 CFR 93.104(e), within 2 years of the effective date of this notice, the metropolitan planning organizations in the San Joaquin Valley and the U.S. Department of Transportation will need to demonstrate conformity to the new MVEBs if the demonstration has not already been made.[5] For demonstrating conformity to the MVEBs in this plan, the motor vehicle emissions from implementation of the transportation plan should be projected consistently with the budgets in this plan, *i.e.,* by taking each county's emissions results from EMFAC2014 and then rounding each county's emissions up to the nearest tenth of a ton.

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

Dated: June 13, 2017.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2017–13658 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

[3] *See* 62 FR 43780 (August 15, 1997).

[4] *See* 69 FR 40004 (July 1, 2004).

[5] *See* 73 FR 4419 (January 24, 2008).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0478; FRL–9962–14–OAR]

Proposed Information Collection Request; Comment Request; Regulation of Fuels and Fuel Additives: Gasoline Volatility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), Regulation of Fuels and Fuel Additives: Gasoline Volatility (EPA ICR No. 1367.11, OMB control No. 2060–0178), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection. This is a proposed extension of the ICR, which is currently approved through August 31, 2017. 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.

DATES: Comments must be submitted on or before August 28, 2017.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–0478, online using *https://www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Compliance Division, Office of Transportation and Air Quality, Mail Code 6405A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9303; fax number: (202) 343–2802; email address: *caldwell.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Gasoline volatility, as measured by Reid Vapor Pressure (RVP) in pounds per square inch (psi), is controlled during the summer ozone season (June 1 to September 15) in order to minimize evaporative hydrocarbon emissions from motor vehicles. RVP is subject to a federal standard of 7.8 psi or 9.0 psi, depending on location. The addition of ethanol to gasoline increases the RVP by about 1 psi. Gasoline that contains between nine and 10 volume percent ethanol is provided a 1.0 psi waiver such that the RVP may be up to 8.8 psi or 10.0 psi for a federal standard of 7.8 psi or 9.0 psi respectively. As an aid to industry compliance and EPA enforcement, the product transfer document (PTD), which is prepared by the gasoline producer or importer and which accompanies a shipment of gasoline containing ethanol, is required by regulation to contain a legible and conspicuous statement that the gasoline contains ethanol and the percentage concentration of ethanol. This is intended to deter the mixing within the

distribution system, particularly in retail storage tanks, of gasoline containing between nine and 10 volume percent ethanol with gasoline which does not contain ethanol in that range. Such mixing would likely result in a gasoline which is in violation of its RVP standard. Also, a party seeking a testing exemption for research on gasoline that is not in compliance with the applicable volatility standard must submit certain information to EPA. EPA has additional PTD requirements for gasoline containing ethanol at 40 CFR 80.1503. Those requirements are covered in a separate ICR.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are those who produce or import gasoline containing ethanol, or who wish to obtain a testing exemption.

Respondent's obligation to respond: Mandatory per 40 CFR 80.27(d) and (e).

Estimated number of respondents: 2,000.

Frequency of response: On occasion.

Total estimated burden: 12,330 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1.1 million, includes $20 annualized capital or operation & maintenance costs.

Changes in Estimates: There is no change in the hours in the total estimated respondent burden compared with the ICR currently approved by OMB. The use of ethanol in gasoline has remained stable.

Dated: April 27, 2017.

Byron J. Bunker,

Director, Compliance Division, Office of Transportation and Air Quality.

[FR Doc. 2017–13675 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2008–0719, FRL–9962–12–OW]

Proposed Information Collection Request; Comment Request; ICR Supporting Statement Information Collection Request for National Pollutant Discharge Elimination System (NPDES) Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''ICR Supporting Statement Information Collection Request for National Pollutant Discharge Elimination System (NPDES) Program (Renewal)'' (EPA ICR No. 0229.22, OMB Control No. 2040–0004) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection. This is a proposed revision of the ICR which is currently approved through December 31, 2017. 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.

DATES: Comments must be submitted on or before August 28, 2017.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2008–0719, FRL–9962–12–OW, online using *https://www.regulations.gov* (our preferred method), by email to *letnes.amelia@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Amelia Letnes, State and Regional Branch, Water Permits Division, OWM Mail Code: 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–5627; fax number: (202) 564 9544; email address: *letnes.amelia@epa.gov*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: This consolidated ICR calculates the burden and costs associated with the NPDES program, identifies the types of activities regulated under the NPDES program, describes the roles and responsibilities of state governments and the Agency, and presents the program areas that address the various types of regulated activities. It is a revision of the Information Collection Request for the NPDES Program (OMB Control Number: 2040–0004; EPA ICR Number: 0229.21; expiration date 12/31/2017) submitted to OMB in December 2015 that consolidated the burden and costs associated with activities previously reported in 11 NPDES program or NPDES-related ICRs administered by EPA's Water Permits Division. This renewal documents the addition, into the consolidated NPDES ICR, of the burden and costs for seven more NPDES programs, which were previously contained in separate ICRs as listed below:

- Consolidated Animal Sectors (OMB Control No. 2040–0250; EPA ICR Number 1989.09; Expiration date—5/31/2019)
- Pesticide Applicators (OMB Control No. 2040–0284; EPA ICR Number 2397.02; Expiration date—3/31/2019)
- National Pretreatment Program (OMB Control No. 2040–0009; EPA ICR Number 0002.15; Expiration date—4/30/2019)
- Cooling Water Intake Structures Phase I—New Facilities (OMB Control No. 2040–0241; EPA ICR Number 1973.06; Expiration date—11/30/2019)
- Cooling Water Intake Structures at Phase III Facilities (OMB Control No.

2040–0268, EPA ICR No. 2169.05; Expiration date—07/31/2017)

• Cooling Water Intake Structures Existing Facilities (OMB Control No. 2040–0257; EPA ICR No. 2060.07 Expiration date—10/31/2017)

• NPDES Electronic Reporting Rule (OMB Control No. 2020–0035; EPA ICR No. 2468.02; Expiration date—1/31/2019)

Permit applications and other respondent reports may contain confidential business information. If a respondent does consider this information to be of a confidential nature, the respondent may request that such information be treated as confidential. All confidential data will be handled in accordance with 40 CFR 122.7, 40 CFR part 2, and EPA's Security Manual part III, chapter 9, dated August 9, 1976.

Form Numbers: OMB No. 2040–0086; OMB No. 2040–0250; OMB No. 2040–0188, OMB No. 2040–0211; OMB No. 1004–0189; OMB 2040–0284; OMB No. 0596–0082; and OMB No. 2040–0004.

Respondents/affected entities: Any industrial point source discharger of pollutants, including but not limited to publicly owned and privately owned treatment works (POTWs and PrOTWs), industrial dischargers to POTWs and PrOTWs, sewage sludge management and disposal operations, small and large vessels, airports with deicing operations, dischargers of stormwater, construction sites, municipalities, pesticide applicators, local and state governments.

Respondent's obligation to respond: Mandatory. Sections 301, 302, 304, 306, 307, 308, 316(b), 401, 402, 403, 405, and 510 of the CWA; the 1987 Water Quality Act (WQA) revisions to CWA section 402(p); 40 (CFR) Parts 122, 123, 124, and 125 (and Parts 501 and 503 for Biosolids); and the Great Lakes Critical Programs Act (CPA).

Estimated number of respondents: 935,020 total (934,383 permittees and 637 States/Tribes/Territories).

Frequency of response: The frequency of response varies depending on the specific response activity and can range from ongoing and monthly to once every 5 years.

Total estimated burden: 28,239,262 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,476,244,044 (per year), includes $43,659,009 annualized capital or operation & maintenance costs.

Changes in Estimates: There is a net increase of 836,289 (3%) hours in the total estimated respondent burden compared with the combined burden of the component ICRs currently approved by OMB. This minor change in the total is primarily due to a combination of both burden increases and decreases in the component ICRs. Minor changes in the estimated burden occurred for five of the eight component ICRs (NPDES ICR, Pesticide Applicators ICR, National Pretreatment Program ICR, Cooling Water Intake Structures Phase I New Facilities ICR, and the Cooling Water Intake Structures Phase III Facilities ICR). Significant changes occurred for three of the eight component ICRs (Consolidated Animal Sectors ICR, Cooling Water Intake Structures Existing Facility ICR, and Electronic Reporting Rule ICR). These significant changes included:

• A decrease of 12 percent in the animal sector labor burden due to revised EPA estimates based on changes in industry practice, adherence to USDA guidelines, and industry consolidation (OMB Control No. 2040–0250; EPA ICR Number 1989.09);

• an increase of 140 percent in the cooling water intake structures existing facilities labor burden due to the coincidence of the period of greatest implementation burden with the three year ICR period (OMB Control No. 2040–0257; EPA ICR No. 2060.07); and

• a decrease of 164 percent in the electronic reporting rule labor burden due to the reduced need for data input due to increased participation in electronic filing of forms and reports as the rule is implemented (OMB Control No. 2020–0035; EPA ICR No. 2468.02).

Dated: April 26, 2017.

Sheila E. Frace,

Acting Director, Office of Wastewater Management, Office of Water.

[FR Doc. 2017–13672 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1158; FRL–9962–43–OAR]

Proposed Information Collection Request; Comment Request; Alternative Affirmative Defense Requirements for Ultra-low Sulfur Diesel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Alternative Affirmative Defense Requirements for Ultra-low Sulfur Diesel'' (EPA ICR No.2364.05, OMB Control No. 2060–0639 to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through May 31, 2017. 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.

DATES: Comments must be submitted on or before August 28, 2017.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–1158, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Geanetta Heard, Fuels Compliance Center, 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–343–9017; fax number: 202–565–2085; email address: *heard.geanetta@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: With this ICR renewal, EPA is seeking permission to continue recordkeeping and reporting requirements under the ultra-low sulfur diesel (ULSD) fuel regulations. Where a violation of the 15 ppm sulfur standard is identified at a retail outlet, the retailer responsible for dispensing the noncompliant fuel is deemed liable, as well as the refiner(s), importer(s) and distributor(s) of such fuel. The highway diesel regulations further provide, however, that any person deemed liable can rebut this presumption by establishing an affirmative defense that includes, among other things, showing that it conducted a quality assurance sampling and testing program as prescribed by the regulations. This ICR covers burdens and costs associated with provisions that allow refiners and importers of ULSD an alternative means of meeting the affirmative defense requirements in the diesel sulfur regulations by participating in a nationwide diesel fuel sampling and testing program. The reporting burden covered by this ICR renewal relates to reports that refiners, importers and distributors, have to submit in the event they have a non-complying sulfur test result.

Form Numbers: None.

Respondents/affected entities: 5.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 5 (total).

Frequency of response: On occasion.

Total estimated burden: 80 hours (per year). Burden is defined at 5 CFR 1320.03(b).

T*otal estimated cost:* $8,640 (per year), includes no annualized capital or operation & maintenance costs.

Changes in Estimates: There is no increase of hours in the total estimated respondent burden compared to the ICR currently approved by OMB. The respondent universe and responses also remained the same in this collection. After using more accurate numbers to calculate industry burden and reflecting inflation, there is a change in respondent cost from $9,200 in the currently approved ICR to $8,640 in this ICR, totaling a net decrease to the industry cost burden of $560 per year.

Dated: May 3, 2017.

Byron J. Bunker,

Director, Compliance Division, Office of Transportation and Air Quality.

[FR Doc. 2017–13655 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0947; FRL–9963–49–OAR]

Proposed Information Collection Request; Comment Request; Information Collection Request Renewal for the NO_X Budget Trading Program To Reduce the Regional Transport of Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency(EPA) is planning to submit an information collection request (ICR), ''Information Collection Request Renewal for the NO_X Budget Trading Program to Reduce the Regional Transport of Ozone'' (EPA ICR No. 1857.07, OMB Control No. 2060–0445) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through August 31, 2017. 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.

DATES: Comments must be submitted on or before August 28, 2017.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2006–0947, online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epamail.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Karen VanSickle, Clean Air Markets Division, Office of Atmospheric Programs (6204J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9220; fax number: (202) 343–2361; email address: *vansickle.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The NO_X Budget Trading Program was a market-based cap and trade program created to reduce emissions of nitrogen oxides (NO_X) from

power plants and other large combustion sources in the eastern United States. NO_X is a prime ingredient in the formation of ground-level ozone (smog), a pervasive air pollution problem in many areas of the eastern United States. The NO_X Budget Trading Program was designed to reduce NO_X emissions during the warm summer months, referred to as the ozone season, when ground-level ozone concentrations are highest. In 2009 the program was replaced by an ozone-season NO_X trading program under the Clean Air Interstate Rule (CAIR), which has in turn been replaced by ozone-season NO_X trading programs under the Cross-State Air Pollution Rule (CSAPR). Although the NO_X Budget Trading Program was replaced after the 2008 compliance season, this information collection is being renewed because some industrial sources in certain States are still required to monitor and report emissions data to EPA under these rules, so we will account for their burden. All data received by EPA will be treated as public information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are those which participate in the NO_X Budget Trading Program to Reduce the Regional Transport of Ozone.

Respondent's obligation to respond: mandatory (Sections 110(a) and 301(a) of the Clean Air Act).

Estimated number of respondents: EPA estimates that there are 122 former NO_X Budget Trading Program units that will continue to conduct monitoring in accordance with Part 75 solely under the NO_X SIP call.

Frequency of response: Yearly, quarterly, occasionally.

Total estimated burden: 57,586 hours (per year). Burden is defined at 5 CFR 1320.03(b)

T*otal estimated cost:* $8,066,616 (per year), includes $3,777,000 annualized capital or operation & maintenance costs.

Changes in Estimates: There is no increase in hours in the total estimated respondent burden compared with the ICR currently approved by OMB.

Dated: May 31, 2017.

Richard A. Haeuber,

Acting Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2017–13676 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9962–16–OECA]

See the Item Specific Docket Numbers Provided in the Text: Proposed Information Collection Request; Comment Request; See Item Specific ICR Titles Provided in the Text

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit the below listed information collection requests (ICRs) (See item specific ICR title, EPA ICR Number and OMB Control Number provided in the text) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. These are proposed extension of 70 currently approved ICRs, and request for approval of two new collections. 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.

DATES: Comments must be submitted on or before August 28, 2017.

ADDRESSES: Submit your comments, referencing the Docket ID numbers provided for each item in the text, online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. Burden is defined at 5 CFR 1320.03(b). EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

General Abstract: For all the listed ICRs in this notice, owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the general provisions of 40 CFR part 60, subpart A or Part 63, Subpart A, as well as the applicable specific standards. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is

inoperative. These reports are used by EPA to determine compliance with the standards.

(1) Docket ID Number: EPA–HQ–OECA–2013–0019; Title: NSPS for Electric Utility Steam Generating Units (40 CFR part 60, subpart Da); EPA ICR Number 1053.12; OMB Control Number 2060–0023; Expiration Date: December 31, 2017.

Respondents: Electric utility steam generating facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart Da).

Estimated number of respondents: 699 (total).

Frequency of response: Initially and semiannually.

Estimated annual burden: 168,000 hours.

Estimated annual cost: $29,200,000, includes $12,700,000 annualized capital or operation & maintenance (O&M) costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(2) Docket ID Number: EPA–HQ–OECA–2013–0332; Title: NSPS for Small Industrial-Commercial-Institutional Steam Generating Units (40 CFR part 60, subpart Dc); EPA ICR Number 1564.10; OMB Control Number 2060–0202; Expiration Date: December 31, 2017.

Respondents: Industrial-commercial-institutional steam generating units with maximum design heat input capacity of 29 megawatts (MW) or less, but greater than or equal to 2.9 MW.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart Dc).

Estimated number of respondents: 268 (total).

Frequency of response: Initially and semiannually.

Annual estimated burden: 182,000 hours.

Annual estimated cost: $28,600,000, includes $10,800,000 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(3) Docket ID Number: EPA–HQ–OECA–2013–0326; Title: NSPS for Asphalt Processing and Roofing Manufacturing (40 CFR part 60, subpart UU); EPA ICR Number 0661.12; OMB Control Number 2060–0002; Expiration Date: April 30, 2018.

Respondents: Asphalt processing and roofing manufacture plants.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart UU).

Estimated number of respondents: 144 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 33,900 hours.

Annual estimated cost: $8,560,000, includes $5,240,000 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to reconstruction of existing sources.

(4) Docket ID Number: EPA–HQ–OECA–2014–0028; Title: NSPS for Calciners and Dryers in Mineral Industries (40 CFR part 60, subpart UUU); EPA ICR Number 0746.10; OMB Control Number 2060–0251; Expiration Date: April 30, 2018.

Respondents: Calciners and dryers at mineral facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart UUU).

Estimated number of respondents: 167 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 6,440 hours.

Annual estimated cost: $739,000, includes $109,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(5) Docket ID Number: EPA–HQ–OECA–2013–0324; Title: NESHAP for Marine Tank Vessel Loading Operations (40 CFR part 63, subpart Y); EPA ICR Number 1679.10; OMB Control Number 2060–0289; Expiration Date: April 30, 2018.

Respondents: Marine tank vessel loading plants.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart Y).

Estimated number of respondents: 804 (total).

Frequency of response: Initially and annually.

Annual estimated burden: 9,890 hours.

Annual estimated cost: $968,000, includes no annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(6) Docket ID Number: EPA–HQ–OECA–2013–0347; Title: NESHAP for Epoxy Resin and Non-Nylon Polyamide Production (40 CFR part 63, subpart W); EPA ICR Number 1681.09; OMB Control Number 2060–0290; Expiration Date: April 30, 2018.

Respondents: Epoxy resin and non-nylon polyamide plants.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart W).

Estimated number of respondents: 7 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 3,960 hours.

Annual estimated cost: $390,000, includes $9,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(7) Docket ID Number: EPA–HQ–OECA–2014–0056; Title: NESHAP for Shipbuilding and Ship Repair Facilities—Surface Coating (40 CFR part 63, subpart II); EPA ICR Number 1712.10; OMB Control Number 2060–0330; Expiration Date: April 30, 2018.

Respondents: Shipbuilding and repair facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart II).

Estimated number of respondents: 56 (total).

Frequency of response: Initially and semiannually.

Annual estimated burden: 28,600 hours.

Annual estimated cost: $2,800,000, includes no annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(8) Docket ID Number: EPA–HQ–OECA–2013–0351; Title: NESHAP for Solvent Extraction for Vegetable Oil Production (40 CFR part 63, subpart GGGG); EPA ICR Number 1947.07; OMB Control Number 2060–0471; Expiration Date: April 30, 2018.

Respondents: Vegetable oil production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart GGGG).

Estimated number of respondents: 89 (total).

Frequency of response: Initially and annually.

Annual estimated burden: 34,700 hours.

Annual estimated cost: $3,340,000, includes no annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to reconstruction of existing sources.

(9) Docket ID Number: EPA–HQ–OECA–2014–0080; Title: NESHAP for Cellulose Products Manufacturing (40 CFR part 63, subpart UUUU); EPA ICR Number 1974.08; OMB Control Number 2060–0488; Expiration Date: April 30, 2018.

Respondents: Cellulose products manufacturing plants.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart UUUU).

Estimated number of respondents: 13 (total).

Frequency of response: Initially and semiannually.

Annual estimated burden: 12,100 hours.

Annual estimated cost: $1,180,000, includes $1,010 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(10) Docket ID Number: EPA–HQ–OECA–2014–0041; Title: NSPS for Glass Manufacturing Plants (40 CFR part 60, subpart CC); EPA ICR Number 1131.11; OMB Control Number 2060–0054; Expiration Date: May 31, 2018.

Respondents: Glass manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart CC).

Estimated number of respondents: 41 (total).

Frequency of response: Initially, semiannually and annually.

Annual estimated burden: 803 hours.

Annual estimated cost: $315,000, includes $238,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(11) Docket ID Number: EPA–HQ–OECA–2013–0349; Title: NESHAP for Pharmaceutical Production (40 CFR part 63, subpart GGG); EPA ICR Number 1781.08; OMB Control Number 2060–0358; Expiration Date: May 31, 2018.

Respondents: Pharmaceutical production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart GGG).

Estimated number of respondents: 27 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 44,300 hours.

Annual estimated cost: $4,440,000, includes $112,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(12) Docket ID Number: EPA–HQ–OECA–2013–0322; Title: NESHAP for Beryllium Rocket Motor Fuel Firing (40 CFR part 61, subpart D); EPA ICR Number 1125.08; OMB Control Number 2060–0394; Expiration Date: May 31, 2018.

Respondents: Beryllium rocket static test firing or beryllium propellant disposal facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 61, subpart D).

Estimated number of respondents: 1 (total).

Frequency of response: Initially and occasionally.

Annual estimated burden: 9 hours.

Annual estimated cost: $930, includes no annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(13) Docket ID Number: EPA–HQ–OECA–2013–0356; Title: NESHAP for Group I Polymers and Resins (40 CFR part 63, subpart U); EPA ICR Number 2410.04; OMB Control Number 2060–0665; Expiration Date: May 31, 2018.

Respondents: Facilities with elastomer product process units and associated equipment.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart U).

Estimated number of respondents: 5 (total).

Frequency of response: Initially and semiannually.

Annual estimated burden: 315 hours.

Annual estimated cost: $16,800, includes no annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(14) Docket ID Number: EPA–HQ–OECA–2013–0348; Title: NESHAP for Primary Aluminum Reduction Plants (40 CFR part 63, subpart LL); EPA ICR Number 1767.08; OMB Control Number 2060–0360; Expiration Date: June 30, 2018.

Respondents: Primary aluminum reduction plants.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart LL).

Estimated number of respondents: 16 (total).

Frequency of response: Initially and semiannually.

Annual estimated burden: 80,400 hours.

Annual estimated cost: $7,600,000, includes $91,400 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(15) Docket ID Number: EPA–HQ–OECA–2013–0323; Title: NESHAP for Area Sources: Electric Arc Furnace Steelmaking Facilities (40 CFR part 63, subpart YYYYY); EPA ICR Number 2277.05; OMB Control Number 2060–0608; Expiration Date: June 30, 2018.

Respondents: Area source electric arc furnace steelmaking facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart YYYYY).

Estimated number of respondents: 87 (total).

Frequency of response: Initially and semiannually.

Annual estimated burden: 1,420 hours.

Annual estimated cost: $136,000, includes no annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(16) Docket ID Number: EPA–HQ–OECA–2014–0027; Title: NSPS for Bulk Gasoline Terminals (40 CFR part 60, subpart XX); EPA ICR Number 0664.12; OMB Control Number 2060–0006; Expiration Date: August 31, 2018.

Respondents: Bulk gasoline terminals.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart XX).

Estimated number of respondents: 40 (total).

Frequency of response: Initially and occasionally.

Annual estimated burden: 13,200 hours.

Annual estimated cost: $1,290,000, includes no annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(17) Docket ID Number: EPA–HQ–OECA–2013–0327; Title: NSPS for Portland Cement Plants (40 CFR part 60, subpart F); EPA ICR Number 1051.14; OMB Control Number 2060–0025; Expiration Date: August 31, 2018.

Respondents: Portland cement plants.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart F).

Estimated number of respondents: 96 (total).

Frequency of response: Initially and semiannually.

Annual estimated burden: 14,500 hours.

Annual estimated cost: $2,190,000, includes $774,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(18) Docket ID Number: EPA–HQ–OECA–2014–0043; Title: NSPS for Polymeric Coating of Supporting Substrates Facilities (40 CFR part 60, subpart VVV); EPA ICR Number 1284.11; OMB Control Number 2060–0181; Expiration Date: August 31, 2018.

Respondents: Polymeric coating facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart VVV).

Estimated number of respondents: 58 (total).

Frequency of response: Initially, quarterly and semiannually.

Annual estimated burden: 13,700 hours.

Annual estimated cost: $2,000,000, includes $658,000 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(19) Docket ID Number: EPA–HQ–OECA–2014–0059; Title: NESHAP for Natural Gas Transmission and Storage (40 CFR part 63, subpart HHH); EPA ICR Number 1789.10; OMB Control Number 2060–0418; Expiration Date: August 31, 2018.

Respondents: Facilities that transport or store natural gas prior to entering the pipeline.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart HHH).

Estimated number of respondents: 37 (total).

Frequency of response: Initially and semiannually.

Annual estimated burden: 2,000 hours.

Annual estimated cost: $205,000, includes no annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(20) Docket ID Number: EPA–HQ–OECA–2014–0085; Title: NESHAP for Friction Materials Manufacturing (40 CFR part 63, subpart QQQQQ); EPA ICR Number 2025.07; OMB Control Number 2060–0481; Expiration Date: August 31, 2018.

Respondents: Friction materials manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart QQQQQ).

Estimated number of respondents: 4 (total).

Frequency of response: Initially, semiannually and annually.

Annual estimated burden: 1,290 hours.

Annual estimated cost: $127,000, includes $1,090 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(21) Docket ID Number: EPA–HQ–OECA–2014–0099; Title: NESHAP for Ferroalloys Production Area Sources (40 CFR part 63, subpart YYYYYY); EPA ICR Number 2303.05; OMB Control Number 2060–0625; Expiration Date: August 31, 2018.

Respondents: Ferroalloys production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart YYYYYY).

Estimated number of respondents: 10 (total).

Frequency of response: Initially and annually.

Annual estimated burden: 345 hours.

Annual estimated cost: $33,000, includes no annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(22) Docket ID Number: EPA–HQ–OECA–2013–0311; Title: Emission Guidelines for Sewage Sludge Incinerators (40 CFR part 60, subpart MMMM); EPA ICR Number 2403.04; OMB Control Number 2060–0661; Expiration Date: August 31, 2018.

Respondents: Sewage sludge incinerators constructed on or before October 14, 2010.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart MMMM).

Estimated number of respondents: 110 (total).

Frequency of response: Initially, semiannually and annually.

Annual estimated burden: 29,100 hours.

Annual estimated cost: $7,580,000, includes $4,730,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(23) Docket ID Number: EPA–HQ–OECA–2014–0035; Title: NSPS for Sulfuric Acid Plants (40 CFR part 60, subpart H); EPA ICR Number 1057.14; OMB Control Number 2060–0041; Expiration Date: September 30, 2018.

Respondents: Sulfuric acid plants.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart H).

Estimated number of respondents: 53 (total).

Frequency of response: Initially and semiannually.

Annual estimated burden: 13,400 hours.

Annual estimated cost: $1,550,000, includes $239,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(24) Docket ID Number: EPA–HQ–OECA–2014–0061; Title: NESHAP for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semichemical Pulp Mills (40 CFR part 63, subpart MM); EPA ICR Number 1805.08; OMB Control Number 2060–0377; Expiration Date: October 31, 2018.

Respondents: Kraft, soda, sulfite, and stand-alone semichemical pulp mills.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart MM).

Estimated number of respondents: 111 (total).

Frequency of response: Initially, quarterly and semiannually.

Annual estimated burden: 124,000 hours.

Annual estimated cost: $13,000,000, includes $712,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(25) Docket ID Number: EPA–HQ–OECA–2014–0067; Title: NESHAP for Primary Copper Smelters (40 CFR part 63, subpart QQQ); EPA ICR Number 1850.08; OMB Control Number 2060–0476; Expiration Date: October 31, 2018.

Respondents: Primary copper smelters.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart QQQ).

Estimated number of respondents: 3 (total).

Frequency of response: Initially and semiannually.

Annual estimated burden: 9,380 hours.

Annual estimated cost: $927,000, includes $8,220 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(26) Docket ID Number: EPA–HQ–OECA–2014–0033; Title: NSPS for Petroleum Refineries (40 CFR part 60, subpart J); EPA ICR Number 1054.13; OMB Control Number 2060–0022; Expiration Date: November 30, 2018.

Respondents: Fluid catalytic cracking unit catalyst regenerator or fuel gas combustion device at petroleum refineries.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart J).

Estimated number of respondents: 150 (total).

Frequency of response: Initially and semiannually.

Annual estimated burden: 15,800 hours.

Annual estimated cost: $2,260,000, includes $719,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(27) Docket ID Number: EPA–HQ–OECA–2014–0037; Title: NSPS for Primary and Secondary Emissions from Basic Oxygen Furnaces (40 CFR part 60, subparts N and Na); EPA ICR Number 1069.12; OMB Control Number 2060–0029; Expiration Date: November 30, 2018.

Respondents: Basic oxygen process furnace at iron and steel plants.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subparts N and Na).

Estimated number of respondents: 18 (total).

Frequency of response: Initially and semiannually.

Annual estimated burden: 6,260 hours.

Annual estimated cost: $643,000, includes $29,700 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(28) Docket ID Number: EPA–HQ–OECA–2014–0038; Title: NESHAP for Inorganic Arsenic Emissions from Glass Manufacturing Plants (40 CFR part 61, subpart N); EPA ICR Number 1081.12; OMB Control Number 2060–0043; Expiration Date: November 30, 2018.

Respondents: Glass manufacturing plants.

Respondent's obligation to respond: Mandatory (40 CFR part 61, subpart N).

Estimated number of respondents: 16 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 3,080 hours.

Annual estimated cost: $366,000, includes $56,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(29) Docket ID Number: EPA–HQ–OECA–2014–0042; Title: NSPS for Lime Manufacturing (40 CFR part 60, subpart HH); EPA ICR Number 1167.12; OMB Control Number 2060–0063; Expiration Date: November 30, 2018.

Respondents: Lime manufacturing plants.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart HH).

Estimated number of respondents: 41 (total).

Frequency of response: Initially and semiannually.

Annual estimated burden: 3,770 hours.

Annual estimated cost: $441,000, includes $61,500 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(30) Docket ID Number: EPA–HQ–OECA–2013–0328; Title: NESHAP for Vinyl Chloride (40 CFR part 61, subpart F); EPA ICR Number 0186.14; OMB Control Number 2060–0071; Expiration Date: November 30, 2018.

Respondents: Ethylene dichloride, vinyl chloride monomer, and polyvinyl chloride plants.

Respondent's obligation to respond: Mandatory (40 CFR part 61, subpart F).

Estimated number of respondents: 18 (total).

Frequency of response: Quarterly and occasionally.

Annual estimated burden: 7,600 hours.

Annual estimated cost: $1,550,000, includes $810,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(31) Docket ID Number: EPA–HQ–OECA–2014–0040; Title: NSPS for Hot Mix Asphalt Facilities (40 CFR part 60, subpart I); EPA ICR Number 1127.12; OMB Control Number 2060–0083; Expiration Date: November 30, 2018.

Respondents: Hot mix asphalt facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart I).

Estimated number of respondents: 4,535 (total).

Frequency of response: Initially.

Annual estimated burden: 18,800 hours.

Annual estimated cost: $1,890,000, includes no annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(32) Docket ID Number: EPA–HQ–OECA–2014–0026; Title: NSPS for Metal Coil Surface Coating (40 CFR part 60, subpart TT); EPA ICR Number 0660.13; OMB Control Number 2060–0107; Expiration Date: November 30, 2018.

Respondents: Metal coil surface coating facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart TT).

Estimated number of respondents: 158 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 15,600 hours.

Annual estimated cost: $1,860,000, includes $332,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(33) Docket ID Number: EPA–HQ–OECA–2014–0047; Title: NSPS for Municipal Solid Waste Landfills (40 CFR part 60, subpart WWW); EPA ICR Number 1557.10; OMB Control Number 2060–0220; Expiration Date: November 30, 2018.

Respondents: Municipal solid waste landfills constructed, modified, or reconstructed on or after May 30, 1991.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart WWW).

Estimated number of respondents: 195 (total).

Frequency of response: Initially, occasionally and annually.

Annual estimated burden: 111,000 hours.

Annual estimated cost: $11,600,000, includes $700,000 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(34) Docket ID Number: EPA–HQ–OECA–2014–0055; Title: NESHAP for Secondary Lead Smelter Industry (40 CFR part 63, subpart X); EPA ICR Number 1686.11; OMB Control Number 2060–0296; Expiration Date: November 30, 2018.

Respondents: Secondary lead smelters.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart X).

Estimated number of respondents: 14 (total).

Frequency of response: Initially, semiannually and annually.

Annual estimated burden: 13,000 hours.

Annual estimated cost: $1,650,000, includes $375,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(35) Docket ID Number: EPA–HQ–OECA–2014–0057; Title: NESHAP for Wood Furniture Manufacturing Operations (40 CFR part 63, subpart JJ); EPA ICR Number 1716.10; OMB Control Number 2060–0324; Expiration Date: November 30, 2018.

Respondents: Wood furniture manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart JJ).

Estimated number of respondents: 856 (total).

Frequency of response: Initially, occasionally, quarterly and semiannually.

Annual estimated burden: 66,200 hours.

Annual estimated cost: $6,510,000, includes $24,600 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(36) Docket ID Number: EPA–HQ–OECA–2014–0068; Title: NESHAP for Primary Lead Smelters (40 CFR part 63, subpart TTT); EPA ICR Number 1856.11; OMB Control Number 2060–0414; Expiration Date: November 30, 2018.

Respondents: Primary lead smelters.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart TTT).

Estimated number of respondents: 1 (total).

Frequency of response: Quarterly and semiannually.

Annual estimated burden: 6,270 hours.

Annual estimated cost: $782,000, includes $169,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(37) Docket ID Number: EPA–HQ–OECA–2014–0091; Title: NESHAP for Engine Test Cells/Stands (40 CFR part 63, subpart PPPPP); EPA ICR Number 2066.07; OMB Control Number 2060–0483; Expiration Date: November 30, 2018.

Respondents: Internal combustion engine test cells/stands at major source facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart PPPPP).

Estimated number of respondents: 18 (total).

Frequency of response: Semiannually.

Annual estimated burden: 1,720 hours.

Annual estimated cost: $173,000, includes $5,400 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(38) Docket ID Number: EPA–HQ–OECA–2014–0078; Title: NESHAP for Metal Coil Surface Coating Plants (40 CFR part 63, subpart SSSS); EPA ICR Number 1957.08; OMB Control Number 2060–0487; Expiration Date: November 30, 2018.

Respondents: Metal coil surface coating facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart SSSS).

Estimated number of respondents: 89 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 25,100 hours.

Annual estimated cost: $2,550,000, includes $91,200 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(39) Docket ID Number: EPA–HQ–OECA–2013–0352; Title: NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters (40 CFR part 63, subpart DDDDD); EPA ICR Number 2028.09; OMB Control Number 2060–0551; Expiration Date: November 30, 2018.

Respondents: Industrial, commercial and institutional boilers and process heaters.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart DDDDD).

Estimated number of respondents: 1,700 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 493,000 hours.

Annual estimated cost: $155,000,000, includes $108,000,000 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(40) Docket ID Number: EPA–HQ–OECA–2011–0256; Title: Emission Guidelines for Existing Other Solid Waste Incineration Units (40 CFR part 60, subpart FFFF); EPA ICR Number 2164.06; OMB Control Number 2060–0562; Expiration Date: November 30, 2018.

Respondents: Other solid waste incineration units.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart FFFF).

Estimated number of respondents: 99 (total).

Frequency of response: Initially, semiannually and annually.

Annual estimated burden: 70,200 hours.

Annual estimated cost: $7,560,000, includes $495,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(41) Docket ID Number: EPA–HQ–OECA–2014–0094; Title: NSPS for Other Solid Waste Incineration Units (40 CFR part 60, subpart EEEE); EPA ICR Number 2163.06; OMB Control Number 2060–0563; Expiration Date: November 30, 2018.

Respondents: Other solid waste incineration units.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart EEEE).

Estimated number of respondents: 0 (total).

Frequency of response: Initially, semiannually and annually.

Annual estimated burden: 0 hours.

Annual estimated cost: $0, includes no annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(42) Docket ID Number: EPA–HQ–OECA–2014–0096; Title: NESHAP for Iron and Steel Foundries (40 CFR part 63, subpart ZZZZZ); EPA ICR Number 2267.05; OMB Control Number 2060–0605; Expiration Date: November 30, 2018.

Respondents: Area source iron and steel foundries.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart ZZZZZ).

Estimated number of respondents: 427 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 7,890 hours.

Annual estimated cost: $773,000, includes no annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(43) Docket ID Number: EPA–HQ–OECA–2014–0097; Title: NESHAP for Plating and Polishing Area Sources (40 CFR part 63, subpart WWWWWW); EPA ICR Number 2294.05; OMB Control Number 2060–0623; Expiration Date: November 30, 2018.

Respondents: Area source plating and polishing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart WWWWWW).

Estimated number of respondents: 2,900 (total).

Frequency of response: Initially and annually.

Annual estimated burden: 64,300 hours.

Annual estimated cost: $6,300,000, includes $8,310 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(44) Docket ID Number: EPA–HQ–OECA–2014–0030; Title: NSPS for Metallic Mineral Processing Plants (40 CFR part 60, subpart LL); EPA ICR Number 0982.12; OMB Control Number 2060–0016; Expiration Date: December 31, 2018.

Respondents: Metallic mineral processing plants.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart LL).

Estimated number of respondents: 20 (total).

Frequency of response: Initially and semiannually.

Annual estimated burden: 2,300 hours.

Annual estimated cost: $239,000, includes $13,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(45) Docket ID Number: EPA–HQ–OECA–2014–0034; Title: NSPS for Kraft Pulp Mills (40 CFR part 60, subpart BB); EPA ICR Number 1055.12; OMB Control Number 2060–0021; Expiration Date: December 31, 2018.

Respondents: Kraft pulp mills.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart BB).

Estimated number of respondents: 110 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 16,700 hours.

Annual estimated cost: $6,010,000, includes $4,330,000 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(46) Docket ID Number: EPA–HQ–OECA–2014–0045; Title: NSPS for Municipal Waste Combustors (40 CFR part 60, subparts Ea and Eb); EPA ICR Number 1506.14; OMB Control Number 2060–0210; Expiration Date: December 31, 2018.

Respondents: Municipal waste combustors.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subparts Ea and Eb).

Estimated number of respondents: 13 (total).

Frequency of response: Initially, occasionally, quarterly and semiannually.

Annual estimated burden: 20,300 hours.

Annual estimated cost: $1,880,000, includes $117,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(47) Docket ID Number: EPA–HQ–OECA–2014–0062; Title: NESHAP for Pesticide Active Ingredient Production (40 CFR part 63, subpart MMM); EPA ICR Number 1807.09; OMB Control Number 2060–0370; Expiration Date: December 31, 2018.

Respondents: Pesticide active ingredient production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart MMM).

Estimated number of respondents: 18 (total).

Frequency of response: Initially, quarterly and semiannually.

Annual estimated burden: 12,000 hours.

Annual estimated cost: $1,420,000, includes $236,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(48) Docket ID Number: EPA–HQ–OECA–2014–0066; Title: NESHAP for Ferroalloys Production: Ferromanganese and Silicomanganese (40 CFR part 63, subpart XXX); EPA ICR Number 1831.07; OMB Control Number 2060–0391; Expiration Date: December 31, 2018.

Respondents: Ferroalloy production facilities that manufacture ferromanganese and silicomanganese.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart XXX).

Estimated number of respondents: 1 (total).

Frequency of response: Initially, quarterly, semiannually and annually.

Annual estimated burden: 600 hours.

Annual estimated cost: $57,200, includes no annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(49) Docket ID Number: EPA–HQ–OECA–2014–0083; Title: NESHAP for Leather Finishing Operations (40 CFR part 63, subpart TTTT); EPA ICR Number 1985.07; OMB Control Number 2060–0478; Expiration Date: December 31, 2018.

Respondents: Leather finishing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart TTTT).

Estimated number of respondents: 10 (total).

Frequency of response: Initially, occasionally and annually.

Annual estimated burden: 334 hours.

Annual estimated cost: $32,700, includes no annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(50) Docket ID Number: EPA–HQ–OECA–2014–0082; Title: NESHAP for Carbon Black, Ethylene, Cyanide, and Spandex (40 CFR part 63, subpart YY); EPA ICR Number 1983.08; OMB Control Number 2060–0489; Expiration Date: December 31, 2018.

Respondents: Carbon black production, ethylene production, cyanide manufacturing, and spandex production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart YY).

Estimated number of respondents: 61 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 41,800 hours.

Annual estimated cost: $4,550,000, includes $351,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(51) Docket ID Number: EPA–HQ–OECA–2014–0079; Title: NESHAP for Wet-Formed Fiberglass Mat Production (40 CFR part 63, subpart HHHH); EPA ICR Number 1964.07; OMB Control Number 2060–0496; Expiration Date: December 31, 2018.

Respondents: Wet-formed fiberglass mat production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart HHHH).

Estimated number of respondents: 14 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 2,800 hours.

Annual estimated cost: $285,000, includes no annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(52) Docket ID Number: EPA–HQ–OECA–2014–0093; Title: NESHAP for Coal- and Oil-fired Electric Utility Steam Generating Units (40 CFR part 63, subpart UUUUU); EPA ICR Number 2137.08; OMB Control Number 2060–0567; Expiration Date: December 31, 2018.

Respondents: Electric utility steam generating units.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart UUUUU).

Estimated number of respondents: 1,254 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 670,000 hours.

Annual estimated cost: $67,300,000, includes $1,690,000 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(53) Docket ID Number: EPA–HQ–OECA–2013–0354; Title: NESHAP for Paint Stripping and Miscellaneous Surface Coating at Area Sources (40 CFR part 63, subpart HHHHHH); EPA ICR Number 2268.05; OMB Control Number 2060–0607; Expiration Date: December 31, 2018.

Respondents: Area source facilities that use methylene chloride paint strippers.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart HHHHHH).

Estimated number of respondents: 39,812 (total).

Frequency of response: Initially and annually.

Annual estimated burden: 125,000 hours.

Annual estimated cost: $1,180,000, includes $117,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(54) Docket ID Number: EPA–HQ–OECA–2014–0095; Title: NESHAP for Gasoline Distribution Bulk Terminals, Bulk Plants, Pipeline Facilities and Gasoline Dispensing Facilities (40 CFR part 63, subparts BBBBBB and CCCCCC); EPA ICR Number 2237.05; OMB Control Number 2060–0620; Expiration Date: December 31, 2018.

Respondents: Area source gasoline distribution facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subparts BBBBBB and CCCCCC).

Estimated number of respondents: 19,120 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 175,000 hours.

Annual estimated cost: $17,300,000, includes $110,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(55) Docket ID Number: EPA–HQ–OECA–2013–0312; Title: Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units (40 CFR part 60, subpart DDDD); EPA ICR Number 2385.07; OMB Control Number 2060–0664; Expiration Date: December 31, 2018.

Respondents: Commercial and industrial solid waste incineration units.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart DDDD).

Estimated number of respondents: 57 (total).

Frequency of response: Initially, occasionally, semiannually and annually.

Annual estimated burden: 7,380 hours.

Annual estimated cost: $8,690,000, includes $8,270,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(56) Docket ID Number: EPA–HQ–OECA–2014–0044; Title: NESHAP for Coke Oven Batteries (40 CFR part 63, subpart L); EPA ICR Number 1362.11; OMB Control Number 2060–0253; Expiration Date: January 31, 2019.

Respondents: Coke oven batteries.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart L).

Estimated number of respondents: 19 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 80,000 hours.

Annual estimated cost: $8,020,000, includes no annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(57) Docket ID Number: EPA–HQ–OECA–2012–0668; Title: NESHAP for Flexible Polyurethane Foam Product (40 CFR part 63, subpart III); EPA ICR Number 1783.09; OMB Control Number 2060–0357; Expiration Date: January 31, 2019.

Respondents: Flexible polyurethane foam product manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart III).

Estimated number of respondents: 12 (total).

Frequency of response: Initially, semiannually and annually.

Annual estimated burden: 882 hours.

Annual estimated cost: $46,800, includes no annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(58) Docket ID Number: EPA–HQ–OECA–2014–0064; Title: NESHAP for Steel Pickling, HCl Process Facilities and Hydrochloric Acid Regeneration Plants (40 CFR part 63, subpart CCC); EPA ICR Number 1821.09; OMB Control Number 2060–0419; Expiration Date: January 31, 2019.

Respondents: Facilities that pickle steel using HCl or regenerate HCl.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart CCC).

Estimated number of respondents: 100 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 35,100 hours.

Annual estimated cost: $3,540,000, includes $10,600 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(59) Docket ID Number: EPA–HQ–OECA–2012–0532; Title: NSPS for Beverage Can Surface Coating (40 CFR part 60, subpart WW); EPA ICR Number 0663.13; OMB Control Number 2060–0001; Expiration Date: March 31, 2019.

Respondents: Beverage can surface coating facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart WW).

Estimated number of respondents: 48 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 5,190 hours.

Annual estimated cost: $623,000, includes $101,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(60) Docket ID Number: EPA–HQ–OECA–2014–0039; Title: NSPS for Nonmetallic Mineral Processing (40 CFR part 60, subpart OOO); EPA ICR Number 1084.14; OMB Control Number 2060–0050; Expiration Date: March 31, 2019.

Respondents: Fixed and portable nonmetallic mineral processing plants.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart OOO).

Estimated number of respondents: 4,896 (total).

Frequency of response: Initially and occasionally.

Annual estimated burden: 14,100 hours.

Annual estimated cost: $1,650,000, includes $228,000 annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to an increase in the number of sources subject to the regulation.

(61) Docket ID Number: EPA–HQ–OECA–2014–0031; Title: NSPS for Petroleum Dry Cleaners (40 CFR part 60, subpart JJJ); EPA ICR Number 0997.12; OMB Control Number 2060–0079; Expiration Date: March 31, 2019.

Respondents: Petroleum dry cleaning facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart JJJ).

Estimated number of respondents: 20 (total).

Frequency of response: Initially.

Annual estimated burden: 1,850 hours.

Annual estimated cost: $186,000, includes no annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(62) Docket ID Number: EPA–HQ–OECA–2012–0529; Title: NESHAP for Mercury (40 CFR part 61, subpart E); EPA ICR Number 0113.13; OMB Control Number 2060–0097; Expiration Date: March 31, 2019.

Respondents: Facilities that process mercury ore to recover mercury, use mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide, and incinerate or dry wastewater treatment plant sludge.

Respondent's obligation to respond: Mandatory (40 CFR part 61, subpart E).

Estimated number of respondents: 107 (total).

Frequency of response: Initially, occasionally, semiannually and annually.

Annual estimated burden: 20,600 hours.

Annual estimated cost: $2,070,000, includes no annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(63) Docket ID Number: EPA–HQ–OECA–2014–0025; Title: NESHAP for Asbestos (40 CFR part 61, subpart M); EPA ICR Number 0111.15; OMB Control Number 2060–0101; Expiration Date: March 31, 2019.

Respondents: Demolition and renovation facilities; asbestos waste disposal; asbestos milling, manufacturing, and fabricating facilities; use of asbestos on roadways; asbestos waste converting facilities; and use of asbestos insulation and sprayed-on materials.

Respondent's obligation to respond: Mandatory (40 CFR part 61, subpart M).

Estimated number of respondents: 9,575 (total).

Frequency of response: Initially, occasionally, quarterly and semiannually.

Annual estimated burden: 292,000 hours.

Annual estimated cost: $29,400,000, includes no annualized capital or O&M costs.

Changes in Estimates: There is a projected increase in burden due to a net increase in the number of sources subject to the regulation.

(64) Docket ID Number: EPA–HQ–OECA–2012–0530; Title: NSPS for Metal Furniture Coating (40 CFR part 60, subpart EE); EPA ICR Number 0649.13; OMB Control Number 2060–0106; Expiration Date: March 31, 2019.

Respondents: Metal furniture surface coating facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart EE).

Estimated number of respondents: 400 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 56,500 hours.

Annual estimated cost: $6,530,000, includes $840,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(65) Docket ID Number: EPA–HQ–OECA–2012–0531; Title: NSPS for Surface Coating of Large Appliances (40 CFR part 60, subpart SS); EPA ICR Number 0659.14; OMB Control Number 2060–0108; Expiration Date: March 31, 2019.

Respondents: Large appliance coating facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart SS).

Estimated number of respondents: 72 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 7,740 hours.

Annual estimated cost: $787,000, includes $8,400 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(66) Docket ID Number: EPA–HQ–OECA–2013–0331; Title: NSPS for New Residential Wood Heaters (40 CFR part 60, subpart AAA); EPA ICR Number 1176.13; OMB Control Number 2060–0161; Expiration Date: March 31, 2019.

Respondents: Residential wood heaters.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart AAA).

Estimated number of respondents: 66 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 8,840 hours.

Annual estimated cost: $1,720,000, includes $1,470,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(67) Docket ID Number: EPA–HQ–OECA–2014–0046; Title: NESHAP for Benzene Waste Operations (40 CFR part 61, subpart FF); EPA ICR Number 1541.12; OMB Control Number 2060–0183; Expiration Date: March 31, 2019.

Respondents: Facilities that generate waste containing benzene, and hazardous waste treatment, storage, and disposal facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 61, subpart FF).

Estimated number of respondents: 270 (total).

Frequency of response: Initially, quarterly and annually.

Annual estimated burden: 19,200 hours.

Annual estimated cost: $1,930,000, includes no annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(68) Docket ID Number: EPA–HQ–OECA–2009–0422; Title: NESHAP for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR part 63, subpart N); EPA ICR Number 1611.12; OMB Control Number 2060–0327; Expiration Date: March 31, 2019.

Respondents: Hard chromium electroplating, decorative chromium electroplating, and chromium anodizing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart N).

Estimated number of respondents: 1,343 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 242,000 hours.

Annual estimated cost: $29,700,000, includes $20,400,000 annualized capital or O&M costs.

Changes in Estimates: There is no change in burden from the previous ICR.

(69) Docket ID Number: EPA–HQ–OECA–2017–0200; Title: NESHAP for Rubber Tire Manufacturing (40 CFR part 63, subpart XXXX); EPA ICR Number 1982.01; OMB Control Number 2060–NEW.

Respondents: Major source rubber tire manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart XXXX).

Estimated number of respondents: 36 (total).

Frequency of response: Initially, occasionally and semiannually.

Annual estimated burden: 12,807 hours.

Annual estimated cost: $2,058,337, includes $1,357,000 annualized capital or O&M costs.

(70) Docket ID Number: EPA–HQ–OECA–2017–0201; Title: NESHAP for Inorganic Arsenic Emissions from Primary Copper Smelters (40 CFR part 61, subpart O); EPA ICR Number 1089.04; OMB Control Number 2060–NEW.

Respondents: Copper converter at primary copper smelters.

Respondent's obligation to respond: Mandatory (40 CFR part 61, subpart O).

Estimated number of respondents: 59 (total).

Frequency of response: Initially, quarterly and annually.

Annual estimated burden: 3,167 hours.

Annual estimated cost: $297,703, includes $2,000 annualized capital or O&M costs.

Dated: April 27, 2017.

Edward J. Messina,

Director, Monitoring, Assistance and Media Programs Division.

[FR Doc. 2017–13669 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9963–77–OARM]

Meeting of Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Federal Advisory Committee teleconference meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Good Neighbor Environmental Board will hold public teleconference meetings on Tuesday, July 11, 2017 and Thursday, September 7, 2017. The meetings are open to the public.

DATES: The Good Neighbor Environmental Board will hold open teleconference meetings on Tuesday, July 11, 2017 from 12:00–4:00 p.m. EDT and on Thursday, September 7, 2017 from 12:00–4:00 p.m. EDT.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: The purpose of these meetings is to discuss the Board's next report, which is examining environmental protection and security issues in the U.S.-Mexico border region.

General Information: The agendas for the teleconferences will be available at *http://www2.epa.gov/faca/gneb.* General information about the Board can be found on its Web site at *http://www2.epa.gov/faca/gneb.* If you wish to make oral comments or submit written comments to the Board, please contact

Mark Joyce at least five days prior to the meeting. Written comments should be submitted to Mark Joyce at *joyce.mark@epa.gov.*

Meeting Access: For information on access or services for individuals with disabilities, please contact Mark Joyce at (202) 564–2130 or email at *joyce.mark@epa.gov.* To request accommodation of a disability, please contact Mark Joyce at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: June 5, 2017.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 2017–13654 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9963–96–Region 5]

Notification of a Public Teleconference of the Great Lakes Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) announces a public teleconference of the Great Lakes Advisory Board (the Board) to discuss the Board's specific recommendations in response to charge questions from the federal Interagency Task Force on the development of the Great Lakes Restoration Initiative Action Plan 3.

DATES: The teleconference will be held on Monday, July 17, 2017 from 2 p.m. to 4 p.m. Central Time, 3 p.m. to 5 p.m. Eastern Time. An opportunity will be provided to the public to comment.

ADDRESSES: The public teleconference will be conducted by telephone only. The teleconference number is 866–299–3188 and the teleconference code is 120 3348.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this teleconference may contact Rita Cestaric, Designated Federal Officer (DFO), by email at *Cestaric.Rita@epa.gov.* General information about the Board can be found at *http://glri.us/advisory/index.html.*

SUPPLEMENTARY INFORMATION:

Background: The Board is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established the Board in 2013 to provide independent advice to the EPA Administrator in his capacity as Chair of the federal Great Lakes Interagency Task Force (IATF). The Board complies with the provisions of FACA.

The Board held a public meeting on May 30, 2017 to discuss its draft responses to charge questions on the development of GLRI Action Plan 3. The Board expects to finalize its recommendations at the July 17, 2017 teleconference. Additional information, including the charge questions and draft responses, can be found at *https://www.glri.us/public.html.*

Availability of Teleconference Materials: The agenda and other materials in support of the teleconference will be available before the teleconference at *https://www.glri.us/public.html.*

Procedures for Providing Public Input: Federal advisory committees provide independent advice to federal agencies. Members of the public can submit relevant comments for consideration by the Board. Input from the public to the committees will have the most impact if it provides specific information for consideration. Members of the public wishing to provide comments should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at this public teleconference will be limited to three minutes per speaker, subject to the number of people wanting to comment. Interested parties should contact the DFO in writing (preferably via email) at the contact information noted above by July 14, 2017 to be placed on the list of public speakers for the teleconference.

Written Statements: Written statements must be received by July 14, 2017 so that the information may be made available to the committees for consideration. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature and one electronic copy via email. Commenters are requested to provide two versions of each document submitted: One each with and without signatures because only documents without signatures may be published on the GLRI Web page.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO at the email address noted above, preferably at least seven days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: June 12, 2017.

Tinka G. Hyde,

Director, Great Lakes National Program Office.

[FR Doc. 2017–13660 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0678]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before August 28, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the PRA, 44 U.S.C. 3501–3520, the FCC

invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control No.: 3060–0678.

Title: Part 25 of the Federal Communications Commission's Rules Governing the Licensing of, and Spectrum Usage by, Commercial Earth Stations and Space Stations.

Form Nos.: FCC Form 312; Schedule A; Schedule B; Schedule S; FCC Form 312–EZ; FCC Form 312–R.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 4,924 respondents; 4,981 responses.

Estimated Time per Response: .5–80 hours per response.

Frequency of Response: On occasion, one time, and annual reporting requirements; third-party disclosure requirement; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721.

Total Annual Burden: 34,140 hours.

Annual Cost Burden: $10,625,120.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information. Certain information collected regarding international coordination of satellite systems is not routinely available for public inspection pursuant to 5 U.S.C. 552(b) and 47 CFR 0.457(d)(vii).

Needs and Uses: The Federal Communications Commission requests that the Office of Management and Budget (OMB) approve a revision of the information collection titled ''Part 25 of the Federal Communications Commission's Rules Governing the Licensing of, and Spectrum Usage By, Commercial Earth Stations and Space Stations'' under OMB Control No. 3060–0678, as a result of a recent rulemaking discussed below.

On April 25, 2017, the Commission released a Third Report and Order in IB Docket No. 06–123, FCC 17–49, titled ''Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3–17.7 GHz Frequency Band and at the 17.7–17.8 GHz Frequency Band Internationally, and at the 24.75–25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3–17.8 GHz Frequency Band.'' In the Report and Order, the Commission adopted rules requiring applicants for new licenses for Digital Broadcasting Satellite Service (DBS) feeder-link earth stations in the 17.3–17.8 GHz band to file with the Commission coordination agreements with affected Broadcasting-Satellite Service (BSS) licensees prior to licensing, and to provide technical information on their proposed feeder-link earth stations to a third-party coordinator to facilitate the coordination process (*see* 47 CFR 25.203(m)). The changes adopted in the Report and Order will result in a net annualized increase of 41 burden hours to applicants and licensees under Part 25. This submission amends the previous submission to the OMB of July 1, 2014, to reflect these changes.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–13624 Filed 6–28–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[NOTICE 2017–11]

Filing Dates for the Utah Special Elections in the 3rd Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Utah has scheduled a Special General Election on November 7, 2017, to fill the U.S. House of Representatives seat in the 3rd Congressional District being vacated by Representative Jason E. Chaffetz. A Special Primary Election, if necessary, will be held on August 15, 2017.[1]

Political committees participating in the Utah special elections are required to file pre- and post-election reports. Filing deadlines for these reports are affected by whether one or two elections are held.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 999 E Street NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

Special Primary Election

All principal campaign committees of candidates *only* participating in the Utah Special Primary, if necessary, shall file a Pre-Primary Report on August 3, 2017. (See charts below for the closing date for the report.)

Special Primary and General Elections

If two elections are held, all principal campaign committees of candidates participating in the Utah Special Primary and Special General Elections shall file a Pre-Primary Report on August 3, 2017; a Pre-General Report on October 26, 2017; and a Post-General Report on December 7, 2017. (See charts below for the closing date for each report.)

Special General Election

All principal campaign committees of candidates *only* participating in the Utah Special General shall file a Pre-General Report on October 26, 2017; and a Post-General Report on December 7, 2017. (See charts below for the closing date for each report.)

Note that these reports are in addition to the campaign committee's regular quarterly filings. (See charts below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees not filing monthly in 2017 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Utah Special Primary and Special General Elections by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the Utah Special

[1] Under Utah law, partisan candidates can seek nomination at their party's convention and/or gather signatures to appear on the primary election ballot.

Primary or Special General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Utah Special Elections may be found on the FEC Web site at *https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/.*

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $17,900 during the special election reporting periods. (See charts below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b).

CALENDAR OF REPORTING DATES FOR UTAH SPECIAL ELECTIONS

Report	Close of books [1]	Reg./Cert. and overnight mailing deadline	Filing deadline
Campaign Committees Involved in *Only* the Special Primary (08/15/17) Must File:			
Pre-Primary	07/26/17	07/31/17	08/03/17
October Quarterly	09/30/17	10/15/17	[2] 10/15/17
Participating PACS and Party Committees Not Filing Monthly Involved in *Only* the Special Primary (08/15/17) Must File:			
Pre-Primary	07/26/17	07/31/17	08/03/17
Mid-Year	Waived		
Year-End	12/31/17	01/31/18	01/31/18
If Two Elections Are Held, Campaign Committees Involved in Both the Special Primary (08/15/17) and Special General (11/07/17) Must File:			
Pre-Primary	07/26/17	07/31/17	08/03/17
October Quarterly	09/30/17	10/15/17	[2] 10/15/17
Pre-General	10/18/17	10/23/17	10/26/17
Post-General	11/27/17	12/07/17	12/07/17
Year-End	12/31/17	01/31/18	01/31/18
If Two Elections Are Held, PACS and Party Committees Not Filing Monthly Involved in Both the Special Primary (08/15/17) and Special General (11/07/17) Must File:			
Pre-Primary	07/26/17	07/31/17	08/03/17
Mid-Year	Waived		
Pre-General	10/18/17	10/23/17	10/26/17
Post-General	11/27/17	12/07/17	12/07/17
Year-End	12/31/17	01/31/18	01/31/18
Campaign Committees Involved in *Only* the Special General (11/07/17) Must File:			
October Quarterly	09/30/17	10/15/17	[2] 10/15/17
Pre-General	10/18/17	10/23/17	10/26/17
Post-General	11/27/17	12/07/17	12/07/17
Year-End	12/31/17	01/31/18	01/31/18
PACS and Party Committees Not Filing Monthly Involved in *Only* the Special General (11/07/17) Must File:			
Pre-General	10/18/17	10/23/17	10/26/17
Post-General	11/27/17	12/07/17	12/07/17
Year-End	12/31/17	01/31/18	01/31/18

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

[2] Notice that this filing deadline falls on a weekend or federal holiday. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than registered, certified or overnight mail must be received by close of business on the last business day before the deadline.

Dated: May 30, 2017.

On behalf of the Commission.

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. 2017–13569 Filed 6–28–17; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the voluntary Compensation and Salary Surveys (FR 29a, FR 29b; OMB No. 7100–0290).

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

DATES: Comments must be submitted on or before August 28, 2017.

ADDRESSES: You may submit comments, identified by *FR 29a* or *FR 29b,* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposed revisions prior to giving final approval.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report

Report title: Compensation and Salary Surveys.

Agency form number: FR 29a, FR 29b.

OMB control number: 7100–0290.

Frequency: FR 29a, annually; FR 29b, on occasion.

Respondents: Employers considered competitors for Federal Reserve Board (Board) employees.

Estimated number of respondents: FR 29a, 35; FR 29b, 10.

Estimated average hours per response: FR 29a, 6 hours; FR 29b, 1 hour.

Estimated annual burden hours: FR 29a, 210 hours; FR 29b, 50 hours.

General description of report: The FR 29a,b collect information on salaries, employee compensation policies, and other employee programs from employers that are considered competitors of the Board. The data from the surveys are primarily used to determine the appropriate salary structure and salary adjustments for Board employees so that salary ranges are competitive with other organizations offering similar jobs. The Board along with other Financial Institutions Reforms, Recovery and Enforcement Act of 1989 (FIRREA) agencies [1] conduct the FR 29a survey jointly. The FR 29b is collected by the Board only.

Legal authorization and confidentiality: The Board's Legal Division has determined that the FR 29a and FR29b surveys are voluntary and authorized by sections 10(4) and 11(1) of the Federal Reserve Act (12 U.S.C. 244 and 248(1)), which authorize the Board to determine employees' compensation. The FR 29a survey is completed by an outside consultant that submits to the Board a report of the survey containing only aggregate data. Because the Board does not collect or have access to the individual respondent data, no confidentiality issue arises with respect to the individual responses to the FR 29a. The Board does not consider the report containing aggregate data to be confidential. The FR 29b consists of ad hoc surveys conducted by the Board during the year to collect information on specific salary and non-salary matters that affect Board employees. The ability of the Board to maintain the

[1] For purposes of this proposal, the FIRREA agencies consist of: The Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Commodities Futures Trading Commission, the Farm Credit Administration, and the Securities and Exchange Commission.

confidentiality of information provided by respondents to the FR 29b surveys will have to be determined on a case by case basis depending on the data collected under a particular survey. Some of the information collected on the surveys may be protected from Freedom of Information Act (FOIA) disclosure by FOIA exemptions 4 and 6. (5 U.S.C. 552 (b)(4) and (6)). Exemption 4 protects from disclosure trade secrets and commercial or financial information, while Exemption 6 protects information ''the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.''

Consultation outside the agency: Towers Watson and the Board work together to review and update the FR 29a survey instrument.

Board of Governors of the Federal Reserve System, June 26, 2017.

Ann E. Misback

Secretary of the Board.

[FR Doc. 2017–13641 Filed 6–28–17; 8:45 am]

BILLING CODE 6210–01–P

GULF COAST ECOSYSTEM RESTORATION COUNCIL

[Docket Number 106292017–1111–14]

Notice of Proposed Subaward Under a Council-Selected Restoration Component Award

AGENCY: Gulf Coast Ecosystem Restoration Council.

ACTION: Notice.

SUMMARY: The Gulf Coast Ecosystem Restoration Council (Council) publishes notice of a proposed subaward from the U.S. Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA) Restoration Center to The Nature Conservancy (TNC), a nonprofit organization, for the purpose of establishing the Gulf Coast Conservation Corps (GulfCorps) program to support meaningful Gulf of Mexico Habitat Restoration via Conservation Corps Partnerships as approved in the Initial Funded Priority List (FPL).

FOR FURTHER INFORMATION CONTACT: Please send questions by email to *raams_pgmsupport@restorethegulf.gov.*

SUPPLEMENTARY INFORMATION: Section 1321(t)(2)(E)(ii)(III) of the RESTORE Act (33 U.S.C. 1321(t)(2)(E)(ii)(III)) and Treasury's implementing regulation at 31 CFR 34.401(b) require that, for purposes of awards made under the Council-Selected Restoration Component, a State or Federal award recipient may make a grant or subaward to or enter into a cooperative agreement with a nongovernmental entity that equals or exceeds 10 percent of the total amount of the award provided to the State or Federal award recipient only if certain notice requirements are met. Specifically, at least 30 days before the State or Federal award recipient enters into such an agreement, the Council must publish in the **Federal Register** and deliver to specified Congressional Committees the name of the recipient and subrecipient; a brief description of the activity, including its purpose; and the amount of the award. This notice accomplishes the **Federal Register** requirement.

Description of Proposed Action

As specified in the Initial FPL, which is available on the Council's Web site at *https://www.restorethegulf.gov/council-selected-restoration-component/funded-priorities-list,* RESTORE Act funds will support the Gulf of Mexico Habitat Restoration via Conservation Corps Partnerships, which is also referred to as the GulfCorps program. Through an interagency agreement with NOAA in the amount of $7,500,000, the GulfCorps program will contribute to meaningful Gulf Coast ecosystem restoration, while economically benefiting coastal communities by providing education, training, and opportunities to workers to implement conservation projects. The GulfCorps program will help establish partnerships among Federal, State, academic, and non-profit organizations to provide local labor for restoration projects; and will work through these partnerships to recruit, train, and employ workers to develop skills that will contribute to a local restoration-based workforce.

NOAA will coordinate development of the GulfCorps program in partnership with other Council members, as a means of creating a program that is reflective of Gulf priorities. NOAA will work within a collaborative process to prioritize projects with State partners and move forward on projects most supported by the respective State Council members, also considering synergies of pairing the GulfCorps program with other projects selected for the FPL, where appropriate. Through a proposed subaward to TNC in the amount of $7,000,000, TNC will recruit and train GulfCorps participants who will be mobilized to provide labor on selected coastal restoration projects in each Gulf State. Projects may include invasive species removal, shoreline protection and enhancement, riparian restoration, debris removal, re-vegetation, reef restoration, and habitat monitoring and conservation. TNC and their partners will provide training commensurate with the selected projects, as well as provide participants with soft skills that can help contribute to employability in restoration-based vocations.

Will D. Spoon,

Program Analyst, Gulf Coast Ecosystem Restoration Council.

[FR Doc. 2017–13633 Filed 6–28–17; 8:45 am]

BILLING CODE 6560–58–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2003–D–0431]

Current Good Manufacturing Practice for Medical Gases; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a revised draft guidance for industry entitled ''Current Good Manufacturing Practice for Medical Gases.'' This guidance is intended to assist manufacturers of medical gases in complying with applicable current good manufacturing practice (CGMP) regulations. Compliance with applicable CGMP requirements helps to ensure the safety, identity, strength, quality, and purity of medical gases. Medical gases that are not manufactured, produced, processed, packed, or held according to applicable CGMP requirements can cause serious injury or death. This guidance is expected to reduce the regulatory compliance burden for the medical gas industry by providing clear, up-to-date, detailed recommendations regarding CGMP issues that have been the subject of industry questions.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 28, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal 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):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, 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–2003–D–0431 for ''Current Good Manufacturing Practice for Medical Gases.'' 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 Dockets Management Staff 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 Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Frank Perrella, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4161, Silver Spring, MD 20993–0002, 301–796–3265.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance for industry entitled ''Current Good Manufacturing Practice for Medical Gases.'' When finalized, this guidance will represent FDA's current thinking on the manufacture, processing, packing, and holding of medical gases in compliance with applicable CGMP regulations (21 CFR parts 210 and 211). This guidance does not address every potentially applicable CGMP requirement. Instead, it addresses those requirements that are considered most critical to the safety of medical gases, that have been the subject of industry questions, or for which FDA has otherwise determined compliance recommendations are appropriate.

FDA considered extensive input from the medical gas industry and other stakeholders regarding the appropriate application of CGMP requirements to medical gases in developing this revised draft guidance, which replaces the 2003 draft guidance of the same name (68 FR 24005, May 6, 2003). FDA carefully reviewed and considered comments submitted on the 2003 draft guidance, information from meetings with stakeholders, and relevant information from a review of Federal drug regulations as applied to medical gases.[1] FDA has changed draft recommendations regarding certain issues (*e.g.,* expiration dating for medical gases). As mentioned previously, this guidance does not address every potentially applicable CGMP requirement, and we note that if a regulation was cited in the 2003 draft guidance without further discussion, and FDA is not aware of a need for guidance on the issue, discussion of the requirement was generally omitted from this revised draft guidance.

We further note that this revised draft guidance is a key component of FDA's regulatory approach to medical gases. Section 1112 of the Food and Drug Administration Safety and Innovation Act (FDASIA) required that FDA determine whether any changes to Federal drug regulations were needed concerning medical gases, submit a report to Congress regarding any such changes, and undertake rulemaking to make any needed changes. In its report to Congress on this issue submitted in June 2015,[2] FDA explained its determination that, although some regulation changes were necessary to implement the medical gas labeling provisions contained in FDASIA,[3] the

[1] See section 1112(a)(2) of FDASIA(Pub. L. 112–144), requiring the review; see also FDA, 2015, ''Report to Congress, Review of Federal Drug Regulations With Regard to Medical Gases'', available at *https://www.fda.gov/downloads/RegulatoryInformation/Legislation/SignificantAmendmentstotheFDCAct/FDASIA/UCM453727.pdf.*

[2] See FDA, 2015, ''Report to Congress, Review of Federal Drug Regulations With Regard to Medical Gases''.

[3] As amended by FDASIA, section 576(a)(3)(A)(ii) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360ddd–1(a)(3)(A)(ii)) provides that the requirements of sections 503(b)(4) of the FD&C Act (21 U.S.C. 353(b)(4)) (regarding labeling of a drug as a prescription drug) and 502(f) of the FD&C Act (21 U.S.C. 352(f)) (regarding inclusion of adequate directions for use and adequate warnings in drug labeling) are deemed to have been met for a designated medical gas if the labeling on the final use container for the medical gas bears: (1) The information required by section

current regulatory framework is adequate and sufficiently flexible to appropriately regulate medical gases. FDA further explained that it can continue to work within this framework to appropriately regulate these products.

FDA issued a final rule promulgating warning statements to be included in the labeling of designated medical gases on November 18, 2016 (81 FR 81685). This final rule also imposes labeling, design, and color requirements on medical gas containers and closures to increase the likelihood that the contents of medical gas containers are accurately identified and reduce the likelihood of the wrong gas being connected to a gas supply system or container. FDA may undertake additional targeted rulemaking in the future on other specific issues if FDA determines that such issues cannot be adequately addressed by other means.

In addition to the applicable regulations, FDA relies on guidance documents (such as this one), development of appropriate inspection practices and inspector training, and interaction with industry trade associations, State regulators, and other stakeholders on an as-needed basis in regulating medical gases.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on current good manufacturing practice for medical gases. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This revised draft guidance includes information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). In accordance with the PRA, before publication of the final guidance document, FDA intends to solicit public comment and obtain OMB approval for any information collections recommended in this guidance that are new or that would represent material modifications to previously approved collections of information found in FDA regulations.

503(b)(4); (2) a warning statement concerning the use of the medical gas as determined by the Secretary by regulation; and (3) appropriate directions and warnings concerning storage and handling.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: June 23, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–13608 Filed 6–28–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–3854]

Antimicrobial Susceptibility and Resistance: Addressing Challenges of Diagnostic Devices; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public workshop entitled ''Antimicrobial Susceptibility and Resistance: Addressing Challenges of Diagnostic Devices.'' The purpose of this workshop is to discuss potential scientific and regulatory challenges associated with developing traditional antimicrobial susceptibility testing (AST) devices and devices that detect antimicrobial resistance markers by molecular or novel diagnostic technologies, and to provide an overview of relevant provisions of the 21st Century Cures Act that may impact the development of such devices. Public input and feedback gained through this workshop will aid in the development of science-based approaches to regulatory decisionmaking regarding traditional and novel AST devices. Further, this workshop will explore opportunities for the efficient development and evaluation of AST devices, which may lead to better patient care and reduce antimicrobial resistance through improved antibiotic stewardship.

DATES: The public workshop will be held on September 13, 2017, from 8:30 a.m. to 5 p.m.

Submit either electronic or written comments on this public workshop by October 20, 2017. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, Rm. 1503 (The Great Room), Silver Spring, MD 20993. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 20, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of October 20, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal 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 public, 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):* Dockets Management Staff (HFA–305), Food and

Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, 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–2017–N–3854 for ''Antimicrobial Susceptibility and Resistance: Addressing Challenges of Diagnostic Devices.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff 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 Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Natasha Townsend, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, Rm. 5525, Silver Spring, MD 20993–0002, 301–796–5927, email: *natasha.townsend@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The accurate detection of antimicrobial resistance is important due to the emergence and spread of highly resistant pathogenic bacteria. Traditional AST systems continue to provide the bulk of antimicrobial susceptibility testing. However, the spread of antimicrobial resistance has spurred the development of a range of novel diagnostic technologies (*e.g.,* detection of molecular resistance markers) that can provide more rapid bacterial identification and susceptibility testing results than is possible with current phenotypic methods. In light of the need for accurate susceptibility information and the development of these innovative diagnostic technologies, there is a need to explore and discuss new approaches for the efficient development and evaluation of AST devices—that are important to patient care and antibiotic stewardship—to allow for the timely availability of these devices.

The purpose of the public workshop is to discuss potential scientific and regulatory challenges associated with developing traditional AST devices and devices that detect antimicrobial resistance markers by molecular or novel diagnostic technologies, and to provide an overview of relevant provisions of the 21st Century Cures Act that may impact the development of such devices. Specifically, section 3044 of the 21st Century Cures Act, entitled ''Susceptibility Test Interpretive Criteria for Microorganisms; Antimicrobial Susceptibility Testing Devices,'' adds section 511A to the Federal Food, Drug, and Cosmetic Act, which creates a new regulatory framework for updating AST devices with current susceptibility test interpretive criteria for approved antimicrobial drugs. Further, this workshop will explore opportunities for the efficient development and evaluation of AST devices, including new science-based approaches to regulatory decisionmaking regarding traditional and novel AST devices. In addition, FDA is considering the development of a draft guidance, and will look to the meeting to help inform the Agency's thinking on relevant topics. Therefore, FDA seeks input and feedback from industry, other government agencies, standard-setting organizations, clinical laboratories, and patient care professionals with an interest in the future development of AST devices.

II. Topics for Discussion at the Public Workshop

This public workshop will consist of brief presentations providing information to frame interactive discussions via two panel sessions. The presentations and panel discussions will focus on:

1. Industry and FDA perspectives on AST device evaluation requirements, including opportunities to streamline the premarket review processes that may allow for more rapid availability of AST devices for new antimicrobial drugs;
2. Performance review of traditional AST devices;
3. An overview of relevant provisions of the 21st Century Cures Act that may impact the development of AST devices;
4. The clinical laboratory perspective on AST result interpretation and reporting;
5. Novel technologies for detection of resistance markers;
6. Standards-setting organization perspective on reference methods and organism resources;
7. The role of new technologies for promoting antibiotic stewardship, improving patient care, aiding the selection of appropriate antimicrobial therapy, and reducing the impact of antimicrobial resistance; and
8. Direct-from-specimen testing and the challenges of the clinical use and phenotypic interpretation of genotypic results.

III. Participating in the Public Workshop

Registration: To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public workshop must register by September 1, 2017, 4 p.m. Eastern Time. Early registration is recommended because seating is

limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted. If time and space permit, onsite registration on the day of the public meeting/public workshop will be provided beginning at 8 a.m. We will let registrants know if registration closes before the day of the public workshop.

If you need special accommodations due to a disability, please contact Susan Monahan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4321, Silver Spring, MD 20993–0002, 301–796–5661, email: *susan.monahan@fda.hhs.gov* no later than August 30, 2017.

Requests for Oral Presentations: During online registration you may indicate if you wish to present during the public comment session, and which topic you wish to present. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and begin notifying participants by September 5, 2017. All requests to make oral presentations must be received by the close of registration on September 1, 2017. If selected for presentation, any presentation materials must be emailed to Natasha Townsend (see **FOR FURTHER INFORMATION CONTACT**) no later than September 8, 2017, 5 p.m. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by September 8, 2017, 4 p.m. The Webcast link will be available on the registration Web page after September 8, 2017. Organizations are requested to register all participants, but to view using one connection per location.

If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit: *http://www.adobe.com/go/connectpro_overview.* FDA has verified the Web site addresses in this document, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public workshop is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list).

Dated: June 23, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–13611 Filed 6–28–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–3199]

Program for Enhanced Review Transparency and Communication for Original 351(k) Biologics License Applications in Biosimilar User Fee Act II

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the statement of work for an assessment of the Program for Enhanced Review Transparency and Communication for original biologics license applications (BLAs) (351(k)s) submitted under the Public Health Service Act (hereafter referred to as 351(k) applications) (hereafter referred to as the Program). The Program is part of the FDA performance commitments under the proposed reauthorization of the Biosimilar User Fee Act (BsUFA), which, if enacted into law, will allow FDA to collect user fees for the review of 351(k) applications for fiscal years (FYs) 2018–2022. As part of the FDA performance commitments described in this document, the Program will be evaluated by an independent contractor in an interim and final assessment.

DATES: FDA is providing a period of 30 days for public comment on the statement of work before beginning the assessment. The statement of work can be accessed at *https://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM559341.pdf.* Public comments will be accepted through July 31, 2017. See **ADDRESSES** section below for information about submitting comments to the public docket.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before July 31, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of July 31, 2017. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal 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):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, 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–2017–N–3199 for ''Program for Enhanced Review Transparency and Communication for Original 351(k) Biologics License Applications in BsUFA II.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff 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 Dockets Management Staff. 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: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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 Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Azada Hafiz, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1148, Silver Spring, MD 20993, 240–402–6073, Fax: 301–847–8443, *Azada.Hafiz@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The timely review of 351(k) applications is central to FDA's mission to protect and promote the public health. The BsUFA was first enacted by Congress in 2012 and authorizes FDA to collect user fees for 351(k) applications. FDA dedicates BsUFA user fees to the efficient review of 351(k) applications and to facilitate the development of safe and effective biosimilar biological products for the American public. FDA dedicates the additional fee resources to hire reviewers and support staff and upgrade its information technology systems. With the availability of these additional fee resources, FDA was able to agree to certain review performance goals, including a complete review of 351(k) applications and taking regulatory action within specified timeframes. The current authorization of the program (BsUFA I) expires in September 2017.

As directed by statute, FDA prepared recommendations for the reauthorization of BsUFA for a new 5-year period by conducting negotiations with the regulated industry and holding regular consultations with public stakeholders including patient advocates, consumer advocates, and healthcare professionals. Following these discussions, related public meetings, and Agency requests for public comment, FDA transmitted proposed recommendations for BsUFA II for fiscal years 2018–2022. FDA's BsUFA II recommendations include an FDA commitment to implement a new review program for 351(k) applications to promote the efficiency and effectiveness of the first-cycle review process and minimize the number of review cycles necessary for approval of these complex applications. The Program is described in detail in section I.B of the document entitled ''Biosimilar Biological Product Reauthorization Performance Goals and Procedures Fiscal Years 2018 Through 2022'' available at *https://www.fda.gov/downloads/forindustry/userfees/biosimilaruserfeeactbsufa/ucm521121.pdf.*

II. BsUFA II Program for Enhanced Review Transparency and Communication for Original 351(k) BLAs

FDA recognizes that increasing communication between the Agency and applicants during FDA's review has the potential to increase efficiency in the review process. To enhance review transparency and improve communication between the FDA review team and the applicant, FDA has proposed for BsUFA II a new review model (the Program), for the review of all 351(k) applications. The Program will allow for additional communication between FDA review teams and the applicants of biosimilar biological products in the form of a Biological Product Development Type 4 (pre-351(k) BLA) meetings, mid-cycle communications, and late-cycle meetings. To accommodate this increased interaction during regulatory review and to address the need for additional time to review these complex applications, FDA's review clock will begin after the 60-day administrative filing review period for applications reviewed under the Program.

The goal of the Program is to improve the efficiency and effectiveness of the first-cycle review process by increasing communications during application review. This will provide sponsors with the opportunity to clarify previous submissions and provide additional data and analyses that are readily available, potentially avoiding the need for an additional review cycle when concerns can be promptly resolved without compromising FDA's standards for approval.

Dated: June 23, 2017.

Anna K. Abram,

Deputy Commissioner for Policy, Planning, Legislation, and Analysis.

[FR Doc. 2017–13609 Filed 6–28–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR16–274:

Adverse Drug Reaction Scientific Review Panel.

Date: July 26, 2017.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander D Politis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Mechanisms of Bacterial Virulence and Pathogenesis.

Date: July 27–28, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Guangyong Ji, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–1146, *jig@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Synthetic and Biological Chemistry.

Date: July 27, 2017.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mike Radtke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Nutrient and Lipid Regulation.

Date: July 27, 2017.

Time: 1:00 p.m. to 3:00 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: Gary Hunnicutt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, ≤6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *gary.hunnicutt@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodegeneration: Mechanisms and Pathways.

Date: July 27, 2017.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7850, Bethesda, MD 20892, 301–435–1203, *laurent.taupenot@nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; International and Cooperative Projects—1 Study Section.

Date: July 28, 2017.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 23, 2017.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–13571 Filed 6–28–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Time-Sensitive Obesity Review.

Date: July 21, 2017.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 23, 2017.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–13572 Filed 6–28–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Vascular and Hematology.

Date: July 24–25, 2017.

Time: 10:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; NeuroAIDS and other End-Organ Diseases Study Section.

Date: July 25–26, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 2nd Avenue, San Diego, CA 92101.

Contact Person: Eduardo A Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics on Obesity and Metabolism.

Date: July 25, 2017.

Time: 11:30 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Liliana Norma Berti-Mattera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 4215, Bethesda, MD 20892, *liliana.berti-mattera@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Diabetes, Obesity and Reproduction.

Date: July 25, 2017.

Time: 12:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Myalgic Encephalomyelitis/Chronic Fatigue Syndrome (ME/CFS): Collaborative Research Centers (CRCs) and Data Management and Coordinating Center (DMCC).

Date: July 26–27, 2017.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: M Catherine Bennett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Toxicology, Digestive and Kidney Systems AREA Review.

Date: July 26, 2017.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aiping Zhao, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892–7818, (301) 435–0682, *zhaoa2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pregnancy and Neonatology.

Date: July 26, 2017.

Time: 1:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, Bethesda, MD 20892, 301–435–1044, *chenhui@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology, Aging and Development.

Date: July 26, 2017.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Thomas Beres, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 5201, MSC 7840, Bethesda, MD 20892, 301–435–1175, *berestm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 23, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–13570 Filed 6–28–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2017–0289]

Application for Recertification of Cook Inlet Regional Citizens' Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard announces the availability of, and seeks comments on, the application for recertification of the Cook Inlet Regional Citizen's Advisory Council (CIRCAC) for September 1, 2017, through August 31, 2018. Under the Oil Pollution Act of 1990 (OPA 90), the Coast Guard may certify the CIRCAC on an annual basis. This advisory group monitors the activities of terminal facilities and crude oil tankers under the Cook Inlet program established by the statute. The Coast Guard may certify an alternative voluntary advisory group in lieu of the CIRCAC. The current certification for the CIRCAC will expire August 31, 2017.

DATES: Public comments on CIRCAC's recertification application must reach the Seventeenth Coast Guard District on or before July 31, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2017–0289 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this recertification, call or email LT Jonathan Dale, Seventeenth Coast Guard District (dpi); telephone (907) 463–2812; email *jonathan.dale@uscg.mil.* If you have questions on viewing or submitting material to the docket, contact the U.S. Coast Guard Headquarters, Regulations and Administrative Law office, telephone 202–372–3862.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public meeting

The Coast Guard does not plan to hold a public meeting. But you may submit a request for one on or before July 1, 2017 using the method specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid the process of thoroughly considering the application for recertification, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard published guidelines on December 31, 1992 (57 FR 62600), to assist groups seeking recertification under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the Act). The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36504), to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act; and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act. Most recently, on September 16, 2002 (67 FR 58440), the Coast Guard changed its policy on recertification procedures for regional citizen's advisory council by requiring applicants to provide comprehensive information every three years. For the two years in between, applicants only submit information describing substantive changes to the information provided at the last triennial recertification. This is the year in this triennial cycle that CIRCAC must provide comprehensive information.

The Coast Guard is accepting comments concerning the recertification of CIRCAC. At the conclusion of the comment period, July 31, 2017, the Coast Guard will review all application materials and comments received and will take one of the following actions:

(a) Recertify the advisory group under 33 U.S.C. 2732(o).

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies, which must be corrected to qualify for recertification for the remainder of the year.

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of 33 U.S.C. 2732.

The Coast Guard will notify RCAC by letter of the action taken on their respective applications. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: May 26, 2017.

M.F. McAllister,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 2017–13651 Filed 6–28–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0002; Internal Agency Docket No. FEMA–B–1727]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster

Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: May 30, 2017.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Alabama:						
Jefferson	City of Birmingham (17–04–3064X).	The Honorable William A. Bell, Sr., Mayor, City of Birmingham, 710 North 20th Street, 3rd Floor, Birmingham, AL 35203.	City Hall, 710 North 20th Street, 3rd Floor, Birmingham, AL 35203.	*http://www.msc.fema.gov/lomc*	Aug. 28, 2017	010116
Jefferson	Unincorporated areas of Jefferson County (16–04–6806P).	The Honorable James A. Stephens, Chairman, Jefferson County Board of Commissioners, 716 Richard Arrington, Jr. Boulevard North, Birmingham, AL 35203.	Jefferson County Land Development Department, 716 Richard Arrington, Jr. Boulevard North, Birmingham, AL 35203.	*http://www.msc.fema.gov/lomc*	Aug. 17, 2017	010217
Jefferson	Unincorporated areas of Jefferson County (17–04–3064X).	The Honorable James A. Stephens, Chairman, Jefferson County Board of Commissioners, 716 Richard Arrington, Jr. Boulevard North, Birmingham, AL 35203.	Jefferson County Land Development Department, 716 Richard Arrington, Jr. Boulevard North, Birmingham, AL 35203.	*http://www.msc.fema.gov/lomc*	Aug. 28, 2017	010217
Florida:						
Lee	Town of Fort Myers Beach (16–04–8301P).	The Honorable Dennis C. Boback, Mayor, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	Community Development Department, 2525 Estero Boulevard, Fort Myers Beach, FL 33931.	*http://www.msc.fema.gov/lomc*	Sep. 6, 2017	120673
Lee	Unincorporated areas of Lee County (16–04–8301P).	The Honorable Frank Mann, President, Lee County Board of Commissioners, 2120 Main Street, Fort Myers, FL 33901.	Lee County Community Development Department, 1500 Monroe Street, Fort Myers, FL 33901.	*http://www.msc.fema.gov/lomc*	Sep. 6, 2017	120124
Manatee	Unincorporated areas of Manatee County (16–04–8240P).	The Honorable Betsy Benac, Chair, Manatee County Board of Commissioners, P.O. Box 1000, Bradenton, FL 34206.	Manatee County Building and Development Services Department, 1112 Manatee Avenue West, Bradenton, FL 34205.	*http://www.msc.fema.gov/lomc*	Sep. 8, 2017	120153
Miami-Dade	City of Miami (16–04–7715P).	The Honorable Tomas P. Regalado, Mayor, City of Miami, 3500 Pan American Drive, Miami, FL 33133.	Building Department, 444 Southwest 2nd Avenue, 4th Floor, Miami, FL 33130.	*http://www.msc.fema.gov/lomc*	Sep. 5, 2017	120650
St. Johns	Unincorporated areas of St. Johns County (17–04–1263P).	The Honorable James K. Johns, Chairman, St. Johns County Board of Commissioners, 500 San Sebastian View, St. Augustine, FL 32084.	St. Johns County Building Services Division, 4040 Lewis Speedway, St. Augustine, FL 32084.	*http://www.msc.fema.gov/lomc*	Aug. 31, 2017	125147
Sarasota	Unincorporated areas of Sarasota County (17–04–0651P).	The Honorable Paul Caragiulo, Chairman, Sarasota County Board of Commissioners, 1660 Ringling Boulevard, Sarasota, FL 34236.	Sarasota County Development Services Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34236.	*http://www.msc.fema.gov/lomc*	Aug. 11, 2017	125144

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Seminole	City of Altamonte Springs (17–04–1381P).	The Honorable Patricia Bates, Mayor, City of Altamonte Springs, 225 Newburyport Avenue, Altamonte Springs, FL 32701.	Public Works Department, 225 Newburyport Avenue, Altamonte Springs, FL 32701.	*http://www.msc.fema.gov/lomc*	Sep. 1, 2017	120290
Georgia:						
Cherokee	City of Canton (16–04–5695P).	The Honorable Gene Hobgood, Mayor, City of Canton, 151 Elizabeth Street, Canton, GA 30114.	City Hall, 151 Elizabeth Street, Canton, GA 30114.	*http://www.msc.fema.gov/lomc*	Sep. 5, 2017	130039
Cherokee	Unincorporated areas of Cherokee County (16–04–5695P).	The Honorable L.B. Ahrens, Jr., Chairman, Cherokee County Board of Commissioners, 1130 Bluffs Parkway, Canton, GA 30114.	Cherokee County Public Works Department, 1130 Bluffs Parkway, Canton, GA 30114.	*http://www.msc.fema.gov/lomc*	Sep. 5, 2017	130424
Maryland:						
Anne Arundel	Unincorporated areas of Anne Arundel County (17–03–0502P).	The Honorable Steve R. Schuh, Anne Arundel County Executive, 44 Calvert Street, Annapolis, MD 21401.	Anne Arundel County Heritage Complex, 2664 Riva Road, Annapolis, MD 21401.	*http://www.msc.fema.gov/lomc*	Sep. 5, 2017	240008
Mississippi:						
Rankin	City of Pearl (17–04–0485P).	The Honorable Brad Rogers, Mayor, City of Pearl, P.O. Box 5948, Pearl, MS 39288.	Community Development Department, 2420 Old Brandon Road, Pearl, MS 39208.	*http://www.msc.fema.gov/lomc*	Aug. 31, 2017	280145
North Carolina:						
Wake	Town of Apex (17–04–1615P).	The Honorable Lance Olive, Mayor, Town of Apex, P.O. Box 250, Apex, NC 27502.	Engineering Department, 73 Hunter Street, Apex, NC 27502.	*http://www.msc.fema.gov/lomc*	Sep. 5, 2017	370467
Wake	Town of Cary (17–04–1615P).	The Honorable Harold Weinbrecht, Jr., Mayor, Town of Cary, P.O. Box 8005, Cary, NC 27512.	Stormwater Services Division, 316 North Academy Street, Cary, NC 27511.	*http://www.msc.fema.gov/lomc*	Sep. 5, 2017	370238
Oklahoma:						
Tulsa	City of Tulsa (17–06–0933P).	The Honorable G.T. Bynum, Mayor, City of Tulsa, 175 East 2nd Street, Tulsa, OK 74103.	Engineering Services Department, 2317 South Jackson Avenue, Tulsa, OK 74107.	*http://www.msc.fema.gov/lomc*	Sep. 11, 2017	405381
Texas:						
Bexar	City of Fair Oaks Ranch (16–06–3504P).	The Honorable Garry Manitzas, Mayor, City of Fair Oaks Ranch, 7286 Dietz Elkhorn Road, Fair Oaks Ranch, TX 78015.	Public Works Department, 7286 Dietz Elkhorn Road, Fair Oaks Ranch, TX 78015.	*http://www.msc.fema.gov/lomc*	Aug. 28, 2017	481644
Dallas	City of Irving (16–06–4337P).	The Honorable Beth Van Duyne, Mayor, City of Irving, 825 West Irving Boulevard, Irving, TX 75060.	Capital Improvement Program Department, Engineering Section, 825 West Irving Boulevard, Irving, TX 75060.	*http://www.msc.fema.gov/lomc*	Sep. 11, 2017	480180
Denton	City of Frisco (17–06–0579P).	The Honorable Maher Maso, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	Engineering Services Department, 6101 Frisco Square Boulevard, Frisco, TX 75034.	*http://www.msc.fema.gov/lomc*	Sep. 5, 2017	480134
Denton	City of Justin (16–06–3379P).	The Honorable Greg Scott, Mayor, City of Justin, P.O. Box 129, Justin, TX 76247.	City Hall, 415 North College Avenue, Justin, TX 76248.	*http://www.msc.fema.gov/lomc*	Aug. 24, 2017	480778
Denton	Town of Flower Mound (17–06–0304P).	The Honorable Thomas Hayden, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028.	Engineering Department, 2121 Cross Timbers Road, Flower Mound, TX 75028.	*http://www.msc.fema.gov/lomc*	Sep. 7, 2017	480777
Harris	City of Houston (16–06–4198P).	The Honorable Sylvester Turner, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Floodplain Management Department, 1002 Washington Avenue, Houston, TX 77002.	*http://www.msc.fema.gov/lomc*	Aug. 28, 2017	480296
Harris	City of Missouri City (16–06–4198P).	The Honorable Allen Owen, Mayor, City of Missouri City, 1522 Texas Parkway, Missouri City, TX 77489.	City Hall, 1522 Texas Parkway, Missouri City, TX 77489.	*http://www.msc.fema.gov/lomc*	Aug. 28, 2017	480304

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Kendall	Unincorporated areas of Kendall County (16–06–3504P).	The Honorable Darrel L. Lux, Kendall County Judge, 201 East San Antonio Avenue, Suite 122, Boerne, TX 78006.	Kendall County Engineering Department, 201 East San Antonio Avenue, Suite 101, Boerne, TX 78006.	*http://www.msc.fema.gov/lomc*	Aug. 28, 2017	480417
Williamson	City of Leander (17–06–1136P).	The Honorable Christopher Fielder, Mayor, City of Leander, P.O. Box 319, Leander, TX 78646.	City Hall, 200 West Wills Street, Leander, TX 78641.	*http://www.msc.fema.gov/lomc*	Aug. 18, 2017	481536
Utah:						
Salt Lake	City of West Jordan (17–08–0033P).	The Honorable Kim Rolfe, Mayor, City of West Jordan, 8000 South Redwood Road, West Jordan, UT 84088.	City Hall, 8000 South Redwood Road, West Jordan, UT 84088.	*http://www.msc.fema.gov/lomc*	Aug. 28, 2017	490108
Summit	City of Park City, (16–08–1092P).	The Honorable Jack Thomas, Mayor, City of Park City, 445 Marsac Avenue, Park City, UT 84060.	City Hall, 445 Marsac Avenue, Park City, UT 84060.	*http://www.msc.fema.gov/lomc*	Aug. 31, 2017	490139

[FR Doc. 2017–13562 Filed 6–28–17; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2017–0002; Internal Agency Docket No. FEMA–B–1726]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at

both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: May 30, 2017.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Arizona:						
Maricopa	City of Peoria (17–09–0311P).	The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	*http://www.msc.fema.gov/lomc*	Aug. 25, 2017	040050
Maricopa	City of Scottsdale (17–09–0074P).	The Honorable W.J. ''Jim'' Lane, Mayor, City of Scottsdale, City Hall, 3939 North Drinkwater Boulevard, Scottsdale, AZ 85251.	Scottsdale Planning Records, 7447 East Indian School Road, Suite 100, Scottsdale, AZ 85251.	*http://www.msc.fema.gov/lomc*	Aug. 25, 2017	045012
Maricopa	Unincorporated Areas of Maricopa County (16–09–2971P).	The Honorable Denny Barney, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*http://www.msc.fema.gov/lomc*	Sep. 1, 2017	040037
Pinal	Unincorporated Areas of Pinal County (16–09–2973P).	The Honorable Stephen Miller, Chairman, Board of Supervisors, Pinal County, 135 North Pinal Street, Florence, AZ 85132.	Pinal County Department of Public Works, 31 North Pinal Street, Florence, AZ 85132.	*http://www.msc.fema.gov/lomc*	Aug. 23, 2017	040077
California:						
Butte	Unincorporated Areas of Butte County (17–09–0110P).	The Honorable Bill Connelly, Chairman, Board of Supervisors, Butte County, 5280 Lower Wyandotte Road, Oroville, CA 95966.	Butte County Department of Public Works, 7 County Center Drive, Oroville, CA 95965.	*http://www.msc.fema.gov/lomc*	Aug. 30, 2017	060017
Calaveras	Unincorporated Areas of Calaveras County (17–09–0086P).	The Honorable Michael C. Oliveira, Chairman, Board of Supervisors, Calaveras County, 891 Mountain Ranch Road, San Andreas, CA 95249.	Calaveras County Planning Department, 891 Mountain Ranch Road, San Andreas, CA 95249.	*http://www.msc.fema.gov/lomc*	Aug. 28, 2017	060633
Illinois:						
Will	Village of Plainfield (15–05–7793P).	The Honorable Michael P. Collins, Village President, Village of Plainfield, 24401 West Lockport Street, Plainfield, IL 60544.	Village Hall, 24401 West Lockport Street, Plainfield, IL 60544.	*http://www.msc.fema.gov/lomc*	Aug. 18, 2017	170771
Iowa:						
Ringgold	Unincorporated Areas of Ringgold County (17–07–0216P).	The Honorable Paul Dykstra, Chairperson, County Board of Supervisors, County Courthouse, 109 West Madison Street, Mount Ayr, IA 50854.	Ringgold County Courthouse, 109 West Madison Street, Mount Ayr, IA 50854.	*http://www.msc.fema.gov/lomc*	Aug. 18, 2017	190903
Kansas:						
Riley	City of Ogden (16–07–1213P).	The Honorable Robert R. Pence, Jr., Mayor, City of Ogden, 222 Riley Avenue, Ogden, KS 66517.	City Hall, 222 Riley Avenue, Ogden, KS 66517.	*http://www.msc.fema.gov/lomc*	Aug. 10, 2017	200301
Riley	Unincorporated Areas of Riley County (16–07–1213P).	Mr. Ron Wells, Chair, Riley County Commissioners, 3609 Anderson Avenue, Manhattan, KS 66503.	Riley County Office Building, 110 Courthouse Plaza, Manhattan, KS 66502.	*http://www.msc.fema.gov/lomc*	Aug. 10, 2017	200298
Michigan:						
Kalamazoo	City of Kalamazoo (16–05–5168P).	The Honorable Bobby J. Hopewell, Mayor, City of Kalamazoo, 241 West South Street, Kalamazoo, MI 49007.	City Hall, 241 West South Street, Kalamazoo, MI 49007.	*http://www.msc.fema.gov/lomc*	Aug. 22, 2017	260315
Missouri:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
St. Louis	City of Des Peres (17–07–0868P).	The Honorable Richard G. Lahr, Mayor, City of Des Peres, 12325 Manchester Road, Des Peres, MO 63131.	City Hall, 12325 Manchester Road, Des Peres, MO 63131.	*http://www.msc.fema.gov/lomc*	Sep. 5, 2017	290347
New Jersey:						
Passaic	City of Paterson (17–02–0940P).	The Honorable Jose Torres, Mayor, City of Paterson, City Hall, 155 Market Street, Paterson, NJ 07505.	City Hall, 155 Market Street, Paterson, NJ 07505.	*http://www.msc.fema.gov/lomc*	Aug. 25, 2017	340404
Oregon:						
Multnomah	City of Portland (17–10–0646X).	The Honorable Charlie Hales, Mayor, City of Portland, 1221 Southwest 4th Avenue, Room 340, Portland, OR 97204.	Bureau of Environmental Services, 1221 Southwest 4th Avenue, Room 230, Portland, OR 97204.	*http://www.msc.fema.gov/lomc*	Aug. 24, 2017	410183
Texas:						
Dallas	City of Dallas (17–06–0526P).	The Honorable Michael S. Rawlings, Mayor, City of Dallas, 1500 Marilla Street, Suite 5EN, Dallas, TX 75201.	Department of Public Works, 320 East Jefferson Boulevard, Room 321, Dallas, TX 75203.	*http://www.msc.fema.gov/lomc*	Aug. 25, 2017	480171
Wisconsin:						
Brown	Village of Bellevue (16–05–4339P).	The Honorable Steve Soukup, President, Village Board, 2828 Allouez Avenue, Bellevue, WI 54311.	Village Hall, 2828 Allouez Avenue, Bellevue, WI 54311.	*http://www.msc.fema.gov/lomc*	Sep. 1, 2017	550627

[FR Doc. 2017–13564 Filed 6–28–17; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0005]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection; Application for Family Unity Benefits

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 purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 31, 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 *dhsdeskofficer@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 1615–0005.

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

The information collection notice was previously published in the **Federal Register** on April 10, 2017, at 82 FR 17273, allowing for a 60-day public comment period. USCIS received one comment in connection with the 60-day notice.

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 -0021 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 for Family Unity Benefits.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–817; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households: The information collected will be used to determine whether the applicant meets the eligibility requirements for benefits under 8 CFR 236.14 and 245a.33.

(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–817 is approximately 1,358 and the estimated hour burden per response is 2 hours per response; and the estimated number of respondents providing biometrics is 1,358 and the estimated hour burden per response is 1.17 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 4,210 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 $166,355.

Dated: June 26, 2017.

Jerry Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2017–13616 Filed 6–28–17; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/ A0A501010.999900 253G]

Agency Information Collection Activities: OMB Control Number 1076–0176; IDEIA Part B and C Child Count

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Education (BIE) is submitting to the Office of Management and Budget (OMB) a request for renewal for the collection of information for the Individuals with Disabilities Education Improvement Act (IDEIA) Part B and C Child Count. The information is currently authorized by OMB Control Number 1076–0176, which expires June 30, 2017.

DATES: Interested persons are invited to submit comments on or before July 31, 2017.

ADDRESSES: Please submit your comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov.* Also please send a copy of your comments to Ms. Sue Bement, Bureau of Indian Education, 2001 Killebrew Drive—Suite 122, Bloomington, Minnesota, fax: (952) 851–5439 or email: *sue.bement@bie.edu.*

FOR FURTHER INFORMATION CONTACT: Ms. Sue Bement, telephone: (952) 851–5423. You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

The IDEIA, 20 U.S.C. 1411(h)(4)(c) and 1443(b)(3) require Tribes and Tribal organizations to submit certain information to the Secretary of the Interior. Under the IDEIA, the U.S. Department of Education provides funding to the Secretary of the Interior for the coordination of assistance for special education and related services for Indian children from birth through age 5 with disabilities on reservations served by Bureau-funded schools. The Secretary of the Interior, through the BIE, then allocates this funding to Tribes and Tribal organizations based on the number of such children served. In order to allow the Secretary of the Interior to determine what amounts to allocate to whom, the IDEIA requires Tribes and Tribal organizations to submit information to Interior. The BIE collects this information on two forms, one for Indian children aged 3 through 5 covered by IDEIA Part B, and one for Indian children from birth to age 2 covered by IDEIA Part C.

In IDEIA Part B—Assistance for Education of All Children with Disabilities, 20 U.S.C. 1411(h)(4)(D) Tribes and Tribal organizations are required to use the funds to assist in child find, screening, and other procedures for the early identification of Indian children aged 3 through 5, parent training, and the provision of direct services. IDEIA Part C—Infants and Toddlers with Disabilities, 20 U.S.C. 1443(b)(4) likewise requires Tribes and Tribal organizations to use the fund to assist in child find, screening, and other procedures for early identification of Indian children under 3 years of age and for parent training and early intervention services.

II. Request for Comments

The BIE requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. 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.

III. Data

OMB Control Number: 1076–0176.

Title: IDEIA Part B and Part C Child Count.

Brief Description of Collection: Indian Tribes and Tribal organizations served by elementary or secondary schools for Indian children operated or funded by the Departments of the Interior that receive allocations of funding under the IDEIA for the coordination of assistance for Indian children 0 to 5 years of age with disabilities on reservations must submit information to the BIE. The information must be provided on two forms. The Part B form addresses Indian children 3 to 5 years of age on reservations served by Bureau-funded

schools. The Part C form addresses Indian children up to 3 years of age on reservations served by Bureau-funded schools. The information required by the forms includes counts of children as of a certain date each year.

Type of Review: Extension without change of currently approved collection.

Respondents: Indian Tribes and Tribal organizations.

Number of Respondents: 61 each year.

Number of Responses: 122 each year.

Frequency of Response: Twice (Once per year for each form).

Obligation to respond: Response is required to obtain a benefit.

Estimated Time per Response: 20 hours per form.

Estimated Total Annual Hour Burden: 2,440 hours.

Estimated Total Annual Non-Hour Dollar Cost: $0.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2017–13638 Filed 6–28–17; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[178A2100DD/AAKC001030/ A0A501010.999900 253G]

Agency Information Collection Activities: OMB Control Number 1076–0017; Financial Assistance and Social Services

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Assistant Secretary—Indian Affairs is submitting to the Office of Management and Budget (OMB) a request for renewal for the collection of information for ''Financial Assistance and Social Services Program, 25 CFR 20.'' The information collection is currently authorized by OMB Control Number 1076–0017, which expires June 30, 2017.

DATES: Interested persons are invited to submit comments on or before July 31, 2017.

ADDRESSES: Please submit your comments to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov.* Also please send a copy of your comments to Ms. Evangeline Campbell, Chief, Division of Human Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4513–MIB, Washington, DC 20240; facsimile: (202) 208–5113; email: *Evangline.Campbell@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Evangeline M. Campbell, (202) 513–7621. You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

The BIA is seeking to renew the information collection it conducts to provide assistance under 25 CFR 20 to eligible Indians when comparable financial assistance or social services either are not available or not provided by State, Tribal, county, local, or other Federal agencies. Approval for this collection expires June 30, 2017. The information collection allows BIA to determine whether an individual is eligible for assistance and services. No third party notification or public disclosure burden is associated with this collection.

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. 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.

III. Data

OMB Control Number: 1076–0017.

Title: Financial Assistance and Social Services Program, 25 CFR 20.

Brief Description of Collection: Submission of this information is required of Indian applicants for BIA financial assistance and social services. BIA uses the information to determine if an individual is eligible for services and, where appropriate, to conduct an employability assessment and jointly develop with the individual an Individual Self-Sufficiency Plan outlining how the individual can attain self-sufficiency.

Type of Review: Extension without change of currently approved collection.

Respondents: Individual Indians seeking financial assistance or social services from BIA.

Number of Respondents: 240,000 provide information on the application; of those, 95,000 contribute information to an employability assessment and ISP.

Total Number of Responses: 335,000.

Frequency of Response: Once per respondent.

Obligation to respond: Response is required to obtain a benefit.

Estimated Time per Response: One half hour for the application and 1 hour for the employability assessment and ISP.

Estimated Total Annual Hour Burden: 215,000 hours ((240,000 × .5 hours for applications = 120,000 hours) + (95,000 × 1 hour for employability assessment and ISP = 95,000 hours)).

Estimated Total Annual Non-Hour Dollar Cost: $0.

Authority

The authorities for this action are the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450, Expenditures of appropriations by the Bureau, 25 U.S.C. 13, the Indian Employment, Training and Related Services Demonstration Act, 25 U.S.C. 3401 *et seq.*, the Personal Responsibility and Work Opportunity Act, Public Law 104–193, and the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2017–13639 Filed 6–28–17; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM921200 L1320000.EL0000 17X]

Extension of the Category 5 Royalty Rate Reduction Qualification for Oklahoma Federal Coal Within a Designated Area of Nine Oklahoma Counties (OKNM 96155)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice announces that Federal coal lands located within the nine Oklahoma Counties of Atoka, Coal, Haskell, Latimer, LeFlore, McIntosh, Muskogee, Pittsburgh, and Sequoyah continue to qualify as a Category 5 royalty rate reduction area (Area) as set forth in the Bureau of Land Management (BLM) Royalty Rate Reduction Guidelines and BLM Manual 3485, Reports, Royalties, and Records. Analysis by the BLM New Mexico State Office indicates that there have been no significant changes in the coal market for the Area during the last five years. Therefore, the BLM State Director for the New Mexico State Office has decided to extend the qualification of the area for Category 5 royalty rate reductions until December 17, 2019.

DATES: The qualification of the designated area for Category 5 royalty rate reductions is extended until December 17, 2019.

ADDRESSES: New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, NM 87502.

FOR FURTHER INFORMATION CONTACT: Ida Viarreal, 505–954–2163, *iviarrea@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8229 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 New Mexico State Office first designated these same nine counties in Oklahoma as a Category 5 area effective December 17, 1990, (56 FR 27771). A Category 5 area may be established only if all of the following criteria are affirmed to exist:

1. The Federal coal resources are not the dominant coal resources available for mining in the area;

2. The royalty rate for Federal coal leases (43 CFR 3473.3–2(a)) is greater than the royalty rate for comparable non-Federal coal in the area;

3. The Federal coal resources in the area would be bypassed or remain undeveloped in favor of development of non-Federal coal resources due to the difference in royalty rate;

4. The above conditions exist throughout the area; and

5. A royalty rate reduction under this category is not likely to result in undue competitive advantages over neighboring coal producing areas.

The BLM has concluded that the nine-county Oklahoma Area continues to meet all of these criteria. The royalty rates for Federal coal in the Area shall continue to be: 2 Percent for Federal coal mined by underground mining methods and 4 percent for Federal coal mined by surface mining methods, rather than the full Federal rates of 8 percent and 12.5 percent, respectively. This extension of rate reduction helps to support the Area's continued economic viability and encourages the greatest ultimate recovery of the Federal coal resources. These royalty rates are only granted if the Federal coal lessee applies to the BLM in writing for a Category 5 royalty rate reduction and the BLM approves the application.

Authority: 43 CFR 3473.3–2(e) and 43 CFR 3485.2(c).

Amy Lueders,

State Director, New Mexico.

[FR Doc. 2017–13630 Filed 6–28–17; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 001/2017]

Privacy Act of 1974; Matching Program

AGENCY: Department of Justice, Justice Management Division, Debt Collection Management Staff.

ACTION: Notice of re-establishment of a matching program.

SUMMARY: The Department of Justice (DOJ) is issuing a public notice of its intent to re-establish a matching program with the Internal Revenue Service (IRS), the Department of the Treasury. Under this matching program, entitled Taxpayer Address Request (TAR), the IRS will provide information relating to taxpayers' mailing addresses to DOJ for purposes of enabling DOJ to locate debtors to initiate litigation and/or enforce the collection of debts owed by taxpayers to the United States.

This notice is issued in accordance with the Privacy Act of 1974 (*5 U.S.C. 552a*), as amended by the Computer Matching and Privacy Protection Act of 1988 (*Pub. L. 100–503*), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs *54 FR 25818 (June 19, 1989),* OMB Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public,'' and OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' Revised December 23, 2016.

DATES: Effective date: The matching program will become effective 30 days after publication of this notice in the **Federal Register**, if no comments have been received from interested members of the public requiring modification and republication of the notice. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months, if the respective agency Data Integrity Boards (DIBs) determine that the conditions specified in *5 U.S.C. 552a(o)(2)(D)* have been met.

ADDRESSES: Interested persons are invited to submit written comments regarding this notice to Dennis Dauphin, Director, Debt Collection Management Staff, Justice Management Division, 145 N St. NE., Rm 6W.102, Washington, DC 20530 or email to *Eric.L.Nelson@usdoj.gov*.

FOR FURTHER INFORMATION CONTACT: Eric Nelson, Debt Collection Management Staff, Justice Management Division, 145 N St. NE., Rm 6W.212, Washington, DC 20530 or email to *Eric.L.Nelson@usdoj.gov*.

SUPPLEMENTARY INFORMATION: Notice of Procedures—IRS provides direct notice to taxpayers in the instructions to Forms 1040, 1040A, and 1040EZ, and constructive notice in the **Federal Register** system of records notice for records involved in this matching program, that information provided on U.S. Individual Income Tax Returns may be given to other Federal agencies, as provided by law. For the records involved in this match, both IRS and DOJ have provided constructive notice to record subjects through the publication, in the **Federal Register**, of systems of records notices that contain routine uses permitting disclosures for this matching program.

In addition, a draft copy of this Notice and of the matching agreement, as approved by the DIB of each agency, has been provided to the Committee on Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget for Review.

Participating Agencies:

Department of Justice and the Department of the Treasury.

Authority for Conducting the Matching Program:

This matching program is being conducted under the authority of the Internal Revenue Code *(IRC) 6103(m)(2), and the routine uses published in the agencies' Privacy Act systems notices for the systems of records used in this match.* This provides for disclosure, upon written request, of a taxpayer's mailing address for use by officers, employees, or agents of a Federal agency for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer in accordance with *sections 3711, 3717,* and *3718 of title 31 of the United States Code,* statutory provisions which authorize DOJ to collect debts on behalf of the United States through litigation.

Purpose(s):

The purpose of this program is to provide DOJ with the most current addresses of taxpayers, to notify debtors of legal actions that may be taken by DOJ and the rights afforded them in the litigation, and to enforce collection of debts owed to the United States.

Categories of Individuals:

Individuals whose information is included in this matching program include: From DOJ's System of Records, individuals indebted to the United States who have [. . .] allowed their debts to become delinquent and whose delinquent debts have been referred to a DOJ litigating division, a United States Attorney Office, or to contract private counsel retained by DOJ, for settlement or enforced collection through litigation; and, from Treasury's System of Records, individuals who file Federal Individual Income Tax Returns.

Categories of Records:

Records involved in the matching program and the specific data elements that will be matched are as follows: DOJ will submit the nine-digit SSN and four-character Name Control (the first four letters of the surname) of each individual whose current address is requested. IRS will provide an address for each taxpayer whose SSN and Name Control matches the record submitted by DOJ, or a code explaining that no match was found.

System(s) of Records:

DOJ will provide records from the Debt Enforcement System, JUSTICE/DOJ–016, last published in its entirety at *77 FR 9965–9968 (February 21, 2012).* This system of records contains information on persons who owe debts to the United States and whose debts have been referred to the DOJ for litigation and/or enforced collection. DOJ records will be matched against records contained in Treasury's Privacy Act System of Records: Customer Account Data Engine (CADE) Individual Master File (IMF), Treasury/IRS 24.030, last published at *80 FR 54082 (Sep. 8, 2015).* This system of records contains, among other information, the taxpayer's name, SSN, and most recent address known by IRS.

Dated: June 20, 2017.

Lee Lofthus,

Assistant Attorney General for Administration.

[FR Doc. 2017–13625 Filed 6–28–17; 8:45 am]

BILLING CODE 4410–CN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Clean Air Act

On June 22, 2017, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Ohio in the lawsuit entitled *United States* v. *Lima Refining Company,* Civil Action No. 3:17–cv–01320–JZ.

This Consent Decree resolves claims against Lima Refining Company with respect to violations of the Clean Air Act at Lima Refining's petroleum refinery located in Lima, Ohio. Coincidental with the entry of the Consent Decree we are also resolving claims for stipulated penalties for violations of a Consent Decree Addendum entered into with Lima Refining Company regarding this facility in 2007 involving the Facility (''2007 Addendum'').

The Consent Decree requires a penalty of $706,982. Moreover, Lima has to pay $293,018 ($146,509 to the State of Ohio and $146,509 to the United States) to resolve the Stipulated Penalty claims. Therefore, Lima Refining will pay a total of $1,000,000 in penalties. In addition, the Consent Decree requires that Lima Refining perform injunctive relief related to its leak detection and repair program, continuous emissions monitoring system, flare efficiency and minimization, and its sulfur recovery plant. Lima Refining will also will perform a lead paint abatement supplemental environmental project. In addition, as mitigation, Lima Refining will install oxygen enrichment at two of its sulfur recovery units, which will result in lower sulfur emissions.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Lima Refining Company,* Civil Action No. 3:17–cv–01320–JZ, D.J. Ref. No. 90–5–2–1–06811/3. 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 e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $39.50 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the appendices, the cost is $23.50.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–13622 Filed 6–28–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D–11825]

Withdrawal of Notice of Proposed Exemption Involving the ABARTA, Inc. Pension Plan (the Plan) Located in Pittsburgh, PA

In the **Federal Register** dated May 12, 2016 (81 FR 29696), the Department of Labor (the Department) published a notice of proposed exemption (the Notice) from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended, and from certain taxes imposed by the Internal Revenue Code of 1986, as amended. The Notice concerned the following proposed transactions: (a) The in-kind contribution (the Contribution) to the

Plan by ABARTA Inc. (ABARTA), the Plan sponsor and a party in interest to the Plan, of ABARTA's 100% ownership interests in two special LLCs (together, the LLCs), each of which owns, as its only asset, a parcel of improved real property (the Properties); (b) following the Contribution, the Plan's leasing of the Properties (the Leases) to two of ABARTA's subsidiaries (the Tenants), and a one-time renewal of such Leases (the Lease Renewals); (c) the guarantees by the Tenants to the Plan in connection with a make whole obligation (the Make Whole Obligation), and any payments to the Plan in fulfillment of such Make Whole Obligation; (d) each Tenant's indemnification of the Plan in connection with the Leases and Lease Renewals; (e) the Plan's granting of a right of first offer (the Right of First Offer) to each Tenant, whereby, under certain circumstances, a Tenant may purchase the Property or LLC Interest that is subject to such Tenant's Lease; and (f) a sale by the Plan of a Property or LLC Interest to a Tenant in connection with such Tenant's exercise of its Right of First Offer.

Subsequent to the publication of the Notice in the **Federal Register**, the Department was informed that ABARTA had decided not to pursue the requested exemption due to changed circumstances. Therefore, the Department is hereby withdrawing the Notice from the **Federal Register**.

Signed at Washington, DC, this 26th day of June 2017.

Lyssa E. Hall,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2017–13619 Filed 6–28–17; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2017–052]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records they no longer need to conduct agency business. NARA invites public comments on such records schedules.

DATES: NARA must receive requests for copies in writing by July 31, 2017. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, by phone at (301) 837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: NARA publishes notice in the **Federal Register** for records schedules they no longer need to conduct agency business. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Energy, Naval Nuclear Propulsion Program (DAA–0434–2015–0007, 61 items, 59 temporary items). Records relating to infrastructure including routine correspondence, general administration, materials management, equipment management, facilities construction, and

security and associated records. Proposed for permanent retention are records relating to significant case files and site histories.

2. Department of Health and Human Services, National Institutes of Health (DAA–0443–2017–0002, 1 item, 1 temporary item). Agency-wide research records that support intellectual property rights consisting of project documentation that supports patents or invention rights.

3. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2017–0025, 1 item, 1 temporary item). Master files of an electronic information system used to create duty schedules for asylum officers to conduct interviews.

4. Department of Justice, Criminal Division (DAA–0060–2017–0024, 3 items, 3 temporary items). Case files, transfer applications, and working files related to international prisoner transfers which allow prisoners to serve sentences in their home countries under treaty agreements.

5. Department of the Navy, Agency-wide (DAA–NU–2015–0004, 47 items, 39 temporary items). Records relating to logistics including routine correspondence, maintenance records, training papers, daily operations, exchange operations, inventory, and related matters. Proposed for permanent retention are records relating to policy, security assistance, ship inspection, command strategy, publications, loans and gifts, and equipment and allowance tables.

6. Administrative Office of the United States Courts, United States District Courts (DAA–0021–2017–0001, 2 items, 1 temporary item). Records of seven new Civil Nature of Suit Codes to include cases that do not reach trial for False Claims, Family and Medical Leave, Arbitration, and Administrative Procedures. Proposed for permanent retention are cases that reach ''issue joined'' for Personal Injury-Pharmaceutical, Civil Rights-Education, and Civil Detainee-Conditions of Confinement.

7. Central Intelligence Agency, Directorate of Digital Innovation (DAA–0263–2016–0001, 2 items, 2 temporary items). Obsolete card indexing and retrieval system for records now maintained by the Office of Information Management Services.

8. General Services Administration, Agency-wide (DAA–0269–2016–0007, 4 items, 3 temporary items). Communication program records to include speeches and official communication, records related to special events, ceremonies, and dedications, and program management records. Proposed for permanent retentions are speeches and official communication of administrators, commissioners, and heads of staff and service offices.

9. General Services Administration, Agency-wide (DAA–0269–2016–0008, 4 items, 2 temporary items). Records relating to legislative and Congressional affairs including legislative program records and Congressional property records. Proposed for permanent retention are legislation case files and legislative program reports.

10. General Services Administration, Agency-wide (DAA–0269–2016–0009, 2 items, 2 temporary items). Records relating to special employment categories such as detailees, interns and executive service, and human resources program management.

11. Securities and Exchange Commission, Division of Enforcement (DAA–0266–2017–0009, 1 item, 1 temporary item). Records of financial obligations related to disgorgement, penalties, fees, and interest.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2017–13604 Filed 6–28–17; 8:45 am]

BILLING CODE 7515–01–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Notification of a Public Teleconference of the President's Commission on Combating Drug Addiction and the Opioid Crisis (Commission)

AGENCY: Office of National Drug Control Policy (ONDCP)

ACTION: Notice of teleconference.

SUMMARY: ONDCP announces a meeting by teleconference of the President's Commission on Combating Drug Addiction and the Opioid Crisis. The purpose of the meeting is to review a draft interim report that will be posted on ONDCP's Commission Web site listed below before the teleconference.

DATES: The teleconference will be held on Monday July 17, 2017 at 4:00 p.m. (Eastern time).

ADDRESSES: There will be no physical address. The public may call (800) 260–0718 (Access Code 426289) to listen. Please call five minutes before the start time. If you are part of an organization, please try to consolidate use to as few lines as possible.

FOR FURTHER INFORMATION CONTACT: General information concerning the Commission and its meetings can be found on ONDCP's Web site at *https://www.whitehouse.gov/ondcp/presidents-commission.* Any member of the public wishing to obtain information about the Commission or its meetings that is not already on ONDCP's Web site or who wishes to submit written comments for the Commission's consideration may contact Michael Passante, Designated Federal Officer (DFO) via email at *commission@ondcp.eop.gov* or telephone at (202) 395–6709. Please note that ONDCP may post such written comments publicly on our Web site, including names and contact information that are submitted. There will not be oral comments from the public on the teleconference. Requests to accommodate disabilities should also be sent to that email address, preferably at least 10 days prior to the meeting to allow time for processing.

SUPPLEMENTARY INFORMATION: The Commission was established in accordance with E.O. 13784 of March 29, 2017, the Commission's charter, and the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2, to obtain advice and recommendations for the President regarding drug issues. The Executive Order, charter, and information on the Members of the Commission are available on ONDCP's Web site. The Commission will function solely as an advisory body and will make recommendations regarding policies and practices for combating drug addiction with particular focus on the current opioid crisis in the United States. The Commission's final report is due October 1, 2017 unless there is an extension. Per E.O. 13784, the Commission shall:

a. Identify and describe the existing Federal funding used to combat drug addiction and the opioid crisis;

b. Assess the availability and accessibility of drug addiction treatment services and overdose reversal throughout the country and identify areas that are underserved;

c. Identify and report on best practices for addiction prevention, including healthcare provider education and evaluation of prescription practices, collaboration between State and Federal officials, and the use and effectiveness of State prescription drug monitoring programs;

d. Review the literature evaluating the effectiveness of educational messages for youth and adults with respect to prescription and illicit opioids;

e. Identify and evaluate existing Federal programs to prevent and treat drug addiction for their scope and

effectiveness, and make recommendations for improving these programs; and;

f. Make recommendations to the President for improving the Federal response to drug addiction and the opioid crisis.

Dated: June 26, 2017.

Michael Passante,

Acting General Counsel, Designated Federal Officer.

[FR Doc. 2017–13650 Filed 6–28–17; 8:45 am]

BILLING CODE 3280–F5–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0183]

Information Collection: NRC Form 749, "Manual License Verification Report"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is titled NRC Form 749, ''Manual License Verification Report.''

DATES: Submit comments by July 31, 2017.

ADDRESSES: Submit comments directly to the OMB reviewer at: Aaron Szabo, Desk Officer, Office of Information and Regulatory Affairs (3150–0223), NEOB–10202, Office of Management and Budget, Washington, DC 20503; telephone: 202–395–3621, email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2016–0183 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0183. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2016–0183 on this Web site.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The Supporting Statement and NRC Form 749 ''Manual License Verification Report'' are available in ADAMS under Accession Nos. ML177173A878 and ML16335A194.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

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

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review titled, NRC Form 749, ''Manual License Verification Report.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on March 23, 2017 (82 FR 14919).

1. *The title of the information collection:* NRC Form 749, ''Manual License Verification Report.''

2. *OMB approval number:* 3150–0223.

3. *Type of submission:* Extension.

4. *The form number if applicable:* NRC Form 749.

5. *How often the collection is required or requested:* On occasion. Licensees subject to 10 CFR part 37, ''Physical Protection of Byproduct Material'' license verification requirements must verify the legitimacy of the license with the issuing agency prior to transferring radioactive materials in quantities of concern.

6. *Who will be required or asked to respond:* Licensees are required to complete a license verification under the circumstances noted in 4 above. A License Verification System (LVS) is available to provide an electronic method for fulfilling this requirement. In cases where a licensee is unable to use the LVS to perform a verification, they will provide NRC Form 749 for manual license verification.

7. *The estimated number of annual responses:* 456.

8. *The estimated number of annual respondents:* 456.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 46 hours.

10. *Abstract:* When a licensee is unable to use the License Verification System to perform their license verification prior to transferring radioactive materials in quantities of concern, a manual process is available, in which licensees submit the NRC Form 749, ''Manual License Verification Report.'' The form provides the information necessary for the license issuing agencies to perform the verification on behalf of the licensee transferring the radioactive materials.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2017–13614 Filed 6–28–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1257; NRC–2017–0148]

AREVA, Inc.; Consideration of Approval of Transfer of License

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for indirect transfer of license; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of an application filed by AREVA, Inc. on April 14, 2017. The application seeks NRC approval of the indirect transfer of Material License SNM–1227; Import License IW009; and Export Licenses XSNM3471, XSNM3551, XSNM3697, XSNM3747, XSOU8833, and XCOM1202, for the Richland, Washington Fuel Manufacturing Facility from AREVA SA, the current parent company of the license holder, to Electricite de France SA (EDF).

DATES: Comments must be filed by July 31, 2017. A request for a hearing must be filed by July 19, 2017.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0148. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Hearingdocket@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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

FOR FURTHER INFORMATION CONTACT: Kevin Ramsey, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–7506, email: *Kevin.Ramsey@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0148 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0148.
- *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 ''AREVA Internal Reorganization and Indirect Transfer to EDF: Request for NRC Consent to License Transfers'' is available in ADAMS under Accession No. ML17108A259.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2017–0148 in your comment submission.

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

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

II. Introduction

The NRC is considering the issuance of an order under § 70.36 of title 10 of the *Code of Federal Regulations* (10 CFR) approving the indirect transfer of control of the AREVA Richland Fuel Fabrication Facility, Material License SNM–1227; Import License IW009; and Export Licenses XSNM3471, XSNM3551, XSNM3697, XSNM3747, XSOU8833, and XCOM1202, from AREVA SA, the current parent company of the license holder, to Electricite de France SA (EDF).

According to the application for approval filed by AREVA, Inc., the transaction will result in a transfer of controlling interest in AREVA SA's nuclear power business from its current parent company (AREVA SA) to EDF. AREVA, Inc., which is a North American subsidiary of AREVA SA, will continue to operate the facility and hold the licenses.

No physical changes to the Richland Fuel Fabrication Facility or operational changes are being proposed in the application.

The NRC's regulations at 10 CFR 70.36 state that no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission, after securing full information, finds that the transfer is in accordance with the provisions of the Atomic Energy Act and gives its consent in writing. The Commission will approve an application for the indirect transfer of a license if the Commission determines that the proposed transfer of controlling interest will not affect the qualifications of the licensee to hold the license, and that the licensee has provided the financial assurance for decommissioning required by 10 CFR 70.25.

III. Opportunity To Comment

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 20 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 20 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 20 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public Web site at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time

the document is submitted through the NRC's E Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission. The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this application, see the application dated April 14, 2017, ADAMS Accession No. ML17108A259.

Dated at Rockville, Maryland, this 21st day of June 2017.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Director, Division of Fuel Cycle Safety, Safeguards, and Environmental Review, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2017–13646 Filed 6–28–17; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on July 19, 2017, 1:30 p.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

Portion open to the public:

(1) Executive Committee Reports

The person to contact for more information is Martha P. Rico, Secretary to the Board, Phone No. 312–751–4920.

Dated: June 27, 2017.

Martha P. Rico,

For the Board, Secretary to the Board.

[FR Doc. 2017–13764 Filed 6–27–17; 11:15 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81010; File No. SR–CBOE–2017–049]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Rule 6.56 (Compression Forums)

June 23, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 16, 2017, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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 Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.56. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.56. Compression Forums

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

(a) No change.

(b) Trades executed through compression forums are subject to trading rules applicable to trading in SPX during Regular Trading Hours (including without limitation manner of bids and offers, allocation and priority, and solicited transaction rules), except:

(1) *opening transactions in SPX options may not execute against opening transactions through a compression forum; however, closing transactions in SPX options (including compression-list positions) that are represented in the compression forum may execute against closing or opening transactions;* [only closing transactions in SPX options (including compression-list positions) may be executed through a compression forum;] and

(2) *only closing transactions may be executed in $0.01 increments, including simple and complex orders. Bids and offers for opening transactions made in response to the representation of a closing transaction must be priced in the standard increment for simple and complex orders set forth in Rule 6.42.* [the minimum increment for bids and offers will be $0.01, including for both simple and complex orders.]

(c) No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.56 (Compression Forums) in order to fine-tune the compression forum process. Specifically, the Exchange seeks to allow closing transactions that are represented in the compression forum to be executed against opening transactions. Allowing closing transactions that are represented in the compression forum to be executed against opening transactions increases the likelihood that existing positions creating high bank regulatory capital requirements will be closed—thus lowering a TPH's bank capital footprint.

Background

SEC Rule 15c3–1 (Net Capital Requirements for Brokers or Dealers) (''Net Capital Rules'') requires registered broker-dealers, unless otherwise excepted, to maintain certain specified minimum levels of capital.[5] The Net Capital Rules are designed to protect securities customers, counterparties, and creditors by requiring that broker-dealers have sufficient liquid resources on hand, at all times, to meet their financial obligations. Notably, hedged positions, including offsetting futures and options contract positions, result in certain net capital requirement reductions under the Net Capital Rules.[6]

Subject to certain exceptions, CBOE Clearing Trading Permit Holders (''CTPHs'')[7] are subject to the Net Capital Rules. However, a subset of CTPHs are subsidiaries of U.S. bank holding companies, which, due to their affiliations with their parent U.S. bank holding companies, must comply with additional bank regulatory capital requirements pursuant to rulemaking required under the Dodd-Frank Wall Street Reform and Consumer Protection Act.[8] Pursuant to this mandate, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation have approved a regulatory capital framework for subsidiaries of U.S. bank holding company clearing firms.[9] Generally, these rules impose higher minimum capital requirements, more restrictive capital eligibility standards, and higher asset risk weights than were previously mandated for CTPHs that are subsidiaries of U.S. bank holding companies under the Net Capital Rules. Furthermore, the new rules do not permit deductions for hedged securities or offsetting options positions.[10] Rather, capital charges under these standards are, in large part, based on the aggregate notional value of short positions regardless of offsets. As a result, in general, CTPHs must hold substantially more bank regulatory capital than would otherwise be required under the Net Capital Rules. The impact of these regulatory capital rules are compounded in the SPX options market due to the large notional value of SPX contracts.

The Exchange believes that these higher regulatory capital requirements have the potential to impact liquidity in the SPX options market by limiting the amount of capital CTPHs can allocate to their clients' transactions. Specifically, the rules may cause CTPHs to impose stricter position limits on their client clearing members, which include CBOE Market-Makers. Such position limits may impact the liquidity Market-Makers might supply in the SPX market, and this impact may be compounded when a CTPH has multiple Market-Maker client accounts, each having largely risk-neutral portfolio holdings.[11] The Exchange believes that permitting Market-Makers and Floor Brokers (for their own proprietary accounts or for the account of another on an agency basis) to efficiently close existing SPX options positions through modified open outcry trading procedures on the Exchange floor may assist CTPHs and TPHs to address bank regulatory capital requirements and would likely have a beneficial effect on continued liquidity in the SPX options market without adversely affecting market quality.

In order to mitigate the potential negative effects of these additional bank regulatory capital requirements and

[5] 17 CFR 240.15c3–1.

[6] In addition, the Net Capital Rules permit various offsets under which a percentage of an option position's gain at any one valuation point is allowed to offset another position's loss at the same valuation point (*e.g.,* vertical spreads).

[7] All CBOE CTPHs must also be clearing members of The Options Clearing Corporation (''OCC'').

[8] H.R. 4173 (amending section 3(a) of the Securities Exchange Act of 1934 (the ''Act'') (15 U.S.C. 78c(a))).

[9] 12 CFR 50; 79 FR 61440 (Liquidity Coverage Ratio: Liquidity Risk Measurement Standards).

[10] Many options strategies, including relatively simple strategies often used by retail customers and more sophisticated strategies used by market-makers and institutions, are risk-limited strategies or options spread strategies that employ offsets or hedges to achieve certain investment outcomes. Such strategies typically involve the purchase and sale of multiple options (and may be coupled with purchases or sales of the underlying securities), executed simultaneously as part of the same strategy. In many cases, the potential market exposure of these strategies is limited and defined. Whereas regulatory capital requirements have historically reflected the risk-limited nature of carrying offsetting positions, these positions may now be subject to higher regulatory capital requirements. Various factors, including administration costs; transaction fees; and limited market demand or counterparty interest, however, may discourage market participants from closing these positions even though many market participants likely would prefer to close the positions rather than carry them to expiration.

[11] Several TPHs have indicated to the Exchange that the heightened bank regulatory requirements could impact their ability to provide consistent liquidity in the SPX options market unless they are able to efficiently close their positions in SPX.

foster continued liquidity in the SPX options market in a manner consistent with the requirements, the Exchange adopted Rule 6.56 pursuant to which TPHs can reduce (or ''compress'') existing positions in SPX at the end of each calendar month more efficiently through trading in an open outcry compression forum.[12] The Exchange believes that making available these periodic trading forums, which allow for closing transactions in SPX options series to occur at reduced transaction fees likely contributes to additional liquidity and continued competitiveness in the SPX market and promotes more efficient capital deployment in light of bank regulatory capital requirements.

Under current Rule 6.56, on the final three business days of each calendar month, the Exchange holds compression forums in the SPX trading crowd. Beforehand, in order to facilitate TPHs finding counterparty offsets against which they can trade closing positions, currently, TPHs may submit lists of existing SPX positions to the Exchange that they wish to close during a compression forum. Prior to the open of trading on the third-to-last business day of each calendar month (*i.e.,* the first day of the month on which a compression forum is held), the Exchange makes available to all TPHs on its Web site a list including each series for which both long and short compression-list positions have been submitted to the Exchange (''compression-list positions file''). In addition, TPHs that submit compression positions list to the Exchange receive a compression-list positions file containing the names of the TPHs that contributed to the file, including contact information for each TPH's designated point of contact. This list does not identify the specific positions that any TPH has submitted to the Exchange.

The Exchange then holds open outcry ''compression forums'' in which all TPHs may participate whether or not they submitted positions for inclusion in the compression-list position file. Currently, trades executed during compression forums are subject to trading rules applicable to trading in SPX during Regular Trading Hours, including manner of bids and offers and allocation and priority rules, except: (1) Only closing transactions in SPX options (including compression-list positions) may be executed through a compression forum; and (2) the minimum increment for all series is $0.01 during a compression forum. TPHs that trade positions previously submitted to the Exchange on a compression list may then take advantage of the compression-list position fee rebate on portions of a transaction that involve their compression-list positions, which are executed through a compression forum.

The Exchange proposes to amend Rule 6.56 to enhance the effectiveness and utility of its compression forums process for market participants. Specifically, the Exchange seeks to allow closing transactions that are represented in the compression forum to be executed against opening transactions. Allowing closing transactions that are represented in the compression forum to be executed against opening transactions increases the likelihood that existing positions creating high bank regulatory capital requirements will be closed—thus lowering a TPH's (or clearing firm's) bank capital footprint.

Proposal

The purpose of Rule 6.56 is to encourage the closing of positions that are creating high bank regulatory capital requirements. When Rule 6.56 was originally implemented, the Exchange was concerned that allowing opening transactions in the compression forum ''would defeat the purpose of the proposed rule[.]'' [13] However, after observing the compression process for the past several months, the Exchange believes allowing closing transactions that are represented in the compression forum to execute against opening transactions will not discourage the closing of positions that are creating a high bank regulatory capital footprint nor will it adversely affect the compression forums. Allowing opening transactions will expand the liquidity available to close positions represented in a compression forum, thus, increasing the opportunity for TPHs to close positions that cause them to have high bank regulatory capital footprints. Ultimately the Exchange believes the increased opportunity for positions to be closed will in fact further encourage TPHs to close positions that cause them to have high bank regulatory capital footprints without adversely affecting the compression forums.

Thus, the Exchange proposes to amend Rule 6.56(b)(1) to remove the closing only restricting for compression forum executions. Specifically, the Exchange proposes to amend Rule 6.56(b)(1) to provide that transactions in SPX options (including compression-list positions) that are represented in the compression forum may execute against closing or opening transactions. To provide further clarity as to the limited application of this change, the Exchange proposes to amend Rule 6.56(b)(1) to provide that opening transactions in SPX options may not execute against opening transactions through a compression forum. The Exchange notes that Rule 6.56(b)(1) already effectively prohibits opening transactions from executing against opening transactions in a compression forum because Rule 6.56(b)(1) currently provides that only closing transactions are to be executed via a compression forum.

Currently, transactions executed via a compression forum may be executed in $0.01 increments for both simple and complex orders, but as previously noted, compression forums are currently restricted to closing transactions. Thus, with the expansion of compression forums to opening transactions (provided they execute against closing transactions), the Exchange proposes to amend Rule 6.56(b)(2) to provide that only closing transactions may be executed in $0.01 increments, including simple and complex orders whereas bids and offers for opening transactions made in response to the representation of a closing transaction must be priced in the standard increment for simple and complex orders set forth in Rule 6.42 (*e.g.,* $0.05 for option series below $3, $0.10 for option series at or above $3, and $0.05 increments for complex orders).[14] The Exchange notes that the proposed minimum increment for opening transactions executed against closing transactions in a compression forum is consistent with the minimum increment applicable to SPX transactions (opening or closing) executed outside a compression forum.

Currently, only a fraction of the offsetting interest provided in the compression-list positions have ultimately been closed out during previous compression forums.[15] This proposal will allow a TPH that is representing closing transactions in a compression forum—but is unable to close the position against another party's closing transaction—to solicit TPHs or non-TPH customers or broker-dealers to participate in the compression forum whether the TPH or non-TPH is opening or closing a position. Although the most impactful

[12] *See* Securities Exchange Act Release No. 79610 (December 20, 2016), 81 FR 95219 (December 27, 2016) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Compression of S&P 500(R) Index Options Positions) (SR–CBOE–2016–090).

[13] *Id.*

[14] *See* Rule 6.42(1)–(4).

[15] In the months since the adoption of Rule 6.56, of the compression-list positions submitted to the Exchange, less than 10% of the offsetting interest were actually closed in transactions through a compression forum.

bank capital relief (in the context of listed options) occurs when two parties can each close offsetting open position, whenever a TPH is able to close a position—whether the TPH is transacting with a party that is opening or closing a position—the TPH will lower its bank capital footprint. Thus, the Exchange simply seeks to increase the opportunity for TPHs to lower their bank capital footprint.

A party's bank capital footprint is largely a function of its investor profile and clearing firm. TPHs are sophisticated parties capable of assessing a transaction's impact on their bank capital footprint and determining whether to close positions to reduce their bank capital footprint. For those TPHs concerned with their bank capital footprint, Rule 6.56 provides an opportunity for them to submit compression-list positions and participate in the compression process. The Exchange believes this proposal further encourages TPHs to close positions via the compression process by increasing the likelihood that there will be liquidity against which a closing position may execute.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[18] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that its proposal is consistent with the Act in that it seeks to foster liquidity in the SPX options market in light of the bank regulatory capital requirements. As described above, the Exchange believes that the new bank regulatory capital requirements could potentially limit the amount of capital CTPHs can allocate to their clients' transactions, which in turn, may impact liquidity, particularly in the SPX market. The Exchange believes the proposal encourages TPHs to close positions via the compression process by increasing the likelihood that there will be liquidity with which to execute a closing position, which, in general, helps to protect investors and the public interest because closing positions via the compression process serves to alleviate the adverse impact of bank capital requirements.

The Exchange also believes the proposed rule change is consistent with the Act, because the proposed procedure is consistent with its current rules. The proposed rule would direct that all trading through compression forums be conducted in accordance with normal SPX trading rules and thus, in the same manner as transactions during normal SPX trading, except that opening transactions may not execute against opening transactions via a compression forum and that closing transactions executed against closing transactions may be in penny increments. The Exchange notes that Rule 6.56(b)(1) already effectively prohibits opening transactions from executing against opening transactions in a compression forum because Rule 6.56(b)(1) currently provides that only closing transactions are to be executed via a compression forum. The Exchange also notes that the proposed minimum increment for opening transactions executed against closing transactions in a compression forum (*i.e.,* bids and offers for opening transactions made in response to the representation of a closing transaction must be priced in the standard increment for simple and complex orders set forth in Rule 6.42) is consistent with the minimum increment applicable to SPX transactions (opening or closing) executed outside a compression forum.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change would encourage the closing of positions, which, once closed, may serve to alleviate the capital requirement constraints on TPHs and improve overall market liquidity by freeing capital currently tied up in certain SPX positions. The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change applies only to the trading of SPX options, which are exclusively-listed on CBOE. To the extent that the proposed changes make the Exchange a more attractive marketplace for market participants at other exchanges, such market participants are eligible to participant through CBOE TPHs. Furthermore, participation in compression forums is completely voluntary and open to all TPHs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20] 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, if consistent with the protection of investors and public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6)[23] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[24] 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

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

operative delay so that the proposed rule change may become effective on June 27, 2017, permitting the proposed change to take effect for the compression forum scheduled to take place using the amended procedures prior to the end of the second quarter. In justifying its requested waiver, the Exchange noted that bank-imposed capital limits may impact certain TPHs on at least a quarterly basis, which can effectively limit the amount of liquidity that such TPHs, including some Market-Makers, are willing or able to provide in SPX options. The month of June is the end of a quarter, and the Exchange expressed concern that those bank capital requirements may have adverse consequences on investors if the impacted TPHs are not able to more effectively reduce their open interest in SPX. The Exchange therefore believes that it is in the best interest of investors and the general public to help ensure consistent continued depth of liquidity in the SPX options market by allowing TPHs to utilize the modified compression forum process set forth in this proposal on the final three days of trading of the second quarter.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because this waiver will enable the Exchange to hold a compression forum for SPX options under the proposed amended procedures prior to the end of the second quarter, thereby helping to facilitate transactions and remove impediments to quarter-end trading in SPX options. The Commission notes that CBOE's compression forum rule, as proposed to be amended, is limited in its application, involves no material changes to how trading is conducted on the Exchange, involves a process in which participation is voluntary and open to all, and is designed as a means to help Market Makers and other market participants, as well as their clearing brokers, to close positions in SPX options that they carry on their books and which may impact their available capital. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal effective on June 27, 2017.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2017–049 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2017–049. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2017–049 and should be submitted on or before July 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–13585 Filed 6–28–17; 8:45 am]

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[25] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81016; File No. SR–NYSEMKT–2017–23]

Self-Regulatory Organizations; NYSE MKT LLC; Order Granting Approval of Proposed Rule Change To Harmonize the Requirements of the NYSE MKT Company Guide With the Periodic and Semi-Annual Reporting Requirements of the NYSE

June 23, 2017.

I. Introduction

On April 25, 2017, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to harmonize the periodic reporting requirements of the NYSE MKT Company Guide (the ''Company Guide'') with those of the New York Stock Exchange LLC (''NYSE''). The proposed rule change was published for comment in the **Federal Register** on May 12, 2017.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange has proposed to harmonize the requirements of the Company Guide with respect to (i) periodic reporting and (ii) semi-annual reporting by foreign private issuers, with those of the NYSE Listed Company Manual (''NYSE Manual'').

A. Amendment to Annual Report Requirements

Currently, under Section 610(a) of the Company Guide, listed companies must provide specific enumerated disclosures with regard to outstanding options.[4] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 80619 (May 8, 2017), 82 FR 22170 (''Notice'').

[4] Specifically, Section 610(a) provides that a listed company must disclose in its annual report to security holders, for the year covered by the

Exchange proposes to remove these requirements because such companies are already required to include disclosures in their Form 10–K regarding options available under equity compensation plans, pursuant to Item 201(d) of Regulation S–K, and options issued as executive compensation, pursuant to Item 402 of Regulation S–K.[5] The Exchange believes that it is appropriate to defer to the Commission in determining what disclosures should be required of a listed company with respect to its outstanding options.[6]

Section 610(a) also currently specifies that a company that fails to file its annual report on Forms 10–K, 20–F, 40–F or N–CSR with the Commission in a timely manner would be subject to delisting pursuant to Section 1002(d).[7] The Exchange proposes to amend this provision to provide that companies delayed in making these filings would be subject to the compliance procedures set forth in proposed Section 1007 of the Company Guide, which establishes compliance procedures for companies that are delayed in filing their annual and quarterly reports with the Commission, as further discussed below.

Section 610(b) currently makes reference to providing notice of material news to the Exchange's StockWatch and Listing Qualifications Departments. The Exchange proposes to delete these outdated references and proposes to include a statement that companies should comply with the Exchange's material news policies set forth in Sections 401 and 402 of the Company Guide by providing notice to the Exchange's Market Watch Group pursuant to the material news notification requirements of Sections 401 and 402.[8]

Additionally, Section 610(b) of the Company Guide currently provides that a listed company that receives an audit opinion that contains a going concern ''qualification'' must make a public announcement through the news media disclosing the receipt of such qualified opinion. The Exchange proposes to replace the reference to a going concern ''qualification'' with a reference to a going concern ''emphasis'' as the Exchange states that this is a more accurate accounting characterization.[9] In addition, the Exchange proposes to provide that the public announcement of the existence of a going concern emphasis in an audit opinion must be made contemporaneously with the filing of such audit opinion with the Commission, rather than within seven calendar days of such filing as is currently the case. The Exchange believes a going concern emphasis is material to investors and should be immediately disclosed.[10]

The Exchange states that prior to an amendment in 2009,[11] Section 610 of the Company Guide required a listed company to physically deliver its annual report filed with the Commission to shareholders each year.[12] The Exchange states that, as a result of the 2009 amendment, Section 610 no longer requires companies to physically deliver their annual reports but may instead rely on the fact that listed company annual reports are required to be made available on or through the public Web site of the Commission or the applicable listed company.[13] Accordingly, the Exchange proposes to delete Sections 611 (Time of Publication), 612 (Request for Extension) and 613 (Good Cause for Delay) of the Company Guide in their entirety.[14]

Section 611 specifies timeframes within which a company's hard copy annual report must be filed with the Exchange and submitted to shareholders. The Exchange proposes to delete this provision as Section 610 no longer requires the delivery of hard copy annual reports and proposed Section 1007 will include detailed compliance requirements with respect to delayed annual report filings.[15] Similarly, Section 612 sets forth a process for companies to request an extension of time from the Exchange to distribute hard copy annual reports to their shareholders. The Exchange proposes to delete this requirement, as companies are not required to deliver hard copy annual reports under its current rules and proposed Section 1007 will establish a process for granting companies additional time when they are delayed in submitting their annual reports to the Commission.[16] Section 613 specifies circumstances under which good cause may exist for a company being delayed in the publication of its annual report. The Exchange proposes to delete this provision because all determinations as to the continued listing of companies that are delayed in their annual report filings will be made pursuant to the provisions of proposed Section 1007.[17]

B. Amendment to Timely Filing Criteria

Currently, the Exchange provides listed companies that are delinquent in submitting required periodic filings with a compliance plan under its general provisions for companies that are non-compliant with Exchange rules, as set forth in Section 1009 (Continued Listing Evaluation and Follow-Up) of the Company Guide. Section 1009(b) gives the Exchange the sole discretion to grant companies a time period of up to 18 months to regain compliance and does not provide specific guidance on how compliance periods should be administered for companies delinquent in submitting their periodic filings.[18] In contrast, Section 802.01E of the NYSE Manual limits companies to a maximum cure period of 12 months to submit all delayed filings and includes specific provisions for determining the period of time companies should be given to regain compliance within the context of that maximum 12 month period and what is required to be eligible for that additional time.[19] Accordingly, the Exchange believes that the NYSE's procedures for dealing with delinquent filings is more stringent and transparent than its own and believes that it is appropriate to harmonize its own process with Section 802.01E of the NYSE Manual to avoid confusion among investors, companies, and their service providers about the applicable rules.[20]

Specifically, the Exchange has proposed to adopt new Section 1007 (''Late Filer Rule'')[21] to explicitly state

report: (a) The number of unoptioned shares available at the beginning and at the close of the year for the granting of options under an option plan; and (b) any changes in the exercise price of outstanding options, through cancellation and reissuance or otherwise, except price changes resulting from the normal operation of anti-dilution provisions of the options.

[5] *See* Notice, *supra* note 3, at 22171.

[6] *Id.*

[7] Section 1002(d) of the Company Guide provides that the Exchange, as a matter of policy, will consider the suspension of trading in, or removal from listing or unlisted trading of, any security when, in the opinion of the Exchange, the issuer has failed to comply with its listing agreements with the Exchange.

[8] The Exchange has proposed to delete the related contact information for the Exchange's StockWatch and Listing Qualifications Department in Section 610(b) of the Company Guide.

[9] *See* Notice, *supra* note 3, at 22171.

[10] *Id.*

[11] *See* Securities Exchange Act Release No. 59685 (April 1, 2009), 74 FR 16031 (April 8, 2009) (SR–NYSEAmex–2009–04).

[12] *See* Notice, *supra* note 3, at 22171.

[13] *Id.*

[14] The Exchange has proposed to mark each deleted section as ''Reserved.''

[15] *See* Notice, *supra* note 3, at 22171.

[16] *Id.*

[17] *Id.*

[18] *Id.* at 22170. While Commentary .01 to Section 1009 states that delinquencies of Commission filing obligations are among those that may warrant the imposition of a compliance time period shorter than 18 months, the Exchange's rules do not provide any guidance on how this is applied or administered.

[19] *Id.*

[20] *Id.*

[21] The Exchange states that any company that is delayed in making a filing that would be subject to

Continued

that, for purposes of remaining listed on the Exchange, a company would incur a filing delinquency and be subject to the procedures set forth in the amended rule on the date on which any of the following occurs:

• The company fails to file its annual report (Forms 10–K, 20–F, 40–F or N–CSR) or its quarterly report on Form 10–Q or semi-annual report on Form N–CSR (''Semi-Annual Form N–CSR'') with the Commission by the date such report was required to be filed by the applicable form, or if a Form 12b–25 was timely filed with the Commission, the extended filing due date for the annual report, Form 10–Q, or Semi-Annual Form N–CSR (for purposes of this Section 1007, the later of these two dates, along with any Semi-Annual Report Filing Due Date as defined below, will be referred to as the ''Filing Due Date'' and the failure to file a report by the applicable Filing Due Date, a ''Late Filing Delinquency'');[22]

• a listed foreign private issuer fails to file the Form 6–K containing semi-annual financial information required by proposed Section 110(e) (the ''Semi-Annual Report'') by the date specified in that rule (the ''Semi-Annual Report Filing Due Date'');

• the company files its annual report without a financial statement audit report from its independent auditor for any or all of the periods included in such annual report (a ''Required Audit Report'' and the absence of a Required Audit Report, a ''Required Audit Report Delinquency'');

• the company's independent auditor withdraws a Required Audit Report or the company files a Form 8–K with the Commission pursuant to Item 4.02(b) thereof disclosing that it has been notified by its independent auditor that a Required Audit Report or completed interim review should no longer be relied upon (a ''Required Audit Report Withdrawal Delinquency''); or

• the company files a Form 8–K with the Commission pursuant to Item 4.02(a) thereof to disclose that previously issued financial statements should no longer be relied upon because of an error in such financial statements or, in the case of a foreign private issuer, makes a similar disclosure in a Form 6–K filed with the Commission or by other means (a ''Non-Reliance Disclosure'') and, in either case, the company does not refile all required corrected financial statements within 60 days of the issuance of the Non-Reliance Disclosure (an ''Extended Non-Reliance Disclosure Event'' and, together with a Late Filing Delinquency, a Required Audit Report Delinquency and a Required Audit Report Withdrawal Delinquency, a ''Filing Delinquency'') (for purposes of the cure periods described below, an Extended Non-Reliance Disclosure Event would be deemed to have occurred on the date of original issuance of the Non-Reliance Disclosure); if the Exchange believes that a company is unlikely to refile all required corrected financial statements within 60 days after a Non-Reliance Disclosure or that the errors giving rise to such Non-Reliance Disclosure are particularly severe in nature, the Exchange may, in its sole discretion, determine earlier than 60 days that the applicable company has incurred a Filing Delinquency as a result of such Non-Reliance Disclosure.[23]

Additionally, under the proposed rule, the Exchange would deem a company to have incurred a Filing Delinquency if the company submits an annual report, Form 10–Q, or Semi-Annual Form N–CSR to the Commission by the applicable Filing Due Date, but such filing fails to include an element required by the applicable form and the Exchange determines in the Exchange's sole discretion that such deficiency is material in nature.[24]

A company that has an uncured Filing Delinquency will not incur an additional Filing Delinquency if it fails to file a subsequent annual report, Form 10–Q, Semi-Annual Form N–CSR or Semi-Annual Report (a ''Subsequent Report'') by the applicable Filing Due Date for such Subsequent Report.[25] However, in order for the company to cure its initial Filing Delinquency, no Subsequent Report may be delinquent or deficient on the date by which the initial Filing Delinquency is required to be cured.[26]

Upon the occurrence of a Filing Delinquency, the Exchange would promptly send written notification to a company of the procedures relating to late filings (the ''Filing Delinquency Notification''). Within five days of the date of the Filing Delinquency Notification, the company would be required to contact the Exchange to discuss the status of the Delinquent Report and issue a press release disclosing the occurrence of the Filing Delinquency, the reason therefor, and (if known) the anticipated date such Filing Delinquency will be cured via the filing or refiling of the applicable report, as the case may be.[27]

During the six-month period from the date of the Filing Delinquency (the ''Initial Cure Period''), the Exchange would monitor the company and the status of the Delinquent Report and any Subsequent Reports, including through contact with the company, until the Filing Delinquency is cured.[28] If the company fails to cure the Filing Delinquency within the Initial Cure Period, the Exchange may, in its sole discretion, allow the company's securities to be traded for up to an additional six-month period (the ''Additional Cure Period'') depending on the company's specific circumstances.[29] If the Exchange determines that an Additional Cure Period is not appropriate, suspension and delisting procedures would commence in accordance with the procedures set out in Section 1010 (Procedures for Delisting and Removal) of the Company Guide.[30] A company would not be eligible to follow the procedures outlined in Section 1009

proposed Section 1007 will continue to be subject to the compliance plan provisions of Section 1009 in relation to that delayed filing, but will be subject to proposed Section 1007 in relation to any subsequent delayed filings. *See* Notice, *supra* note 3, at 22173.

[22] The proposed rule states that the annual report, Form 10–Q, Semi-Annual Form N–CSR or Semi-Annual Report that gives rise to a Filing Delinquency shall be referred to therein as the ''Delinquent Report.''

[23] *See* proposed Section 1007 of the Company Guide. *Id.*

[24] *Id.* The Exchange states that the following is a non-exclusive list of scenarios involving material filing elements that would cause the Exchange to deem the company to have incurred a Late Filing Delinquency: The filing does not include required financial statements or a required audit opinion; a required financial statement audit opinion includes qualifying or disclaiming language or the auditor provides an adverse financial statement audit opinion; a required financial statement audit opinion is unsigned or undated; there is a discrepancy between the period end date for required financial statements and the date cited in the related audit report; the company's auditor has not conducted a SAS 100 review with respect to the company's Form 10–Q; required chief executive officer or chief financial officer certifications are missing; a Sarbanes-Oxley Act Section 404 required internal control report or auditor certification is missing; the filing does not comply with the applicable SEC XBRL requirements; or the filing does not include signatures of officers or directors required by the applicable form. *See* Notice, *supra* note 3, at 22172, n.8.

[25] *See id.*

[26] *See id.*

[27] *See* proposed Section 1007 of the Company Guide. If the company has not issued the required press release within five days of the date of the Filing Delinquency Notification, the Exchange will issue a press release stating that the company has incurred a Filing Delinquency and providing a description thereof. *Id.*

[28] *Id.* Under the proposed rule, a company that has an uncured Filing Delinquency would not incur an additional Filing Delinquency if it fails to file a Subsequent Report by the applicable Filing Due Date. However, in order for the company to cure its initial Filing Delinquency, no Subsequent Report may be delinquent or deficient on the date by which the initial Filing Delinquency is required to be cured. *Id.*

[29] *Id.*

[30] *Id.*

with respect to these criteria.[31] Notwithstanding the foregoing, however, under the proposed rule the Exchange may in its sole discretion decide: (i) Not to afford a company any Initial Cure Period or Additional Cure Period, as the case may be, at all; or (ii) at any time during the Initial Cure Period or Additional Cure Period, as the case may be, to truncate the Initial Cure Period or Additional Cure Period and immediately commence suspension and delisting procedures if the company is subject to delisting pursuant to any other provision of the Company Guide, including if the Exchange believes, in the Exchange's sole discretion, that continued listing and trading of a company's securities on the Exchange is inadvisable or unwarranted in accordance with Sections 1001–1006 of the Company Guide.[32]

The Exchange may also commence suspension and delisting procedures if it believes, in its sole discretion, that it is advisable to do so based on an analysis of all relevant factors, including, but not limited to:

- Whether there are allegations of financial fraud or other illegality in relation to the company's financial reporting;
- the resignation or termination by the company of the company's independent auditor due to a disagreement;
- any extended delay in appointing a new independent auditor after a prior auditor's resignation or termination;
- the resignation of members of the company's audit committee or other directors;
- the resignation or termination of the company's chief executive officer, chief financial officer or other key senior executives;
- any evidence that it may be impossible for the company to cure its Filing Delinquency within the cure periods otherwise available under the Late Filer Rule; and
- any past history of late filings.[33]

In determining whether an Additional Cure Period after the expiration of the Initial Cure Period is appropriate, the Exchange would consider the likelihood that the Delinquent Report and all Subsequent Reports can be filed or refiled, as applicable, during the Additional Cure Period, as well as the company's general financial status, based on information provided by a variety of sources, including the company, its audit committee, its outside auditors, the staff of the Commission and any other regulatory body.[34] Further, the Exchange would strongly encourage companies to provide ongoing disclosure on the status of the Delinquent Report and any Subsequent Reports to the market through press releases, and would also take the frequency and detail of such information into account in determining whether an Additional Cure Period is appropriate.[35]

As proposed, if the Exchange determines that an Additional Cure Period is appropriate and the company fails to file the Delinquent Report and all Subsequent Reports by the end of such additional period, suspension and delisting procedures would commence immediately in accordance with the procedures set out in Section 1010.[36] In no event would the Exchange continue to trade a company's securities if: (i) It has failed to cure its Filing Delinquency; or (ii) it is not current with all Subsequent Reports, on the date that is twelve months after its initial Filing Delinquency.[37]

The Exchange also proposed to include a cross-reference to proposed Section 1007 in Section 1101 of the Company Guide, which discusses general Commission filing obligations of listed companies. In addition, the Exchange proposed to remove a reference to a company's Listing Qualifications analyst in Section 1101 and replace it with a reference to Exchange staff, as the Exchange no longer has a department under the Listings Qualification title.

C. Amendment to Semi-Annual Reporting by Foreign Private Issuers

The Exchange has proposed to amend Section 110 (Securities of Foreign Companies) by adding new paragraph (e), which provides that each listed foreign private issuer will be required, at a minimum, to submit to the Commission a Form 6–K that includes (i) an interim balance sheet as of the end of its second fiscal quarter and (ii) a semi-annual income statement that covers its first two fiscal quarters.[38] This Form 6–K must be submitted no later than six months following the end of the company's second fiscal quarter.[39] Additionally, the financial information included in the Form 6–K must be presented in English, but does not have to be reconciled to U.S. GAAP.[40] The Exchange has stated that new Section 110(e) would provide a more specific interim reporting requirement for listed foreign private issuers and harmonize such rules with Section 203.03 of the NYSE Manual.[41]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[42] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[43] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the goal of ensuring that listed companies have filed accurate, up-to-date reports under the Exchange Act is of critical importance so that investors have reliable information upon which they can make informed investment decisions. For the same reason, it is also important that companies with stale or defective publicly filed financial information do not remain listed on a national securities exchange if such information is not brought up-to-date or the deficiency cured in a timely manner. As noted above, under the existing provisions of the Company Guide, a delinquent filer of Commission required periodic reports could receive up to 18 months to become up to date in its filings. While the Company Guide suggests a time period of less than 18 months to achieve compliance may be appropriate for late filers, there is no specific guidance in the Company Guide on how such a determination is made and for what time period. The Commission has also previously noted the importance of ensuring that companies listed on a national securities exchange are up to date in

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] The Exchange proposes to renumber existing Section 110(e) to Section 110(f).

[39] *See* proposed Section 110(e) of the Company Guide.

[40] *See* proposed Section 110(e) of the Company Guide.

[41] *See* Notice, *supra* note 3, at 22170.

[42] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[43] 15 U.S.C. 78f(b)(5).

their filings so accurate and timely information is available to investors.[44] The Commission believes that the proposed rule change should help to prevent an undue amount of time from passing without the company's annual, quarterly or semi-annual reports, as applicable,[45] being provided to the marketplace. In addition, the Commission believes that harmonizing the requirements of the Company Guide with respect to periodic reporting with those of the NYSE Manual are reasonably designed to help investors and companies avoid confusion and achieve consistent results for the applicable rules.

The Commission also believes that proposed Section 1007 should help to ensure that companies cannot continue to trade for extended periods of time without making their annual and interim reports publicly available. In this regard, the Commission notes that the proposed rule change should help reduce those situations in which investors continuously have outdated or stale financial information upon which to base their investment decisions. As is discussed above, a company that has an uncured Filing Delinquency would not be able to cure the Filing Delinquency until all subsequent annual or interim reports that are delinquent have been filed.[46] In other words, once it is a delinquent filer, a company can only become current in its filings if all of its annual and interim filings have been submitted to the Commission within 12 months of the first Filing Delinquency. Furthermore, a listed company that demonstrates a history of delinquent filings could still be subject to delisting under the proposed rule change without the Exchange affording it any cure period at all (or at any time during an initial or additional cure period) as a result of the Exchange's ability to commence suspension and delisting procedures based on a company's ''past history of late filings.'' [47] The Commission believes these provisions will enable the Exchange to delist those companies that have demonstrated a history of providing outdated or stale financial information to investors and help the Exchange address the situation where a company becomes current within 12 months and then a short while later, such as by the next Commission filing date, incurs another Filing Delinquency. In such a case, the Commission would be concerned that investors continue to rely on outdated information and do not have current financial information on a timely basis in which to make their trading and investment decisions. The Commission believes that the proposal is reasonably designed to further these goals of investor protection and therefore is consistent with the Exchange Act and Section 6(b)(5) thereunder.

Additionally, by clearly stating that the Exchange's Late Filer Rule applies to companies that file late or defective annual and interim reports, the Commission believes that the proposal should benefit the public interest and protect investors by helping to assure that a larger segment of the financial information investors may rely upon when deciding whether to invest in a company listed on the Exchange is up-do-date and accurate. Further, by detailing what the Exchange considers to be a defective annual or interim report and how the Exchange treats listed companies whose filed reports suffer from a deficiency, the Commission believes that the proposed rule change promotes just and equitable principles of trade by providing additional transparency to listed companies as to what could cause them to become subject to proposed Section 1007 for a late or deficient filing. For example, as noted above, Exchange rules will be clear that a company that files a Form 8–K pursuant to Item 4.02(b) thereof and has a Required Audit Report Withdrawal Delinquency will be subject to the procedures in proposed Section 1007 and can only be extended a maximum of 12 months to cure the delinquency. Moreover, and importantly, this additional transparency, as well as the more stringent requirements set forth in the proposed rule, could encourage listed companies to take extra care to ensure that their filed reports are timely and accurate, which would protect investors and the public interest. To the extent this occurs, the Commission believes that the proposal also has the potential to enhance the reliability of reports filed by companies listed on the Exchange as well as investor confidence in such reports, which should help to perfect the mechanism of a free and open market.

Proposed Section 1007 also gives the Exchange discretion in certain areas when a filing fails to include an element required by the applicable Commission form and the Exchange determines in its sole discretion that such deficiency is material in nature. Proposed Section 1007 provides a non-exclusive list of elements that, if missing from a filing, would cause the Exchange to deem the company to have incurred a Filing Delinquency. The Commission notes that any determination by the Exchange that a missing element is not material for purposes of a Filing Delinquency has no effect on the company's compliance with Commission rules. The Commission further notes that while there is a provision in the new rules concerning a listed company that files a Form 8–K or Form 6–K announcing a Non-Reliance Disclosure having 60 days to correct its financial statements, the proposal makes clear that the Filing Delinquency will date from the original announcement of the Non-Reliance Disclosure if it is not cured within 60 days. This will ensure that the period for curing a Non-Reliance Disclosure will not extend past the 12 month period given to listed companies that have had another type of Filing Delinquency.

The Commission notes that the time periods allowed to cure a Filing Delinquency are maximums for purposes of continued listing. The new provisions being adopted provide additional transparency to investors and the marketplace but also give the Exchange discretion to analyze the particular case and consider whether it is appropriate to commence suspension and delisting procedures immediately based on the particular facts, as well giving the Exchange discretion to grant an additional six month cure period, or shorten any time periods previously given. The new rules provide additional transparency by setting forth certain factors that may cause immediate delisting or shortened periods, such as resignation of a company's chief executive officer, financial officer or members of the audit committee; allegations of fraud or other illegality in relation to financial reporting; and past history of late filings. We expect the Exchange to carefully review each Filing Deficiency and ensure that the public interest is being served by continued trading. As noted above, the importance of timely and complete Commission filings to ensure that investors and the marketplace have accurate and up-to-date information about publicly traded companies is of extreme importance for confidence in our public markets.[48]

[44] *See, e.g.,* Securities and Exchange Act Release No. 51777 (June 2, 2005), 70 FR 33573 (June 8, 2005).

[45] Hereinafter, quarterly and semi-annual reports shall be referred to as ''interim reports.''

[46] *See supra* note 28.

[47] *See supra* note 33 and accompanying text.

[48] As noted above, the Exchange strongly encourages companies to provide ongoing disclosure on the status of the Delinquent Report and any Subsequent Reports to the market through press releases, and would also take the frequency and detail of such information into account in determining whether an Additional Cure Period is appropriate. The Commission believes such disclosures are very important to the marketplace during the delinquency period.

The Commission believes that the amendments to Chapter Six of the Company Guide will add clarity to the periodic reporting requirements in connection with proposed Section 1007. For example, as noted above, the deletion and replacement in Section 610(a) of a reference to Section 1002(d) regarding delisting procedures with proposed Section 1007 will avoid confusion among investors and companies about the applicable rules for failure to timely file an annual report with the Commission. In addition, the Commission believes the proposed modifications to delete Sections 611 through 613 of the Company Guide are reasonably designed to protect investors and the public interest by removing obsolete language that will be replaced with a more detailed compliance regime in proposed Section 1007.

The Commission further believes the Exchange's deletion of the specific enumerated disclosures with regard to outstanding options in Section 610(a) of the Company Guide is consistent with the Exchange Act since listed companies are already required to comply with the Commission's disclosure regime for options in the companies' Form 10–K. In this regard the Commission believes it is reasonable for the Exchange to determine it will defer to Commission disclosure requirements as to options, some of which are similar to the NYSE requirements.[49] Similarly, the deletion of outdated references to the Exchange's StockWatch and Listing Qualifications Departments in Section 610(b) of the Company Guide and their replacement with a statement that companies should comply with the Exchange's material news policies set forth in Sections 401 and 402 would provide additional transparency to a listed company on the disclosure steps that it must take when it receives an audit opinion that contains a going concern emphasis.[50]

Additionally, the Commission believes that the amendment to require the public announcement of the existence of a going concern in an audit opinion be made contemporaneously with the filing of such audit opinion with the Commission furthers investor protection by ensuring that investors are made aware, as soon as possible, of material information that may impact their investment decisions. The Commission also notes that eliminating the possibility that a company can delay the public announcement of a going concern opinion for up to seven days, as currently permitted under the Company Guide, will help to further investor protection consistent with Section 6(b)(5) of the Exchange Act.

Finally, the Commission believes the proposed amendment to harmonize the semi-annual reporting requirement by foreign private issuers in new Section 110(e) with the applicable rule in the NYSE Manual would provide a more precise compliance guideline and establish a minimum interim reporting regime applicable to all listed foreign private issuers.[51] Additionally, the Commission believes the proposed amendment is consistent with the investor protection objectives of Section 6(b)(5) because it is reasonably designed to ensure that foreign private issuers provide timely financial information that is necessary to enable investors to make informed investment decisions.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[52] that the proposed rule change (SR–NYSEMKT–2017–23) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–13590 Filed 6–28–17; 8:45 am]

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[49] *See supra* note 5 and accompanying text.

[50] The Commission further believes that the Exchange's proposal to update the reference to a going concern ''qualification'' with a reference to a going concern ''emphasis'' would align the Exchange's rules more accurately with general accounting characterizations.

[51] *See, e.g.,* Section 203.03 of the NYSE Manual.

[52] 15 U.S.C. 78f(b)(2).

[53] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81011; File No. SR–FINRA–2017–012]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change To Reduce the Delay Period for Transactions Included in the Historic TRACE Data Sets Relating to Corporate and Agency Debt Securities

June 23, 2017.

I. Introduction

On May 12, 2017, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 7730 (Trade Reporting and Compliance Engine (TRACE)) to reduce the minimum delay from 18 months to six months for transactions included in the Historic TRACE Data Sets relating to corporate and agency debt securities. The proposed rule change was published for comment in the **Federal Register** on May 22, 2017.[3] The Commission did not receive any comments on the proposal.[4] For the reasons discussed below, the Commission approving the proposed rule change.

II. Description of the Proposal

FINRA Rule 7730, among other things, sets forth the TRACE data products offered by FINRA and the fees applicable to such products. In addition to a real-time data feed, FINRA offers a Historic Corporate Bond Data Set, Agency Data Set, Securitized Product Data Set, and Rule 144A Data Set (collectively, the ''Historic TRACE Data'').[5] The Historic TRACE Data includes information such as the price, date, time of execution, yield, and uncapped volume for each transaction occurring at least 18 months ago.[6] FINRA originally established this 18-month delay to address the possibility that the Historic TRACE Data might be used to identify positions or strategies of market participants.[7] FINRA has proposed to reduce the delay applicable to transactions included in the Historic Corporate Bond Data Set and the Historic Agency Data Set—and Rule 144A transactions in corresponding securities (together, the ''Corporate and Agency Historic TRACE Data'')—from a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 80685 (May 16, 2017), 82 FR 23385 (May 22, 2017) (''Notice'').

[4] FINRA previously solicited comments on the proposal as *Regulatory Notice* 15–24 (June 2015) and received four comments. *Regulatory Notice* 15–24 and the related comment letters are available as Exhibit 2 to the Notice on both FINRA and the SEC's Web sites.

[5] The Historic TRACE Data originally included only the Corporate Bond and Agency Data Sets. The Securitized Product Data Set and the Rule 144A Data Set were added later as information about transactions in those securities became subject to public dissemination. FINRA has stated that additional securities may be included in Historic TRACE Data as they become subject to public dissemination.

[6] Historic TRACE Data also may include transactions or items of information that were not previously disseminated, such as exact trade volumes, where the real-time disseminated amount was capped.

[7] *See* Securities Exchange Act Release No. 56327 (August 28, 2007), 72 FR 51689, 51690 (September 10, 2007).

minimum of 18 months to a minimum of six months.[8]

FINRA has stated that researchers and other non-dealers have been the primary subscribers to Historic TRACE Data. FINRA has attributed the lack of usage by dealers to the minimum 18-month delay period for including transactions in the Corporate and Agency Historic TRACE Data. FINRA has stated that it is not aware of any complaints regarding information leakage under the current 18-month delay, and that market participants have indicated that a reduction in the minimum delay to six months would make the product more useful.

FINRA believes that a minimum six-month delay would promote the goal of increased transparency for transactions in TRACE-Eligible Securities while continuing to address information leakage concerns.[9] In support of that belief, FINRA conducted a sampling analysis of past transactions in both corporate and agency bonds to assess whether positions or strategies of market participants could be identified if the Corporate and Agency Historic TRACE Data had included transactions that were aged only six months.[10] Based on this analysis, FINRA concluded that ''the proposed rule, if it had been in place, would have provided little additional information to the public relative to these positions'' [11] and that a reduction of the delay would be ''a limited risk for smaller issues that are held by a limited number of market participants.'' [12]

To further address concerns about information leakage, FINRA solicited comment from its members on an earlier iteration of the proposed rule change.[13] FINRA received four comment letters and made certain revisions to its initial proposal to respond to those concerns before filing the current proposal with the Commission.[14] The Commission notes that it has received no comments on the version of the proposed rule change published by the Commission.

FINRA stated that it will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 120 days following publication of the *Regulatory Notice.*

III. Discussion

After carefully consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[16] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that, because the proposed rule change does not require firms to provide FINRA with any additional data, it will not have any operational impact on firms. Furthermore, the purchase of TRACE data products is optional for members and others. Finally, in light of FINRA's analysis of past transactions in corporate and agency debt securities and the revisions that FINRA made to its first iteration of the proposal, the Commission believes that reducing the period before which transactions in such securities are included in the Historic TRACE Data from a minimum of 18 months to six months is reasonably designed to promote transparency and respond to consumer demand for a more useful market data product, while minimizing the potential for information leakage.

IV. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Act [17] that the proposed rule change (SR–FINRA–2017–012) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81008; File No. SR–OCC–2017–015]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning the U.S. Market Transition to a Shortened Settlement Cycle

June 23, 2017.

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 June 9, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below. Items I and II have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(4)(i) [4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change by OCC concerns the amendment of OCC's By-Laws and Rules in connection with recent amendments adopted by the Commission to Rule 15c6–1(a) [5] under the Act. The amendments to Rule 15c6–1(a) [6] shorten the standard settlement cycle for most broker-dealer securities transactions from three business days after the trade date to two business days after the trade date.

The proposed changes to OCC's By-Laws and Rules were included in Exhibits 5A and 5B of the filing, respectively.

[8] FINRA has not proposed to change the 18-month delay for transactions included in the Historic Securitized Product Data Set.

[9] FINRA noted that the Municipal Securities Rulemaking Board (''MSRB'') disseminates in real time the exact par value on all transactions with a par value of $5 million or less, and includes an indicator (''MM+'') in place of the exact par value on transactions where the par value is greater than $5 million until the fifth business day. MSRB disseminates the exact par value for each transaction on the fifth day after the transaction. *See* MSRB Rule G–14.

[10] *See* Notice, 82 FR 23387–89.

[11] *Id.* at 23388.

[12] *Id.* at 23389.

[13] *See supra* note 4.

[14] *See* Notice, 82 FR at 23389.

[15] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78o–3(b)(6).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(4)(i).

[5] 17 CFR 240.15c6–1(a).

[6] *Id.*

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[7]

(A) Clearing Agency'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 amend OCC's By-Laws and Rules in connection with recently adopted amendments to Commission Rule 15c6–1(a) to shorten the standard settlement cycle for most broker-dealer transactions regarding the purchase or sale of securities from three business days after the trade date (''T+3'') to two business days after the trade date (''T+2'').[8] The compliance date regarding these amendments is September 5, 2017.[9]

Background

Commission Rule 15c6–1 establishes a standard settlement cycle for most purchases or sales of securities by broker-dealers. The Commission adopted Rule 15c6–1(a)[10] in 1993 to establish T+3 as the standard trade settlement cycle (instead of five business days after the trade date), and it became effective in June of 1995.[11] In March of 1995, the Commission approved changes to OCC's Rules that were proposed to ensure consistency with the new T+3 standard settlement cycle.[12]

Since the change to T+3, the Commission and the financial services industry have continued to explore the idea of shortening the settlement cycle even further.[13] In April 2014, DTCC published a recommendation to shorten the standard U.S. trade settlement cycle to T+2 and announced that it would partner with market participants and industry organizations to devise the necessary approach and timelines to achieve T+2.[14] To improve the efficiency of the U.S. settlement system by reducing the attendant risks in the T+3 settlement of securities transactions, and to align U.S. markets with the standard settlement cycles in other major global markets that have already moved to T+2, DTCC, in collaboration with the financial services industry, formed an Industry Steering Committee (''ISC'') and an industry working group and sub-working groups to facilitate the move to T+2.[15] In June of 2015, the ISC published a White Paper outlining the activities and proposed timeframes that would be required to move to T+2 in the U.S.[16] Concurrently, SIFMA and the ICI jointly submitted a letter to Commission Chair White expressing support of the financial service industry's efforts to shorten the settlement cycle and identified amendments to Rule 15c6–1(a) that they believed would be necessary for an effective transition to T+2.[17] In March 2016, the ISC announced an industry target date of September 5, 2017, for the transition to T+2.[18]

On September 28, 2016, the Commission proposed amendments to Rule 15c6–1(a) to shorten the standard settlement cycle to T+2 on the basis that the shorter settlement cycle would reduce the risks that arise from the value and number of unsettled securities transactions prior to completion of settlement, including credit, market and liquidity risks faced by U.S. market participants.[19] On March 22, the Commission adopted the amendments to Rule 15c6–1(a) as proposed.[20] In light of this action by the SEC, OCC is proposing amendments to its By-Laws and Rules in connection with the T+2 settlement cycle and to do so by the Commission's designated compliance date of September 5, 2017.

Proposed Changes to OCC By-Laws and Rules

OCC is proposing changes to the following By-Laws and Rules in connection with the recently-amended Rule 15c6–1(a) and the particular changes are discussed in more detail below:

- OCC Rule 901 (Settlement Through Correspondent Clearing Corporations);[21]
- OCC Rule 903 (Obligation to Deliver);
- OCC Rule 1302 (Delivery of Underlying Securities);
- OCC Rule 1503 (Exercise Settlement Date for Event Options and Range Options);
- Article XXI of OCC's By-Laws (Stock Loan/Hedge Program);
- OCC Rule 2208 (Settlement Date);
- OCC Rule 2209A (Termination of Market Loans); and
- OCC Rule 2502 (Settlement Date for BOUNDs).

First, OCC proposes to amend certain of its Rules that govern settlement of physically-settled options and futures through NSCC. Chapter IX of OCC's

[7] OCC's By-Laws and Rules can be found on OCC's public Web site: *http://optionsclearing.com/about/publications/bylaws.jsp.*

[8] Securities Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564 (March 29, 2017).

[9] *Id.*

[10] 17 CFR 240.15c6–1(a). Rule 15c6–1(a) provides, in relevant part, that ''a broker or dealer shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.''

[11] Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (final rule adopting Rule 15c6–1); 34952 (November 9, 1994), 59 FR 59137 (changing the effective date of the final rule from June 1, 1995 to June 7, 1995).

[12] Securities Exchange Act Release No. 35552 (March 30, 1995), 60 FR 17600 (April 6, 1995) (SR–OCC–94–11).

[13] *See e.g.,* Securities Industry Association, ''SIA T+1 Business Case Final Report'' (July 2000); Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922 (March 18, 2004) (Concept Release: Securities Transactions Settlement); The Depository Trust & Clearing Corporation (''DTCC''), ''Proposal to Launch a New Cost-Benefit Analysis on Shortening the Settlement Cycle'' (December 2011).

[14] *See* DTCC, ''DTCC Recommends Shortening the U.S. Trade Settlement Cycle'' (April 2014).

[15] The ISC includes, among other participants, DTCC, the Securities Industry and Financial Markets Association (''SIFMA'') and the Investment Company Institute (''ICI'').

[16] *See* ''Shortening the Settlement Cycle: The Move to T+2'' (June 18, 2015).

[17] *See* Letter from ICI and SIFMA to Mary Jo White, Chair, SEC, dated June 18, 2015; *see also* Letter from Mary Jo White, Chair to Kenneth E. Bentsen, Jr. President and CEO, SIFMA, and Paul Schott Stevens, President and CEO, ICI, dated September 16, 2015 (expressing support for industry efforts to shorten the trade settlement cycle to T+2 and indicating a commitment to developing a proposal to amend Rule 15c6–1(a) to require standard settlement no later than T+2).

[18] *See* ISC Media Alert: ''US T+2 ISC Recommends Move to Shorter Settlement Cycle On September 5, 2017'' (March 7, 2016).

[19] Securities Exchange Act Release No. 78962 (September 28, 2016), 81 FR 69240 (October 5, 2016); *see also* Commission Press Release 2016–200: ''SEC Proposes Rule Amendment to Expedite Process for Settling Securities Transactions'' (September 28, 2016).

[20] Securities Exchange Act Release No. 80295, *supra* note 8.

[21] Article I, Section 1.C.(33) of OCC's By-Laws defines the term ''correspondent clearing corporation'' to mean National Securities Clearing Corporation (''NSCC'') or any successor thereto which, ''by agreement with [OCC], provides facilities for settlements in respect of exercised option contracts or BOUNDs or in respect of delivery obligations arising from physically-settled stock futures.''

Rules addresses delivery and payment obligations arising out of the exercise of physically-settled stock option contracts and the maturity of physically-settled stock futures contracts. Rule 901 requires that certain obligations be settled through the facilities of NSCC. Rule 901(d) permits OCC to revoke a specification in any Delivery Advice that settlement be made through the facilities of NSCC at any time prior to the opening of business on the delivery date by an appropriate notice to the Receiving and Delivering Clearing Members.[22] In particular, Rule 901(d) allows specified OCC senior officers to extend or postpone the time for delivery to no more than three business days after the date that OCC revokes such a settlement specification. OCC proposes to amend this provision to make such an extension or postponement consistent with the new T+2 settlement cycle. Accordingly, under the proposed rule change, the amount of time that OCC has to extend or postpone the time of delivery would be changed to two business days.

Rule 903 governs the obligation of a Clearing Member to deliver when either a Delivery Advice or OCC directs that settlement be made on a broker-to-broker basis. It currently specifies the delivery date for physically-settled options as the third business day following the day on which the exercise notice was, or is deemed to have been, properly tendered to OCC. Rule 903 also generally specifies the delivery date for physically settled security futures as the third business day following the maturity date. Under the proposed rule change, these references in Rule 903 to the ''third'' business day would be changed to the ''second'' business day.

Second, OCC proposes to amend Rule 1302 concerning the delivery of underlying securities for physically-settled stock futures. With certain exceptions, Rule 1302 currently provides that the delivery date for a physically-settled stock future is the third business day following the maturity date of the applicable series. Under the proposed rule change, the reference to the ''third'' business day would be changed to ''second'' business day.

Third, OCC proposes to amend Rule 1503 concerning the exercise settlement date for credit default options and credit default basket options. With certain exceptions, Rule 1503 currently provides that the exercise settlement date for a credit default option and credit default basket option is the third business day following the date on which the option is deemed to have been exercised. Under the proposed rule change, the reference to the ''third'' business day would be changed to ''second'' business day.

Fourth, OCC proposes to amend a provision of its By-Laws and certain Rules concerning its two Stock Loan Programs: The Hedge Program and Market Loan Program. In the Hedge Program, OCC acts as the guarantor for Stock Loans that are initiated bilaterally between Clearing Members through The Depository Trust Company (''DTC''). Under Article XXI, Section 2(c) of OCC's By-Laws, OCC may terminate outstanding Hedge Loans under certain conditions. If any Hedge Loans are so terminated by OCC, it is required to provide written notice thereof to all affected Hedge Clearing Members to specify the date on which such termination is to become effective, which shall be at least three stock loan business days after the date of such notice. OCC proposes to amend this provision to make the effective date of such a termination consistent with the new T+2 settlement cycle. OCC therefore proposes to amend Section 2(c) of Article XXI to change the minimum number of days between notice and termination from three to two.

Rule 2208(a) currently provides the settlement date for the termination of a Hedge Loan shall be the earlier of: (1) The date on which the Borrowing Clearing Member initiates the termination or (2) the date that is three stock loan business days after the date on which the Lending Clearing Member initiates the termination. OCC proposes to amend Rule 2208(a) to change ''three'' stock loan business days to ''two'' stock loan business days.

In the Market Loan Program, OCC acts as the guarantor for Market Loans that are initiated through the matching of bids and offers that are either agreed upon by the Market Loan Clearing Members or matched anonymously through a Loan Market. Typically, a Market Loan is terminated through the process of a Market Loan Clearing Member providing notice to the Loan Market to call for the recall or return of a specified quantity of Loaned Stock. The Loan Market sends details of the matched return or recall transaction to OCC, and OCC validates the transaction and sends a pair of delivery orders to DTC for settlement in connection with the recall or return. Rule 2209A(a)(3) currently provides that if a recall transaction fails to settle by the Settlement Time on the third stock loan business day following the day that the transaction was first submitted, the Lending Clearing Member may choose to execute a buy-in of the Loaned Stock. OCC proposes to change the reference to ''third'' stock loan business day to ''second'' stock loan business day.

Under Rule 2209A(d), OCC may terminate outstanding Market Loans under certain conditions. If any Market Loans are so terminated by OCC, it is required to provide written notice thereof to all affected Market Loan Clearing Members to specify the date on which such termination is to become effective, which shall be at least three stock loan business days after the date of such notice. OCC proposes to amend this provision to make the effective date of such a termination consistent with the new T+2 settlement cycle. OCC therefore proposes to amend Rule 2209A(d) to change the minimum number of days between notice and termination from three to two.

Fifth, OCC proposes to amend Rule 2502 concerning the settlement date for BOUNDs in Chapter XXV of OCC's Rules. Rule 2502 currently provides the settlement date for a BOUND is the third business day following the expiration date. Under the proposed rule change, the settlement would be changed to the second business day following the expiration date.

Implementation

OCC would implement the proposed rule change in coordination with the Commission's September 5, 2017, compliance date for the amendments to Rule 15c6–1(a) and the transition to T+2 and would provide advance notice to Clearing Members of the implementation through an Information Memo. OCC will include a footnote in its By-Laws and Rules with each rule that will change under this proposed rule change noting that each such rule will be updated on September 5, 2017, to reflect the transition to the new T+2 settlement cycle. As part of that footnote, OCC will also include a link to documents on OCC's public Web site that show the updates to OCC's rules that are being made in this proposed rule change. OCC intends for these updates to be self-executing on September 5, 2017.

[22] OCC recently proposed changes to existing Rule 901(d) in connection with advance notice and proposed rule change filings related to a new Stock Options and Futures Settlement Agreement between OCC and the National Securities Clearing Corporation. *See* SR–OCC–2017–013 and SR–OCC–2017–804. The proposed changes to Rule 901(d) currently pending Commission review in SR–OCC–2017–013 and SR–OCC–2017–804 are indicated in Exhibit 5B with double underlined and double strikethrough text.

2. Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [23] and the rules thereunder applicable to OCC. Section 17A(b)(3)(F) requires, among other things, that rules of a clearing agency be designed ''to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest[.]'' [24] OCC believes the proposed rule change is consistent with these requirements because it would coordinate the terms of certain OCC rules with the Commission's amendments to Rule 15c6–1(a) to support a T+2 standardized settlement cycle. Specifically, where a current OCC By-Law or Rule is based upon or otherwise references the T+3 standardized securities settlement cycle, the provision would be changed to support T+2. Harmonizing OCC's By-Laws and Rules with the new T+2 standardized settlement cycle would also remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions by, for example, ensuring that OCC's By-laws and Rules that are related to T+2 are consistent with the rules concerning the standardized settlement cycle that are maintained by the exchanges for which OCC clears and settles transactions and the rules of clearing agencies, such as NSCC and DTC, that provide clearance and settlement services for securities transactions that underlie physically-settled stock option and physically-settled stock future contracts cleared by OCC. OCC believes that conforming certain of its By-Laws and Rules to the Commission's new standardized settlement cycle would also protect investors and the public interest by ensuring that OCC provides clearance and settlement services in a manner that supports the Commission's requirements for the T+2 standardized settlement cycle.

OCC believes the proposed changes are also consistent with the requirements in Commission Rule 17Ad–22(e)(1).[25] The changes are designed to modify OCC's By-Laws and Rules that would otherwise become outdated upon the change to the T+2 standardized settlement cycle. Therefore, OCC believes that the proposed changes promote compliance and consistency with the requirements in Rule 17Ad–22(e)(1) to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent and enforceable legal basis. Maintaining provisions in OCC's publicly available By-Laws and Rules that are consistent at all times with the standardized settlement cycle that is specified in Commission Rule 15c6–1(a) helps ensure that OCC's By-Laws and Rules remain well-founded, clear, transparent and enforceable.

The proposed rule change is not inconsistent with the existing rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[26] OCC does not believe that the proposed rule change would impose any burden or have any impact on competition. The proposed rule change would implement conforming changes within OCC's By-Laws and Rules to ensure consistency with amendments recently adopted by the Commission in Rule 15c6–1(a) to change the standard securities settlement cycle to T+2. All Clearing Members would be equally subject to these conforming changes, and the proposed changes would not provide any Clearing Member with a competitive advantage over any other Clearing Member. This proposed rule change would also not inhibit access to OCC's services or disadvantage or favor any particular user in relationship to another. As a result, OCC believes the proposed rule change would not impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [27] and paragraph (f)(4)(i) of Rule 19b–4 [28] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[29]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2017–015 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2017–015. 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

[23] 15 U.S.C. 78q–1(b)(3)(F).

[24] *Id.*

[25] 17 CFR 240.17Ad–22(e)(1).

[26] 15 U.S.C. 78q–1(b)(3)(I).

[27] 15 U.S.C. 78s(b)(3)(A)(iii).

[28] 17 CFR 240.19b–4(f)(4)(i).

[29] Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation § 40.6.

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 OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_17_015.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2017–015 and should be submitted on or before July 20,2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–13583 Filed 6–28–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81007; File No. SR–FINRA–2017–021]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 7730 To Make Available a New TRACE Security Activity Report

June 23, 2017.

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 June 19, 2017, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 7730 to make available a new TRACE Security Activity Report.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 7730 (Trade Reporting and Compliance Engine (TRACE)), among other things, sets forth the TRACE data products offered by FINRA in connection with TRACE-Eligible Securities.[3] FINRA is proposing to amend Rule 7730 to make available a new TRACE Security Activity Report, which would provide aggregated statistics by security for TRACE-Eligible Securities that are corporate or agency bonds (collectively ''CA Bonds'').[4]

The proposed TRACE Security Activity Report would contain basic descriptive security elements for each CA Bond (such as the issuer's name and the security's coupon and maturity date). In addition, the proposed report would provide subscribers with transaction totals, a measure of market concentration to indicate the extent to which activity in the security is concentrated within a few market participant identifiers (MPIDs),[5] and more detailed aggregate par value volume information in a particular CA Bond than would be available in Real-Time TRACE transaction data. Today, the actual par value traded is available in the short-term only for transactions with sizes up to the applicable dissemination cap.[6] Transactions with sizes over the capped amount become available only after 18 months as part of the Historic TRACE Data product.

The proposed TRACE Security Activity Report would provide insight into the level of activity in CA Bonds during a given month. Specifically, in addition to overall aggregate par value volume, the proposed TRACE Security Activity Report would provide information on the par value volume of customer buys, the par value volume of customer sells and the par value volume of inter-dealer transactions. The proposed TRACE Security Activity Report would reflect par value volume information using either capped amounts or actual par value volume, as follows. For uncapped transactions, the proposed TRACE Security Activity Report would reflect the actual trade size of each transaction (*i.e.,* the transaction size disseminated in Real-Time TRACE transaction data). If there are six or more capped transactions disseminated during the calendar month, the aggregate par value volume would reflect the actual trade size of each transaction, as well as the par value traded that falls within specified size categories (*e.g.,* the aggregate par value traded for transactions with a size greater than the dissemination cap up to $10 million and the aggregate par value traded for transactions with a size greater than $10 million).[7]

However, if there are fewer than six disseminated capped transactions during the calendar month, the TRACE Security Activity Report would reflect the capped volumes disseminated in Real-Time TRACE transaction data. Accordingly, the report would only reflect the actual par value traded (*i.e.,* the amount reported by the member to TRACE) where there have been at least

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 6710 (Definitions) provides that a ''TRACE-Eligible Security'' is a debt security that is United States (''U.S.'') dollar-denominated and issued by a U.S. or foreign private issuer, and, if a ''restricted security'' as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; or is a debt security that is U.S. dollar-denominated and issued or guaranteed by an Agency as defined in paragraph (k) or a Government-Sponsored Enterprise as defined in paragraph (n); or a U.S. Treasury Security as defined in paragraph (p). ''TRACE-Eligible Security'' does not include a debt security that is issued by a foreign sovereign or a Money Market Instrument as defined in paragraph (o).

[4] FINRA intends to establish a fee for the TRACE Security Activity Report prior to the effective date of the instant proposed rule change. The fee will be established pursuant to a separate rule filing.

[5] One member may use multiple MPIDs.

[6] Due to transaction confidentiality concerns, FINRA has applied ''dissemination caps'' for purposes of dissemination. Specifically, for transactions in investment grade corporate bonds and in agency bonds over a 5 million dollar par value, TRACE disseminates the size as ''5MM+.'' For transactions in non-investment grade corporate bonds over a 1 million dollar par value, TRACE disseminates the size as ''1MM+.''

[7] If the SEC approves this proposal, the size categories will be announced in the *Regulatory Notice* announcing the effective date of the new TRACE Security Activity Report. The size category thresholds will be based on a multiple of the dissemination cap, *e.g.,* up to or over $10 million, which would be two times the investment grade dissemination cap. The number of size categories also may be adjusted (*e.g.,* up to $10 million; over $10 million up to $20 million; over $20 million) based on FINRA's experience with the data product.

six capped transactions during the calendar month. As a measure to further address possible confidentiality concerns, FINRA proposes that the TRACE Security Activity Report be provided on a 90-day delay.

The proposed TRACE Security Activity Report also would provide the total number of transactions disseminated for each CA Bond as well as the number of customer buy transactions, the number of customer sell transactions and the number of inter-dealer transactions. In addition, the proposed TRACE Security Activity Report would provide incremental ranges (*e.g.,* fewer than or equal to 5, between 6 and 10, etc.) for the number of transactions with a par value volume within specified size categories (*e.g.,* the number of trades with a size greater than the dissemination cap up to $10 million, and the number of trades with a size of $10 million or greater).

The proposed TRACE Security Activity Report also would provide information regarding the number of unique reporting MPIDs and statistics for the aggregate activity of the five most active MPIDs in each CA Bond. Specifically, the proposed TRACE Security Activity Report would provide the number of unique reporting MPIDs for disseminated uncapped and capped transactions. The number of unique reporting MPIDs would be provided by displaying the actual number of unique MPIDs where there are six or more unique MPIDs, or ''1 to 5,'' as applicable, where there are five or fewer reporting MPIDs. For capped transactions, the number of unique reporting MPIDs would be provided by displaying the actual number of unique MPIDs where there are six or more unique MPIDs, or ''0'' or ''1 to 5,'' as applicable, where there are five or fewer reporting MPIDs.

The market participants that engaged in the transactions will not be identified in the proposed TRACE Security Activity Report. The TRACE Security Activity Report also would provide the percentage of the total number of transactions traded by the top five MPIDs for each CUSIP and the percentage of total par value traded by the top five MPIDs for each CUSIP. The percentage of the total number of transactions and total par value traded for the top 5 MPIDs will be provided irrespective of the number of capped transactions (*e.g.,* where there is only one MPID, the number of unique MPIDs will be displayed as ''1 to 5'' and both the number of transactions and par value percentages will be displayed as 100%).

FINRA believes that the proposed TRACE Security Activity Report may be useful to interested parties for business as well as regulatory purposes. For example, members may use the information provided in the TRACE Security Activity Report to better ascertain their relative level of trading activity in particular CA Bonds. Interested parties also may use the information in the proposed report in connection with regulatory obligations—*e.g.,* in assessing, classifying and reviewing the liquidity risk of individual securities pursuant to Rule 22e–4 under the Investment Company Act.[8]

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.* The effective date will be no later than 365 days following SEC approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Pursuant to the proposal, FINRA would make available to subscribers an optional data product to provide aggregated statistics by security for CA Bonds. FINRA believes that the TRACE Security Activity Report could benefit market participants and others interested in corporate and agency bond transaction data, including information on actual transaction volume that currently would not be ascertainable for 18 months after the date of the transaction (as part of the Historic TRACE Data product). FINRA believes that the measures proposed to mitigate any potential confidentiality concerns—*e.g.,* aggregate volume would reflect actual volume only where there were six or more total disseminated capped transactions during the calendar month—strikes an appropriate balance in providing additional transparency on the overall trading activity in a particular CA Bond, while remaining sensitive to confidentiality concerns. Thus, FINRA believes that the proposed rule change is in the public interest and consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Analysis

FINRA's existing Real-Time TRACE data product provides transaction data for the following Data Sets: Corporate Bond Data, Agency Data Set, SP Data Set, and Rule 144A Data Set. As detailed above, FINRA is proposing to create a TRACE Security Activity Report to provide additional aggregated statistics by security for CA Bonds, as an alternative or in addition to the transaction data contained in the Real-Time TRACE product. The TRACE Security Activity Report would be available on an optional basis to subscribers. The proposed rule change would expand the benefits of FINRA's TRACE initiatives by providing additional transparency on CA Bonds, as the product would provide subscribers with more detailed volume information on the overall trading activity in a particular CA Bond.

The proposal to create a new TRACE Security Activity Report would not impose any additional reporting requirements or costs on firms, and the purchase of TRACE data products would continue to be optional for market participants and others and, as a result, would have no direct impact on firms. However, FINRA also considered the potential for indirect costs regarding possible information leakage due to the inclusion of the number of unique reporting MPIDs. FINRA believes that information contained in the TRACE Security Activity Report alone is not sufficient to discover the true identity of other MPIDs by market participants, where the only information used in the analysis is the information to be contained in this product. However, there may exist other publicly available datasets that can be used in conjunction with the proposed TRACE Security Activity Report.[10] FINRA acknowledges

[8] *See* SEC Press Release 2016–215 (October 13, 2016) (SEC Adopts Rules to Modernize Information Reported by Funds, Require Liquidity Risk Management Programs, and Permit Swing Pricing). *See also* 17 CFR 270.22e–4.

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] One such dataset is sold by the National Association of Insurance Commissioners (NAIC) and contains detailed information about insurance company bond transactions, including the CUSIP of the bond traded along with identities of insurance companies and the dealers with whom each trade is completed, the date of the transaction, the amount traded and the price of the transaction. *See* Maureen O'Hara, Yihui Wang, and Xing (Alex) Zhou, *The Execution Quality of Corporate Bonds*

Continued

the potential for reverse engineering of the information contained in the TRACE Security Activity Report, in particular for bonds that are traded by a few market participants in a given month, to determine the true identities of other market participants, and FINRA has taken a number of measures, such as displaying information in buckets as discussed above, to reduce this risk and mitigate any potential impacts.

The proposed TRACE Security Activity Report would include a ''top 5'' snapshot for each CA Bond showing the percentage of the total number of transactions that is represented by the activity of the top five MPIDs, and the percentage of the total par value traded by the top five MPIDs. To the extent that market participants extract non-reported information from this report about concentration and competition in a specific bond, they may alter their demand, supply and pricing accordingly. Customers may potentially find it easier or harder to trade some bonds, and may see a change in the costs of trading, including search costs. Such changes may eventually express themselves as an indirect impact on the liquidity of these bonds.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2017–021 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–2017–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2017–021 and should be submitted on or before July 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–13582 Filed 6–28–17; 8:45 am]

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(June 1, 2016), *http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2680480.*

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81013; File No. SR–NYSEArca–2017–62]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to its NYSE Arca Options Fee Schedule and the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services To Add Access for Users to Two Third Party Systems and Connectivity to Six Additional Third Party Data Feeds

June 23, 2017.

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 June 16, 2017, 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 the Substance of the Proposed Rule Change

The Exchange proposes to (a) provide Users with access to two additional third party systems, connectivity to six additional third party data feeds, and connectivity to two additional third party testing feeds, and (b) remove a duplicative third party data feed. In addition, the Exchange proposes to change its NYSE Arca Options Fee Schedule (the ''Options Fee Schedule'') and the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the ''Equities Fee Schedule'' and, together with the Options Fee Schedule, the ''Fee Schedules'') related to these co-location services. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the co-location [4] services offered by the Exchange to (a) provide Users [5] with access to two additional third party systems, connectivity to six additional third party data feeds, and connectivity to two additional third party testing feeds, and (b) remove a duplicative third party data feed. In addition the Exchange proposes to make the corresponding changes to the Exchange's Fee Schedules related to these co-location services.

As set forth in the Fee Schedules, the Exchange charges fees for connectivity to the execution systems of third party markets and other content service providers (''Third Party Systems''), data feeds from third party markets and other content service providers (''Third Party Data Feeds''), and third party testing feeds.[6] The lists of Third Party Systems and Third Party Data Feeds are set forth in the Fee Schedules.

The Exchange now proposes to make the following changes:

- add two content service providers to the list of Third Party Systems: Euronext Optiq Cash and Derivatives Unicast (EUA), and Euronext Optiq Cash and Derivatives Unicast (Production) (together, the ''Additional Third Party Systems'' or ''ATPS'');
- add six feeds to the list of Third Party Data Feeds:
  - Euronext Optiq Compressed Cash, Euronext Optiq Compressed Derivatives, Euronext Optiq Shaped Cash and Euronext Optiq Shaped Derivatives (together, the ''Additional Euronext Third Party Data Feeds''); and
  - CME Group (''CME'') and International Securities Exchange (''ISE'') (together, with the Additional Euronext Third Party Data Feeds, the ''Additional Third Party Data Feeds'' or ''ATPD''); and
- add two new testing feeds, Euronext Optiq Cash EUA and the Euronext Optiq Derivatives EUA; and
- remove the Euronext Third Party Data Feed (the ''Current Euronext Feed'') from the list of Third Party Data Feeds, because the Current Euronext Feed is similar to the Euronext Optiq Compressed Derivatives feed that the Exchange now proposes to add as a Third Party Data Feed.[7]

The proposed Additional Third Party Systems, Additional Euronext Third Party Data Feeds and new testing feeds are new services and products from the third party content service provider, Euronext N.V. (collectively, the ''Euronext Products''). Euronext N.V. (''Euronext'') is expected to make the Euronext Products available no later than September 30, 2017.

The Exchange would provide access to the Additional Third Party Systems (''Access'') and connectivity to the Additional Third Party Data Feeds and new testing feeds (''Connectivity'') as conveniences to Users. Use of Access or Connectivity would be completely voluntary. The Exchange is not aware of any impediment to third parties offering Access or Connectivity.

Because the Euronext Products are not yet available, the Exchange does not know whether third parties will offer Users access and connectivity options to connect to the Euronext Products. Similarly, the Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users connectivity to the CME and ISE Additional Third Party Data Feeds, as such third parties are not required to make that information public. However, if one or more third parties opt to offer (or, in the case of the CME and ISE Additional Third Party Data Feeds, presently offer) such access and connectivity to Users, a User may opt to access or connect to such services and products through a connection to an Exchange access center outside the data center, through another User, a third party access center or a third party vendor. In such a case, depending on the service offered by the third party, the User would be able to make such connection through the Exchange's Secure Financial Transaction Infrastructure (''SFTI'') network, through a third party telecommunication provider, third party wireless network, or a combination thereof.

The proposed rule change relating to the CME and ISE Additional Third Party Data Feeds would become operative upon the effectiveness of the present rule filing. The proposed rule change relating to each Euronext Product would become operative when such Euronext Product became available from Euronext, which is expected to be no later than September 30, 2017, but may not be at the same time for each Euronext Product.[8] The Exchange will announce the dates that each Euronext Product will be available through customer notices disseminated to all Users simultaneously.

Connectivity to Additional Third Party Systems

The Exchange proposes to revise the Fee Schedules to provide that Users may obtain connectivity to the two Additional Third Party Systems for a fee. As with the current Third Party Systems, Users would connect to the Additional Third Party Systems over the internet protocol (''IP'') network, a local area network available in the data center.[9]

As with the current Third Party Systems, in order to obtain access to an Additional Third Party System, the User would enter into an agreement with the relevant third party content service provider, pursuant to which the third party content service provider would charge the User for access to the Additional Third Party System. The Exchange would then establish a unicast connection between the User and the relevant third party content service

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. See Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100) (the ''Original Co-location Filing''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE LLC'') and NYSE MKT LLC (''NYSE MKT and, together with NYSE LLC, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[6] *See* Securities Exchange Act Release No. 80310 (March 24, 2017), 82 FR 15763 (March 30, 2017) (SR–NYSEArca–2016–89).

[7] As discussed *infra,* the proposed Euronext Optiq Compressed Derivatives third party data feed will be offered in place of the Current Euronext Feed at the same price.

[8] As discussed *infra,* the Current Euronext Feed will not be removed until the proposed Euronext Optiq Compressed Derivatives third party data feed is available.

[9] *See* Securities Exchange Act Release No. 74219 (February 6, 2015), 80 FR 7899 (February 12, 2015) (SR–NYSEArca–2015–03) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

provider over the IP network.[10] The Exchange would charge the User for the connectivity to the Additional Third Party System. A User would only receive, and only be charged for, access to Additional Third Party Systems for which it enters into agreements with the third party content service provider.

The Exchange has no ownership interest in the Additional Third Party Systems. Establishing a User's access to an Additional Third Party System would not give the Exchange any right to use the Additional Third Party Systems. Connectivity to an Additional Third Party System would not provide access or order entry to the Exchange's execution system, and a User's connection to an Additional Third Party System would not be through the Exchange's execution system.

The Exchange proposes to charge a monthly recurring fee for connectivity to an Additional Third Party System. Specifically, when a User requests access to an Additional Third Party System, it would identify the applicable content service provider and what bandwidth connection it required.

The Exchange proposes to modify its Fee Schedules to add the Additional Third Party Systems to its existing list of Third Party Systems. The revised table would be as follows:

THIRD PARTY SYSTEMS

Americas Trading Group (ATG).
BATS.
Boston Options Exchange (BOX).
Chicago Board Options Exchange (CBOE).
Credit Suisse.
Euronext Optiq Cash and Derivatives Unicast (EUA).
Euronext Optiq Cash and Derivatives Unicast (Production).
International Securities Exchange (ISE).
Nasdaq.
NYFIX Marketplace.

The Exchange does not propose to change the monthly recurring fee the Exchange charges Users for unicast connectivity to each Third Party System, including the Additional Third Party Systems.

Connectivity to Additional Third Party Data Feeds

The Exchange proposes to revise the Fee Schedules to provide that Users may obtain connectivity to each of the six Additional Third Party Data Feeds for a fee. The Exchange would receive the Additional Third Party Data Feeds from the content service provider, at its data center. It would then provide connectivity to that data to Users for a fee. Users would connect to the Additional Third Party Data Feeds over the IP network.[11]

With respect to the Additional Euronext Third Party Data Feeds, the Exchange proposes to offer connectivity to both ''compressed'' and ''shaped'' data feeds. The Exchange expects that Euronext's shaped feeds will include more data than the compressed feeds.

In order to connect to an Additional Third Party Data Feed, a User would enter into a contract with the content service provider, pursuant to which the content service provider would charge the User for the Third Party Data Feed. The Exchange would receive the Third Party Data Feed over its fiber optic network and, after the content service provider and User entered into the contract and the Exchange received authorization from the content service provider, the Exchange would re-transmit the data to the User over the User's port. The Exchange would charge the User for the connectivity to the Additional Third Party Data Feed. A User would only receive, and would only be charged for, connectivity to the Additional Third Party Data Feeds for which it entered into contracts.

The Exchange has no affiliation with the sellers of the Additional Third Party Data Feeds. It would have no right to use the Additional Third Party Data Feeds other than as a redistributor of the data. The Additional Third Party Data Feeds would not provide access or order entry to the Exchange's execution system. The Additional Third Party Data Feeds would not provide access or order entry to the execution systems of the third parties generating the feed. The Exchange would receive the Additional Third Party Data Feeds via arms-length agreements and it would have no inherent advantage over any other distributor of such data.

As it does with the existing Third Party Data Feeds, the Exchange proposes to charge a monthly recurring fee for connectivity to each Additional Third Party Data Feed. The monthly recurring fee would be per Additional Third Party Data Feed. Depending on its needs and bandwidth, a User may opt to receive all or some of the feeds or services included in an Additional Third Party Data Feed.

The Exchange proposes to add the connectivity fees for the Additional Third Party Data to its existing list in the Fee Schedules. The additional items would be as follows:

Third party data feed	Monthly recurring connectivity fee per third party data feed
CME Group	$3,000
Euronext Optiq Compressed Cash	900
Euronext Optiq Compressed Derivatives	600
Euronext Optiq Shaped Cash	1,200
Euronext Optiq Shaped Derivatives	900
International Securities Exchange (ISE)	1,000

In addition, the Exchange proposes to remove the Current Euronext Feed from the list of Third Party Data Feeds when the proposed Euronext Optiq Compressed Derivatives third party data feed is available. The Exchange understands that the proposed Euronext Optiq Compressed Derivatives third party data feed is a similar platform to the Current Euronext Feed. The proposed Euronext Optiq Compressed Derivatives data feed will be offered at the same price as the Current Euronext Feed. A User of the Current Euronext Feed that wishes to continue to receive such data would enter into a contract with the content service provider to purchase the proposed Euronext Optiq Compressed Derivatives data feed, when available. The Exchange will not cease to offer connectivity to the Current Euronext Feed until the Euronext Optiq Compressed Derivatives data feed is available.

Connectivity to Third Party Testing and Certification Feeds

The Exchange offers Users connectivity to third party certification and testing feeds. Certification feeds are used to certify that a User conforms to any of the relevant content service provider's requirements for accessing Third Party Systems or receiving Third Party Data, while testing feeds provide Users an environment in which to conduct tests with non-live data. Such feeds, which are solely used for certification and testing and do not carry live production data, are available over the IP network.

The Exchange charges a connectivity fee of $100 per month per third party certification and testing feed. The Exchange proposes to offer Users connectivity to the Euronext Optiq Cash EUA and the Euronext Optiq Derivatives

[10] Information flows over existing network connections in two formats: ''unicast'' format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange; and ''multicast'' format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast.

[11] *See supra* note 9, at 7899 (''The IP network also provides Users with access to away market data products'').

EUA testing data feeds for the same connectivity fee of $100 per month per feed.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [12] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both the Affiliate SROs.[13]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[15] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering additional services, the Exchange would give each User additional options for addressing its access and connectivity needs, responding to User demand for access and connectivity options. Providing additional services would help each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access and connectivity that best suits its needs.

The Exchange would provide Access and Connectivity as conveniences to Users. Use of Access or Connectivity would be completely voluntary. The Exchange is not aware of any impediment to third parties offering Access or Connectivity. Because the Euronext Products are not yet available, the Exchange does not know whether third parties will offer Users access and connectivity options to connect to the Euronext Products. Similarly, the Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users connectivity to the CME and ISE Additional Third Party Data Feeds. However, if one or more third parties opt to offer (or, in the case of the CME and ISE Additional Third Party Data Feeds, presently offer) such access and connectivity to Users, a User may opt to access or connect to such services and products through a connection to an Exchange access center outside the data center, through another User, a third party access center or a third party vendor. In such a case, the User potentially would be able to make such connection through the Exchange's SFTI network, through a third party telecommunication provider, third party wireless network, or a combination thereof.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering connectivity to each of the Euronext Products as they come into production by Euronext, and offering connectivity to the CME and ISE data feeds to Users upon the effective date of this filing, the Exchange would give Users additional options for connectivity and access to new services as soon as they are available, responding to User demand for access and connectivity options.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the Exchange proposes not to remove the Current Euronext Feed from the list of Third Party Data Feeds until the proposed Euronext Optiq Compressed Derivatives third party data feed is available. The proposed Euronext Optiq Compressed Derivatives data feed will be offered to Users at the same price at the Current Euronext Feed, and the Exchange understands that the proposed Euronext Optiq Compressed Derivatives data feed is a similar platform to the Current Euronext Feed. All Users, whether or not they currently subscribe to the Current Euronext Feed, will have the opportunity to enter into a contract with Euronext to purchase the proposed Euronext Optiq Compressed Derivatives data feed, when available.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[16] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fee changes are consistent with Section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to

[12] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[13] *See* SR–NYSEArca–2013–80, *supra* note 5 at 50459. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2017–25 and SR–NYSEMKT–2017–32.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(4).

lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the additional services and fees proposed herein would be equitably allocated and not unfairly discriminatory because, in addition to the services being completely voluntary, they would be available to all Users on an equal basis (*i.e.,* the same products and services would be available to all Users). All Users that voluntarily selected to receive Access or Connectivity would be charged the same amount for the same services. Users that opted to use Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contracted with the relevant market or content provider would receive access or connectivity.

The Exchange believes that the proposed charges would be reasonable, equitably allocated and not unfairly discriminatory because the Exchange would offer the Access and Connectivity as conveniences to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues. Since the inception of co-location, the Exchange has made numerous improvements to the network hardware and technology infrastructure and has established additional administrative controls. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including resilient and redundant feeds. In addition, in order to provide Access and Connectivity, the Exchange would maintain multiple connections to each ATPD and ATPS, allowing the Exchange to provide resilient and redundant connections; adapt to any changes made by the relevant third party; and cover any applicable fees charged by the relevant third party, such as port fees. In addition, Users would not be required to use any of their bandwidth for Access and Connectivity, unless they wish to do so.

The Exchange believes the proposed fees for connectivity to the ATPD would be reasonable because they would allow the Exchange to defray or cover the costs associated with offering Users connectivity to ATPD while providing Users the convenience of receiving such ATPD within co-location, helping them tailor their data center operations to the requirements of their business operations. In regards to the Additional Euronext Third Party Data Feeds, the Exchange expects that the shaped feeds will include more data than the compressed feeds. The Exchange accordingly believes that the proposed fees for the compressed and shaped data feeds for both the new Euronext cash and new Euronext derivatives services are reasonable because they would allow the Exchange to defray or cover the costs associated with offering such connectivity, including the maintenance and operating costs associated with the transatlantic Euronext data feeds, while providing Users the benefit of receiving such Additional Euronext Third Party Data Feeds within co-location, helping them tailor their data center operations to the requirements of their business operations by allowing them to select the form and latency of connectivity that best suits their needs, including by selecting between shaped and compressed formats.

The Exchange believes that the addition of the two new Euronext testing feeds for the same price as the monthly connectivity fees currently charged for the other third party testing and certification feeds offered by the Exchange would be reasonable, equitably allocated and not unfairly discriminatory because it would provide Users with the benefit of having an environment in which to conduct tests with non-live data, including testing for upcoming releases and product enhancements or the User's own software development.

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[17] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users).

The Exchange believes that providing Users with additional options for connectivity and access to new services when available would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such proposed Access and Connectivity would satisfy User demand for access and connectivity options. The Exchange would provide Access and Connectivity as conveniences equally to all Users. Because the Euronext Products are not yet available, the Exchange does not know whether third parties will offer Users access and connectivity options to connect to the Euronext Products. Similarly, the Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users connectivity to the CME and ISE Additional Third Party Data Feeds, as such third parties are not required to make that information public. However, if one or more third parties opt to offer (or, in the case of the CME and ISE Additional Third Party Data Feeds, presently offer) such access and connectivity to Users, a User may opt to access or connect to such services and products through a connection to an Exchange access center outside the data center, through another User, a third party access center or a third party vendor. In such a case, depending on the service offered by the third party, the User would be able to make such connection through the SFTI network, through a third party telecommunication provider, third party wireless network, or a combination thereof. Users that opt to use the proposed Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contract with the content provider may receive access or connectivity. In this way, the proposed changes would enhance competition by helping Users tailor their Access and Connectivity to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

In addition, the Exchange believes that providing Users with connectivity to each of the Euronext Products as they become available would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such proposed Access and Connectivity would satisfy User demand for additional options for connectivity and access to new services by providing them as soon as Euronext makes them

[17] 15 U.S.C. 78f(b)(8).

available, responding to User demand for access and connectivity options.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

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[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19] A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.[20] Rule 19b–4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[21]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay will permit Users to obtain the benefits of the proposed new access and connectivity services and help Users tailor their data center operations to the requirements of their business operations without delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[22]

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)[23] 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 No. SR–NYSEArca–2017–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEArca–2017–62. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2017–62, and should be submitted on or before July 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–13587 Filed 6–28–17; 8:45 am]

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[18] 15 U.S.C. 78s(b)(3)(a)(iii).

[19] 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 Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] *Id.*

[22] 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).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81015; File No. SR–NYSEMKT–2017–32]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the NYSE MKT Equities Price List and the NYSE Amex Options Fee Schedule To Add Access for Users to Two Third Party Systems and Connectivity to Six Additional Third Party Data Feeds

June 23, 2017.

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 June 16, 2017, 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 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 the Substance of the Proposed Rule Change

The Exchange proposes to (a) provide Users with access to two additional third party systems, connectivity to six additional third party data feeds, and connectivity to two additional third party testing feeds, and (b) remove a duplicative third party data feed. In addition, the Exchange proposes to change its NYSE MKT Equities Price List (''Price List'') and the NYSE Amex Options Fee Schedule (''Fee Schedule'') related to these co-location services. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the co-location [4] services offered by the Exchange to (a) provide Users [5] with access to two additional third party systems, connectivity to six additional third party data feeds, and connectivity to two additional third party testing feeds, and (b) remove a duplicative third party data feed. In addition the Exchange proposes to make the corresponding changes to the Exchange's Price List and Fee Schedule related to these co-location services.

As set forth in the Price List and Fee Schedule, the Exchange charges fees for connectivity to the execution systems of third party markets and other content service providers (''Third Party Systems''), data feeds from third party markets and other content service providers (''Third Party Data Feeds''), and third party testing feeds.[6] The lists of Third Party Systems and Third Party Data Feeds are set forth in the Price List and Fee Schedule.

The Exchange now proposes to make the following changes:

- Add two content service providers to the list of Third Party Systems: Euronext Optiq Cash and Derivatives Unicast (EUA), and Euronext Optiq Cash and Derivatives Unicast (Production) (together, the ''Additional Third Party Systems'' or ''ATPS'');
- add six feeds to the list of Third Party Data Feeds:
  - Euronext Optiq Compressed Cash, Euronext Optiq Compressed Derivatives, Euronext Optiq Shaped Cash and Euronext Optiq Shaped Derivatives (together, the ''Additional Euronext Third Party Data Feeds''); and
  - CME Group (''CME'') and International Securities Exchange (''ISE'') (together, with the Additional Euronext Third Party Data Feeds, the ''Additional Third Party Data Feeds'' or ''ATPD''); and
- add two new testing feeds, Euronext Optiq Cash EUA and the Euronext Optiq Derivatives EUA; and
- remove the Euronext Third Party Data Feed (the ''Current Euronext Feed'') from the list of Third Party Data Feeds, because the Current Euronext Feed is similar to the Euronext Optiq Compressed Derivatives feed that the Exchange now proposes to add as a Third Party Data Feed.[7]

The proposed Additional Third Party Systems, Additional Euronext Third Party Data Feeds and new testing feeds are new services and products from the third party content service provider, Euronext N.V. (collectively, the ''Euronext Products''). Euronext N.V. (''Euronext'') is expected to make the Euronext Products available no later than September 30, 2017.

The Exchange would provide access to the Additional Third Party Systems (''Access'') and connectivity to the Additional Third Party Data Feeds and new testing feeds (''Connectivity'') as conveniences to Users. Use of Access or Connectivity would be completely voluntary. The Exchange is not aware of any impediment to third parties offering Access or Connectivity.

Because the Euronext Products are not yet available, the Exchange does not know whether third parties will offer Users access and connectivity options to connect to the Euronext Products. Similarly, the Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users connectivity to the CME and ISE Additional Third Party Data Feeds, as such third parties are not required to make that information public. However, if one or more third parties opt to offer (or, in the case of the CME and ISE Additional Third Party Data Feeds, presently offer) such access and connectivity to Users, a User may opt to access or connect to such services and products through a connection to an Exchange access center outside the data center, through another User, a third

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. See Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80) (the ''Original Co-location Filing''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE LLC'') and NYSE Arca, Inc. (''NYSE Arca'' and, together with NYSE LLC, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

[6] *See* Securities Exchange Act Release No. 80309 (March 24, 2017), 82 FR 15725 (March 30, 2017) (SR–NYSEMKT–2016–63).

[7] As discussed *infra,* the proposed Euronext Optiq Compressed Derivatives third party data feed will be offered in place of the Current Euronext Feed at the same price.

party access center or a third party vendor. In such a case, depending on the service offered by the third party, the User would be able to make such connection through the Exchange's Secure Financial Transaction Infrastructure (''SFTI'') network, through a third party telecommunication provider, third party wireless network, or a combination thereof.

The proposed rule change relating to the CME and ISE Additional Third Party Data Feeds would become operative upon the effectiveness of the present rule filing. The proposed rule change relating to each Euronext Product would become operative when such Euronext Product became available from Euronext, which is expected to be no later than September 30, 2017 but may not be at the same time for each Euronext Product.[8] The Exchange will announce the dates that each Euronext Product will be available through customer notices disseminated to all Users simultaneously.

Connectivity to Additional Third Party Systems

The Exchange proposes to revise the Price List and Fee Schedule to provide that Users may obtain connectivity to the two Additional Third Party Systems for a fee. As with the current Third Party Systems, Users would connect to the Additional Third Party Systems over the internet protocol (''IP'') network, a local area network available in the data center.[9]

As with the current Third Party Systems, in order to obtain access to an Additional Third Party System, the User would enter into an agreement with the relevant third party content service provider, pursuant to which the third party content service provider would charge the User for access to the Additional Third Party System. The Exchange would then establish a unicast connection between the User and the relevant third party content service provider over the IP network.[10] The Exchange would charge the User for the connectivity to the Additional Third Party System. A User would only receive, and only be charged for, access to Additional Third Party Systems for which it enters into agreements with the third party content service provider.

The Exchange has no ownership interest in the Additional Third Party Systems. Establishing a User's access to an Additional Third Party System would not give the Exchange any right to use the Additional Third Party Systems. Connectivity to an Additional Third Party System would not provide access or order entry to the Exchange's execution system, and a User's connection to an Additional Third Party System would not be through the Exchange's execution system.

The Exchange proposes to charge a monthly recurring fee for connectivity to an Additional Third Party System. Specifically, when a User requests access to an Additional Third Party System, it would identify the applicable content service provider and what bandwidth connection it required.

The Exchange proposes to modify its Price List and Fee Schedule to add the Additional Third Party Systems to its existing list of Third Party Systems. The revised table would be as follows:

Third Party Systems
Americas Trading Group (ATG).
BATS.
Boston Options Exchange (BOX).
Chicago Board Options Exchange (CBOE).
Credit Suisse.
Euronext Optiq Cash and Derivatives. Unicast (EUA).
Euronext Optiq Cash and Derivatives. Unicast (Production).
International Securities Exchange (ISE).
Nasdaq.
NYFIX Marketplace.

The Exchange does not propose to change the monthly recurring fee the Exchange charges Users for unicast connectivity to each Third Party System, including the Additional Third Party Systems.

Connectivity to Additional Third Party Data Feeds

The Exchange proposes to revise the Price List and Fee Schedule to provide that Users may obtain connectivity to each of the six Additional Third Party Data Feeds for a fee. The Exchange would receive the Additional Third Party Data Feeds from the content service provider, at its data center. It would then provide connectivity to that data to Users for a fee. Users would connect to the Additional Third Party Data Feeds over the IP network.[11]

With respect to the Additional Euronext Third Party Data Feeds, the Exchange proposes to offer connectivity to both ''compressed'' and ''shaped'' data feeds. The Exchange expects that Euronext's shaped feeds will include more data than the compressed feeds.

In order to connect to an Additional Third Party Data Feed, a User would enter into a contract with the content service provider, pursuant to which the content service provider would charge the User for the Third Party Data Feed. The Exchange would receive the Third Party Data Feed over its fiber optic network and, after the content service provider and User entered into the contract and the Exchange received authorization from the content service provider, the Exchange would re-transmit the data to the User over the User's port. The Exchange would charge the User for the connectivity to the Additional Third Party Data Feed. A User would only receive, and would only be charged for, connectivity to the Additional Third Party Data Feeds for which it entered into contracts.

The Exchange has no affiliation with the sellers of the Additional Third Party Data Feeds. It would have no right to use the Additional Third Party Data Feeds other than as a redistributor of the data. The Additional Third Party Data Feeds would not provide access or order entry to the Exchange's execution system. The Additional Third Party Data Feeds would not provide access or order entry to the execution systems of the third parties generating the feed. The Exchange would receive the Additional Third Party Data Feeds via arms-length agreements and it would have no inherent advantage over any other distributor of such data.

As it does with the existing Third Party Data Feeds, the Exchange proposes to charge a monthly recurring fee for connectivity to each Additional Third Party Data Feed. The monthly recurring fee would be per Additional Third Party Data Feed. Depending on its needs and bandwidth, a User may opt to receive all or some of the feeds or services included in an Additional Third Party Data Feed.

The Exchange proposes to add the connectivity fees for the Additional Third Party Data to its existing list in the Price List and Fee Schedule. The additional items would be as follows:

[8] As discussed *infra,* the Current Euronext Feed will not be removed until the proposed Euronext Optiq Compressed Derivatives third party data feed is available.

[9] *See* Securities Exchange Act Release No. 74220 (February 6, 2015), 80 FR 7894 (February 12, 2015) (SR–NYSEMKT–2015–08) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

[10] Information flows over existing network connections in two formats: ''unicast'' format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange; and ''multicast'' format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast.

[11] *See supra* note 9, at 7894 (''The IP network also provides Users with access to away market data products'').

Third party data feed	Monthly recurring connectivity fee per third party data feed
CME Group	$3,000
Euronext Optiq Compressed Cash	900
Euronext Optiq Compressed Derivatives	600
Euronext Optiq Shaped Cash	1,200
Euronext Optiq Shaped Derivatives	900
International Securities Exchange (ISE)	1,000

In addition, the Exchange proposes to remove the Current Euronext Feed from the list of Third Party Data Feeds when the proposed Euronext Optiq Compressed Derivatives third party data feed is available. The Exchange understands that the proposed Euronext Optiq Compressed Derivatives third party data feed is a similar platform to the Current Euronext Feed. The proposed Euronext Optiq Compressed Derivatives data feed will be offered at the same price as the Current Euronext Feed. A User of the Current Euronext Feed that wishes to continue to receive such data would enter into a contract with the content service provider to purchase the proposed Euronext Optiq Compressed Derivatives data feed, when available. The Exchange will not cease to offer connectivity to the Current Euronext Feed until the Euronext Optiq Compressed Derivatives data feed is available.

Connectivity to Third Party Testing and Certification Feeds

The Exchange offers Users connectivity to third party certification and testing feeds. Certification feeds are used to certify that a User conforms to any of the relevant content service provider's requirements for accessing Third Party Systems or receiving Third Party Data, while testing feeds provide Users an environment in which to conduct tests with non-live data. Such feeds, which are solely used for certification and testing and do not carry live production data, are available over the IP network.

The Exchange charges a connectivity fee of $100 per month per third party certification and testing feed. The Exchange proposes to offer Users connectivity to the Euronext Optiq Cash EUA and the Euronext Optiq Derivatives EUA testing data feeds for the same connectivity fee of $100 per month per feed.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [12] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both the Affiliate SROs.[13]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[15] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering additional services, the Exchange would give each User additional options for addressing its access and connectivity needs, responding to User demand for access and connectivity options. Providing additional services would help each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access and connectivity that best suits its needs.

The Exchange would provide Access and Connectivity as conveniences to Users. Use of Access or Connectivity would be completely voluntary. The Exchange is not aware of any impediment to third parties offering Access or Connectivity. Because the Euronext Products are not yet available, the Exchange does not know whether third parties will offer Users access and connectivity options to connect to the Euronext Products. Similarly, the Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users connectivity to the CME and ISE Additional Third Party Data Feeds. However, if one or more third parties opt to offer (or, in the case of the CME and ISE Additional Third Party Data Feeds, presently offer) such access and connectivity to Users, a User may opt to access or connect to such services and products through a connection to an Exchange access center outside the data center, through another User, a third party access center or a third party vendor. In such a case, the User potentially would be able to make such connection through the Exchange's SFTI network, through a third party telecommunication provider, third party wireless network, or a combination thereof.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering connectivity to each of the Euronext Products as they come into production by Euronext, and offering connectivity to the CME and ISE data feeds to Users upon the effective date of this filing, the Exchange would give Users additional options for connectivity and access to new services as soon as they are available, responding to User demand for access and connectivity options.

[12] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[13] *See* SR–NYSEMKT–2013–67, *supra* note 5 at 50471. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2017–25 and SR–NYSEArca–2017–62.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, the Exchange proposes not to remove the Current Euronext Feed from the list of Third Party Data Feeds until the proposed Euronext Optiq Compressed Derivatives third party data feed is available. The proposed Euronext Optiq Compressed Derivatives data feed will be offered to Users at the same price at the Current Euronext Feed and the Exchange understands that the proposed Euronext Optiq Compressed Derivatives data feed is a similar platform to the Current Euronext Feed. All Users, whether or not they currently subscribe to the Current Euronext Feed, will have the opportunity to enter into a contract with Euronext to purchase the proposed Euronext Optiq Compressed Derivatives data feed, when available.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[16] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fee changes are consistent with Section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the additional services and fees proposed herein would be equitably allocated and not unfairly discriminatory because, in addition to the services being completely voluntary, they would be available to all Users on an equal basis (*i.e.,* the same products and services would be available to all Users). All Users that voluntarily selected to receive Access or Connectivity would be charged the same amount for the same services. Users that opted to use Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contracted with the relevant market or content provider would receive access or connectivity.

The Exchange believes that the proposed charges would be reasonable, equitably allocated and not unfairly discriminatory because the Exchange would offer the Access and Connectivity as conveniences to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues. Since the inception of co-location, the Exchange has made numerous improvements to the network hardware and technology infrastructure and has established additional administrative controls. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including resilient and redundant feeds. In addition, in order to provide Access and Connectivity, the Exchange would maintain multiple connections to each ATPD and ATPS, allowing the Exchange to provide resilient and redundant connections; adapt to any changes made by the relevant third party; and cover any applicable fees charged by the relevant third party, such as port fees. In addition, Users would not be required to use any of their bandwidth for Access and Connectivity unless they wish to do so.

The Exchange believes the proposed fees for connectivity to the ATPD would be reasonable because they would allow the Exchange to defray or cover the costs associated with offering Users connectivity to ATPD while providing Users the convenience of receiving such ATPD within co-location, helping them tailor their data center operations to the requirements of their business operations. In regards to the Additional Euronext Third Party Data Feeds, the Exchange expects that the shaped feeds will include more data than the compressed feeds. The Exchange accordingly believes that the proposed fees for the compressed and shaped data feeds for both the new Euronext cash and new Euronext derivatives services are reasonable because they would allow the Exchange to defray or cover the costs associated with offering such connectivity, including the maintenance and operating costs associated with the transatlantic Euronext data feeds, while providing Users the benefit of receiving such Additional Euronext Third Party Data Feeds within co-location, helping them tailor their data center operations to the requirements of their business operations by allowing them to select the form and latency of connectivity that best suits their needs, including by selecting between shaped and compressed formats.

The Exchange believes that the addition of the two new Euronext testing feeds for the same price as the monthly connectivity fees currently charged for other third party testing and certification feeds offered by the Exchange would be reasonable, equitably allocated and not unfairly discriminatory because it would provide Users with the benefit of having an environment in which to conduct tests with non-live data, including testing for upcoming releases and product enhancements or the User's own software development.

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[17] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users).

The Exchange believes that providing Users with additional options for

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78f(b)(8).

connectivity and access to new services when available would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such proposed Access and Connectivity would satisfy User demand for access and connectivity options. The Exchange would provide Access and Connectivity as conveniences equally to all Users. Because the Euronext Products are not yet available, the Exchange does not know whether third parties will offer Users access and connectivity options to connect to the Euronext Products. Similarly, the Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users connectivity to the CME and ISE Additional Third Party Data Feeds, as such third parties are not required to make that information public. However, if one or more third parties opt to offer (or, in the case of the CME and ISE Additional Third Party Data Feeds, presently offer) such access and connectivity to Users, a User may opt to access or connect to such services and products through a connection to an Exchange access center outside the data center, through another User, a third party access center or a third party vendor. In such a case, depending on the service offered by the third party, the User would be able to make such connection through the SFTI network, through a third party telecommunication provider, third party wireless network, or a combination thereof. Users that opt to use the proposed Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contract with the content provider may receive access or connectivity. In this way, the proposed changes would enhance competition by helping Users tailor their Access and Connectivity to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

In addition, the Exchange believes that providing Users with connectivity to each of the Euronext Products as they become available would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such proposed Access and Connectivity would satisfy User demand for additional options for connectivity and access to new services by providing them as soon as Euronext makes them available, responding to User demand for access and connectivity options.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

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[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19] A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.[20] Rule 19b–4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[21]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay will permit Users to obtain the benefits of the proposed new access and connectivity services and help Users tailor their data center operations to the requirements of their business operations without delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[22]

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)[23] 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 No. SR–NYSEMKT–2017–32 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.

[18] 15 U.S.C. 78s(b)(3)(a)(iii).

[19] 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 Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] *Id.*

[22] 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).

[23] 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File No. SR–NYSEMKT–2017–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEMKT–2017–32, and should be submitted on or before July 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–13589 Filed 6–28–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81014; File No. SR–NYSE–2017–25]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Access for Users to Two Third Party Systems and Connectivity to Six Additional Third Party Data Feeds

June 23, 2017.

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 June 16, 2017, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I 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 the Substance of the Proposed Rule Change

The Exchange proposes to (a) provide Users with access to two additional third party systems, connectivity to six additional third party data feeds, and connectivity to two additional third party testing feeds, and (b) remove a duplicative third party data feed. In addition, the Exchange proposes to change its Price List related to these co-location services. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the co-location[4] services offered by the Exchange to (a) provide Users[5] with access to two additional third party systems, connectivity to six additional third party data feeds, and connectivity to two additional third party testing feeds, and (b) remove a duplicative third party data feed. In addition the Exchange proposes to make the corresponding changes to the Exchange's Price List related to these co-location services.

As set forth in the Price List, the Exchange charges fees for connectivity to the execution systems of third party markets and other content service providers (''Third Party Systems''), data feeds from third party markets and other content service providers (''Third Party Data Feeds''), and third party testing feeds.[6] The lists of Third Party Systems and Third Party Data Feeds are set forth in the Price List.

The Exchange now proposes to make the following changes:

- Add two content service providers to the list of Third Party Systems: Euronext Optiq Cash and Derivatives Unicast (EUA), and Euronext Optiq Cash and Derivatives Unicast (Production) (together, the ''Additional Third Party Systems'' or ''ATPS'');
- add six feeds to the list of Third Party Data Feeds:
  - Euronext Optiq Compressed Cash, Euronext Optiq Compressed Derivatives, Euronext Optiq Shaped Cash and Euronext Optiq Shaped Derivatives (together, the ''Additional Euronext Third Party Data Feeds''); and
  - CME Group (''CME'') and International Securities Exchange (''ISE'') (together, with the Additional Euronext Third Party Data Feeds, the ''Additional Third Party Data Feeds'' or ''ATPD''); and
- add two new testing feeds, Euronext Optiq Cash EUA and the Euronext Optiq Derivatives EUA; and
- remove the Euronext Third Party Data Feed (the ''Current Euronext Feed'') from the list of Third Party Data Feeds, because the Current Euronext

[24] 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] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56) (the ''Original Co-location Filing''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE MKT LLC (''NYSE MKT'') and NYSE Arca, Inc. (''NYSE Arca'' and, together with NYSE MKT, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[6] *See* Securities Exchange Act Release No. 80311 (March 24, 2017), 82 FR 15741 (March 30, 2017) (SR–NYSE–2016–45).

Feed is similar to the Euronext Optiq Compressed Derivatives feed that the Exchange now proposes to add as a Third Party Data Feed.[7]

The proposed Additional Third Party Systems, Additional Euronext Third Party Data Feeds and new testing feeds are new services and products from the third party content service provider Euronext N.V. (collectively, the ''Euronext Products''). Euronext N.V. (''Euronext'') is expected to make the Euronext Products available no later than September 30, 2017.

The Exchange would provide access to the Additional Third Party Systems (''Access'') and connectivity to the Additional Third Party Data Feeds and new testing feeds (''Connectivity'') as conveniences to Users. Use of Access or Connectivity would be completely voluntary. The Exchange is not aware of any impediment to third parties offering Access or Connectivity.

Because the Euronext Products are not yet available, the Exchange does not know whether third parties will offer Users access and connectivity options to connect to the Euronext Products. Similarly, the Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users connectivity to the CME and ISE Additional Third Party Data Feeds, as such third parties are not required to make that information public. However, if one or more third parties opt to offer (or, in the case of the CME and ISE Additional Third Party Data Feeds, presently offer) such access and connectivity to Users, a User may opt to access or connect to such services and products through a connection to an Exchange access center outside the data center, through another User, a third party access center or a third party vendor. In such a case, depending on the service offered by the third party, the User would be able to make such connection through the Exchange's Secure Financial Transaction Infrastructure (''SFTI'') network, through a third party telecommunication provider, third party wireless network, or a combination thereof.

The proposed rule change relating to the CME and ISE Additional Third Party Data Feeds would become operative upon the effectiveness of the present rule filing. The proposed rule change relating to each Euronext Product would become operative when such Euronext Product became available from Euronext, which is expected to be no later than September 30, 2017, but may not be at the same time for each Euronext Product.[8] The Exchange will announce the dates that each Euronext Product will be available through customer notices disseminated to all Users simultaneously.

Connectivity to Additional Third Party Systems

The Exchange proposes to revise the Price List to provide that Users may obtain connectivity to the two Additional Third Party Systems for a fee. As with the current Third Party Systems, Users would connect to the Additional Third Party Systems over the internet protocol (''IP'') network, a local area network available in the data center.[9]

As with the current Third Party Systems, in order to obtain access to an Additional Third Party System, the User would enter into an agreement with the relevant third party content service provider, pursuant to which the third party content service provider would charge the User for access to the Additional Third Party System. The Exchange would then establish a unicast connection between the User and the relevant third party content service provider over the IP network.[10] The Exchange would charge the User for the connectivity to the Additional Third Party System. A User would only receive, and only be charged for, access to Additional Third Party Systems for which it enters into agreements with the third party content service provider.

The Exchange has no ownership interest in the Additional Third Party Systems. Establishing a User's access to an Additional Third Party System would not give the Exchange any right to use the Additional Third Party Systems. Connectivity to an Additional Third Party System would not provide access or order entry to the Exchange's execution system, and a User's connection to an Additional Third Party System would not be through the Exchange's execution system.

The Exchange proposes to charge a monthly recurring fee for connectivity to an Additional Third Party System. Specifically, when a User requests access to an Additional Third Party System, it would identify the applicable content service provider and what bandwidth connection it required.

The Exchange proposes to modify its Price List to add the Additional Third Party Systems to its existing list of Third Party Systems. The revised table would be as follows:

THIRD PARTY SYSTEMS

Americas Trading Group (ATG).
BATS.
Boston Options Exchange (BOX).
Chicago Board Options Exchange (CBOE).
Credit Suisse.
Euronext Optiq Cash and Derivatives Unicast (EUA).
Euronext Optiq Cash and Derivatives Unicast (Production).
International Securities Exchange (ISE).
Nasdaq.
NYFIX Marketplace.

The Exchange does not propose to change the monthly recurring fee the Exchange charges Users for unicast connectivity to each Third Party System, including the Additional Third Party Systems.

Connectivity to Additional Third Party Data Feeds

The Exchange proposes to revise the Price List to provide that Users may obtain connectivity to each of the six Additional Third Party Data Feeds for a fee. The Exchange would receive the Additional Third Party Data Feeds from the content service provider, at its data center. It would then provide connectivity to that data to Users for a fee. Users would connect to the Additional Third Party Data Feeds over the IP network.[11]

With respect to the Additional Euronext Third Party Data Feeds, the Exchange proposes to offer connectivity to both ''compressed'' and ''shaped'' data feeds. The Exchange expects that Euronext's shaped feeds will include more data than the compressed feeds.

In order to connect to an Additional Third Party Data Feed, a User would enter into a contract with the content service provider, pursuant to which the content service provider would charge the User for the Third Party Data Feed. The Exchange would receive the Third Party Data Feed over its fiber optic network and, after the content service

[7] As discussed *infra,* the proposed Euronext Optiq Compressed Derivatives third party data feed will be offered in place of the Current Euronext Feed at the same price.

[8] As discussed *infra,* the Current Euronext Feed will not be removed until the proposed Euronext Optiq Compressed Derivatives third party data feed is available.

[9] *See* Securities Exchange Act Release No. 74222 (February 6, 2015), 80 FR 7888 (February 12, 2015) (SR–NYSE–2015–05) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

[10] Information flows over existing network connections in two formats: ''unicast'' format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange; and ''multicast'' format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast.

[11] *See supra* note 9, at 7889 (''The IP network also provides Users with access to away market data products'').

provider and User entered into the contract and the Exchange received authorization from the content service provider, the Exchange would re-transmit the data to the User over the User's port. The Exchange would charge the User for the connectivity to the Additional Third Party Data Feed. A User would only receive, and would only be charged for, connectivity to the Additional Third Party Data Feeds for which it entered into contracts.

The Exchange has no affiliation with the sellers of the Additional Third Party Data Feeds. It would have no right to use the Additional Third Party Data Feeds other than as a redistributor of the data. The Additional Third Party Data Feeds would not provide access or order entry to the Exchange's execution system. The Additional Third Party Data Feeds would not provide access or order entry to the execution systems of the third parties generating the feed. The Exchange would receive the Additional Third Party Data Feeds via arms-length agreements and it would have no inherent advantage over any other distributor of such data.

As it does with the existing Third Party Data Feeds, the Exchange proposes to charge a monthly recurring fee for connectivity to each Additional Third Party Data Feed. The monthly recurring fee would be per Additional Third Party Data Feed. Depending on its needs and bandwidth, a User may opt to receive all or some of the feeds or services included in an Additional Third Party Data Feed.

The Exchange proposes to add the connectivity fees for the Additional Third Party Data to its existing list in the Price List. The additional items would be as follows:

Third party data feed	Monthly recurring connectivity fee per third party data feed
CME Group	$3,000
Euronext Optiq Compressed Cash	900
Euronext Optiq Compressed Derivatives	600
Euronext Optiq Shaped Cash	1,200
Euronext Optiq Shaped Derivatives	900
International Securities Exchange (ISE)	1,000

In addition, the Exchange proposes to remove the Current Euronext Feed from the list of Third Party Data Feeds when the proposed Euronext Optiq Compressed Derivatives third party data feed is available. The Exchange understands that the proposed Euronext Optiq Compressed Derivatives third party data feed is a similar platform to the Current Euronext Feed. The proposed Euronext Optiq Compressed Derivatives data feed will be offered at the same price as the Current Euronext Feed. A User of the Current Euronext Feed that wishes to continue to receive such data would enter into a contract with the content service provider to purchase the proposed Euronext Optiq Compressed Derivatives data feed, when available. The Exchange will not cease to offer connectivity to the Current Euronext Feed until the Euronext Optiq Compressed Derivatives data feed is available.

Connectivity to Third Party Testing and Certification Feeds

The Exchange offers Users connectivity to third party certification and testing feeds. Certification feeds are used to certify that a User conforms to any of the relevant content service provider's requirements for accessing Third Party Systems or receiving Third Party Data, while testing feeds provide Users an environment in which to conduct tests with non-live data. Such feeds, which are solely used for certification and testing and do not carry live production data, are available over the IP network.

The Exchange charges a connectivity fee of $100 per month per third party certification and testing feed. The Exchange proposes to offer Users connectivity to the Euronext Optiq Cash EUA and the Euronext Optiq Derivatives EUA testing data feeds for the same connectivity fee of $100 per month per feed.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [12] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both the Affiliate SROs.[13]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[15] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering additional services, the Exchange would give each User additional options for addressing its access and connectivity needs, responding to User demand for access and connectivity options. Providing additional services would help each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access and connectivity that best suits its needs.

The Exchange would provide Access and Connectivity as conveniences to Users. Use of Access or Connectivity would be completely voluntary. The Exchange is not aware of any impediment to third parties offering Access or Connectivity. Because the

[12] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[13] *See* SR–NYSE–2013–59, *supra* note 5 at 51766. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEMKT–2017–32 and SR–NYSEArca–2017–62.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

Euronext Products are not yet available, the Exchange does not know whether third parties will offer Users access and connectivity options to connect to the Euronext Products. Similarly, the Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users connectivity to the CME and ISE Additional Third Party Data Feeds. However, if one or more third parties opt to offer (or, in the case of the CME and ISE Additional Third Party Data Feeds, presently offer) such access and connectivity to Users, a User may opt to access or connect to such services and products through a connection to an Exchange access center outside the data center, through another User, a third party access center or a third party vendor. In such a case, the User potentially would be able to make such connection through the Exchange's SFTI network, through a third party telecommunication provider, third party wireless network, or a combination thereof.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering connectivity to each of the Euronext Products as they come into production by Euronext, and offering connectivity to the CME and ISE data feeds to Users upon the effective date of this filing, the Exchange would give Users additional options for connectivity and access to new services as soon as they are available, responding to User demand for access and connectivity options.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the Exchange proposes not to remove the Current Euronext Feed from the list of Third Party Data Feeds until the proposed Euronext Optiq Compressed Derivatives third party data feed is available. The proposed Euronext Optiq Compressed Derivatives data feed will be offered to Users at the same price at the Current Euronext Feed, and the Exchange understands that the proposed Euronext Optiq Compressed Derivatives data feed is a similar platform to the Current Euronext Feed. All Users, whether or not they currently subscribe to the Current Euronext Feed, will have the opportunity to enter into a contract with Euronext to purchase the proposed Euronext Optiq Compressed Derivatives data feed, when available.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[16] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fee changes are consistent with Section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the additional services and fees proposed herein would be equitably allocated and not unfairly discriminatory because, in addition to the services being completely voluntary, they would be available to all Users on an equal basis (*i.e.,* the same products and services would be available to all Users). All Users that voluntarily selected to receive Access or Connectivity would be charged the same amount for the same services. Users that opted to use Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contracted with the relevant market or content provider would receive access or connectivity.

The Exchange believes that the proposed charges would be reasonable, equitably allocated and not unfairly discriminatory because the Exchange would offer the Access and Connectivity as conveniences to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues. Since the inception of co-location, the Exchange has made numerous improvements to the network hardware and technology infrastructure and has established additional administrative controls. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including resilient and redundant feeds. In addition, in order to provide Access and Connectivity, the Exchange would maintain multiple connections to each ATPD and ATPS, allowing the Exchange to provide resilient and redundant connections; adapt to any changes made by the relevant third party; and cover any applicable fees charged by the relevant third party, such as port fees. In addition, Users would not be required to use any of their bandwidth for Access and Connectivity unless they wish to do so.

The Exchange believes the proposed fees for connectivity to the ATPD would be reasonable because they would allow the Exchange to defray or cover the costs associated with offering Users connectivity to ATPD while providing Users the convenience of receiving such ATPD within co-location, helping them tailor their data center operations to the requirements of their business operations. In regards to the Additional Euronext Third Party Data Feeds, the Exchange expects that the shaped feeds will include more data than the compressed feeds. The Exchange accordingly believes that the proposed fees for the compressed and shaped data feeds for both the new Euronext cash and new Euronext derivatives services are reasonable because they would allow the Exchange to defray or cover the costs associated with offering such connectivity, including the maintenance and operating costs associated with the transatlantic Euronext data feeds, while providing Users the benefit of receiving such Additional Euronext Third Party Data Feeds within co-location, helping them tailor their data center operations to the requirements of their business operations by allowing them to select the form and latency of connectivity that best suits their needs, including by selecting between shaped and compressed formats.

[16] 15 U.S.C. 78f(b)(4).

The Exchange believes that the addition of the two new Euronext testing feeds for the same price as the monthly connectivity fees currently charged for other third party testing and certification feeds offered by the Exchange would be reasonable, equitably allocated and not unfairly discriminatory because it would provide Users with the benefit of having an environment in which to conduct tests with non-live data, including testing for upcoming releases and product enhancements or the User's own software development.

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[17] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users).

The Exchange believes that providing Users with additional options for connectivity and access to new services when available would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such proposed Access and Connectivity would satisfy User demand for access and connectivity options. The Exchange would provide Access and Connectivity as conveniences equally to all Users. Because the Euronext Products are not yet available, the Exchange does not know whether third parties will offer Users access and connectivity options to connect to the Euronext Products. Similarly, the Exchange does not have visibility into whether third parties currently offer, or intend to offer, Users connectivity to the CME and ISE Additional Third Party Data Feeds, as such third parties are not required to make that information public. However, if one or more third parties opt to offer (or, in the case of the CME and ISE Additional Third Party Data Feeds, presently offer) such access and connectivity to Users, a User may opt to access or connect to such services and products through a connection to an Exchange access center outside the data center, through another User, a third party access center or a third party vendor. In such a case, depending on the service offered by the third party, the User would be able to make such connection through the SFTI network, through a third party telecommunication provider, third party wireless network, or a combination thereof. Users that opt to use the proposed Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contract with the content provider may receive access or connectivity. In this way, the proposed changes would enhance competition by helping Users tailor their Access and Connectivity to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

In addition, the Exchange believes that providing Users with connectivity to each of the Euronext Products as they become available would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such proposed Access and Connectivity would satisfy User demand for additional options for connectivity and access to new services by providing them as soon as Euronext makes them available, responding to User demand for access and connectivity options.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

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[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19] A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing.[20] Rule 19b–4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[21]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay will permit Users to obtain the benefits of the proposed new access and connectivity services and help Users tailor their data center operations to the requirements of their business operations without delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the

[17] 15 U.S.C. 78f(b)(8).

[18] 15 U.S.C. 78s(b)(3)(a)(iii).

[19] 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 Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] *Id.*

proposed rule change operative upon filing.[22]

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)[23] 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 No. SR–NYSE–2017–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSE–2017–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2017–25, and should be submitted on or before July 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–13588 Filed 6–28–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81009; File No. SR–FINRA–2017–022]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Waive Certain TRACE Reporting Fees

June 23, 2017.

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 June 21, 2017, 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 ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to waive fees under Rule 7730 for trade reporting to the Trade Reporting and Compliance Engine (''TRACE'') due to a TRACE system issue on February 16, 2017 and February 17, 2017. The proposed rule change does not make any changes to the text of FINRA rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA Rule 6730 (Transaction Reporting) generally requires that members report trades in TRACE-Eligible Securities[5] to TRACE. FINRA assesses fees in connection with TRACE reporting pursuant to Rule 7730, including for reporting trades, cancelling or correcting previously reported trades, and late reporting, as summarized below:

Trades up to and including $200,000 par value	$0.475/trade. For Securitized Products where par value is not used to determine the size (volume) of a transaction, for purposes of trade reporting fees, size (volume) is the lesser of original face value or Remaining Principal Balance (or the equivalent) at the Time of Execution of the transaction.

[22] 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).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Rule 6710 provides that ''TRACE-Eligible Security'' means a debt security that is United States (''U.S.'') dollar-denominated and is: (1) Issued by a U.S. or foreign private issuer, and, if a ''restricted security'' as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; (2) issued or guaranteed by an Agency as defined in paragraph (k) or a Government-Sponsored Enterprise as defined in paragraph (n); or (3) a U.S. Treasury Security as defined in paragraph (p), but does not include a debt security that is issued by a foreign sovereign or a Money Market Instrument as defined in paragraph (o).

Trades over $200,000 and up to and including $999,999.99 par value.	$0.000002375 times the par value of the transaction (*i.e.,* $0.002375/$1000).
Trades of $1,000,000 par value or more	$2.375/trade.
All transactions in Securitized Products that are Agency Pass-Through Mortgage-Backed Securities traded to be announced or SBA-Backed ABS traded to be announced.	$1.50/trade.
Cancel/Correct	$1.50/trade.
"As/of" Trade Late	$3/trade.

FINRA rules also provide that FINRA will disseminate information on all reported transactions for public transparency, unless the transaction is not subject to dissemination pursuant to Rule 6750 (Dissemination of Transaction Information). FINRA is filing the instant proposed rule change to waive member trade reporting fees, cancel/correct fees, and as-of/late fees in connection with a TRACE system issue that resulted in a number of transactions not being disseminated.

Specifically, on February 16, 2017 and February 17, 2017, due to an inadvertent change to the configuration settings for a single TRACE-Eligible Security, the TRACE system did not disseminate 68 trades that were subject to dissemination. On February 21, 2017, FINRA contacted the 12 members that reported the affected transactions and requested that these trades be cancelled and re-reported so that the transactions would be properly disseminated. All impacted trades were cancelled and re-reported between February 21st and February 23rd. In addition to the original trade reporting fees, impacted members were assessed trade reporting fees in connection with the corrective actions necessary to facilitate dissemination.

To ensure that members are not charged for such additional submissions, FINRA is proposing to waive the TRACE reporting fees under Rule 7730 that were associated with the corrective trade reports between February 21st and February 23rd, including transaction reporting fees, cancel/correct fees, and as-of/late fees. Because the pertinent billing cycle ended on February 28, 2017, members impacted by the system glitch will receive appropriate credits during the July 2017 billing cycle. FINRA believes it is equitable to provide this relief to members.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[6] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change to waive trade reporting fees under Rule 7730, as described herein, is appropriate in light of the TRACE system issue on February 16, 2017 and February 17, 2017. FINRA does not believe that members should incur fees resulting from corrective trade reports submitted following the TRACE systems issue.

FINRA believes that this limited waiver results in reasonable fees that are equitably allocated. In addition, the proposed trade reporting fee waiver does not unfairly discriminate between or among members in that the waiver is available to any impacted member that reported impacted transactions to TRACE on the relevant dates and who took the requested corrective actions that resulted in additional fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the proposed rule change to waive the trade reporting fees is appropriate in light of the TRACE systems issue, which required members to take corrective action and resubmit transaction reports to TRACE. FINRA believes that the limited trade reporting fee waiver would not place an unreasonable fee burden on members, nor confer an uncompetitive benefit to members that have their trade reporting fees waived, in that such waiver would be applied only to the members that incurred additional TRACE fees in connection with the cancellation and re-reporting of impacted transactions.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and paragraph (f)(2) of Rule 19b–4 thereunder.[8] 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 No. SR–FINRA–2017–022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–FINRA–2017–022. 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

[6] 15 U.S.C. 78*o*–3(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

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 No. SR–FINRA–2017–022, and should be submitted on or before July 20, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–13584 Filed 6–28–17; 8:45 am]

BILLING CODE 8011–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36129]

Iowa River Railroad, Inc.—Acquisition and Operation Exemption—Rail Line of North Central Railway Association, Inc.

Iowa River Railroad, Inc. (IRR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from North Central Railway Association, Inc., and operate 0.59 miles of rail line, between Milepost 200.87 and Milepost 201.46, at or near Ackley, in Hardin County, Iowa.

IRR certifies that the projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier and will not exceed $5 million.

IRR further certifies that the transaction does not include an interchange commitment.

The transaction may be consummated on July 13, 2017, the effective date of the exemption (30 days after the verified notice was filed).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than July 6, 2017 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36129, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on T. Scott Bannister, 111 SW., Fifty-Sixth St., Des Moines, IA 50312.

According to IRR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at *WWW.STB.GOV.*

Decided: June 26, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Marline Simeon,

Clearance Clerk.

[FR Doc. 2017–13645 Filed 6–28–17; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2017–0010]

Request for Comments Regarding the Administration's Reviews and Report to the President on Trade Agreement Violations and Abuses

AGENCY: Office of the United States Trade Representative and the Department of Commerce

ACTION: Request for comments.

SUMMARY: Executive Order 13796 of April 29, 2017 (82 FR 20819), requires the United States Trade Representative and the Secretary of Commerce, in consultation with the Secretary of State, the Secretary of the Treasury, the Attorney General, and the Director of the Office of Trade and Manufacturing Policy, to conduct comprehensive performance reviews of all bilateral, plurilateral, and multilateral trade agreements and investment agreements to which the United States is a party and all trade relations with countries governed by the rules of the World Trade Organization (WTO) with which the United States does not have free trade agreements but with which the United States runs significant trade deficits in goods. The Office of the United States Trade Representative (USTR) and the Department of Commerce (DoC) are seeking comments that they will consider as part of these performance reviews and in the preparation of the subsequent report to the President.

DATES: Written comments are due by 11:59 p.m. (EDT) on July 31, 2017.

ADDRESSES: USTR and DoC strongly prefer electronic submissions made through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments in section II below. The docket number is USTR–2017–0010. For alternatives to on-line submissions, please contact Yvonne Jamison, Trade Policy Staff Committee, at (202) 395–3475.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments, contact Yvonne Jamison at (202) 395–3475. Direct all other questions regarding this notice to Sloane Strickler, USTR Office of General Counsel, at *John_Strickler@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Topics on Which USTR and Commerce Seek Information

To assist USTR and DoC in conducting the performance reviews of trade agreements and preparing the report, commenters should submit information related to one or more of the following assessments:

a. The performance of individual free trade agreements (FTAs) and bilateral investment treaties (BITs) to which the United States is a party. There currently are 14 FTAs in force: *https://ustr.gov/trade-agreements/free-trade-agreements.*There currently are 40 BITs in force: *http://tcc.export.gov/Trade_Agreements/Bilateral_Investment_Treaties/index.asp.*

b. The performance of the WTO agreements with regard to our trade relations with those trading partners with which the United States does not have an FTA, but with which the United States runs significant trade deficits in goods. Consistent with the **Federal Register** notice regarding the Report on Significant Trade Deficits (82 FR 18110), the trading partners subject to these performance reviews are in alphabetical order: China, the European Union, India, Indonesia, Japan, Malaysia, Switzerland, Taiwan, Thailand, and Vietnam. You can find a complete list of the WTO agreements at *https://*

[9] 17 CFR 200.30–3(a)(12).

www.wto.org/english/docs_e/legal_e/legal_e.htm.

c. The performance of U.S. trade preference programs. You can find a complete list of the preference programs at *https://ustr.gov/issue-areas/preference-programs.*

d. In commenting on assessments (a), (b), or (c), you may want to address any specific harm or benefit resulting from any agreement, treaty including:

1. Whether there have been violations or abuses of the agreement, treaty, or program that have harmed American workers or domestic manufacturers, farmers, or ranchers; harmed intellectual property rights held by U.S. companies and U.S. persons; reduced the rate of innovation in the United States; or impaired research and development from occurring in the United States.

2. Whether any unfair treatment by trade and investment partners has harmed American workers or domestic manufacturers, farmers, or ranchers; harmed intellectual property rights held by U.S. companies and U.S. persons; reduced the rate of innovation in the United States; or deterred performance of research and development in the United States.

3. Whether an agreement, treaty, or preference program listed in (a), (b), or (c) has not met predictions with regard to new jobs created, favorable effects on the trade balance, expanded market access, lowered trade barriers, or increased United States exports.

Commenters also may submit information describing benefits or opportunities created as part of these agreements, treaties, programs, and trade relations with respect to, *inter alia,* export opportunities for American workers or domestic manufacturers, farmers, or ranchers; lowered trade barriers; promotion of U.S. intellectual property rights holders; the rate of innovation in the United States; U.S. based research and development; protection of rights of U.S. persons investing abroad; and any other relevant information.

II. Request for Public Written Comments

USTR and DoC seek public comments with respect to the issues described in Section I. To be assured of consideration, you must submit written comments by 11:59 p.m. (EDT) on July 31, 2017. All comments must be in English and must identify on the reference line of the first page of the submission ''Comments in Response to Executive Order Regarding Trade Agreements Violations and Abuses.''

USTR and DoC strongly encourage commenters to make on-line submissions, using the *www.regulations.gov* Web site. To submit comments via *www.regulations.gov,* enter docket number USTR–2017–0010 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice and click on the link entitled ''Comment Now!'' For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use Regulations.gov'' on the bottom of the home page. We will not accept hand-delivered submissions.

The *www.regulations.gov* Web site allows users to provide comments by filling in a ''Type Comment'' field, or by attaching a document using an ''Upload File'' field. USTR and DoC prefer that you provide comments as an attached document. If you attach a document, please identify the name of the country to which the submission pertains in the ''Type Comment'' field. For example: ''See attached comments with respect to (name of trade agreement or country)''. USTR and DoC prefer submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) format. If the submission is in another file format, please indicate the name of the software application in the ''Type Comment'' field. File names should reflect the name of the person or entity submitting the comments. Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comments submitted electronically that contain business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and would not customarily be released to the public by the submitter.

Filers of submissions containing business confidential information also must submit a public version of their comments. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments.

As noted, USTR and DoC strongly urge submitters to file comments through *www.regulations.gov.* You must make any alternative arrangements with Yvonne Jamison in advance of transmitting a comment. You can contact Ms. Jamison at (202) 395–3475. General information concerning USTR is available at *www.ustr.gov* and about DoC at *www.commerce.gov.*

We will post comments in the docket for public inspection, except business confidential information. You can view comments on the *www.regulations.gov* Web site by entering the relevant docket number in the search field on the home page.

Edward Gresser,

Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.

[FR Doc. 2017–13610 Filed 6–28–17; 8:45 am]

BILLING CODE 3290–F7–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2017–52]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before July 19, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0645 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow

the online instructions for sending your comments electronically.

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

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

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

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

FOR FURTHER INFORMATION CONTACT: Lynette Mitterer, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *Lynette.Mitterer@faa.gov,* phone (425) 227–1047; or Alphonso Pendergrass, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, email *alphonso.pendergrass@faa.gov,* phone (202) 267–4713.

This notice is published pursuant to 14 CFR 11.85.

Issued in Renton, Washington.

Victor Wicklund,

Manager, Transport Standards Staff.

Petition for Exemption

Docket No.: FAA–2017–0645.

Petitioner: Western Global Airlines.

Section of 14 CFR Affected: §§ 25.785(j), 25.812(e), 25.813(b), 25.857(e), 25.1447(c)(1).

Description of Relief Sought: Allow for the carriage of up to two supernumeraries and allowing those supernumeraries in-flight access to Class E cargo compartment of the McDonnell Douglas Model MD–11F airplanes.

[FR Doc. 2017–13596 Filed 6–28–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Ninth RTCA SC–235 Non Rechargeable Lithium Batteries Plenary

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

ACTION: Ninth RTCA SC–235 Non Rechargeable Lithium Batteries Plenary.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Ninth RTCA SC–235 Non Rechargeable Lithium Batteries Plenary.

DATES: The meeting will be held July 13, 2017, 12:00 p.m.–1:00 p.m.

ADDRESSES: The meeting will be held virtually at: *https://rtca.webex.com/rtca/j.php?MTID=m9ab27f37950b7c41fb2cc743ef8b5891,* Join by phone, 1–877–668–4493, Call-in toll-free number (US/Canada), 1–650–479–3208, Call-in toll number (US/Canada), Access code: 638 570 306, Meeting Password: tP6B8u5E.

FOR FURTHER INFORMATION CONTACT: Karan Hofmann at *khofmann@rtca.org* or 202–330–0680, or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Ninth RTCA SC–235 Non Rechargeable Lithium Batteries Plenary. The agenda will include the following:

Thursday, July 13, 2017, 12:00 p.m.–2:00 p.m.

1. Welcome and Administrative Remarks (Including DFO & RTCA Statement)
2. Introductions
3. Agenda Review
4. Meeting-Minutes Review
5. Final Review and Comment (FRAC) Resolution Review
6. Approval of DO–227A for Submission to RTCA PMC
7. Action Item Review
8. Any Other Business
9. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 26, 2017.

Mohannad Dawoud,

Management and Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2017–13606 Filed 6–28–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0178]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from seven individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a commercial motor vehicle (CMV) to drive in interstate commerce. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: Comments must be received on or before July 31, 2017.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2017–0178 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200

New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number(s) for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov* as described in the system records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the two-year period.

The nine individuals listed in this notice have requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person:

> Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section *H. Epilepsy: § 391.41(b)(8),* paragraphs 3, 4, and 5.]

The advisory criteria state the following:

If an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown cause that did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the Medical Examiner in consultation with the treating physician. Prior to considering certification, it is suggested there be a six-month waiting period from the time of the episode. Following the waiting period, it is suggested that the individual undergo a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has recovered fully from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers who have had a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for five years or more.

As a result of Medical Examiners misinterpreting advisory criteria as regulation, numerous drivers have been prohibited from operating a CMV in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified Medical Examiner based on the physical qualification standards and medical best practices.

On January 15, 2013, in a Notice of Final Disposition entitled, ''Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders,'' (78 FR 3069), FMCSA announced its decision to grant requests from 22 individuals for exemptions from the regulatory requirement that interstate CMV drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' Since the January 15, 2013 notice, the Agency has published additional notices granting requests from individuals for exemptions from the regulatory requirement regarding epilepsy found in 49 CFR 391.41(b)(8).

To be considered for an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), applicants must meet the criteria in the 2007 recommendations of the Agency's Medical Expert Panel (MEP) (78 FR 3069).

II. Qualifications of Applicants

Richard A. Bailey

Mr. Bailey is a 67 year-old class A CDL holder in Iowa. He has a history of a seizure disorder and his last seizure was 2009. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Bailey receiving an exemption.

Roosevelt J. Chambers

Mr. Chambers is a 71 year-old driver in Washington. He has a history of epilepsy and his last seizure was in 2007. He takes anti-seizure medication with the dosage and frequency remaining the same since 2006. His

[1] See *http://www.ecfr.gov/cgi-bin/text-idx?SID=e47b48a9ea42dd67d999246e23d97970&mc=true&node=pt49.5.391&rgn=div5#ap49.5.391_171.a* and *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

physician states that he is supportive of Mr. Chambers receiving an exemption.

Donnie D. Kuck

Mr. Kuck is a 61 year-old driver in Montana. He has a history of a seizure disorder and his last seizure was in 1986. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Kuck receiving an exemption.

Mario A. Palomares

Mr. Palomares is a 46 year-old driver in Texas. He has a history of a seizure disorder and his last seizure was in 1985. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Palomares receiving an exemption.

Mark A. Parish

Mr. Parish is a 56 year-old driver in Georgia. He has a history of a seizure disorder and his last seizure was in 2008. He takes anti-seizure medication with the dosage and frequency remaining the same since 2014. His physician states that he is supportive of Mr. Parish receiving an exemption.

Rickie M. Rineer

Mr. Rineer is a 64 year-old driver in Pennsylvania. He has a history of a seizure disorder and his last seizure was in 1981. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Rineer receiving an exemption.

Timothy Wolsieffer

Mr. Wolsieffer is a 61 year-old driver in Pennsylvania. He has a history of a seizure disorder and his last seizure was in 1998. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. His physician states that he is supportive of Mr. Wolsieffer receiving an exemption.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2017–0178'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right and side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2017–0178 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: June 21, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–13618 Filed 6–28–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–22177; FMCSA–2005–22905; FMCSA–2006–26600; FMCSA–2008–0009; FMCSA–2008–0399; FMCSA–2009–0055; FMCSA–2011–0011; FMCSA–2011–0025; FMCSA–2013–0011; FMCSA–2013–0013; FMCSA–2014–0314]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions of 135 individuals from its prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals with ITDM to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions was effective on the dates stated in the discussions below and will expire on the dates stated in the discussions below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http//www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

II. Background

On April 27, 2017, FMCSA published a notice announcing its decision to renew exemptions for 135 individuals from the insulin-treated diabetes mellitus prohibition in 49 CFR 391.41(b)(3) to operate a CMV in interstate commerce and requested comments from the public (82 FR 19435). The public comment period

ended on May 30, 2017, and no comments were received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

The physical qualification standard for drivers regarding diabetes found in 49 CFR 391.41(b)(3) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

III. Discussion of Comments

FMCSA received no comments in this preceding.

IV. Conclusion

Based upon its evaluation of the 135 renewal exemption applications and that no comments were received, FMCSA confirms its' decision to exempt the following drivers from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce in 49 CFR 391.41(b)(3):

As of April 2, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 7852; 79 FR 19798):
Isaias Gomez (IN)
Brandon E. Hamlett (NV)
Douglas F. Keller (MI)
Mark R. Loesel (WI)
Jason E. McAnnally (AL)
Samuel L. Sergio (MA)
Paul M. Shierk (OR)
David W. West (MO)
Eugene R. Zollner II (OH)

The drivers were included in docket No. FMCSA–2013–0011. Their exemptions are effective as of April 2, 2017, and will expire on April 2, 2019.

As of April 5, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, James R. Moretz, Jr. (PA) has satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce. (70 FR 60875; 71 FR 17159).

This driver was included in docket No. FMCSA–2005–22177. The exemption is effective as of April 5, 2017, and will expire on April 5, 2019.

As of April 6, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 11 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (74 FR 7093; 74 FR 15577):
Daniel J. Conner (PA)
Luis G. Garcia (FL)
Joey M. Godinho (CA)
Gerardo Gonzalez (WI)
Edwin L. Haynie (TX)
Darryl D. Hewitt (CA)
Mark D. Hoag (WA)
Patrick H. Junkins (SC)
Jeffrey D. Moul (SD)
Frank B. Rivett (NY)
Michael L. Wise (IN)

The drivers were included in docket No. FMCSA–2008–0399. Their exemptions are effective as of April 6, 2017, and will expire on April 6, 2019.

As of April 7, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following three individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (70 FR 75236; 71 FR 17943):
Roy G. Hill (KY)
Anthony D. Izzi (RI)
Kenneth L. Pogue (MO)

The drivers were included in docket No. FMCSA–2005–22905. Their exemptions are effective as of April 7, 2017, and will expire on April 7, 2019.

As of April 18, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 27 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (80 FR 14232; 80 FR 26986):
Scott A. Anderson (MN)
Peter A. Breister (WI)
Donald J. Carino (IL)
Marc B. Curtis (NV)
Aaron M. Dixon (SD)
Bradley O. Gibson (TX)
Theodore F. Griffith (MA)
Lawrence E. Handel (OR)
Danny P. Hersh (NE)
Bryan W. Hughes-Gariepy (NY)
James L. Johnson (GA)
Thomas Landis (IL)
Grant L. Lupold (PA)
Nathan R. McGathey (IN)
Mark A. Mesnard (OH)
Gene K. Milburn (ID)
Andrew M. Oliver (MI)
Richard L. Peak (KS)
Anthony P. Reith (PA)
Steven Smith (FL)
Robert L. Snyder (MA)
John H. Spierings (WI)
Robert E. Stokes (WA)
Corey R. Sturm (IN)
Christopher W. Williams (ID)
Robert L. Witt (VT)
Paul G. Wright (CO)

The drivers were included in docket No. FMCSA–2014–0314. Their exemptions are effective as of April 18, 2017, and will expire on April 18, 2019.

As of April 22, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following ten individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (74 FR 9467; 74 FR 18436):
Scott D. Baroch (MT)
Michael G. Chisum (NM)
Timothy N. Davenport (TN)
Henry S. Glover (TX)
James R. Halliday (NY)
Nathan M. Hennix (ND)
Wilbert E. Isadore (TX)
Eddie J. Nosser (MO)
Joseph C. Perrin III (MN)
Ronald A. Stachura.

The drivers were included in docket No. FMCSA–2009–0055. Their exemptions are effective as of April 22, 2017, and will expire on April 22, 2019.

As of April 24, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 19 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 14406; 78 FR 24303):
Christopher R. Anderson (MN)
Brent T. Applebury (MO)
Joseph A. Auchterlonie (NH)
Brett D. Bertagnolli (IN)
Brian T. Bofenkamp (WA)
Scott A. Carlson (PA)
John Fityere (NJ)
Ronald A. Heaps (OH)
Martin A. Houts (IA)
Michael T. Kraft (MN)
Kris W. Lindsay (KS)
Edward M. Luczynski (NJ)
John E. Ruth (IL)
Greggory A. Smith (MO)
James M. Torkildson (WI)
Terry R. Washa (NE)
Alfred J. Williams (VA)
Scott B. Wood (ND)
James L. Zore (IN)

The drivers were included in docket No. FMCSA–2013–0013. Their exemptions are effective as of April 24, 2017, and will expire on April 24, 2019.

As of April 25, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 36 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (73 FR 11982; 73 FR 22456; 76 FR 9854; 76 FR 9862; 76 FR 22940; 76 FR 22941):
Ryan N. Adams (CA)

Kevin J. Agler (IN)
Michael B. Bessinger (UT)
Douglas D. Brown (WI)
Warren S. Brown (GA)
Roger R. Cabana (ME)
Steven W. Ceckiewicz (WI)
Joseph F. Colbert (PA)
Daniel E. Coufal (NE)
Gregory M. Cox (NY)
Dennis J. Dallmann (MN)
Bruce R. Davis (NJ)
Michael B. Elzey (WY)
Earl S. Fibish (CA)
Todd W. Gillespie (NY)
Omar S. Griffin, Jr. (MN)
Richard E. Grunden (ND)
Mark Hall (NJ)
Michael B. Heuett (ID)
Dennis P. Hohnerlein (GA)
Todd A. Kozemchak (PA)
Chad M. Kunkel (MN)
Paul F. Lanich (PA)
Kenneth L. Lefeld (OH)
Daryl G. Lewis (TX)
Jeffrey S. Lomber (MI)
Joseph G. McDonald (MD)
Alan J. Mitchell (DE)
Raymond P. Mora, Sr. (AZ)
James L. Mynars (MN)
John R. Pile (IN)
Dale A. Roberts (IA)
Richard S. Synakowski (NY)
Bruce K. Thomas (NY)
Kory M. Tobias (IL)
Kevin J. Van Horn (MI)

The drivers were included in one of the following docket Nos: FMCSA–2008–0009; FMCSA–2011–0011; FMCSA–2011–0025. Their exemptions are effective as of April 25, 2017, and will expire on April 25, 2019.

As of April 28, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, Spencer J. Olson (ID) has satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (80 FR 14232; 80 FR 26986).

This driver was included in docket No. FMCSA–2014–0314. The exemption is effective as of April 28, 2017, and will expire on April 28, 2019.

As of April 30, 2017, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 18 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (72 FR 9399; 72 FR 21316):

Daniel W. Bezdek (OH)
Jason L. Freeseman (IA)
Rusty W. Frost (NM)
Andrew J. Hayek (WI)
Gary L. Koehn (NE)
Edward T. Megee (CA)
Steven T. Moody (AL)
Timothy W. Nelson (MN)
Richard W. Newman (NY)
Jamison P. Noel (IA)
Rex S. Norquist (KS)
Steven B. Novak (CA)
Russell D. Rockefeller (NY)
Scott W. Sheerer (OH)
Richard L. Strange (IA)
Samuel G. Thiel (ND)
Robert J. Varetoni (NJ)
Michael R. Vaupel (KS)

The drivers were included in docket No. FMCSA–2006–26600. Their exemptions are effective as of April 30, 2017, and will expire on April 30, 2019.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: June 21, 2017.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2017–13617 Filed 6–28–17; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; New Markets Tax Credit (NMTC) Program Allocation Application

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection request(s) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on the collection(s) listed below.

DATES: Comments should be received on or before July 31, 2017 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

The Community Development Financial Institution Fund (CDFI)

Title: New Markets Tax Credit (NMTC) Program Allocation Application.

OMB Control Number: 1530–0042.

Type of Review: Revision of a currently approved collection.

Abstract: The New Markets Tax Credit (NMTC) Program will provide an incentive to investors in the form of a tax credit, which is expected to stimulate investment in private capital that, and in turn, will facilitate economic and community development in low-income communities. In order to qualify for an allocation of tax credits under the NMTC Program an entity must be certified as a qualified community development entity and submit an allocation application to the CDFI Fund. Upon receipt of such applications, the CDFI Fund will conduct a competitive review process to evaluate applications for the receipt of NMTC allocations.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 71,997.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: June 23, 2017.

Jennifer P. Leonard,

Treasury PRA Clearance Officer.

[FR Doc. 2017–13595 Filed 6–28–17; 8:45 am]

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Part II

Bureau of Consumer Financial Protection

12 CFR Parts 1005 and 1026
Amendments to Rules Concerning Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z); Proposed Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Parts 1005 and 1026

[Docket No. CFPB–2017–0015]

RIN 3170–AA72

Amendments to Rules Concerning Prepaid Accounts Under the Electronic Fund Transfer Act (Regulation E) and the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB) is proposing to amend Regulation E, which implements the Electronic Fund Transfer Act, and Regulation Z, which implements the Truth in Lending Act, and the official interpretations to those regulations. This proposal relates to a final rule, published in the **Federal Register** on November 22, 2016, as amended on April 25, 2017, regarding prepaid accounts under Regulations E and Z. This proposal requests comment on potential modifications to several aspects of that rule, including error resolution and limitations on liability for prepaid accounts where the financial institution has not completed its consumer identification and verification process; application of the rule's credit-related provisions to digital wallets that are capable of storing funds; certain other clarifications and minor adjustments; and two issues relating to the effective date of the rule.

DATES: Comments must be received on or before August 14, 2017.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2017–0015 or RIN 3170–AA72, by any of the following methods:

- *Email: FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2017–0015 or RIN 3170–AA72 in the subject line of the email.
- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Thomas L. Devlin and Yaritza Velez, Counsels; and Kristine M. Andreassen and Krista Ayoub, Senior Counsels, Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

On October 5, 2016, the Bureau released a final rule to create comprehensive consumer protections for prepaid accounts under Regulation E, which implements the Electronic Fund Transfer Act (EFTA),[1] and Regulation Z, which implements the Truth in Lending Act (TILA) [2] (2016 Final Rule).[3] Through its efforts to support industry implementation of the 2016 Final Rule, the Bureau learned in recent months that some industry participants believed that they would have difficulty complying with certain provisions of the 2016 Final Rule that would have gone into effect on October 1, 2017. To facilitate compliance, after notice and comment, the Bureau extended the general effective date of the 2016 Final Rule to April 1, 2018 (2017 Effective Date Proposal and 2017 Effective Date Final Rule, respectively).[4] The 2016 Final Rule, as amended by the 2017 Effective Date Final Rule, is referred to herein as the Prepaid Accounts Rule.

Based on feedback received by the Bureau through its outreach efforts to industry regarding implementation of the 2016 Final Rule as well as in comments received on the 2017 Effective Date Proposal, the Bureau is proposing herein to amend several provisions of the Prepaid Accounts Rule. These proposed revisions address, in part, certain issues that were unanticipated by commenters on the notice of proposed rulemaking that led to the 2016 Final Rule (2014 Proposal),[5] and are intended to facilitate compliance and relieve burden on those issues. In particular, the Bureau is proposing to:

- Revise the error resolution and limited liability provisions of the Prepaid Accounts Rule in Regulation E to provide that financial institutions would not be required to resolve errors or limit consumers' liability on unverified prepaid accounts. However, for accounts where the consumer's identity is later verified, financial institutions would be required to limit liability and resolve errors with regard to disputed transactions that occurred prior to verification, consistent with the timing requirements of the Prepaid Accounts Rule.
- Create a limited exception to the credit-related provisions of the Prepaid Accounts Rule in Regulation Z for certain business arrangements between prepaid account issuers and credit card issuers that offer traditional credit card products. This exception is designed to address certain complications in applying the credit provisions of the Prepaid Accounts Rule to credit card accounts linked to digital wallets that can store funds where the credit card accounts are already subject to Regulation Z's open-end credit card rules in circumstances that appear to pose lower risks to consumers.
- Make clarifications or minor adjustments to provisions of the Prepaid Accounts Rule related to an exclusion from the definition of prepaid account, unsolicited issuance of access devices, several aspects of the rule's pre-acquisition disclosure requirements, and submission of prepaid account agreements to the Bureau, as described in detail below.

Finally, the Bureau is soliciting comment on whether a further delay of the Prepaid Accounts Rule's effective date would be necessary and appropriate in light of the amendments proposed herein, and whether a specific provision addressing early compliance

[1] 15 U.S.C. 1693 *et seq.*

[2] 15 U.S.C. 1601 *et seq.*

[3] 81 FR 83934 (Nov. 22, 2016).

[4] 82 FR 13782 (Mar. 15, 2017); 82 FR 18975 (Apr. 25, 2017).

[5] The Bureau released its proposal regarding prepaid accounts under Regulations E and Z, including model and sample disclosure forms, for public comment on November 13, 2014. 79 FR 77102 (Dec. 23, 2014). The Bureau had previously issued an advance notice of proposed rulemaking that posed a series of questions for public comment about how the Bureau might consider regulating general purpose reloadable cards and other prepaid products. 77 FR 30923 (May 24, 2012).

would be necessary and appropriate for compliance with the Prepaid Accounts Rule prior to its effective date.

II. Background

A. The Prepaid Accounts Rulemaking and Implementation Initiatives

In the 2016 Final Rule, the Bureau extended Regulation E coverage to prepaid accounts and adopted provisions specific to such accounts, and generally expanded Regulation Z's coverage to overdraft features that may be offered in conjunction with prepaid accounts. Upon issuing the 2016 Final Rule, the Bureau initiated robust efforts to support industry implementation.[6] Information regarding the Bureau's Prepaid Accounts Rule implementation initiatives and available resources can be found on the Bureau's regulatory implementation Web site at *https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/.*

B. Effective Date Delay

As published, the 2016 Final Rule had a general effective date of October 1, 2017. As discussed in the 2017 Effective Date Proposal and 2017 Effective Date Final Rule, as part of its efforts to support industry implementation, the Bureau has discussed implementation efforts with a number of industry participants. Through those discussions, the Bureau learned that some industry participants were concerned, for reasons relating to printing of new packaging materials and other considerations, that they would have difficulty in complying with certain aspects of the 2016 Final Rule by October 1, 2017 while also ensuring continued availability of their prepaid products and with minimal disruption to consumers.

In addition, in the course of working to implement the 2016 Final Rule, some industry participants raised concerns about what they described as unanticipated complexities arising from the interaction of certain aspects of the rule with certain business models and practices, including those newly adopted, that industry participants did not fully address in their comment letters on the 2014 Proposal. They indicated that these issues could complicate implementation and affect consumers.

In light of these concerns, on March 9, 2017, the Bureau released the 2017 Effective Date Proposal with a request for comment.[7] In that proposal, the Bureau proposed to delay the general effective date of the 2016 Final Rule by six months, to April 1, 2018. While the Bureau did not propose in the 2017 Effective Date Proposal to amend any other substantive provisions of the 2016 Final Rule, many commenters nonetheless advocated for retaining, modifying, or eliminating various provisions of the rule. These comments are discussed in more detail in part III below, as well as in the section-by-section analyses in part V, where relevant.

On April 20, 2017, the Bureau released the 2017 Effective Date Final Rule, which delayed the general effective date of the 2016 Final Rule until April 1, 2018.[8] The Bureau indicated in that notice that it intended to seek comment on targeted substantive issues raised both through the Bureau's outreach efforts to industry regarding implementation and in comments received on the 2017 Effective Date Proposal.

III. Outreach and Comments on the 2017 Effective Date Proposal

As described above, the Bureau has engaged in extensive efforts to support industry implementation since the 2016 Final Rule was issued. As a part of those efforts, the Bureau has received input from a number of stakeholders regarding various provisions in the 2016 Final Rule. This input has included both concerns about financial institutions' ability to comply with the rule and about the broader effects of various substantive provisions of the 2016 Final Rule. As described in part V below and in the 2017 Effective Date Proposal and 2017 Effective Date Final Rule, some of the issues on which the Bureau seeks comment in this proposal were initially brought to the Bureau's attention through that outreach.

In addition, while the Bureau did not seek comment in the 2017 Effective Date Proposal on amending the 2016 Final Rule other than with respect to its effective date, many commenters nonetheless advocated for retaining, modifying, or eliminating various provisions of the rule. Some of the comment letters focused on very specific challenges that have taken on a new significance as industry has been working through the implementation process. Other comments urged the Bureau to revisit specific provisions that underpin substantial elements of the 2016 Final Rule. For example, some commenters asked the Bureau to revisit the definition of prepaid account, such as to clarify the treatment of so-called checkless checking accounts, or exclude certain products (such as digital wallets that can store funds or person-to-person (P2P) payment products). Other commenters suggested modifications to the Bureau's treatment of overdraft and other credit products associated with prepaid accounts, arguing variously that the Bureau should prohibit overdraft and other credit features on prepaid accounts entirely, or that the Bureau should apply the overdraft regulations applied to deposit accounts under Regulation E § 1005.17 instead. Commenters also suggested that the Bureau modify certain disclosure requirements in the rule, by, for example, eliminating the requirement that financial institutions provide both a short form and a long form disclosure prior to account acquisition, revising or reducing the number and types of fees in the short form disclosure, or eliminating the requirement that financial institutions submit prepaid account agreements to the Bureau. A few commenters urged other undertakings, such as requesting that the Bureau reassess the impact of the rule prior to its becoming effective, exclude certain entities from coverage of the rule, or rescind the rule entirely.

In developing this proposal, the Bureau has taken into account both the input it has received from stakeholders through its efforts to support industry implementation of the 2016 Final Rule as well as comments received in response to the 2017 Effective Date Proposal. The issues that the Bureau has determined are appropriate to revisit are discussed in detail below. The Bureau continues to believe that the Prepaid Accounts Rule will provide significant benefits to consumers and is not, in this proposal, seeking comment generally on decisions made in the Prepaid Accounts Rule that industry or other stakeholders might wish the Bureau to reconsider. The purpose of this proposal is to seek comment on the proposed modifications to specific provisions of the Prepaid

[6] These on-going efforts include: (1) The publication of a plain-language small entity compliance guide to help industry understand the Prepaid Accounts Rule; (2) the publication of various other implementation tools regarding the Prepaid Accounts Rule, including an executive summary of the rule, summaries of key changes for payroll card accounts and government benefit accounts, a prepaid account coverage chart, a summary of the rule's effective date provisions, and a guide to preparing the short form disclosure; (3) the release of native design files for print and source code for web-based disclosures for all of the model and sample disclosure forms included in the Prepaid Accounts Rule; (4) meetings with industry, including trade associations and individual industry participants, to discuss and support their implementation efforts; and (5) participation in conferences and forums.

[7] 82 FR 13782 (Mar. 15, 2017).

[8] 82 FR 18975 (Apr. 25, 2017). The 2017 Effective Date Final Rule did not delay the effective date of the requirement to submit prepaid account agreements to the Bureau in Regulation E § 1005.19(f)(2), which is October 1, 2018.

Accounts Rule and not to revisit the rule wholesale.

Along with this proposal, the Bureau is releasing an updated version of its small entity compliance guide for the Prepaid Accounts Rule. That update reflects the 2017 Effective Date Final Rule's change to the Prepaid Accounts Rule's effective date, and also includes clarifications on several other issues that industry has asked questions about or suggested might be unclear, for which the Bureau does not believe changes to regulatory text or commentary are necessary in order to provide additional clarity. The revised guide, which includes a summary of the updates, can be found on the Bureau's regulatory implementation Web site for the Prepaid Accounts Rule at *https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/.*

IV. Legal Authority

The Bureau is proposing to exercise its rulemaking authority pursuant to EFTA section 904(a) and (c), sections 1022(b) and 1032(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[9] and TILA section 105(a) to amend provisions of Regulations E and Z affected by the Prepaid Accounts Rule, as discussed in this part IV and throughout the section-by-section analyses in part V below.

The legal authority for the Prepaid Accounts Rule is described in detail in the 2016 Final Rule's **SUPPLEMENTARY INFORMATION**.[10] As amended by the Dodd-Frank Act, EFTA section 904(a) and (c)[11] authorizes the Bureau to prescribe regulations to carry out the purposes of EFTA and provides that such regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions, for any class of electronic fund transfers (EFTs) or remittance transfers as in the judgment of the Bureau are necessary or proper to effectuate the purposes of EFTA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.[12] As amended by the Dodd-Frank Act, TILA section 105(a)[13] directs the Bureau to prescribe regulations to carry out the purposes of TILA and provides that such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions as in the judgment of the Bureau are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.[14]

Section 1032(a) of the Dodd-Frank Act[15] provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances. Additionally, under section 1022(b)(1) of the Dodd-Frank Act,[16] the Bureau has general authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof. EFTA, TILA, and title X of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, in proposing this rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b)[17] to prescribe rules under EFTA, TILA, and title X of the Dodd-Frank Act that carry out the purposes and objectives and prevent evasion of those laws. Section 1022(b)(2) of the Dodd-Frank Act[18] prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).

V. Section-by-Section Analysis

Overview of the Proposed Amendments to Regulations E and Z

As discussed above, the Prepaid Accounts Rule amends Regulation E, which implements EFTA, and Regulation Z, which implements TILA, along with the official interpretations thereto. Based on feedback received by the Bureau through its outreach efforts to industry regarding implementation as well as in comments received on the 2017 Effective Date Proposal, the Bureau is proposing to amend several provisions of the Prepaid Accounts Rule. This overview provides a summary of the proposed amendments; each, along with its rationale, is discussed in detail in the section-by-section analyses that follow.

Error resolution and limited liability. The Bureau is proposing to amend Regulation E §§ 1005.11(c)(2)(i), 1005.18(d)(1)(ii), 1005.18(e)(3), comments 18(e)–4 through 6, and Appendix A–7(c) to provide that Regulation E's error resolution and limited liability requirements do not extend to prepaid accounts that have not successfully completed the financial institution's consumer identification and verification process (*i.e.,* accounts that have not concluded the process, accounts where the process is concluded but the consumer's identity could not be verified, and accounts in programs for which there is no such process). However, for accounts where the consumer's identity is later verified, financial institutions would be required to resolve errors and limit liability with regard to disputed transactions that occurred prior to verification, consistent with the general timing limitations in the Prepaid Accounts Rule. The Bureau is also proposing related changes to model language and to require that, for programs where there is no verification process, financial institutions explain in their initial disclosures their error resolution process and limitations on consumers' liability for unauthorized transfers, or explain that there is none, and comply with the process (if any) that they disclose.

Credit card accounts linked to prepaid accounts. The Bureau is proposing to create a limited exception to the credit-related provisions of the Prepaid Accounts Rule in Regulation Z for certain business arrangements between prepaid account issuers and credit card issuers that offer traditional credit card products. This exception is designed to address certain complications in applying the credit provisions of the Prepaid Accounts Rule to credit card accounts linked to digital wallets that can store funds where the credit card accounts are already subject to Regulation Z's open-end credit card rules in circumstances that appear to pose lower risks to consumers.

[9] Public Law 111–203, section 1084, 124 Stat. 2081 (2010) (codified at 15 U.S.C. 1693a *et seq.*).

[10] *See, e.g.,* 81 FR 83934, 83958–60 (Nov. 22, 2016).

[11] 15 U.S.C. 1693b(a) and (c).

[12] EFTA section 902 establishes that the purpose of the statute is to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems but that its primary objective is the provision of individual consumer rights. 15 U.S.C. 1693.

[13] 15 U.S.C. 1604(a).

[14] Pursuant to TILA section 102(a), a purpose of TILA is to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him or her and avoid the uninformed use of credit. 15 U.S.C. 1601(a). Moreover, this stated purpose is tied to Congress' finding that economic stabilization would be enhanced and competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. *Id.*

[15] 12 U.S.C. 5532(a).

[16] 12 U.S.C. 5512(b)(1).

[17] 12 U.S.C. 5512(b).

[18] 12 U.S.C. 5512(b)(2).

Specifically, the Bureau is proposing to amend the definition of ''business partner'' in § 1026.61(a)(5)(iii) and related commentary to exclude business arrangements between prepaid account issuers and issuers of traditional credit cards from coverage under the Prepaid Accounts Rule's tailored provisions applicable to hybrid prepaid-credit cards if certain conditions are satisfied. The exclusion would apply only to traditional credit card accounts that are linked to a prepaid account. The conditions include that the parties could not allow the prepaid card to access credit from the credit card account in the course of a transaction with the prepaid card unless the consumer has submitted a written request to authorize linking the two accounts that is separately signed or initialized, and could not condition the acquisition or retention of either account on whether the consumer authorizes such a linkage. In addition, the exception would only apply where the parties do not vary certain terms and conditions based on whether the two accounts are linked. Under this proposed exception, the linked credit card account would still receive the protections in Regulation Z that generally apply to a credit card account under an open-end (not home-secured) consumer credit plan, but the tailored provisions in the Prepaid Accounts Rule for hybrid prepaid-credit cards would not apply.

Exclusion from coverage for certain loyalty, award, or promotional gift cards. The proposed revisions to Regulation E § 1005.2(b)(3)(ii)(D)(*3*) and proposed new comment 2(b)(3)(ii)–4 would clarify that the exclusion from the Prepaid Accounts Rule for loyalty, award, or promotional gift cards applies both to such products as defined in § 1005.20(a)(4) as well as those that satisfy the criteria in § 1005.20(a)(4)(i) and (ii) and are excluded from § 1005.20 pursuant to § 1005.20(b)(4) because they are not marketed to the general public.

Unsolicited issuance of access devices and pre-acquisition disclosures for prepaid accounts without consumer choice. The proposed revisions to comment 18(a)–1 and to § 1005.18(b)(1)(i) and comment 18(b)(1)(i)–1 would clarify how the provisions regarding unsolicited issuance of access devices and the timing of pre-acquisition disclosures would apply to prepaid products where a financial institution or third party making a disbursement via a prepaid account does not offer any alternative means to receive the funds.

Pre-acquisition disclosures. Several provisions in the proposal would provide additional clarity and flexibility with respect to the Prepaid Accounts Rule's pre-acquisition disclosure requirements. The proposed revisions to § 1005.18(b)(1)(ii)(D) and comment 18(b)(1)(ii)–4 would allow financial institutions offering prepaid accounts that qualify for the retail location exception in § 1005.18(b)(1)(ii) to satisfy the requirement that they provide the long form disclosure after acquisition by allowing the long form disclosure to be delivered electronically without receiving consumer consent under the Electronic Signatures in Global and National Commerce Act (E-Sign Act),[19] if it is not provided inside the prepaid account packaging material and the financial institution is not otherwise mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information. Proposed revisions to § 1005.18(b)(6)(i)(B) and (C) and comment 18(b)(6)(i)(B)–1 and proposed new comment 18(b)(6)(i)–1 would clarify that if a financial institution provides pre-acquisition disclosures in writing, and a consumer subsequently completes the acquisition process online or by telephone, the financial institution need not provide the disclosures again electronically or orally. The proposed revisions to § 1005.18(b)(2)(ix)(C) and comment 18(b)(2)(ix)(C)–1.ii would provide prepaid account issuers additional flexibility in disclosing additional fee types on the short form. Specifically, it would permit financial institutions disclosing additional fee types with three or more fee variations to consolidate those variations into two categories and allow those two categories to be disclosed on the short form.

Section 1005.18(b)(9)(i)(C) requires a financial institution to provide pre-acquisition disclosures in a foreign language if the financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in that foreign language. The Bureau is proposing to amend this provision to state that foreign language disclosures are not required for payroll card accounts and government benefit accounts, where the foreign language is offered by telephone only via a real-time language interpretation service provided by a third party.

Submission of prepaid account agreements. The Bureau is proposing several changes to the rules governing submission of prepaid account agreements to the Bureau in § 1005.19. The proposed revisions to § 1005.19(b)(2) and comment 19(a)(2)–1.vii would allow prepaid account issuers to delay submitting a change in the names of other relevant parties to a prepaid account agreement (such as employers for a payroll card agreement) until such time as the issuer is submitting other agreement changes to the Bureau. The proposed revisions to § 1005.19(b)(6)(ii) and (iii) and comment 19(b)(6)–3 would permit short form and long form disclosures to be provided to the Bureau as separate addenda to the agreement, rather than integrated into the agreement or as a single addendum. The proposed revisions in § 1005.19(f)(2) and comment 19(f)–1 would change the term ''effective date'' to ''compliance date'' when referring to October 1, 2018, in order to avoid potential confusion with the Bureau's recent delay of the Prepaid Accounts Rule's general effective date, but would not alter the October 1, 2018 date by which prepaid account issuers must comply with the requirement to submit agreements to the Bureau.

Effective date. In response to the 2017 Effective Date Proposal, some commenters requested that the Bureau delay the effective date of the Prepaid Accounts Rule by longer than the six months proposed (and ultimately finalized) by the Bureau. While the Bureau is not proposing a further extension of the effective date of the Prepaid Accounts Rule, the Bureau is soliciting comment (see section VI below) on whether a further delay of the effective date would be necessary and appropriate in light of the specific amendments to the Prepaid Accounts Rule proposed herein.

Safe harbor for early compliance. Some commenters to the 2017 Effective Date Proposal stated that while early compliance with the Prepaid Accounts Rule would benefit consumers, they were also concerned that financial institutions may be exposed to potential liability if they comply with the rule prior to the effective date. As stated in the 2017 Effective Date Final Rule, the Bureau is not aware of any conflicts between the Prepaid Accounts Rule and current Federal regulations governing prepaid accounts, and thus is not proposing to add a safe harbor. However, the Bureau is soliciting comment (see section VI below) regarding whether there are in fact any such conflicts, and, to the extent such conflicts exist, whether a specific provision addressing early compliance with the Prepaid Accounts Rule would be necessary and appropriate.

[19] 15 U.S.C. 7001 *et seq.*

Regulation E

Subpart A—General

Section 1005.2 Definitions

2(b) Account

2(b)(3) Prepaid Account

2(b)(3)(ii)

2(b)(3)(ii)(D)

In the 2016 Final Rule, the Bureau extended Regulation E coverage to prepaid accounts by creating a new defined term for ''prepaid account'' in § 1005.2(b)(3) as a subcategory of the definition of ''account'' in § 1005.2(b)(1). The definition of ''prepaid account'' in § 1005.2(b)(3) covers a range of products including general purpose reloadable (GPR) cards, as well as other products such as certain non-reloadable accounts and digital wallets. It also contains several exclusions from the definition of prepaid account, including for gift certificates; store gift cards; loyalty, award, or promotional gift cards; and general-use prepaid cards that are both marketed and labeled as gift cards or gift certificates.[20] The exclusion for loyalty, award, or promotional gift cards refers to such products as defined in § 1005.20(a)(4) and (b).[21] Section 1005.20(a)(4) defines the term ''loyalty, award, or promotional gift card'' as a card, code, or other device that is issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in connection with a loyalty, award, or promotional program; is redeemable upon presentation at one or more merchants for goods or services, or usable at automated teller machines; and sets forth certain disclosures, as applicable, indicating that it is issued for loyalty, award, or promotional purposes and setting forth its expiration date as well as the amount of any fees and the conditions under which they may be imposed. Section 1005.20(b) lists the exclusions from coverage under the Gift Card Rule, one of which is for loyalty, award, or promotional gift cards.[22]

The Bureau explained in the 2016 Final Rule its reasoning for excluding gift certificates, store gift cards, and general-use prepaid cards that are both marketed and labeled as gift cards or gift certificates. Specifically, the Bureau stated that, after considering the comments on the 2014 Proposal, it remained convinced that subjecting this general category of products to both the Gift Card Rule and the requirements of the 2016 Final Rule would place a significant burden on industry without a corresponding consumer benefit. In discussing its rationale for having proposed these exclusions in 2014 Proposal, the Bureau also stated that, among other things, it was concerned about the possibility of consumer confusion regarding products covered by both regimes, though it did not believe the exclusion should extend to products that consumers may use as or confuse with transaction accounts even if such products were also covered by the Gift Card Rule.[23] The Bureau also expressed concern that, were it to impose provisions for access to account information and error resolution and create limits on consumers' liability for unauthorized EFTs, the cost structure of gift cards could change dramatically because, unlike other types of prepaid products, many gift cards do not typically offer these protections.[24]

Through its outreach efforts to industry regarding implementation, the Bureau has become aware that there may be some confusion as to whether the exception in § 1005.2(b)(3)(ii)(D)(*3*) extends to loyalty, award, or promotional gift cards that do not contain disclosures pursuant to § 1005.20(a)(4)(iii) but that are nonetheless excluded from coverage under the Gift Card Rule pursuant to § 1005.20(b)(4) because they are not marketed to the general public. If loyalty, award, or promotional gift cards that do not provide the § 1005.20(a)(4)(iii) disclosures are in fact covered by the Prepaid Accounts Rule, industry stakeholders requested clarification about the timing to add such disclosures in order to qualify for the exclusion under current § 1005.2(b)(3)(ii)(D), particularly for cards that have already been distributed to consumers for whom the financial institution does not have contact information.

The Bureau believes that, given the limited nature and use of such products, it would be appropriate to exclude loyalty, award, or promotional gift cards regardless of whether they provide disclosures pursuant to § 1005.20(a)(4)(iii). Some such cards do not meet the definition of prepaid account, as they cannot be used with multiple, unaffiliated merchants, and are thus outside the scope of the Prepaid Accounts Rule's coverage regardless. With regard to any such cards that do, the Bureau believes it is necessary and proper to propose to exclude those cards pursuant to its authority under EFTA section 904(c) to further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers. Therefore, the Bureau is proposing to clarify the scope of this exclusion by revising § 1005.2(b)(3)(ii)(D) to exclude loyalty, award, or promotional gift cards as defined in § 1005.20(a)(4), or that satisfy the criteria in § 1005.20(a)(4)(i) and (ii) and are excluded from § 1005.20 pursuant to § 1005.20(b)(4). The Bureau is also proposing to add comment 2(b)(3)(ii)–4, which would explain that proposed § 1005.2(b)(3)(ii)(D)(*3*) excludes loyalty, award, or promotional gift cards as defined in § 1005.20(a)(4); those cards are excluded from coverage under § 1005.20 pursuant to § 1005.20(b)(3). It further explains that proposed § 1005.2(b)(3)(ii)(D)(*3*) would also exclude cards that satisfy the criteria in § 1005.20(a)(4)(i) and (ii) and are excluded from coverage under § 1005.20 pursuant to § 1005.20(b)(4) because they are not marketed to the general public; such products would not be required to set forth the disclosures enumerated in § 1005.20(a)(4)(iii) to be excluded pursuant to proposed § 1005.2(b)(3)(ii)(D)(*3*).

The Bureau seeks comment on this aspect of the proposal. The Bureau also seeks comment on whether, alternatively, loyalty, award, or promotional gift cards that do not provide the disclosures enumerated by § 1005.20(a)(4)(iii) should be covered by the Prepaid Accounts Rule but provided with an exclusion for cards manufactured, printed, or otherwise produced in the normal course of business prior to the Prepaid Accounts Rule's effective date, or provided other accommodations to come into

[20] § 1005.2(b)(3)(ii)(D). The exclusions in § 1005.2(b)(3)(ii)(D) each reference specific provisions in § 1005.20, which houses the Board's 2010 rule implementing certain sections of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Pub. L. 111–24, 123 Stat. 1734 (2009)) applicable to gift cards, gift certificates, and certain types of general-use prepaid cards that are marketed or labeled as gift cards (the Gift Card Rule).

For products marketed and sold as gift cards (and that meet certain other qualifications), the Gift Card Rule requires certain disclosures, limits the imposition of certain fees, and contains other restrictions. The Gift Card Rule is distinct from the rest of subpart A of Regulation E, however, and does not provide consumers who use gift cards with the other substantive protections of Regulation E, such as error resolution and limited liability protections, or periodic statements.

[21] § 1005.2(b)(3)(ii)(D)(*3*).

[22] § 1005.20(b)(4).

[23] With respect to general-use prepaid products, the Bureau excluded only such products that were both marketed and labeled as gift cards or gift certificates. The Bureau was concerned that, absent this approach, some products it intended to cover may be inadvertently excluded due to occasional or incidental marketing activities, and that consumers would unwittingly think they carry the same protections are other prepaid accounts under the Prepaid Accounts Rule. 81 FR 83934, 83977 (Nov. 22, 2016).

[24] *Id.* at 83976–77.

compliance with § 1005.20(a)(4)(iii). Finally, the Bureau seeks comment on whether other exclusions under § 1005.20(b) should be made part of the exclusion for loyalty, award, or promotional gift cards in § 1005.2(b)(3)(ii)(D)(*3*).

Section 1005.11 Procedures for Resolving Errors

11(c) Time Limits and Extent of Investigation

As discussed in detail in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau is proposing to make certain changes regarding error resolution and limited liability requirements to address concerns about the treatment of unverified accounts. Relatedly, the Bureau is proposing to delete § 1005.11(c)(2)(i)(C), which was added to § 1005.11 in the 2016 Final Rule to conform to that rule's requirements concerning error resolution.

Specifically, § 1005.11(c)(2)(i)(C) currently provides that a financial institution is not required to provisionally credit a consumer's account if the alleged error involves a prepaid account, other than a payroll card account or government benefit account, for which the financial institution has not successfully completed its consumer identification and verification process, as set forth in current § 1005.18(e)(3)(ii). As discussed in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau is proposing that a financial institution not be required to comply with the liability limits and error resolution requirements under §§ 1005.6 and 1005.11 for any prepaid account, other than a payroll card account or government benefit account, for which it has not successfully completed its consumer identification and verification process. Because the Bureau's proposal would provide that such accounts are not subject to § 1005.11, § 1005.11(c)(2)(i)(C) would no longer be necessary. The Bureau's proposal would revert the text of § 1005.11(c)(2)(i) to its state prior to its amendment by the 2016 Final Rule. The Bureau seeks comment on this portion of the proposal.

Section 1005.18 Requirements for Financial Institutions Offering Prepaid Accounts

18(a) Coverage

Section 1005.18(a) states that a financial institution shall comply with all applicable requirements of EFTA and Regulation E with respect to prepaid accounts except as modified by § 1005.18. One of those generally applicable requirements concerns the issuance of access devices in § 1005.5, which implements EFTA section 911.[25] Prior to the 2016 Final Rule, comment 18(a)–1 explained when a consumer was deemed to request an access device for a payroll card account;[26] a corresponding provision for government benefit accounts appeared in § 1005.15(b).[27] In the 2016 Final Rule, the Bureau did not modify either of those provisions except to add to comment 18(a)–1 two examples of when a consumer is deemed to request an access device for a prepaid account.[28]

As discussed in detail below, the Bureau has received questions about application of § 1005.5 to prepaid accounts since release of the 2016 Final Rule and believes that additional clarification may be warranted. In particular, industry stakeholders have asked about how § 1005.5—which (along with EFTA section 911) appears to have been drafted with a focus on providing access devices for existing accounts where the consumer has means of accessing funds in the account other than through the access device—applies to certain prepaid accounts where there is no means of access to the underlying funds other than via the prepaid card.

Regulation E provides that a financial institution may issue an access device for an account to a consumer only when solicited to do so by the consumer pursuant to § 1005.5(a) (that is, in response to an oral or written request for the device, or as a renewal of, or in substitution for, an accepted access device) or on an unsolicited basis in accordance with the requirements set forth in § 1005.5(b). Section 1005.5(b) provides that a financial institution may distribute an access device to a consumer on an unsolicited basis if the access device is: (1) Not validated, meaning that the financial institution has not yet performed all the procedures that would enable a consumer to initiate an EFT using the access device; (2) accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired; (3) accompanied by the disclosures required by § 1005.7, of the consumer's rights and liabilities that will apply if the access device is validated; and (4) validated only in response to the consumer's oral or written request for validation, after the financial institution has verified the consumer's identity by a reasonable means.

In response to the 2014 Proposal, some commenters noted that certain prepaid products distributed to consumers do not offer an alternate means of accessing the funds, but did not focus in detail on how the technical requirements of § 1005.5 would apply in such cases. Rather, the commenters focused in particular on whether a separate provision of Regulation E that prohibits compulsory use of payroll card accounts and government benefit accounts should be expanded to cover other types of prepaid products.[29] To the extent that commenters did focus on the unsolicited issuance provisions in § 1005.5, they requested clarifications on other issues.[30]

The Bureau has received through its outreach efforts to industry regarding implementation questions about how the unsolicited issuance rules set forth in § 1005.5(b) specifically apply to prepaid accounts used for making disbursements where the consumer is given no other option but to receive the disbursement via a prepaid account,

[25] 15 U.S.C. 1693i.

[26] Comment 18(a)–1 stated that a consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive salary or other compensation through a payroll card account. This portion of the comment was not changed by the 2016 Final Rule.

[27] Section 1005.15(b) stated that a consumer is deemed to request an access device for a government benefit account when the consumer applies for government benefits that the agency disburses or will disburse by means of an EFT. In addition, it provided that the agency shall also verify the identity of the consumer by reasonable means before the device is activated. This provision was not changed by the 2016 Final Rule.

[28] Specifically, the 2016 Final Rule added to comment 18(a)–1 an explanation that a consumer is deemed to request an access device for a prepaid account when, for example, the consumer acquires a prepaid account offered for sale at a retail location or applies for a prepaid account by telephone or online.

[29] In the 2016 Final Rule, the Bureau declined to expand application of the compulsory use prohibition in § 1005.10(e)(2) to other types of prepaid accounts, concluding that it would not be appropriate to take such a step at that time without additional public participation and information gathering about the specific product types at issue. 81 FR 83934, 83985 (Nov. 22, 2016).

[30] Some commenters on the 2014 Proposal requested, with respect to § 1005.18(a), that the Bureau clarify that distribution of cards for certain types of prepaid accounts (including payroll cards, student ID cards that also function as prepaid accounts, and disaster relief cards) would not constitute unsolicited issuance. Some other commenters requested that the Bureau clarify that distribution of an unactivated access device, where the consumer has a choice whether or not to activate it for use as a prepaid account (such as a student ID card that also functions as a prepaid account), would not be considered issuance of an unsolicited access device unless and until it is activated. As discussed in detail in the 2016 Final Rule, the Bureau declined to add an exception to the unsolicited issuance provisions in § 1005.5(b) or adopt related guidance in commentary to § 1005.18(a) for specific types of products as requested by commenters, believing that such exceptions and additional guidance were unwarranted at the time. 81 FR 83934, 84007 (Nov. 22, 2016).

such as prison release cards, jury duty cards, and certain types of refund cards. Specifically, the concern stems from § 1005.5(b)(2), which requires the financial institution to provide a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired. Industry stakeholders have expressed concern that this requirement could be interpreted to mean, in the prepaid context, that they must provide another option by which consumers can receive their funds, despite the Bureau's decision not to extend the compulsory use prohibition in § 1005.10(e)(2) to other types of prepaid accounts beyond payroll card accounts and government benefit accounts at the time of the 2016 Final Rule.[31] Industry stakeholders have explained that costs related to providing an additional payment option, such as a paper check, would threaten the financial viability of these generally temporary, limited-use products and potentially cause unbanked consumers to incur check cashing fees to access their funds if these products were eliminated in favor of paper checks. One issuing bank stated that it issues prepaid accounts for use by prisons in work release programs, where the account holds funds for use by an incarcerated individual to pay for transportation, food, or incidentals related to participation in the work release program. The bank explained that, if these funds were disbursed in any other manner (such as in cash), the prison would not be able to ensure that they were used only for approved purposes.

The Bureau did not intend application of the unsolicited issuance requirements to mandate that consumers be offered other options to receive payments in circumstances beyond those already addressed by the compulsory use prohibition.

Therefore, the Bureau is proposing to clarify application of the unsolicited issuance rules to prepaid accounts where the consumer is not offered any other options by which to receive a disbursement of funds. Specifically, in order to make clear that § 1005.5(b)(2) does not require a financial institution or other party to offer consumers other options to receive such disbursements, the Bureau is proposing to add to comment 18(a)–1 a statement that, if an access device for a prepaid account is provided on an unsolicited basis where the prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, in order to satisfy § 1005.5(b)(2), the financial institution must inform the consumer that he or she has no other means by which to receive any funds in the prepaid account if the consumer disposes of the access device. For prepaid accounts where an alternative means for a consumer to receive those funds is not offered, the Bureau believes that it is reasonable for the disclosure required by § 1005.5(b)(2) to include a statement explaining that there is no other way for the consumer to receive his or her funds. The Bureau believes that this proposed clarification should resolve any potential industry confusion and also avoid consumer confusion that might be caused by receiving an incomplete or inapplicable disclosure pursuant to § 1005.5(b)(2).

The Bureau seeks comment on this aspect of the proposal. The Bureau also seeks comment on whether financial institutions face similar challenges regarding the validation prongs in § 1005.5(b)(1) and (4) for prepaid accounts where there is no consumer choice, and whether the Bureau should make any related clarifications with respect to those requirements.

As indicated in the 2016 Final Rule, the Bureau is continuing to monitor financial institutions' and other persons' practices relating to consumers' lack of choice (including with respect to prepaid accounts that are not subject to the compulsory use prohibition). Depending on the facts and circumstances, the Bureau may consider whether exercise of the Bureau's authority under title X of the Dodd-Frank Act, including its authority over unfair, deceptive, or abusive acts or practices, would be appropriate.[32]

18(b) Pre-Acquisition Disclosure Requirements

The Prepaid Accounts Rule generally requires a financial institution to provide a consumer with both a ''short form'' and a ''long form'' disclosure before the consumer acquires a prepaid account. The Bureau adopted those pre-acquisition disclosure requirements pursuant to EFTA sections 904(a), (b), and (c), 905(a), and 913(2),[33] and section 1032 of the Dodd-Frank Act,[34] and adjusted the timing and fee disclosure requirements as well as required disclosure language pursuant to EFTA section 904(c). As discussed in the section-by-section analyses that follow, the Bureau is proposing to narrow the scope of several discrete provisions to facilitate compliance and reduce burden.

18(b)(1) Timing of Disclosures

18(b)(1)(i) General

Section 1005.18(b)(1)(i) requires a financial institution to provide the short form and long form disclosures required by § 1005.18(b) before a consumer acquires a prepaid account; an alternative timing regime exists for prepaid accounts acquired in retail locations or acquired orally by telephone, as described in § 1005.18(b)(1)(ii) and (iii), respectively.

As discussed in the 2016 Final Rule, the Bureau believed that consumers would benefit from receiving both the short form and long form disclosures in writing prior to acquisition because the disclosures serve different but complementary goals. The Bureau believed that the pre-acquisition disclosures would limit the ability of financial institutions to obscure key fees as well as allow consumers to better comparison shop among products. Even in situations where the consumer might not easily be able to comparison shop, such as when students are offered a card by their university, the Bureau believed that receiving the short form and long form disclosures pre-acquisition would allow consumers to better understand the product's terms before deciding whether to accept it and could inform the way in which consumers decide to use the product once acquired. Relatedly, the Bureau believed that consumers often use their prepaid accounts for an extended period, and whatever disclosure information a consumer used when selecting the prepaid account could have a significant and potentially long-term impact.[35]

Through its outreach efforts to industry regarding implementation, the Bureau has received some questions regarding what it means to provide disclosures ''pre'' acquisition for products where the party making the disbursement to the consumer (or the financial institution) does not offer any alternative means for the consumer to receive those funds. (For further discussion of such products, see the section-by-section analysis of § 1005.18(a) above.) For example, if a refund card is sent by mail, industry stakeholders have asked whether the financial institution would have to first mail the pre-acquisition disclosures to the consumer and then later send the card. The concern also exists for in-

[31] *Id.* at 83985.

[32] *Id.*

[33] 15 U.S.C. 1693b(a), (b), and (c), 1693c(a), and 1693k(2).

[34] 12 U.S.C. 5532.

[35] 81 FR 83934, 84017, 84022 (Nov. 22, 2016).

person acquisition scenarios, such as with prison release or jury duty cards, although pre-acquisition disclosures could be provided more easily in advance of the consumer receiving the prepaid account in such cases.

The Bureau continues to believe that the disclosures required by § 1005.18(b) are important for consumers to receive for all prepaid products, and does not believe exclusions for certain types of products would be appropriate. However, the Bureau did not intend to require that an additional separate formal step for disclosure delivery be added to the acquisition process for products where consumers are not making a choice as to whether to acquire the prepaid account. The Bureau does not believe that sending or otherwise providing the disclosures separately for prepaid accounts in this situation would be beneficial for consumers and acknowledges that, particularly if separate mailings were made, financial institutions could incur additional costs in delivering the pre-acquisition disclosures separately from the prepaid account itself.

The Bureau is therefore proposing revisions to § 1005.18(b)(1)(i) and its related commentary to clarify the timing requirements for delivery of pre-acquisition disclosures in this situation. Specifically, the Bureau is proposing to add to the regulatory text of § 1005.18(b)(1)(i) a statement that, when a prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, the disclosures required by § 1005.18(b) may be provided at the time the consumer receives the prepaid account. The Bureau is also proposing to add an example, as comment 18(b)(1)(i)–1.ii, to illustrate such a scenario involving a utility company that refunds consumers' initial deposits for its utility services via prepaid accounts delivered to consumers by mail. The Bureau is also proposing to renumber the paragraphs within comment 18(b)(1)(i)–1 for clarity.

The Bureau notes that the accommodation in proposed § 1005.18(b)(1)(i) would not apply to payroll card accounts and government benefit accounts because they are subject to the compulsory use prohibition in § 1005.10(e)(2). Comments 15(c)–1 and 2 and current comment 18(b)(1)(i)–1.ii (proposed to be renumbered as comment 18(b)(1)(i)–1.i.B) address the timing of pre-acquisition disclosures for such accounts.

The Bureau seeks comment on this portion of the proposal.

18(b)(1)(ii) Disclosures for Prepaid Accounts Acquired in Retail Locations

Section 18(b)(1)(ii) states that a financial institution is not required to provide the long form disclosure required by § 1005.18(b)(4) before a consumer acquires a prepaid account in person at a retail location provided certain conditions are met. Specifically, these conditions are: (A) The prepaid account access device must be contained inside the packaging material; (B) the short form disclosure required by § 1005.18(b)(2) must be provided on or visible through an outward-facing, external surface of the access device's packaging material; (C) the short form disclosure must include the information set forth in § 1005.18(b)(2)(xiii) that allows a consumer to access the information required to be disclosed in the long form by telephone and via a Web site; and (D) the long form disclosure must be provided after the consumer acquires the prepaid account.

As discussed in the 2016 Final Rule and as noted above, the Bureau believed that consumers would benefit from receiving both the short form and long form disclosures in writing prior to acquisition because the disclosures serve different but complementary goals. However, the Bureau was cognizant of the potentially significant cost to industry related to providing the long form disclosure prior to acquisition at retail and making packaging adjustments necessary to accommodate such a disclosure given the space constraints for products sold at retail. The Bureau thus finalized the retail location exception in current § 1005.18(b)(1)(ii), which it believed struck the appropriate balance between providing consumers with—or access to—important disclosures before acquiring a prepaid account while recognizing the packaging, space, and other constraints faced by financial institutions when selling prepaid accounts at retail.[36]

Specifically, in the 2016 Final Rule, the Bureau explained that it was adopting § 1005.18(b)(1)(ii)(D) to make clear that, to qualify for the retail location exception, a financial institution must provide the long form disclosure after the consumer acquires the prepaid account. The Bureau noted that this provision does not set forth a specific time by which the long form disclosure must be provided after acquisition, but explained that, in practice, it expected that compliance with this requirement would typically be accomplished in conjunction with § 1005.18(f)(1), which requires a financial institution to provide, as part of its initial disclosures given pursuant to § 1005.7, all of the information required to be disclosed pursuant to § 1005.18(b)(4).[37] The financial institution must make the initial disclosures required by § 1005.7 at the time a consumer contracts for an EFT service or before the first EFT is made involving the account. That is, standing alone, § 1005.18(f)(1) does not require inclusion in the initial disclosures of the long form in accordance with the form and formatting requirements set forth in § 1005.18(b)(6) and (7); rather, it only requires that the § 1005.18(b)(4) information be included in the initial disclosures.

During the Bureau's outreach efforts to industry regarding implementation, a trade association told the Bureau that providing the long form disclosure—in accordance with the form and formatting requirements set forth in § 1005.18(b)(6) and (7)—as part of the initial disclosures for the prepaid account contained inside the packaging material may pose problems for financial institutions. The trade association explained that, for at least some institutions, this requirement might necessitate a substantial increase in the size of the packages in order to accommodate the long form disclosure, thus requiring retooling of their J-hook packaging used at retail. Because the 2016 Final Rule did not specify the method by which the long form disclosure must be provided pursuant to current § 1005.18(b)(1)(ii)(D), the trade association said that financial institutions might resort to sending the long form disclosure to the consumer by mail to avoid increasing the size of retail packaging to accommodate the disclosure. The trade association also asked whether the long form disclosure could be provided electronically without E-Sign consent, similar to the transitional accommodation in § 1005.18(h)(2)(iv) for providing certain notices to consumers.

In light of this information, the Bureau is concerned about the potential increased costs financial institutions could face as a result of this requirement. The Bureau also believes that permitting the long form to be provided electronically post-acquisition would not diminish the consumer

[36] *Id.* at 84022.

[37] *Id.* In the 2014 Proposal, proposed § 1005.18(f) would have required, in part, that a financial institution include all of the information required to be disclosed in the long form and be provided in a form substantially similar to the sample form in proposed Appendix A–10(e). *See id.* at 84114.

protections afforded by providing the long form inside the packaging material or by mail. Therefore, the Bureau is proposing to revise § 1005.18(b)(1)(ii)(D) to state that, if a financial institution does not provide the long form disclosure inside the prepaid account packaging material and is not otherwise already mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information, it may provide the long form disclosure in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the E-Sign Act. That is, this accommodation would only be available to financial institutions that are not otherwise mailing or delivering written account-related communications to the consumer post-acquisition.[38] The Bureau is also proposing to add language to comment 18(b)(1)(ii)–4 that would explain that a financial institution that has not obtained the consumer's contact information is not required to comply with the requirements set forth in proposed § 1005.18(b)(1)(ii)(D). A financial institution is able to contact the consumer when, for example, it has the consumer's mailing address or email address.

The Bureau believes these proposed revisions would address the concerns raised regarding providing the long form disclosure after acquisition under the retail location exception without detriment to consumers. Financial institutions will be able to provide consumers with the long form disclosure after acquisition, in accordance with the form and formatting requirements of § 1005.18(b)(6) and (7), either inside the packaging material, or by mail or electronically after the financial institution obtains the consumer's contact information. Moreover, where the long form disclosure itself is not contained inside the packaging material, the consumer will nonetheless receive the information required to be disclosed in the long form via the initial disclosures required by §§ 1005.7 and 1005.18(f)(1), which are typically provided inside the packaging of prepaid accounts sold at retail.

The Bureau seeks comment on this aspect of the proposal. Specifically, the Bureau seeks comment on the feasibility of providing the long form disclosure through the various methods described herein—that is, inside the retail packaging, by mail, or electronically. The Bureau also seeks comment on whether financial institutions were, in fact, planning to include in their retail packaging the long form disclosure (in accordance with the form and formatting requirements of § 1005.18(b)(6) and (7)) and whether a redesign of their packaging would be necessary to do so. The Bureau seeks comment on how often financial institutions mail or deliver written account-related communications to consumers within 30 days of obtaining the consumers' contact information, as well as the likelihood that financial institutions would choose, if the proposal were adopted, to provide the long form disclosure only by mail or electronically rather than including it inside the retail packaging. In addition, the Bureau seeks comment on whether there are other accommodations the Bureau might make to the retail location exception to facilitate financial institutions' inclusion of the long form disclosure inside the packaging. The Bureau also seeks comment on whether the proposed modification should be available only in limited situations, such as for prepaid accounts where the financial institution requires the consumer to provide identifying information before the prepaid account can be used. Finally, the Bureau seeks comment on whether it should expressly state a timing requirement for delivery of the long form disclosure pursuant to proposed § 1005.18(b)(1)(ii)(D) in general or specifically with respect to electronic disclosures provided without E-Sign consent.

Relatedly, current § 1005.18(b)(1)(iii)(C) includes a similar requirement for prepaid accounts acquired orally by telephone. The Bureau does not believe the same modification is necessary for this provision because, in this situation, financial institutions would already be mailing an access device and initial disclosures to consumers and, unlike J-hook packaging, that mailing would not face the same space constraints. Nonetheless, because of the similarities between § 1005.18(b)(1)(ii) and (iii), the Bureau seeks comment on whether the revision the Bureau is proposing in § 1005.18(b)(1)(ii)(D) should also be made in § 1005.18(b)(1)(iii)(C).

18(b)(2) Short Form Disclosure Content

18(b)(2)(ix) Disclosure of Additional Fee Types

The Prepaid Accounts Rule's provisions governing the short form require disclosure of certain ''static'' fees that are relatively common across the industry as well as disclosure of certain additional types of fees that the financial institution may charge with respect to a particular prepaid account program. Specifically, § 1005.18(b)(2)(ix) requires a financial institution to disclose the two fee types that generate the highest revenue from consumers for the prepaid account program or across prepaid account programs that share the same fee schedule during the time period provided in § 1005.18(b)(2)(ix)(D) and (E), subject to certain exclusions, including a de minimis threshold. If an additional fee type required to be disclosed has two fee variations, current § 1005.18(b)(2)(ix)(C) requires the financial institution to disclose the name of the additional fee type along with the names of the two fee variations and the fee amounts; if an additional fee type has more than two fee variations, the financial institution must disclose the name of the additional fee type and the highest fee amount in accordance with § 1005.18(b)(3)(i).[39] Comment 18(b)(2)(ix)(C)–1 provides examples illustrating how to disclose two-tier fees and other fee variations in additional fee types.

As discussed in the 2016 Final Rule, the Bureau believed that it was important for financial institutions to disclose to consumers certain fee types not otherwise listed on the short form. The Bureau believed that disclosing additional fee types creates a dynamic disclosure while reducing incentives for manipulating fee structures by, for example, lowering the price of the common fees listed on the short form in favor of higher fees on fee types incurred less often, thus hiding potential costly charges. The Bureau also believed that putting consumers on notice of such additional fee types would alert them to account features for which they may end up incurring a significant cost. In addition, the Bureau believed that eschewing full standardization in a static short form disclosure in favor of the dynamic disclosure of additional fee types would enable the disclosure to capture market changes and innovations. Furthermore,

[38] If the financial institution includes the long form disclosure inside the prepaid account packaging material, it would not need this E-Sign waiver. Likewise, if a consumer gives E-Sign consent, the financial institution may provide the disclosure electronically even if it is mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information.

[39] Section 1005.18(b)(2)(ix)(C) contains modified requirements for disclosing additional fee types on a short form disclosure for multiple service plans pursuant to § 1005.18(b)(6)(iii)(B)(*2*).

the Bureau believed that the requirement to disclose additional fee types would allow the short form to reflect the advent of new fee types that consumers may come to incur frequently and for significant cost that otherwise would be prohibited from disclosure in the short form and thus could render it outdated and of diminished value to consumers over time.[40]

The Bureau continues to believe that disclosing additional fee types in the short form is necessary and appropriate for the reasons set forth in the 2016 Final Rule and as summarized above. However, the Bureau has heard concerns through its outreach efforts to industry regarding implementation with respect to the requirement to disclose the highest fee (accompanied by an asterisk indicating the fee may be lower depending on how and where the card is used) for additional fee types with more than two fee variations, where one of those fee variations is significantly higher than the others; this may occur, for example, with expedited delivery of a replacement card or a bill payment. Because current § 1005.18(b)(2)(ix)(C) does not allow financial institutions to disclose fee variations within additional fee types when the additional fee type has more than two variations, some prepaid account providers have suggested that, rather than disclosing the highest fee in these situations, they are considering eliminating the service for which that highest fee is charged so as to avoid having to disclose it without additional explanation on the short form.

Although the Bureau believes that consumers generally would benefit from simplified fee structures, the purpose of requiring disclosure of additional fee types was not to encourage financial institutions to eliminate services that are useful for consumers. While it could add some additional complexity to the short form, the Bureau believes it may be appropriate to give financial institutions additional flexibility to provide more detail for additional fee types with multiple fee variations. The Bureau is therefore proposing to modify § 1005.18(b)(2)(ix)(C) by providing that, for disclosures other than for multiple service plans, a financial institution may, but is not required to, consolidate the fee variations into two categories and disclose the names of those two fee variation categories and the fee amounts in a format substantially similar to that used to disclose the two-tier fees required by § 1005.18(b)(2)(v) (ATM balance inquiry fees) and (vi) (customer service fees) and in accordance with § 1005.18(b)(3)(i) and (b)(7)(ii)(B)(*1*). The Bureau expects that, if the three or more fee variations cannot be consolidated into two categories in a logical manner, or if doing so would cause consumer confusion, the financial institution would disclose the name of the additional fee type and the highest fee amount in the manner currently required, rather than avail itself of the proposed alternative. The Bureau is also proposing to revise comment 18(b)(2)(ix)(C)–1.ii to illustrate the two options that a financial institution would have to disclose an additional fee type with more than two fee variations. The example and the first option reflect what currently exist in this comment; the second option reflects the proposed alternative.

Specifically, proposed comment 18(b)(2)(ix)(C)–1.ii would provide the following example: A financial institution offers two methods of bill payment—via ACH and paper check—and offers two modes of delivery for bill payments made by paper check—regular standard mail service and expedited delivery. The financial institution charges $0.25 for bill pay via ACH, $0.50 for bill pay via paper check sent by regular standard mail service, and $3 for bill pay via paper check sent via expedited delivery. The financial institution must calculate the total revenue generated from consumers for all methods of bill pay and all modes of delivery during the required time period to determine whether it must disclose bill payment as an additional fee type pursuant to § 1005.18(b)(2)(ix). Because there are more than two fee variations for the fee type ''bill payment,'' if bill payment is required to be disclosed as an additional fee type pursuant to § 1005.18(b)(2)(ix)(A), the financial institution has two options for the disclosure. The financial institution may disclose the highest fee, $3, followed by a symbol, such as an asterisk, linked to a statement explaining that the fee could be lower depending on how and where the prepaid account is used, pursuant to § 1005.18(b)(3)(i). Thus, the financial institution would disclose on the short form the fee type as ''Bill payment'' and the fee amount as ''$3.00*''. Alternatively, the financial institution may consolidate the fee variations into two categories, such as regular delivery and expedited delivery, with ACH and paper check together constituting regular delivery. In this case, the financial institution would make this disclosure on the short form as: ''Bill payment (regular or expedited delivery)'' and the fee amount as ''$0.50* or $3.00''.

The Bureau believes that its proposed modification would allow for more detail and certainty about fees that appear on the short form disclosure, which would provide consumers more information about a prepaid account prior to acquisition. The Bureau acknowledges that allowing financial institutions to avail themselves of this alternative could reduce the amount of ''white space'' on the short form disclosure, which the Bureau has stated is paramount to clarity and consumer comprehension.[41] However, the Bureau believes that the reduction here would be minimal, particularly when contrasted with the potential diminished benefit to consumers of financial institutions eliminating certain relatively expensive but beneficial features, such as expedited card replacement or bill pay.

The Bureau seeks comment on this aspect of the proposal.

18(b)(6) Form of Pre-Acquisition Disclosures

18(b)(6)(i) General

Section 1005.18(b)(6)(i) currently states that the pre-acquisition disclosures required by § 1005.18(b) must be provided in writing, except in certain circumstances where they must be provided electronically or orally by telephone pursuant to § 1005.18(b)(6)(i)(B) and (C), respectively. Specifically, current § 1005.18(b)(6)(i)(B) provides, in part, that these disclosures must be provided in electronic form when a consumer acquires a prepaid account through electronic means, including via a Web site or mobile application, and must be viewable across all screen sizes. Current § 1005.18(b)(6)(i)(C) provides, in part, that the disclosures required by § 1005.18(b)(2) and (5) must be provided orally when a consumer acquires a prepaid account orally by telephone as described in § 1005.18(b)(1)(iii).

As explained in the 2016 Final Rule, although the Bureau believed that consumers can best review the terms of a prepaid account before acquiring it when seeing the terms in written form, the Bureau recognized that in certain situations, it is not practicable to provide written disclosures. With respect to electronic disclosures, the Bureau believed it was important for consumers who decide to go online to acquire prepaid accounts to see the relevant disclosures for that prepaid account in electronic form.

[40] 81 FR 83934, 84041 (Nov. 22, 2016).

[41] *Id.* at 84024–25.

Furthermore, regarding oral disclosures, the Bureau believed that when a consumer acquires a prepaid account orally by telephone or when a consumer requests to hear the long form in a retail location by calling the telephone number disclosed on the short form pursuant to § 1005.18(b)(2)(xiii), it would not be practicable for a financial institution to provide these disclosures in written form; however, the Bureau believed that consumers should nonetheless have the benefit of pre-acquisition disclosures.[42]

Through its outreach efforts to industry regarding implementation, the Bureau heard concerns from an issuing bank that it would actually be more practicable and convenient to provide the short form and long form disclosures required by § 1005.18(b) in writing rather than electronically and orally for certain payroll card accounts and government benefit accounts. The issuing bank explained that in these situations consumers would first receive the pre-acquisition disclosures in writing from the employer or agency; in order to actually acquire the account, consumers must either go online or call a customer service line. The issuing bank also expressed concern about the cost to some employers and agencies to train their customer service representatives to provide disclosures orally by telephone or to update their Web sites to accommodate the requirements set forth in the 2016 Final Rule for electronic disclosures, particularly when written disclosures are already provided to the consumer in advance of acquisition.

The Bureau continues to believe that it is important for consumers to receive pre-acquisition disclosures via the method by which they are acquiring a prepaid account. As noted above, however, the Bureau also believes that consumers can best review the terms of a prepaid account before acquiring when seeing the terms in written form. The Bureau appreciates the concerns raised by the issuing bank regarding in providing electronic or oral disclosures in this context, and believes that if written pre-acquisition disclosures are provided then it is not necessary to also require electronic and oral disclosures. The Bureau is therefore proposing to revise § 1005.18(b)(6)(i)(B) and (C) and comment 18(b)(6)(i)(B)–1 to make clear that financial institutions are permitted to provide written disclosures prior to acquisition rather than having to give the disclosures electronically or orally by telephone. The Bureau is also proposing to add new comment 18(b)(6)(i)–1 to illustrate this proposed revision in the payroll card account context. Specifically, the proposed comment would give an example stating that, if an employer distributes to new employees printed copies of the disclosures required by § 1005.18(b) for a payroll card account, together with instructions to complete the payroll card account acquisition process online if the employee wishes to be paid via a payroll card account, the financial institution is not required to provide the § 1005.18(b) disclosures electronically via the Web site because the consumer has already received the disclosures pre-acquisition in written form. The Bureau believes that the proposed clarification would alleviate the concern described above, without harm to consumers because the requirement to provide consumers with the disclosures before they agree to acquire a prepaid account would remain.

The Bureau seeks comment on this aspect of the proposal. The Bureau also seeks comment regarding whether it should impose timing or other limitations on when a financial institution may provide pre-acquisition disclosures in writing followed by electronic or telephone acquisition of the prepaid account.

18(b)(9) Prepaid Accounts Acquired in Foreign Languages

Section 1005.18(b)(9)(i) requires a financial institution to provide the pre-acquisition disclosures required by § 1005.18(b) in a foreign language if the financial institution uses that same foreign language in connection with the acquisition of a prepaid account in certain circumstances. Specifically, the financial institution must provide the disclosures in a foreign language if it principally uses a foreign language on the prepaid account packaging material; it principally uses a foreign language to advertise, solicit, or market a prepaid account and provides a means in the advertisement, solicitation, or marketing material that the consumer uses to acquire the prepaid account by telephone or electronically; or it provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language. Section 1005.18(b)(9)(ii) requires financial institutions providing the disclosures in a foreign language pursuant to § 1005.18(b)(9)(i) to also provide the information required to be disclosed in the long form pursuant to § 1005.18(b)(4) in English upon a consumer's request and on any part of the Web site where it discloses this information in a foreign language.

As discussed in the 2016 Final Rule, the Bureau believed that, if a financial institution affirmatively targets consumers by advertising, soliciting, or marketing to them in a foreign language, principally uses a foreign language on the interface that a consumer sees or uses to initiate the process of acquiring a prepaid account, or provides a way for a consumer to acquire a prepaid account in a foreign language, the financial institution is making a deliberate effort to obtain the consumer's business using a foreign language and therefore should be required to provide the pre-acquisition disclosures in that foreign language.[43] The Bureau continues to believe that requiring financial institutions to provide pre-acquisition disclosures in a foreign language is appropriate in the circumstances described above to ensure that non- and limited-English speaking consumers are able to understand the terms of a prepaid account prior to acquisition.

During its outreach efforts to industry regarding implementation, the Bureau discussed with an issuing bank its experiences with employers and government agencies that contract with third parties to provide real-time oral language interpretation services in order to facilitate general processes administered by the employer (such as new employee on-boarding) or agency (enrollment in a benefits program), which may include acquisition of a prepaid account. The bank expressed concern that use of these language interpretation services, although generally beneficial to affected consumers, may potentially pose difficulties providing interpretations of the required disclosures to consumers in foreign languages, while also increasing costs for the employer or agency due to longer call times.

The issuing bank explained that these language interpretation services allow consumers to choose from more than one hundred languages, though the employer or agency may not know it will need interpretation services in a particular language until a consumer requests it. The issuing bank emphasized that it is not involved in selecting the third parties that provide language interpretation services employers and government agencies might use as part of their general enrollment processes, and that the interpreters, who are hired to provide language interpretation services only, may not have any particular experience with financial disclosures. The issuing bank also stated that it would not be able to ensure that the long form

[42] *Id.* at 84075–77.

[43] *Id.* at 84091–92.

disclosures, translated into every possible foreign language that could be selected by a consumer, could be provided either electronically (pursuant to § 1005.18(b)(1)(iii)(B)) or in writing (pursuant to § 1005.18(b)(1)(iii)(C)) to the consumer.

The Bureau intended the foreign language requirements to cover situations where the financial institution affirmatively targets consumers in a foreign language. The Bureau agrees that the situation described above appears somewhat distinct particularly to the extent that it involves providing real-time language interpretation services in the course of facilitating more general processes by an employer or government agency, such as the onboarding an employee or enrollment of a consumer in a benefits program. The Bureau is concerned that applying the foreign language disclosure requirements of § 1005.18(b)(9)(i) in such circumstances might discourage employers and agencies from making language interpretation services available at all. Therefore, the Bureau is proposing revisions to § 1005.18(b)(9)(i)(C) to provide this exception. Specifically, proposed § 1005.18(b)(9)(i)(C) would state that financial institutions must provide the pre-acquisition disclosures in a foreign language in connection with the acquisition of a prepaid account if the financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language, except for payroll card accounts and government benefit accounts where the foreign language is offered by telephone only via a real-time language interpretation service provided by a third party.

The Bureau seeks comment on this aspect of the proposal. In particular, the Bureau requests comment on whether this issue is unique to payroll card accounts and government benefit accounts, or whether it extends to other types of programs as well. The Bureau also seeks comment on whether, alternatively, it should completely exclude payroll card accounts or government benefit accounts from the requirement in § 1005.18(b)(9)(i)(C) to provide foreign language disclosures by telephone and whether, if adopted, such an exclusion should extend to any other types of prepaid accounts as well. In addition, the Bureau seeks comment on whether the requirement in § 1005.18(b)(9)(i)(C) poses any related issues for financial institutions offering prepaid accounts that are not addressed by the proposal. The Bureau also seeks comment on whether there are any other ways the Bureau might address this issue other than those discussed herein, such as by basing the exclusion on the number of foreign languages offered by the financial institution or via the third-party service.

18(d) Modified Disclosure Requirements

18(d)(1) Initial Disclosures

18(d)(1)(ii) Error Resolution

As discussed in detail in the section-by-section analysis of § 1005.18(e)(3) below, the Bureau is proposing to make certain changes regarding error resolution and limited liability requirements to address concerns about the treatment of unverified accounts. Relatedly, the Bureau is proposing to amend § 1005.18(d)(1)(ii), which requires certain disclosures regarding error resolution.

EFTA section 905(a)(7) requires financial institutions to provide a summary of the error resolution provisions in EFTA section 908 and the consumer's rights thereunder as part of the initial disclosures and on an annual basis thereafter.[44] These requirements are implemented for accounts generally in §§ 1005.7(b)(10) and 1005.8(b). In the 2016 Final Rule, the Bureau in § 1005.18(d)(1)(ii) required financial institutions that follow the periodic statement alternative in § 1005.18(c)(1) to modify their initial disclosures required by § 1005.7(b) by disclosing a notice concerning error resolution that is substantially similar to the notice contained in Appendix A–7(b), in place of the notice required by § 1005.7(b)(10). The notice in Appendix A–7(b) explains to consumers the error resolution timeframes that apply when financial institutions follow the periodic statement alternative. To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers, the Bureau is proposing to exercise its authority under EFTA section 904(c) to adopt an adjustment to the error resolution notice requirement of EFTA section 905(a)(7), to permit notices for prepaid accounts as described in proposed § 1005.18(d)(1)(ii), in order to facilitate compliance with error resolution requirements. The Bureau is thus proposing to amend § 1005.18(d)(1)(ii) to clarify that, for prepaid account programs for which the financial institution does not have a consumer identification and verification process, the financial institution must describe its error resolution process and limitations on consumers' liability for unauthorized transfers or, if none, state that there are no such protections. The proposed revisions to § 1005.18(e)(3), discussed below, would not require a financial institution to offer limited liability and error resolution protections on prepaid accounts in a program for which the financial institution does not have a consumer identification and verification process. This clarification is intended to ensure that financial institutions accurately disclose to consumers the limited liability and error resolution protections (if any) that would apply to any such prepaid account in their initial disclosures. The Bureau seeks comment on this portion of the proposal.

18(e) Modified Limitations on Liability and Error Resolution Requirements

18(e)(3) Limitations on Liability and Error Resolution for Unverified Accounts

The 2014 Proposal and 2016 Final Rule

EFTA section 908 governs the timing and other requirements for consumers and financial institutions pertaining to error resolution, including provisional credit.[45] EFTA section 909 governs consumer liability for unauthorized EFTs.[46] These requirements are implemented for accounts generally in §§ 1005.11 and 1005.6, respectively. In the 2014 Proposal, the Bureau proposed to use its exceptions authority under EFTA section 904(c) to add new section § 1005.18(e)(3) to except unverified prepaid accounts from the error resolution and limited liability requirements of EFTA sections 908 and 909 to the extent such accounts remained unverified. That paragraph would have provided that for prepaid accounts that are not payroll card accounts or government benefit accounts,[47] if a financial institution disclosed to the consumer the risks of not registering and verifying the prepaid account using language substantially similar to the model clause proposed by the Bureau, a financial institution would not have been required to comply with the liability limits and error resolution requirements under §§ 1005.6

[44] 15 U.S.C. 1693c(a)(7) and 1693f.

[45] 15 U.S.C. 1693f.

[46] 15 U.S.C. 1693g.

[47] As explained in the 2016 Final Rule, the Bureau excluded payroll card accounts and government benefit accounts from this provision to ensure that, among other things, they maintained the same level of error resolution and limited liability protections that they had under existing Regulation E. 81 FR 83934, 84112 n.502 (Nov. 22, 2016). Furthermore, payroll card accounts and government benefit accounts generally require the financial institution to verify the identity of the consumer prior to acquisition to determine employment status or eligibility for benefits.

and 1005.11 for any prepaid account for which it had not completed its collection of consumer identifying information and identity verification.[48] The proposal would have required financial institutions to comply with Regulation E requirements regarding limited liability and error resolution, including provisional credit, for accounts that were verified; this would have included applying those protections even to unauthorized transfers or other errors that occurred prior to verification.[49] The Bureau solicited comment on this aspect of the 2014 Proposal, including regarding whether the limited liability and error resolution provisions of Regulation E should apply to unverified, as well as verified, accounts.[50]

The Bureau altered its approach for the 2016 Final Rule in several respects, drawing on two primary sources of information. The first was its analysis of 325 prepaid account agreements, in which the Bureau found that a large majority of the agreements reviewed purported to offer Regulation E error resolution and limited liability protections.[51] The second was comments received from both industry and consumer advocacy groups reflecting a wide spectrum of views on the 2014 Proposal. For instance, while some industry commenters expressed support for the Bureau's proposed approach, others predicted that it would increase their risk of fraud losses.[52] The latter group of commenters seemed most concerned with the proposed requirement to extend provisional credit on errors asserted prior to verification. Some commenters, including a number of trade associations, a program manager, and a payment processor, argued that applying error resolution and limited liability protections to pre-verification errors would greatly increase fraud losses because it was extremely difficult to investigate an error that occurs before the financial institution knows the identity of the cardholder. They also asserted, however, that requiring full error resolution and limited liability protections for pre-verification errors would not confer significant additional benefits on consumers, positing that it was unlikely that an unauthorized transfer or other error would occur prior to verification.

On the other hand, consumer advocates emphasized the importance of providing consumers—especially consumers who may have a hard time making ends meet—with recourse if their accounts are subject to error or fraud. Some consumer advocate commenters supported the proposal as striking a good balance between protecting consumers and ensuring that the rule does not encourage additional fraudulent activity, while others urged the Bureau to require full error resolution and limited liability protections for additional account or transaction types.[53]

In response to these considerations, the Bureau finalized § 1005.18(e)(3) and related commentary with several substantive revisions. Specifically, under the 2016 Final Rule, financial institutions must provide error resolution and limited liability protections for all accounts, including accounts for which the financial institution has not successfully completed its consumer identification and verification process (*i.e.,* accounts that have not concluded the process, accounts where the process is concluded but the consumer's identity could not be verified, and accounts in programs for which there is no such process). However, for unverified accounts, the financial institution need not provide provisional credit while investigations are pending. The Bureau also added language to emphasize that financial institutions are not required to adopt a consumer identification and verification process for all prepaid accounts, which had been a point of concern with the 2014 Proposal for some industry commenters. In addition, the Bureau added commentary to clarify when a financial institution should be deemed to have completed its consumer identification and verification process for a particular prepaid account. The Bureau considered whether to require error resolution and limited liability protections for prepaid account programs that do not have a consumer identification and verification process, while excluding financial institutions that have a process in situations where a consumer has failed to complete the process successfully; however, the Bureau concluded that it would be preferable to treat all unverified accounts uniformly.[54]

Industry Outreach and Comments Received on 2017 Effective Date Proposal

Through the Bureau's outreach efforts to industry regarding implementation and in connection with the 2017 Effective Date Proposal, several industry stakeholders raised concerns with regard to how the treatment of unverified prepaid accounts in § 1005.18(e) will impact particular consumers and programs. While it appears that for a large number of prepaid account programs financial institutions already provide substantial error resolution and limited liability protections as a matter of contract, as explained above, these industry stakeholders have expressed general concern that mandating error resolution and limited liability protections as a matter of Federal law will increase fraudulent error claims in connection with prepaid programs by making the industry a bigger target or focus for fraudsters. They also offered more detailed explanations of their current practices regarding error resolution and limited liability protections for

[48] As the Bureau explained in the 2014 Proposal, this provision primarily affects GPR cards that are purchased at retail, where the financial institution may—but does not always—obtain consumer identifying information and perform verification at the time the consumer calls or goes online to activate the card. Because of restrictions imposed by the Financial Crimes Enforcement Network's Prepaid Access Rule (31 CFR 1022.210(d)(1)(v)) and the payment card networks' operating rules, among other things, the Bureau understands that consumer identification and verification is almost always performed before a card can be reloaded, used to make cash withdrawals, or used to receive cash back at the point of sale. However, the Bureau understands that some providers allow consumers to use GPR cards purchased at retail immediately to make purchases. 79 FR 77102, 77185 (Dec. 23, 2014).

[49] Regulation E sets certain timelines for investigation of alleged errors. A financial institution may take up to the maximum length of time permitted under § 1005.11(c)(2)(i) or (3)(ii), as applicable, to complete an investigation if it extends provisional credit to the consumer for the amount of the alleged error, so that consumers may continue to access the funds while the financial institution conducts its investigation.

[50] 79 FR 77101, 77185 (Dec. 23, 2014).

[51] CFPB, *Study of Prepaid Account Agreements,* at 13 tbl. 3 and 16 tbl. 4 (Nov. 2014), *available at http://files.consumerfinance.gov/f/201411_cfpb_study-of-prepaid-account-agreements.pdf.* Specifically, the Bureau found that 77.85 percent of all agreements reviewed appeared to provide full error resolution protections, with provisional credit available for all consumers where the error could not be resolved within a defined period of time, and 88.92 percent of all agreements reviewed appeared to provide liability limitations consistent with Regulation E (or better). *Id.*

[52] The discussion here focuses on comments received on the 2014 Proposal with respect to proposed § 1005.18(e)(3). As discussed in the 2016 Final Rule's section-by-section analysis of § 1005.18(e)(2), most industry commenters and all consumer group commenters generally supported the Bureau's proposal to extend to all prepaid accounts the same error resolution provisions that apply to payroll card accounts. At the same time, several industry commenters argued that prepaid accounts may have a higher incidence of fraudulently asserted errors than other accounts covered by Regulation E for a number of reasons, and urged the Bureau to limit application of the error resolution provisions in certain respects, such as by not requiring error resolution for certain types of prepaid products. As the Bureau noted in the 2016 Final Rule, these commenters did not provide any data or particular details in support of their assertions. 81 FR 83934, 84106–07 (Nov. 22, 2016).

[53] *Id.* at 84109–10.

[54] *Id.* at 84110–12.

unverified accounts and how they may modify such practices in response to the 2016 Final Rule.

The most widespread concern relates to situations where a consumer has attempted, but failed (or refused to complete) the financial institution's consumer identification and verification process.[55] Currently, financial institutions typically permit consumers in such situations to spend down the balances on their cards as if they were gift cards, but do not permit reloads and restrict other functionalities. To reduce the potential risk of fraud that they anticipate could occur under the 2016 Final Rule, a number of financial institutions have indicated that they may stop allowing consumers to spend down their remaining funds and instead issue refund checks to all such consumers. However, a refund check might take up to 10 business days to reach the consumer during which time he or she would not have access to his or her funds, and additional complications could arise for consumers without a fixed address. Further, unbanked consumers may incur costs to cash the refund check.

The Bureau also learned that some financial institutions are considering limiting the functionality of their prepaid accounts (in particular, accounts sold at retail) prior to completion of the verification process to reduce fraud exposure.[56] Where immediate use of the product is advertised on their retail packaging, these financial institutions asserted that they need to replace all of their retail packaging for those prepaid accounts to ensure that the packaging accurately reflects the functionality of the account, notwithstanding the Bureau's decision to allow financial institutions to continue selling prepaid accounts in non-compliant packaging manufactured in the normal course of business prior to the rule's effective date. The Bureau cited these concerns in the 2017 Effective Date Proposal as one of the reasons it was proposing to delay the 2016 Final Rule's effective date.

A number of industry stakeholders have also explained that they believe that full compliance with Regulation E error resolution and limited liability requirements would be more burdensome and difficult than the processes they are currently employing with regard to unverified accounts. For example, two prepaid account issuers, a trade association, and a think tank submitted comments in response to the 2017 Effective Date Proposal asserting that most financial institutions do not in fact currently provide full Regulation E error resolution and limited liability protections on unverified prepaid accounts. These commenters explained that financial institutions' error resolution procedures often require comparison of information provided by the consumer when alleging an error with information previously provided by the consumer to the financial institution (for example, by matching the purchaser's name and shipping address for an online purchase with the consumer's information on file with the financial institution); such information would not be available where the identification and verification process has not been completed.[57]

Commenters also stated that the provision in the 2016 Final Rule excluding unverified accounts from the provisional credit requirement does not provide them meaningful relief because financial institutions often are ultimately unable to establish whether a given transaction on an unverified account was in fact unauthorized. Under EFTA section 909(b), the burden of proof is on the financial institution to show that an alleged error was in fact an authorized transaction; if the financial institution cannot establish proof of valid authorization, the financial institution must credit the consumer's account. These commenters asserted that the rule would therefore increase financial institutions' fraud protection and mitigation costs. The Bureau is aware, however, that some financial institutions do provide full Regulation E limited liability and error resolution protections (though perhaps without provisional credit) even on unverified accounts.

Proposal

The Bureau believes that providing error resolution and limited liability rights to consumers even on unverified accounts would be beneficial to consumers but is concerned about the potential ramifications raised by industry stakeholders as described above. The Bureau therefore is proposing amendments that would return § 1005.18(e)(3) to approximately what it proposed in the 2014 Proposal, with additional modifications to clarify treatment of prepaid account programs for which there is no consumer identification and verification process. However, as detailed further below, the Bureau also is considering whether more targeted approaches could be warranted, and specifically seeks comment on such alternatives.

To further the purposes of EFTA to provide a framework to establish the rights, liabilities, and responsibilities of prepaid account consumers and to facilitate compliance with its provisions, the Bureau believes it is necessary and proper to propose to exercise its authority under EFTA section 904(c) to revise § 1005.18(e)(3) to except accounts that have not completed the consumer identification and verification process from the error resolution and limited liability requirements of EFTA sections 908 and 909 to the extent such accounts remain unverified.

Specifically, the Bureau is proposing to revise § 1005.18(e)(3) and related commentary to provide that, for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in §§ 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process. For purposes of this provision, a financial institution would be deemed to have not successfully completed its consumer identification and verification process where: (A) The financial institution has not concluded its consumer identification and verification process with respect to a particular prepaid account, provided that it has disclosed to the consumer the risks of not verifying the account using a notice that is substantially similar to the model notice contained in proposed Appendix A–7(c); (B) the financial institution has concluded its consumer identification and verification process with respect to a particular prepaid account but could not verify the identity of the consumer, provided that it has disclosed to the consumer the risks of not registering and verifying the account using a notice that is substantially similar to the model notice contained in proposed Appendix A–7(c); or (C) the financial institution does not have a consumer identification and verification process for the prepaid account program, provided that it has

[55] The Bureau understands that some prepaid issuers separate the registration and verification processes, allowing a consumer to activate some card functionality by providing at least some amount of personal information, while requiring additional information along with identity verification before providing access to full functionality on the account.

[56] As noted above, many GPR providers do not allow consumers to use prepaid accounts purchased at retail immediately.

[57] In conducting its Study of Prepaid Account Agreements, the Bureau observed that very few agreements expressly differentiated between the protections applicable to verified and unverified accounts. In fact, as noted above, many of the account agreements reviewed by the Bureau suggested that error resolution and limited liability protections were provided in accordance with Regulation E.

made the alternative disclosure described in proposed § 1005.18(d)(1)(ii), discussed above, and complies with the process it has disclosed.[58]

Proposed § 1005.18(e)(3)(iii) would provide that, once a financial institution successfully completes its consumer identification and verification process with respect to a prepaid account, the financial institution must limit the consumer's liability for unauthorized transfers and resolve errors that occurred prior to verification with respect to any unauthorized transfers or other errors that satisfy the timing requirements of §§ 1005.6 or 1005.11, or the modified timing requirements in § 1005.18(e), as applicable. As noted above, some commenters on the 2014 Proposal expressed concern about having to provide provisional credit on pre-verification errors after an account is verified. In comments on the 2017 Effective Date Proposal and other recent feedback, however, industry stakeholders have acknowledged that the issue in fact lies with the obligation to resolve errors generally for unverified accounts, stating that, as noted above, the exception from the provisional credit requirement does not provide meaningful relief. In addition, the Bureau understands that many financial institutions do in fact currently provide error resolution and limited liability protections for pre-verification unauthorized transfers and other errors once the consumer's identity has been verified, and therefore does not believe that this provision should be problematic for financial institutions.[59]

The Bureau is also proposing changes to the commentary accompanying § 1005.18(e). The proposed revisions to comment 18(e)–4 would align it with the proposed text of § 1005.18(e)(3) as well as add commentary from the 2014 Proposal to explain that, for an unauthorized transfer or other error asserted on a previously unverified prepaid account, whether a consumer has timely reported the unauthorized transfer or other error is based on the date the consumer contacts the financial institution to report the unauthorized transfer or other error, not the date the financial institution successfully completes its consumer identification and verification process. For an error asserted on a previously unverified account, the time limits for the financial institution's investigation pursuant to § 1005.11(c) would begin on the day following the date the financial institution successfully completed its consumer identification and verification process.

The Bureau is proposing to revise comments 18(e)–5 and –6 to more closely align with the proposed text of § 1005.18(e)(3) and to clarify the example provided in comment 18(e)–5 illustrating a situation where a financial institution has not successfully completed its consumer identification and verification process. Proposed comment 18(e)–5 would continue to make clear that financial institutions may not delay completing their consumer identification and verification processes or refuse to verify a consumer's identity in order to avoid investigating an error asserted by a consumer.[60]

The Bureau remains concerned, as it expressed in adopting the 2016 Final Rule, that consumers with prepaid accounts that have not been or cannot be verified would not have a right to Regulation E error resolution and limited liability protections under this proposal. However, the Bureau appreciates the concerns raised by industry that applying those protections to unverified prepaid accounts may increase fraud losses that could, in turn, lead financial institutions to stop offering prepaid accounts at retail that allow for immediate access to funds, provide refunds for accounts that fail verification via paper check, or make other policy changes that would decrease the availability or utility of prepaid accounts to consumers.[61]

For example, the Bureau is concerned that consumers who are not able to complete the consumer identification and verification process successfully could experience days of serious financial disruption while waiting for a return of their funds by check. The Bureau is also aware that consumers use prepaid accounts for a variety of reasons, and that consumers who do not wish to submit their personal information for verification or who may not be able to have their identities verified would have few other options if financial institutions stop allowing any functionality prior to successful verification. Such consumers could choose instead to use open loop gift cards, for which there is not generally an identification and verification process, but in that case would not receive any of the other benefits of the Prepaid Accounts Rule. The Bureau seeks comment on the various tradeoffs to particular groups of consumers in these scenarios.

The Bureau has considered various alternatives to this proposal, and seeks comment on whether more tailored approaches would be workable. For example, the Bureau considered whether it might be appropriate to apply a different standard to prepaid accounts for which a consumer has attempted but failed to complete the consumer identification and verification process. The Bureau is concerned, however, that adding a third category of accounts would increase the complexity of the rule, and in particular that it may be difficult for financial institutions to determine whether a consumer has definitely ''failed to complete'' the process, as opposed to a delay in providing information requested by the financial institution.

The Bureau seeks comment on all aspects of this part of its proposal. In particular, the Bureau seeks comment on financial institutions' existing practices with respect to error resolution and limited liability on unverified accounts, including how those practices align or diverge from what the Bureau is proposing, and how those practices are currently explained to consumers. Information or data regarding the number or percentage of accounts or consumers that do not attempt the consumer identification and verification process, that do not complete the process, and that fail the process, as well as projections for fraudulently

[58] Existing comment 18(e)–5 (to which the Bureau is proposing some modifications for clarity and consistency, as discussed below) makes clear that a financial institution may not delay completing its consumer identification and verification process or refuse to verify a consumer's identity based on the consumer's assertion of an error.

[59] Comments on the 2017 Effective Date Proposal describing this issue suggested that the primary concern about providing error resolution and limited liability protections on unverified accounts is the lack of available information regarding the consumer for use in confirming whether an EFT was in fact authorized. Upon successful verification of the consumer's identity, however, the Bureau believes that financial institutions should have sufficient information to investigate alleged errors.

[60] Under the proposed approach, the Bureau anticipates that when a consumer calls to assert an unauthorized transfer or other error on an unverified account that offers verification, the financial institution would inform the consumer of its policy regarding error resolution and limited liability on unverified accounts and would begin its consumer identification and verification process at that time. The Bureau also expects that the pre-acquisition disclosures regarding registration and deposit insurance, in § 1005.18(b)(2)(xi) and (b)(4)(iii), will help encourage consumers to register their prepaid accounts promptly.

[61] The Bureau also acknowledges that there is some risk that this proposal, if adopted, might increase the incentive for financial institutions to offer prepaid accounts for which there is no customer identification and verification process and are therefore excepted from error resolution and limited liability protections, although the Bureau believes that any such incentives would generally be outweighed by the potential benefits to the financial institution of encouraging consumers to register their prepaid accounts to increase the functionality and thus the longevity of the consumer's use of the account.

asserted errors and corresponding fraud losses under the 2016 Final Rule and the proposed approach, would be particularly useful. The Bureau also seeks comment on any disadvantages to the proposed approach, as well as the pros and cons of the alternatives discussed above. Relatedly, the Bureau seeks comment on whether there are any other alternative solutions that would better protect consumers with legitimate unauthorized transfers or other errors on unverified accounts while also limiting financial institutions' exposure to fraud.

Section 1005.19 Internet Posting of Prepaid Account Agreements

19(b) Submission of Agreements to the Bureau

Section 1005.19 requires prepaid account issuers to post and submit agreements to the Bureau, pursuant to the Bureau's authority under EFTA sections 904(c) and 905(a) and sections 1022(c)(4) and 1032(a) of the Dodd-Frank Act.[62] As discussed in the section-by-section analyses that follow, the Bureau is proposing to narrow the scope of several aspects of § 1005.19(b) to facilitate compliance and reduce burden.

19(b)(2) Amended Agreements

Section 1005.19(b)(1) requires issuers to make submissions of prepaid account agreements to the Bureau on a rolling basis, in the form and manner specified by the Bureau. Submissions must be made to the Bureau no later than 30 days after an issuer offers, amends, or ceases to offer a prepaid account agreement and must contain certain information, including other relevant parties to the agreement (such as the employer for a payroll card program).[63] As explained in the 2016 Final Rule, the Bureau believes that providing this information about each agreement will help the Bureau, consumers, and other parties locate agreements on the Bureau's Web site quickly and more effectively.[64] Section 1005.19(b)(2) currently provides that, if a prepaid account agreement previously submitted to the Bureau is amended, the issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the change becomes effective. Comment 19(a)(2)–1 provides examples of changes to an agreement that generally would be considered substantive, and therefore would be deemed amendments of the agreement.

Through its outreach efforts to industry regarding implementation, the Bureau learned that some industry stakeholders are concerned about needing to notify the Bureau every time relevant parties to a prepaid account agreement are added or removed, particularly in the payroll card context. The Bureau understands that while some payroll card programs are customized for specific employers, payroll card issuers often use a standard account agreement with multiple employers, so that new employers may be added or removed although the agreement itself is not revised. These stakeholders explained that changes to these employers as relevant parties to the agreement might occur on a somewhat frequent basis, and they were thus concerned about continually needing to notify the Bureau of these changes.

While the Bureau continues to believe that information about other relevant parties to agreements will be useful to the Bureau, consumers, and others, the Bureau acknowledges that reporting frequent changes of relevant parties to an agreement for an otherwise unchanging agreement could be time consuming for certain issuers. Therefore, the Bureau is proposing to revise § 1005.19(b)(2) to provide that an issuer may delay submitting a change in the names of other relevant parties to an agreement until such time as the issuer is submitting an amended agreement pursuant to proposed § 1005.19(b)(2) or changes to other identifying information about the issuer and its submitted agreements pursuant to § 1005.19(b)(1)(i), in lieu of submitting such a change no later than 30 days after the change becomes effective. The Bureau is also proposing to revise comment 19(a)(2)–1.vii to add a reference to § 1005.19(b)(2) regarding the timing of submitting such changes to the Bureau.

The Bureau seeks comment on this aspect of the proposal. The Bureau also seeks comment on how often changes are made to the relevant parties to a prepaid account agreement, such as an employer or government agency, as well as how often changes are made to such agreements themselves. In addition, the Bureau seeks comment on whether there are any alternative approaches the Bureau might adopt to reduce burden on issuers while still ensuring that information about other relevant parties is submitted in a timely manner, such as by requiring submission of updated information on other relevant parties at least once per quarter.

19(b)(6) Form and Content of Agreements Submitted to the Bureau

19(b)(6)(ii) Fee Information

Section 1005.19(b)(6)(ii) provides that fee information must be set forth either in the prepaid account agreement or in a single addendum to that agreement. It further provides that the agreement or the addendum thereto must contain all of the fee information, which § 1005.19(a)(3) defines as the short form disclosure for the prepaid account pursuant to § 1005.18(b)(2) and the fee information and statements required to be disclosed in the pre-acquisition long form disclosure for the prepaid account pursuant to § 1005.18(b)(4). As explained in the 2016 Final Rule, the Bureau believed that permitting issuers to include the short form and long form disclosures together as part of the prepaid account agreement or in a single addendum to that agreement would provide issuers some flexibility, while ensuring that consumers and other parties reviewing the agreements have access to such information.[65]

Upon further consideration, the Bureau is concerned that permitting the short form and long form disclosures to be included either as part of the prepaid account agreement or in a single addendum might not provide issuers the flexibility the Bureau intended. Given the form and content requirements of the short form and long form disclosures, the Bureau expects that many issuers will likely create two separate documents, making the task of combining the documents into the agreement or a single addendum potentially unnecessarily complex. Therefore, the Bureau is proposing to revise § 1005.19(b)(6)(ii) to allow issuers to submit the pre-acquisition disclosures either as one or separate addenda. Specifically, proposed § 1005.19(b)(6)(ii) would provide that fee information must be set forth either in the prepaid account agreement or in addenda to that agreement that attach either or both the short form disclosure for the prepaid account pursuant to § 1005.18(b)(2) and the fee information and statements required to be disclosed in the long form disclosure for the prepaid account pursuant to

[62] 15 U.S.C. 1693b(c) and 1693c(a); 12 U.S.C. 5512(c)(4) and 5532(a).

[63] Specifically, § 1005.19(b)(1)(i) requires issuers to submit identifying information about the issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number); the effective date of the prepaid account agreement; the name of the program manager, if any; and the names of other relevant parties, if applicable (such as the employer for a payroll card program or the agency for a government benefit program).

[64] 81 FR 83934, 84136 (Nov. 22, 2016).

[65] *Id.* at 84143.

§ 1005.18(b)(4). The agreement or addenda thereto must contain all of the fee information, as defined by § 1005.19(a)(3).

Relatedly, the Bureau is proposing to make conforming changes to § 1005.19(b)(6)(iii) and comment 19(b)(6)–3, which govern the requirements for integrated prepaid account agreements and which reference an optional fee information addendum, to reflect the proposed changes to § 1005.19(b)(6)(ii).

The Bureau seeks comment on this aspect of the proposal. The Bureau additionally seeks comment on whether it should make further modifications to this requirement, such as requiring (rather than permitting) the short form disclosure to be provided as an addendum or as a separate document.

19(f) Effective Date

Section 1005.19(f)(1) establishes that the April 1, 2018 effective date of the Prepaid Accounts Rule [66] applies to the requirements of § 1005.19, with the exception of § 1005.19(b), which governs the requirements to submit prepaid account agreements to the Bureau on a rolling basis. Section 1005.19(f)(2) currently provides that the effective date for the submission requirements in § 1005.19(b) is October 1, 2018; issuers must submit to the Bureau any prepaid account agreements they are offering as of October 1, 2018 no later than October 31, 2018.

The Bureau continues to believe that the October 1, 2018 effective date for § 1005.19(b) is appropriate and is working to develop a streamlined electronic submission process, which it expects will be fully operational before the October 1, 2018 effective date. The Bureau is proposing to make clarifications related to how the October 1, 2018 effective date is described in § 1005.19(f)(2) and comment 19(f)–1 to avoid any potential confusion between the delayed effective date for § 1005.19(b) and the Bureau's recent six-month delay of the general effective date of the Prepaid Accounts Rule, to April 1, 2018.[67] Specifically, the Bureau is proposing to refer to the October 1, 2018 effective date in the regulatory text and commentary as a compliance date, instead of as a delayed effective date. The Bureau is also proposing to make other minor clarifying revisions to § 1005.19(f)(2) and comment 19(f)–1 to align with the regulatory text of § 1005.19(b)(1).

The Bureau seeks comment on this aspect of the proposal.

Appendix A–7 Model Clauses for Financial Institutions Offering Prepaid Accounts (§ 1005.18(d) and (e)(3))

Current Appendix A–7(c) provides model language for use by a financial institution that chooses not to provide provisional credit while investigating an alleged error for prepaid accounts for which it has not completed its consumer identification and verification process. The Bureau is proposing to revise that model language to reflect the proposed amendments to § 1005.18(d)(1)(ii) and (e)(3). This proposed language is similar to the language used in the 2014 Proposal, with additional language to clarify that limited liability and error resolution rights would apply only upon successful verification of the consumer's identity.[68]

The proposed model language would read: ''It is important to register your prepaid account as soon as possible. Until you register your account and we verify your identity, we are not required to research or resolve any errors regarding your account. To register your account, go to [Internet address] or call us at [telephone number]. We will ask you for identifying information about yourself (including your full name, address, date of birth, and [Social Security Number] [government-issued identification number]), so that we can verify your identity. Once we have done so, we will address your complaint or question as set forth above.''

The Bureau seeks comment on the proposed revisions to this model language.

Regulation Z

Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

Section 1026.61 Hybrid Prepaid-Credit Cards

61(a) Hybrid Prepaid-Credit Card

61(a)(5) Definitions

61(a)(5)(iii)

In the 2016 Final Rule, the Bureau amended Regulations Z and E to establish a set of requirements in connection with ''hybrid prepaid-credit cards'' that can access overdraft credit features offered by the prepaid account issuer, its affiliate, or its business partner.[69] The Bureau was concerned about overdraft credit features that are associated with prepaid accounts in part because of the way that such services have evolved on traditional checking accounts. As explained in detail in the 2016 Final Rule, checking overdraft originally developed as an occasional courtesy to consumers by honoring checks that would otherwise overdraw their accounts, and was exempted from the normal rules governing credit under Regulation Z. As debit card use expanded and fees rose, overdrafts increased substantially and depository institutions changed their account pricing structures in part in reliance on overdraft income. In the 2016 Final Rule, the Bureau noted that a substantial number of consumers have moved to prepaid accounts specifically because they have had difficult experiences with overdraft services on traditional checking accounts, and that prepaid account providers have frequently marketed their products as safer and easier to use than comparable products with credit features. In light of these and other considerations, the Bureau concluded that it was appropriate to apply traditional credit card rules to overdraft credit features accessible by hybrid prepaid-credit cards, as well as a short list of tailored provisions established by the 2016 Final Rule to reduce the risk that consumers would experience problems in accessing and managing their prepaid accounts that are linked to such credit features.[70]

Overdraft credit features accessible by hybrid prepaid-credit cards are referred to as ''covered separate credit features'' in the Prepaid Accounts Rule, as set forth in current § 1026.61(a)(2)(i). The Bureau designed this portion of the Prepaid Accounts Rule to ensure that these products would be treated consistently regardless of certain details about how the credit relationship was structured. For example, the rules for covered separate credit features accessible by hybrid prepaid-credit cards apply regardless of whether the credit is offered by the prepaid account issuer itself, its affiliate, or its business partner. Specifically, current § 1026.61(a)(5)(iii) defines the term

[66] The 2017 Effective Date Final Rule extended the original October 1, 2017 general effective date of the prepaid accounts final rule by six months, to April 1, 2018. 82 FR 18975 (Apr. 25, 2017).

[67] *Id.*

[68] The Bureau tested a version of this proposed model language with consumers as part of its pre-proposal disclosure testing. *See* 79 FR 77101, 77203 and n.327 (Dec. 23, 2014) and ICF Int'l, *ICF Report: Summary of Findings: Design and Testing of Prepaid Card Fee Disclosures,* at 23 (Nov. 2014), *available at https://www.consumerfinance.gov/documents/4776/201411_cfpb_summary-findings-design-testing-prepaid-card-disclosures.pdf.*

[69] Under the Prepaid Accounts Rule, overdraft credit features involve credit that can be accessed from time to time in the course of authorizing, settling, or otherwise completing transactions conducted with a prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers.

[70] 81 FR 83934, 84158–61 (Nov. 22, 2016).

''business partner'' as a person (other than the prepaid account issuer or its affiliate) that can extend credit through a separate credit feature where the person or its affiliate has an arrangement with a prepaid account issuer or its affiliate. Current comment 61(a)(5)(iii)–1 explains that there are two types of arrangements that create a business partner relationship for purposes of current § 1026.61(a)(5)(iii): (1) An agreement between the parties under which a prepaid card can from time to time draw, transfer, or authorize a draw or transfer of credit in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) a cross-marketing or other similar agreement between the parties to cross-market the credit feature or the prepaid account, where the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the credit feature in the course of transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers.

As explained in the 2016 Final Rule, the Bureau believed that it was appropriate to consider a third party that can extend credit to be the prepaid account issuer's business partner in the above circumstances because such arrangements can be used to replicate overdraft programs on a prepaid account. Specifically, the Bureau believed that these types of relationships between the prepaid account issuer and the unaffiliated third party are likely to involve revenue sharing or payments between the two companies and the pricing structure of the two accounts may be related.[71]

Thus, the Bureau believed that it was appropriate to consider these entities to be business partners in this context, although it did not apply the rules related to hybrid prepaid-credit cards in situations in which there is less of a connection between the party offering credit and the prepaid account issuer, such that the person offering credit may not be aware its credit feature is being used as an overdraft credit feature with respect to a prepaid account.[72] This could occur if the prepaid account issuer allows consumers to link their prepaid cards to credit card accounts offered by unrelated third party card issuers.[73] Where the two parties do not have a business arrangement or where the prepaid card cannot be used from time to time to draw, transfer, or authorize a draw or transfer of credit in the course of a transaction with the prepaid account, the separate credit feature is deemed a ''non-covered separate credit feature'' as set forth in current § 1026.61(a)(2)(ii) and does not trigger the Prepaid Accounts Rule provisions governing hybrid prepaid-credit cards, though it generally will be subject to Regulation Z in its own right.

Since issuance of the 2016 Final Rule, the Bureau has received feedback indicating digital wallet providers were concerned that application of the substantive rules in certain circumstances would create a number of unique challenges for their products. Unlike a general purpose reloadable prepaid card, which is generally designed to be used as a standalone product similar to a checking account, a digital wallet is a product that by its nature is generally intended to facilitate the consumer's use of multiple payment options in online and mobile transactions, similar to a physical wallet holding credit and debit cards as well as cash. As set forth in Regulation E § 1005.2(b)(3) and comment 2(b)(3)(i)–6, the term ''prepaid account'' includes digital wallets that are capable of being loaded with funds; those that simply hold payment credentials for other accounts but that are incapable of having funds stored in them are not covered. Some digital wallets provide *both* types of functionality. Accordingly, even where a digital wallet provides the ability to hold funds directly, consumers also may want to store credentials for their existing credit, debit, and prepaid cards and deposit accounts so that they have a range of payment options available. These digital wallet providers may actively encourage consumers to use both functions, either by direct marketing to consumers or through joint arrangements with card issuers.

As detailed below, the Bureau has considered the feedback received through comments on the 2017 Effective Date Proposal and through its outreach efforts to industry regarding implementation, and believes that it is appropriate to consider creating a limited exception from the definition of ''business partner'' that would exclude certain arrangements between companies that offer credit card accounts and companies that offer prepaid accounts (including digital wallet providers) from the tailored provisions in the Prepaid Accounts Rule applicable to covered separate credit features accessible by hybrid prepaid-credit cards. As explained below, where the credit card products would already be subject to traditional credit card rules under Regulation Z and certain other safeguards are present, the Bureau believes that it may not be necessary to apply the Prepaid Accounts Rule's tailored provisions to such business arrangements. Rather, the Bureau is proposing to treat such products as ''non-covered separate credit features,'' comparable to situations in which a prepaid account issuer allows a consumer to link a prepaid account to a credit card account offered by a company that does not have a business arrangement with the prepaid account issuer.

Comments Received on the 2017 Effective Date Proposal

In response to the 2017 Effective Date Proposal, a digital wallet provider whose product can store funds (such that its digital wallet accounts are prepaid accounts under Regulation E § 1005.2(b)(3)) submitted a comment raising several concerns about the account number for the digital wallet account becoming a hybrid prepaid-credit card where consumers link their digital wallet accounts to credit card accounts that are offered by companies with which the wallet provider has cross-marketing or other agreements that would create a business partner relationship under current § 1026.61(a)(5)(iii).

First, the commenter pointed to a requirement in § 1026.61(c) that generally requires a card issuer to wait 30 days after a prepaid account has been registered before soliciting or opening new credit features or linking existing credit features to the prepaid account that would be accessible by a hybrid prepaid-credit card. The commenter expressed concern that this requirement would delay a consumer's ability to link credit card accounts offered by its business partners to the digital wallet account, noting that where a digital wallet provider has entered into a business partner arrangement with Issuer A but not Issuer B, consumers could add Issuer B's credit card accounts to their digital wallet accounts immediately after opening the digital wallet accounts, but could not add Issuer A's credit card accounts for a period of 30 days after the digital wallet

[71] *Id.* at 84253 (Nov. 22, 2016).

[72] *See id* at 84252–53.

[73] The unaffiliated third party creditor might not realize that its credit feature is accessible by a prepaid card in the course of transaction, so that the creditor would have no reason to think that the provisions in the Prepaid Accounts Rule tailored to hybrid prepaid-credit cards would apply to its product. The Bureau was concerned that card issuers might try to mitigate compliance risk in ways that would make it harder for prepaid account consumers to access credit. 81 FR 83934, 84253 (Nov. 22, 2016).

accounts are registered because Issuer A is a business partner of the digital wallet provider. The commenter asserted that the policy concerns underlying the Bureau's decision to impose the 30-day waiting period are inapplicable to digital wallet accounts in these circumstances and that such a delay would likely lead to consumer confusion and reduced consumer choice.

Second, the commenter indicated that additional consumer confusion is likely to arise from the long form pre-acquisition disclosure requirements set forth in Regulation E § 1005.18(b)(4)(vii), which mandate that disclosures of key credit pricing terms set forth in § 1026.60(e)(1) be included on a prepaid account's long form disclosure if a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to a consumer in connection with the prepaid account. The commenter indicated that these credit disclosures for each credit card product offered by each business partner would have to be provided to all new digital wallet account holders in the digital wallet account's long form disclosure even if many of the digital wallet account holders never hold, or apply for, credit card accounts offered by those business partners. The commenter indicated that such disclosures might be numerous depending on how many business partners the digital wallet provider has and how many credit card products are offered by each business partner and asserted that additional consumer confusion was likely to arise from the inclusion of those disclosures in the long form for its digital wallet accounts.

Third, the commenter raised concerns about an exception in § 1026.61(a)(4) that allows prepaid account issuers to provide certain incidental forms of credit in the course of administering the asset feature of prepaid accounts without triggering Regulation Z and the other protections for hybrid prepaid-credit cards. The Bureau created this provision to allow prepaid account issuers to provide certain forms of incidental credit to their customers, including situations where a negative balance results because a consumer is allowed to complete transactions with his or her prepaid account while an incoming load of funds from an asset account is still being processed.[74] However, to limit evasion, the exception only applies where (1) the prepaid card cannot access credit from a covered separate credit feature accessible by a hybrid prepaid-credit card; (2) the prepaid account issuer generally does not charge credit-related fees; and (3) the prepaid account issuer has a general policy and practice of declining transactions that will take the account negative (at least outside of the situations involving incidental credit). The commenter pointed out that it could not take advantage of the exception in situations in which a customer links a credit card account offered by a business partner of the digital wallet provider. Rather, the rule would prohibit negative balances and instead require that even the incidental credit be obtained using the covered separate credit feature that is subject to the full protections of Regulation Z. The commenter expressed concern that this could cause consumer confusion and make it more likely that consumers would be charged fees or interest because the incidental credit would be provided formally via the separate credit feature, rather than as a temporary negative balance on the asset account.

To avoid these various concerns, the commenter suggested two changes to the provisions in Regulation Z and its commentary that were adopted as part of the 2016 Final Rule. First, the commenter suggested that the Bureau amend the commentary to the definition of ''business partner'' in current § 1026.61(a)(5)(iii) to restrict it to situations in which a person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate where (1) the separate credit feature provides overdraft protection to the asset feature of a prepaid account; or (2) the prepaid account can access a separate credit feature either of a type or in a manner that is not also offered by or available from a person or its affiliate (other than the prepaid account issuer or its affiliate) with which the prepaid account issuer or its affiliate has no business, marketing, or promotional agreement. Second, the commenter suggested that the Bureau amend § 1026.61(a)(4) and its commentary to permit incidental credit to be provided via negative balances on a prepaid account even when a covered separate credit feature is connected to the prepaid account, as long as the other prerequisites contained in § 1026.61(a)(4)(ii) are satisfied.

Overview of the Regulation Z Proposal

In light of the feedback described above, the Bureau believes that it may be appropriate to narrow the definition of ''business partner'' in current § 1026.61(a)(5)(iii) to exclude certain arrangements between prepaid account issuers and companies that offer products already subject to traditional credit card rules, provided that certain additional safeguards are in place. Most importantly, these safeguards include restrictions to ensure that the prepaid and credit card accounts are priced independent of the linkage. As described further below, to facilitate compliance with TILA, the Bureau believes it is necessary and proper to propose to exercise its exception authority under TILA section 105(a) so that a prepaid card that is linked to a credit card account meeting the conditions in proposed § 1026.61(a)(5)(iii)(D) would be excluded from the definition of ''credit card'' under TILA section 103(*l*)[75] and Regulation Z § 1026.2(a)(15)(i). Under the proposed exception, the prepaid account issuer and the card issuer would not be ''business partners'' under § 1026.61(a)(5)(iii) and thus the prepaid card would not be a ''hybrid prepaid-credit card'' under § 1026.61(a)(2)(i) with respect to the credit card account if certain conditions are met. The proposed exception would facilitate compliance by allowing the card issuer to comply with the rules in Regulation Z that already apply to the credit card account without also requiring the card issuer or the prepaid account issuer to comply with the tailored provisions in Regulations Z and E that were adopted in the 2016 Final Rule.[76]

To effectuate this potential exception, the Bureau is proposing several revisions to the definition of ''business partner'' in current § 1026.61(a)(5)(iii). First, the Bureau is proposing to make technical revisions to current § 1026.61(a)(5)(iii) by moving certain guidance on when there is an arrangement between business partners from current comment 61(a)(5)(iii)–1 to the regulatory text itself in proposed § 1026.61(a)(5)(iii)(A) through (C), and to revise this language for clarity, as discussed in more detail below. In

[74] This exception is intended to except three types of incidental credit so long as the prepaid account issuer generally does not charge credit-related fees for the credit: (1) Credit related to ''force pay'' transactions; (2) a de minimis $10 payment cushion; and (3) a delayed load cushion where credit is extended while a load of funds from an asset account is pending.

[75] 15 U.S.C. 1602(*l*).

[76] For the same reasons, the Bureau declines to extend the additional tailored provisions of the Prepaid Accounts Rule authorized under TILA section 105(a), section 1032(a) of the Dodd-Frank Act, and EFTA section 904(c) to these cards that are excluded from coverage as hybrid prepaid-credit cards.

particular, this proposed change would include moving the descriptions of the two types of arrangements that trigger coverage as business partners to proposed § 1026.61(a)(5)(iii)(B) and (C).[77]

Second, in response to concerns raised by the digital wallet provider, the Bureau is proposing to add an exception in § 1026.61(a)(5)(iii)(D) to the definition of ''business partner.'' Specifically, proposed § 1026.61(a)(5)(iii)(D) would provide that a person that can extend credit through a credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in proposed § 1026.61(a)(5)(iii)(A) through (C) with regard to such credit card account if all of the following conditions are met:

(1) The credit card account is a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card.

(2) The prepaid account issuer and the card issuer will not allow the prepaid card to draw, transfer, or authorize the draw or transfer of credit from the credit card account from time to time in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers, except where the prepaid account issuer or the card issuer has received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account as described above.

(3) The prepaid account issuer and the card issuer do not condition the acquisition or retention of the prepaid account or the credit card account on whether a consumer authorizes the prepaid card to access the credit card account as described above in proposed § 1026.61(a)(5)(iii)(D)(*2*).

(4) The prepaid account issuer applies the same terms, conditions, or features to the prepaid account when a consumer authorizes linking the prepaid card to the credit card account as described above in proposed § 1026.61(a)(5)(iii)(D)(*2*) as it applies to the consumer's prepaid account when the consumer does not authorize such a linkage. In addition, the prepaid account issuer applies the same fees to load funds from a credit card account that is linked to the prepaid account as described above as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement.

(5) The card issuer applies the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account as described above in proposed § 1026.61(a)(5)(iii)(D)(*2*) as it applies to the consumer's credit card account when the consumer does not authorize such a linkage. In addition, the card issuer applies the same specified terms and conditions to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card.

Each of these conditions is discussed in more detail in the section-by-section analyses of § 1026.61(a)(5)(iii)(D)(*1*), (*2*), (*3*), (*4*), and (*5*) below, respectively.

The Bureau is not proposing to specifically tailor the proposed exception to digital wallet accounts because the Bureau believes that it may be difficult to distinguish these digital wallet accounts from other types of prepaid accounts, particularly those that operate without a physical access device. Nonetheless, the Bureau believes that the proposed exception will address most of the concerns raised by the digital wallet provider, as discussed above. While prepaid account issuers do not generally permit card-based prepaid accounts to be linked to credit card accounts in order to back up transactions where the prepaid account is lacking sufficient funds, the Bureau believes that the potential risk to consumers if issuers were to do so would also be minimal if the conditions in proposed § 1026.61(a)(5)(iii)(D) were met.

If the exception in proposed § 1026.61(a)(5)(iii)(D) applies, a person that can extend credit through a credit card account that can be linked to a prepaid account would not be a business partner of the prepaid account issuer with which it has an arrangement as defined in proposed § 1026.61(a)(5)(iii)(A) through (C) with respect to the credit card account. The credit feature would be subject to traditional credit card rules in its own right because one of the conditions for the proposed exception is that the credit feature be a credit card account under an open-end (not home-secured) consumer credit plan, as would be required by proposed § 1026.61(a)(5)(iii)(D)(*1*). The prepaid card that is linked to the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(*2*) would not be a hybrid prepaid credit-card with respect to that credit card account, and thus the Prepaid Accounts Rule's tailored provisions applicable in connection with covered separate credit features accessible by hybrid prepaid-credit cards would not apply, such as the 30-day waiting period in § 1026.61(c) and the long form pre-acquisition disclosure requirements set forth in Regulation E § 1005.18(b)(4)(vii).[78] In addition, when the exception in proposed § 1026.61(a)(5)(iii)(D) applies, the fact that the prepaid card can access the credit card account would not prevent the prepaid account issuer from providing incidental credit through a negative balance on the linked prepaid account if the conditions of § 1026.61(a)(4) are met.

The Bureau believes that if the conditions of the proposed exception are met, an exception from coverage as a ''covered separate credit feature'' accessible by a hybrid prepaid-credit card under § 1026.61(a)(2)(i) would be appropriate to facilitate compliance and is consistent with the consumer protection purposes of TILA. First, the credit card account would be subject to the credit card rules in Regulation Z in its own right because it would be a credit card account under an open-end (not home-secured) consumer credit plan that the consumer can access with

[77] As noted above, the two types of arrangements are: (1) Agreements between the person that can extend credit or its affiliate with the prepaid account issuer or its affiliate under which a prepaid card can from time to time draw, transfer, or authorize a draw or transfer of credit in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers; and (2) cross-marketing or other similar agreement between the person that can extend credit or its affiliate with the prepaid account issuer or its affiliate to cross-market the credit feature or the prepaid account, and at the time of the marketing agreement or arrangement, or at any time afterwards, the prepaid card can from time to time draw, transfer, or authorize the draw or transfer of credit from the credit feature in the course of transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers.

[78] Other provisions in Regulations Z and E setting forth additional protections that only apply to covered separate credit features accessible by a hybrid prepaid-credit card or to prepaid accounts that are connected to such credit features include:

(1) Restriction in Regulation E § 1026.18(g) on account terms, conditions, and features imposed on the asset feature of the prepaid account and applicability of the fee restriction in § 1026.52(a) to certain fees imposed on the asset feature of the prepaid account;

(2) Repayment-related provisions applicable to covered separate credit features in §§ 1026.5(b)(2)(ii)(A), 1026.7(b)(11), 1026.12(d)(2) and (3), and Regulation E § 1005.10(e)(1);

(3) Applicability of the claims and defenses provision in § 1026.12(c); and

(4) Applicability of limits on liability for unauthorized use and error resolution provisions in §§ 1026.12(b) and 1026.13 and Regulation E § 1005.12(a).

a traditional credit card, pursuant to proposed § 1026.61(a)(5)(iii)(D)(*1*). Thus, the linked credit feature would still receive the protections in Regulation Z that generally apply to a credit card account under an open-end (not home-secured) consumer credit plan.

Second, the Bureau believes that the conditions of the exception would create substantial safeguards to protect against the prepaid account and the credit card account being connected in a way that would pose the kinds of risks to consumers that motivated the Bureau's approach to the general rules for covered separate credit features accessible by hybrid prepaid-credit cards. For example, the 30-day waiting period in § 1026.61(c) was designed to ensure that consumers do not feel undue pressure to decide at the time that they purchase or register a prepaid account whether to link a covered separate credit feature to such account without having the opportunity to fully consider the terms of the prepaid account, the separate credit feature, and the consequences of linking the two.[79] The Bureau also carefully crafted rules to govern the pricing for prepaid accounts and covered separate credit features upon linkage via a hybrid prepaid-credit card, and the disclosure thereof, to better ensure that the consumer could understand the cost and consequences of linking credit to a prepaid account. The Bureau believes that these requirements may not be necessary when the safeguards of the exception are met because those safeguards will help make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure. In particular, the Bureau has tailored the proposed exception to ensure that it is limited to traditional credit card accounts already covered by Regulation Z's open-end credit card rules and that the consumer could not be required to link the prepaid account and the credit card account to obtain or retain either account. In addition, to qualify for the proposed exception, certain terms and conditions that apply to the credit card account and the prepaid account must be the same regardless of whether the two accounts are linked. Thus, the consequences to the consumer of linking the two accounts are less complex. As discussed in more detail below, the Bureau believes that when the conditions of the proposed exception are met, it may not be necessary to apply the 30-day waiting period in § 1026.61(c) or the other additional protections in Regulations Z and E that are applicable only to covered separate credit features or to prepaid accounts that are connected to covered separate credit features.[80]

The Bureau solicits comment generally on the proposed exception in § 1026.61(a)(5)(iii)(D).[81] The Bureau also solicits comment on the proposed scope of this exception to apply to all types of prepaid accounts, rather than limiting its applicability to digital wallets, and whether that general applicability would pose challenges for particular types of prepaid accounts. The Bureau further solicits comment on whether any alternative or additional conditions should be added in order to qualify for the proposed exception in § 1026.61(a)(5)(iii)(D).

The Bureau also considered the suggestion by the digital wallet provider that the Bureau amend the commentary accompanying the definition of ''business partner'' in § 1026.61(a)(5)(iii) to restrict it to situations in which a person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate where (1) the separate credit feature provides overdraft protection to the asset feature of a prepaid account; or (2) the prepaid account can access a separate credit feature either of a type or in a manner that is not also offered by or available from a person or its affiliate (other than the prepaid account issuer or its affiliate) with which the prepaid account issuer or its affiliate has no business, marketing, or promotional agreement. The Bureau believes that the proposed exception would provide clearer guidance to industry regarding which credit features would qualify for the exception, thereby reducing potential confusion relative to this alternative. In addition, the Bureau's proposed approach, which provides for a more narrowly tailored exception to the definition of ''business partner,'' would ensure that substantial safeguards are in place to protect against the prepaid account and the credit card account being connected in a way that would pose the kinds of risks to consumers that motivated the Bureau's approach to the general rules for covered separate credit features accessible by hybrid prepaid-credit cards.

As discussed above, the digital wallet provider also requested that the Bureau amend § 1026.61(a)(4) and its commentary to permit incidental credit to be provided via negative balance on a prepaid account even when a covered separate credit feature is connected to the prepaid account, so long as the other prerequisites contained in § 1026.61(a)(4)(ii) are satisfied. The Bureau is not proposing such changes. As noted above, the Bureau believes that the proposed exception would address the commenter's concern by substantially narrowing the circumstances in which digital wallets would be likely to trigger these Regulation Z requirements. However, where the conditions of the proposed exception are not met, the Bureau believes that the structure and terms, conditions, or features of the prepaid account and the credit card account are sufficiently connected such that the protections set forth in the Prepaid Accounts Rule should apply, including the provisions in § 1026.61(a)(4) and (b) that prohibit incidental credit from being provided via negative balance on a prepaid account when a covered separate credit feature is connected. The Bureau believes that when the proposed exception does not apply, the prepaid account issuer and the card issuer will have a substantial relationship such that the parties can avoid the concerns raised by the digital wallet provider by structuring the terms of the accounts to prevent consumers from being charged fees or interest when the incidental credit is provided formally via the credit card account.

Nevertheless, the Bureau solicits comment on whether it should permit incidental credit to be provided via negative balance on a prepaid account even when a covered separate credit feature is connected to the prepaid account, as requested by the digital wallet commenter. The Bureau also solicits comment on whether prepaid account issuers or card issuers are likely to incur any significant difficulties in structuring the accounts to prevent consumers from being charged fees or interest when the incidental credit is provided formally via the credit card account, such as any significant difficulties in identifying for the card issuer which transactions on the prepaid account relate to incidental credit.

[79] 81 FR 83934, 84268 (Nov. 22, 2016).

[80] The Bureau believes that ensuring separation and independence is more complicated when both accounts are issued by entities under common control, particularly given that offset, security interests, and other types of linkages may be present. Therefore the Bureau believes that the Prepaid Accounts Rule's tailored protections, including the 30-day waiting period, are warranted in such cases and is not proposing to apply the exception where the prepaid account issuer or its affiliate is offering the credit card account.

[81] In the section-by-section analyses that follow, the Bureau also solicits comment and poses questions about particular aspects of specific portions of the proposed exception.

61(a)(5)(iii)(A) Through (C)

Current § 1026.61(a)(5)(iii) defines the term ''business partner'' for purposes of § 1026.61 and other provisions in Regulation Z related to hybrid prepaid-credit cards generally to mean a person (other than the prepaid account issuer or its affiliate) that can extend credit through a separate credit feature where the person or its affiliate has an arrangement with a prepaid account issuer or its affiliate. The Bureau is proposing generally to retain this language in proposed § 1026.61(a)(5)(iii) with a revision to reference the proposed exception in § 1026.61(a)(5)(iii)(D).

Current comment 61(a)(5)(iii)–1 describes the two types of business arrangements that create a business partnership for purposes of the rule, separately provided in paragraphs i and ii. The Bureau is proposing to move most of this language into the regulatory text, with introductory language in proposed § 1026.61(a)(5)(iii)(A) and the two types of business arrangements described in proposed § 1026.61(a)(5)(iii)(B) and (C), respectively, with small revisions for clarity. The Bureau is also proposing to consolidate the language regarding membership in card networks or payment networks that appears in current comments 61(a)(5)(iii)–1.i and ii in a new proposed comment 61(a)(5)(iii)–1, which would explain that a draw, transfer, or authorization of the draw or transfer from a credit feature may be effectuated through a card network or a payment network, but emphasize that for the purposes of proposed § 1026.61(a)(5)(iii), agreements to participate in a card network or payment network themselves do not constitute an ''agreement'' or a ''business, marketing, or promotional agreement or other arrangement'' described in proposed § 1026.61(a)(5)(iii)(B) or (C), respectively. The Bureau is not proposing any changes to comment 61(a)(5)(iii)–2.

61(a)(5)(iii)(D)

For the reasons set forth in the *Overview of the Regulation Z Proposal* above, the Bureau is proposing to add an exception in proposed § 1026.61(a)(5)(iii)(D) to the definition of ''business partner.'' Specifically, proposed § 1026.61(a)(5)(iii)(D) would provide that a person that can extend credit through a credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in proposed § 1026.61(a)(5)(iii)(A) through (C) with regard to such credit card account if certain conditions are met. The conditions are broadly designed to ensure that the credit card account would be subject to Regulation Z credit card requirements in its own right and that the acquisition, retention, and pricing terms of the prepaid account and credit card account would not depend on whether a consumer authorizes the linking of the two accounts to allow the prepaid card to access credit from time to time in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers. Each of the proposed conditions is discussed in more detail in the section-by-section analyses of § 1026.61(a)(5)(iii)(D)(*1*), (*2*), (*3*), (*4*) and (*5*) below, respectively.

Proposed comment 61(a)(5)(iii)(D)–1 would provide that if the exception in proposed § 1026.61(a)(5)(iii)(D) applies, a person that can extend credit through the credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in proposed § 1026.61(a)(5)(iii)(A) through (C). Accordingly, in those cases where a consumer has authorized his or her prepaid card in accordance with proposed § 1026.61(a)(5)(iii)(D) to be linked to the credit card account in such a way as to allow the prepaid card to access the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(*2*), the linked prepaid card would not be a hybrid prepaid-credit card with respect to the linked credit card account. Rather, the linked credit card account would be a non-covered separate credit feature as discussed in § 1026.61(a)(2)(ii). The proposed comment would further note that in this case, by definition, the linked credit card account would be subject to the credit card rules in Regulation Z in its own right because it would be a credit card account under an open-end (not home-secured) consumer credit plan, pursuant to the condition set forth in proposed § 1026.61(a)(5)(iii)(D)(*1*).

61(a)(5)(iii)(D)(1)

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(*1*), the credit card account at issue must be a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card. Proposed comment 61(a)(5)(iii)(D)(*1*)–1 would explain that for purposes of the proposed exception, the term ''traditional credit card'' would mean a credit card that is not a hybrid prepaid-credit card. Thus, the condition in proposed § 1026.61(a)(5)(iii)(D)(*1*) would not be satisfied if the only credit card that a consumer can use to access the credit card account under an open-end (not home-secured) consumer credit plan is a hybrid prepaid-credit card.

As discussed in the *Overview of the Regulation Z Proposal* above, this proposed condition would ensure that the exception only applies to credit features subject to the full protections of the credit card rules in Regulation Z that are applicable to credit card accounts under an open-end (not home-secured) consumer credit plan. As discussed in the 2016 Final Rule, these protections include a range of requirements governing pricing, restrictions on repayment terms, limits on liability for unauthorized use, and requirements that card issuers must assess the consumer's ability to pay the credit before opening the account. The pricing protections include restrictions on the fees that an issuer can charge during the first year after an account is opened, and limits on the instances in which and the amount of fees that issuers can charge as penalty fees when a consumer makes a late payment or exceeds his or her credit limit. The protections also restrict the circumstances under which issuers can increase interest rates on credit card accounts and establishes procedures for doing so. As explained in the 2016 Final Rule, the Bureau believed that applying these protections to overdraft features in connection with prepaid accounts would promote transparent pricing for prepaid accountholders.[82]

61(a)(5)(iii)(D)(2)

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(*2*), the prepaid account issuer and the card issuer would be prohibited from allowing the prepaid card to draw, transfer, or authorize the draw or transfer of credit from the credit card account from time to time in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct P2P transfers, except where the prepaid account issuer or the card issuer has received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account as described above. To aid compliance with the proposed exception, proposed comment 61(a)(5)(iii)(D)(*2*)–1 would explain that any accountholder on

[82] 81 FR 83934, 84161 (Nov. 22, 2016).

either the prepaid account or the credit feature may make the written request.

The Bureau believes that this condition, in combination with others described further below, would help to ensure that consumers are not unduly pressured into linking the prepaid account and the credit card account so as to access credit from time to time in the course of transactions conducted with the prepaid card. In particular, it would help to underscore to consumers that the prepaid account and credit card account are not required to be linked in order for the consumer to obtain or retain the two accounts, and to ensure that consumers have made a deliberate affirmative decision before authorizing such a link. Two of the tailored provisions adopted in the 2016 Final Rule—the 30-day waiting period in § 1026.61(c), and the requirement in Regulation E § 1005.18(b)(4)(vii) to provide certain credit disclosures in the prepaid long form disclosure—were similarly designed to promote deliberative decision making without undue pressure. The Bureau believes that it may not be necessary to apply these tailored provisions to a credit card account when the conditions of the proposed exception are met, given that detailed application and solicitation disclosures for the credit card account still would be required under § 1026.60 and the other conditions in proposed § 1026.61(a)(5)(iii)(D) would make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex. Specifically, as described below, to satisfy the condition in proposed § 1026.61(a)(5)(iii)(D)(*3*), a prepaid account issuer and a card issuer could not condition the acquisition or retention of either account upon whether a consumer authorized linking the two accounts together, and proposed § 1026.61(a)(5)(iii)(D)(*4*) and (*5*) are designed to ensure that certain terms and conditions (including pricing) that apply to the two accounts are not dependent on whether they are linked.

The Bureau solicits comment on the procedures that digital wallet providers currently use to obtain a consumer's consent to connect a credit card account to a digital wallet account. The Bureau also solicits comment on the procedures that prepaid account issuers use to connect a credit card to a prepaid account generally, if any. In addition, the Bureau solicits comment on whether there are alternative options that the Bureau should consider to ensure that consumers understand that the prepaid account and the credit card account are not required to be linked for the consumer to obtain or retain the two accounts, and to ensure that consumers are making a deliberate affirmative decision before authorizing such a link.

61(a)(5)(iii)(D)(3)

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(*3*), the prepaid account issuer and the card issuer must not condition the acquisition or retention of the prepaid account or the credit card account on whether a consumer authorizes the prepaid card to access the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(*2*).

For the same reasons described above in connection with proposed § 1026.61(a)(5)(iii)(D)(*2*), the Bureau believes that this condition would help to ensure that consumers are not unduly pressured into linking the prepaid account and the credit card account. As described above, the Bureau believes that the prohibition on conditioning the acquisition or retention of the two accounts, in combination with the other conditions discussed above in connection with proposed § 1026.61(a)(5)(iii)(D)(*2*), would help to obviate the need for the tailored protections adopted in the 2016 Final Rule concerning the 30-day waiting period in § 1026.61(c) for linking a prepaid account to a covered separate credit feature, and the credit disclosures under Regulation E § 1026.18(b)(4)(vii) required to be provided in the prepaid account's pre-acquisition long form disclosure in connection with covered separate credit features.

61(a)(5)(iii)(D)(4)

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(*4*), the prepaid account issuer must apply the same terms, conditions, or features to the prepaid account when a consumer authorizes linking the prepaid card to the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(*2*) as it applies to the consumer's prepaid account when the consumer does not authorize such a linkage. In addition, the prepaid account issuer must apply the same fees to load funds from a credit card account that is linked to the prepaid account as described above as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement as described in proposed § 1026.61(a)(5)(iii)(A) through (C). Each of these conditions is discussed in more detail below.

Proposed comment 61(a)(5)(iii)(D)(*4*)–1 would provide examples of the types of account terms, conditions, and features that would be subject to the conditions set forth in proposed § 1026.61(a)(5)(iii)(D)(*4*), underscoring that it applies both to pricing and to such items as account access devices, minimum balance requirements, and account features such as online bill payment services.

Same terms, conditions, and features on the prepaid account regardless of whether the prepaid account is linked to the credit card account. With respect to the first condition set forth in proposed § 1026.61(a)(5)(iii)(D)(4), proposed comment 61(a)(5)(iii)(D)(4)–2 would provide an example of impermissible variations in account terms under this condition in proposed § 1026.61(a)(5)(iii)(D)(4). For example, a prepaid account issuer would not satisfy this condition if it provides on a consumer's prepaid account reward points or cash back on purchases with the prepaid card where the consumer has authorized a link to the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(2), while not providing such reward points or cash back on the consumer's account if the consumer has not authorized such a linkage.

The Bureau believes that an appropriate comparison for purposes of proposed § 1026.61(a)(5)(iii)(D)(*4*) would be between the terms of the consumer's prepaid account when the two accounts are linked and the terms of the consumer's prepaid account when the consumer has not authorized such a linkage. This proposed approach would ensure that the pre-acquisition disclosures provided to the consumer with respect to his or her prepaid account reflect the same terms, conditions, and features regardless of whether the consumer decides to link the two accounts, which will make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex. This proposed standard also is consistent with the comparison standard proposed under § 1026.61(a)(5)(iii)(D)(*5*), where the card issuer would compare the specified terms and conditions on the consumer's credit card account if there is a link to the prepaid account with the specified terms and conditions that apply to the consumer's account if there is no such link. The Bureau believes that the proposed approach for the comparison

of terms, conditions, and features on the consumer's prepaid account would aid compliance by ensuring that a consistent comparison approach can be used for both the prepaid account and the credit card account (which is addressed in proposed § 1026.61(a)(5)(iii)(D)(*5*), discussed below).[83]

The Bureau solicits comment on whether proposed § 1026.61(a)(5)(iii)(D)(*4*) and comment 61(a)(5)(iii)(D)(*4*)–2 provide an appropriate standard for comparing account terms, conditions, and features offered on the prepaid account for purposes of the proposed exception, and if not, what alternative standard the Bureau should adopt. The Bureau also solicits comment on whether additional guidance or examples would be helpful related to this comparability standard, and if so, what additional guidance is needed.

Same load fees. Proposed § 1026.61(a)(5)(iii)(D)(4) also would provide a standard for comparing load fees for credit extensions from the credit card account that is linked to the prepaid account as described in proposed § 1026.61(a)(5)(iii)(D)(2). For these fees, to satisfy the conditions of proposed § 1026.61(a)(5)(iii)(D)(4), the prepaid account issuer must apply the same fees to load funds from the credit card account that is linked to the prepaid account as described above as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement as described in proposed § 1026.61(a)(5)(iii)(A) through (C). Proposed comment 61(a)(5)(iii)(D)(4)–3 would provide an example to illustrate this proposed condition. Specifically, the proposed comment would provide that a prepaid account issuer would not satisfy this condition if it charges on the consumer's prepaid account $0.50 to load funds in the course of a transaction from the credit card account offered by a card issuer with which the prepaid account issuer has an arrangement as discussed in proposed § 1026.61(a)(5)(iii)(A) through (C), but $1.00 to load funds in the course of a transaction from a credit card account offered by a card issuer with which it does not have such an arrangement.

The Bureau believes that the proposed standard would provide an appropriate test with regard to comparing load fees by focusing specifically on what fees are charged on the consumer's prepaid account in a comparable load from a separate credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement as described in proposed § 1026.61(a)(5)(iii)(A) through (C). The Bureau believes that this approach would facilitate compliance and is appropriate given that the proposed exception in § 1026.61(a)(5)(iii)(D) would most likely be used with respect to digital wallet accounts that consumers may choose to associate with multiple credit card accounts, including those offered by unaffiliated third parties.[84] The Bureau believes that ensuring that the terms, conditions, and features of the consumer's prepaid account do not depend on whether the consumer authorizes a link with the credit card account as provided for in proposed § 1026.61(a)(5)(iii)(D)(*2*) is important to address a number of policy concerns. First, as discussed in the section-by-section analysis of § 1026.61(a)(5)(iii)(D)(*2*) above, the fact that the prepaid account terms, conditions, and features cannot vary based on whether the consumer authorizes a linkage would make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex, thus, along with the other conditions, would help to obviate the need for applying the 30-day waiting period in § 1026.61(c) and the long form pre-acquisition disclosure requirements in Regulation E § 1005.18(b)(4)(vii). Second, the condition would help to ensure that certain terms and conditions of the prepaid account and the credit card account operate independent of whether the two accounts are linked and restrict the kind of price restructuring that the Bureau observed with regard to overdraft service programs on checking accounts and that various provisions adopted in the 2016 Final Rule were designed to address.[85]

The Bureau solicits comment on whether proposed § 1026.61(a)(5)(iii)(D)(*4*) provides an appropriate standard for comparable load fees imposed on the prepaid account, and if not, what the appropriate standard for comparable load fees should be. The Bureau also solicits comment on whether additional guidance or examples would be helpful related to this comparability standard,

[83] This proposed approach for comparison of the terms, conditions and features on the prepaid account differs from the approach used in the 2016 Final Rule for comparing the terms, conditions, and features of the prepaid account when a covered separate credit feature is connected with the prepaid account. *See* § 1026.4(b)(11) and Regulation E § 1026.18(g). For those provisions, the approach used is to compare the terms, conditions, and features of prepaid accounts held by different consumers in the same prepaid program. While these two approaches might yield similar results in comparing the terms, conditions, and features on the prepaid account, the Bureau believes that the approach set forth in the 2016 Final Rule would not be appropriate with respect to comparing specified terms and conditions on the credit card account because risk-based pricing might cause one consumer's pricing to differ from another consumer's pricing based on the consumers' creditworthiness. Thus, the Bureau is proposing to adopt an approach for comparing the terms, conditions, and features of the prepaid account that is consistent with the one proposed in § 1026.61(a)(5)(iii)(D)(*5*) for comparing specified terms and conditions imposed on the credit card account. See the section-by-section analysis of § 1026.61(a)(5)(iii)(D)(*5*) below for a more detailed discussion on the proposed approach for comparing specified terms and conditions imposed on the credit card account.

[84] This standard for comparing load fees set forth in proposed § 1026.61(a)(5)(iii)(D)(*4*) differs from the comparison for load fees adopted in the 2016 Final Rule with regard to covered separate credit features accessible by hybrid prepaid-credit cards. Specifically, as adopted in the 2016 Final Rule, Regulation E comment 18(g)–5.iii compares what fees are charged for a load from a covered separate credit feature accessible to a hybrid prepaid-credit card in the course of a transaction to the per transaction fee that is charged to access available funds in prepaid accounts in the same prepaid account program without a covered separate credit feature. Also, Regulation E comment 18(g)–5.iv compares what fees are charged for a load from a covered separate credit feature accessible by a hybrid prepaid-credit card outside the course of a transaction to the fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts in the same prepaid account program without a covered separate credit feature. The Bureau took this approach in the 2016 Final Rule because it believed that many prepaid accountholders who wish to use covered separate credit features may not have other asset or credit accounts from which they can draw or transfer funds, and was concerned that prepaid account issuers might therefore inflate such load fees as a backdoor way to impose finance charges on draws from the covered separate credit feature without triggering certain restrictions on fees applicable to credit card accounts. 81 FR 83934, 84187 (Nov. 22, 2016). In contrast, the Bureau believes that competitive pressures would discourage digital wallet providers seeking to qualify for the exception in proposed § 1026.61(a)(5)(iii)(D) from artificially inflating all load fees in this manner.

[85] With the 2016 Final Rule, the Bureau was concerned that prepaid account issuers might inflate fees imposed on prepaid accounts as a backdoor way to impose finance charges on draws from the covered separate credit feature without triggering certain restrictions on fees applicable to credit card accounts. 81 FR 83934, 84222–23 (Nov. 22, 2016). To prevent this, the 2016 Final Rule included in Regulation Z several provisions to ensure that where a fee imposed on the prepaid account with a covered separate feature is higher than a comparable fee on a prepaid account without such a credit feature, the excess amount of the fee is subject to certain fees restrictions applicable to credit card accounts. *See, e.g.,* § 1026.52(a) and comments 6(b)(3)(iii)(D)–1 and 52(a)(2)–2. Proposed § 1026.61(a)(5)(iii)(D)(*5*) would ensure that this type of activity does not occur when the proposed exception applies.

and if so, what additional guidance is needed.

61(a)(5)(iii)(D)(5)

To satisfy the exception in proposed § 1026.61(a)(5)(iii)(D), under proposed § 1026.61(a)(5)(iii)(D)(*5*), the card issuer must apply the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(*2*) as it applies to the consumer's credit card account when the consumer does not authorize such a linkage. In addition, to satisfy proposed § 1026.61(a)(5)(iii)(D)(*5*), the card issuer must apply the same specified terms and conditions to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card.

Proposed § 1026.61(a)(5)(iii)(D)(*5*) would specifically define ''specified terms and conditions'' to mean the terms and conditions required to be disclosed under § 1026.6(b), any repayment terms and conditions, and the limits on liability for unauthorized credit transactions that apply to the credit card account. Proposed comment 61(a)(5)(iii)(D)(*5*)–1 provides additional detail regarding this definition. Specifically proposed comment 61(a)(5)(iii)(D)(*5*)–1.i, would explain that the terms and conditions required to be disclosed under § 1026.6(b) include: (a) Pricing terms, such as periodic rates, annual percentage rates (APRs), and fees and charges imposed on the credit account; (b) any security interests acquired under the credit account; (c) claims and defenses rights under § 1026.12(c); and (d) error resolution rights under § 1026.13. Proposed comment 61(a)(5)(iii)(D)(*5*)–1.ii would explain that the repayment terms and conditions related to a credit card account include the length of the billing cycle, the payment due date, any grace period on the transactions on the account, the minimum payment formula, and the required or permitted methods for making conforming payments on the credit card account. The Bureau notes that the limits on liability for unauthorized use of a credit card are set forth in § 1026.12(b) and error resolution procedures applicable to unauthorized use of an open-end credit account are set forth in § 1026.13. Proposed comments 61(a)(5)(iii)(D)(*5*)–2 and –3 would provide more detailed guidance on application of the two conditions, as discussed further below.

The Bureau believes that ensuring that the specified terms and conditions of the credit card account do not vary depending on whether the consumer authorizes a prepaid card to access the account is important to address a number of policy concerns. First, as discussed in the section-by-section analysis of § 1026.61(a)(5)(iii)(D)(*2*) above, the fact that the specified terms and conditions on the credit card account would not vary based on whether the consumer authorizes the prepaid card to access the credit card account would help simplify consumers' decisions about account acquisition, retention, and link authorization and make these decisions less prone to undue pressure and the consequences of linking the two accounts less complex, thus, along with the other conditions, would help to obviate the need for applying the 30-day waiting period in § 1026.61(c) and the long form pre-acquisition disclosure requirements in Regulation E § 1005.18(b)(4)(vii). Second, the proposed condition would help to ensure that the specified terms and conditions of the prepaid account and the credit card account operate independent of whether the two accounts are linked, and restrict the kind of price restructuring that the Bureau observed with regard to overdraft service programs on checking accounts. Third, this proposed condition would prevent a card issuer from manipulating repayment terms on the credit card account when it is linked to the prepaid account to ensure that the consumer retains control over the funds in his or her prepaid account even if the two accounts are linked.[86]

This proposed condition regarding credit card account terms and conditions is similar to the condition for prepaid account terms, conditions, and features set forth in proposed § 1026.61(a)(5)(iii)(D)(*4*), although it applies to a smaller set of account terms. This smaller set of account terms would allow card issuers to make adjustments to credit limits or other metrics (other than the specified terms and conditions) to account for any increased credit risk where a consumer has linked the two accounts. In addition, the Bureau recognizes that the merchants at which the prepaid card and the traditional credit card can be used might not necessarily be the same, and the smaller set of account terms to which the condition in proposed § 1026.61(a)(5)(iii)(D)(*5*) applies would ensure that a card issuer would not lose the proposed exception because of these or similar differences in account features depending on whether the credit is accessed through the prepaid card or the traditional credit card itself.

Thus, a card issuer could satisfy proposed § 1026.61(a)(5)(iii)(D)(*5*) even if it applies different terms or conditions to the linked credit card account than it would apply if the prepaid account were not linked, so long as the those terms or conditions are not ''specified terms and conditions'' as defined in proposed § 1026.61(a)(5)(iii)(D)(*5*) and proposed comment 61(a)(5)(iii)(D)(*5*)–1. For example, a card issuer could offer different rewards points for purchases on the credit card account, or offer a different credit limit on the credit card account, depending on whether the prepaid account is linked to the credit card account. Reward points and the credit limit offered on the credit card account would not be ''specified terms and conditions'' because these terms are not required to be disclosed under § 1026.6(b), are not repayment terms or conditions, and are not limitations on liability for unauthorized use.[87]

The Bureau also believes that the proposed condition prohibiting the card issuer from varying specified terms and conditions depending on whether the transactions are conducted with the linked prepaid card or the traditional credit card is important to address the

[86] As explained in the 2016 Final Rule, the Bureau was concerned that when a prepaid account was connected to a covered separate credit feature, the creditor may manipulate the repayment terms of the credit feature to better ensure repayment of the credit from the prepaid account funds. As a result, the 2016 Final Rule contained several provisions designed to prevent this type of manipulation. *See, e.g.,* §§ 1026.7(b)(11) and 1026.12(d)(3), comments 5(b)(2)(ii)–4.i and 12(d)(2)–1, and Regulation E § 1005.10(e)(1). These provisions were designed to ensure that consumers retain control over the funds in their prepaid accounts even when a covered separate credit feature becomes associated with that prepaid account. *See, e.g.,* 81 FR 83934, 83982, 84192, 84199, 84211, 84213 (Nov. 22, 2016). This proposed condition would ensure that the card issuer could not engage in this type of manipulation of repayment terms when the prepaid account becomes linked to the credit card account under the proposed exception.

[87] The Bureau is aware that some card issuers have co-brand agreements with digital wallet providers where the reward points on the credit card account vary based on whether a transaction is made through the digital wallet or with the traditional credit card. The proposed condition in § 1026.61(a)(5)(iii)(D)(*5*) would not restrict a card issuer from varying the reward points on the credit card account based on whether the two accounts are linked, or whether the transactions are made with the prepaid card or the traditional credit card. Nonetheless, the Bureau does not believe in these situations that digital wallet providers typically will offer additional reward points on the prepaid account that vary based on whether a consumer has linked the two accounts. Thus, the proposed condition in § 1026.61(a)(5)(iii)(D)(*4*) does not permit the digital wallet provider to vary reward points on the prepaid account depending on whether the two accounts are linked. The Bureau solicits comment on whether the exception should permit a prepaid account issuer to vary reward points on the prepaid account depending on whether the two accounts are linked.

policy concerns described above by making consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex.[88]

Same specified terms and conditions regardless of whether the credit feature is linked to the prepaid account. As discussed above, to satisfy the condition set forth in proposed § 1026.61(a)(5)(iii)(D)(5), a card issuer must apply the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account as described in proposed § 1026.61(a)(5)(iii)(D)(2) as it applies to the consumer's credit card account when the consumer does not authorize such a linkage. Proposed comment 61(a)(5)(iii)(D)(5)–2 would provide examples of the circumstances in which a card issuer would not meet the condition described above. Proposed comment 61(a)(5)(iii)(D)(5)–2.i would provide that a card issuer does not satisfy this condition if the card issuer structures the credit card account as a ''charge card account'' (where no periodic rate is used to compute a finance charge on the credit card account) if the credit feature is linked to a prepaid card as described in proposed § 1026.61(a)(5)(iii)(D)(2), but applies a periodic rate to compute a finance charge on the consumer's account (and thus does not use a charge card account structure) if there is no such link.[89] As another example, proposed comment 61(a)(5)(iii)(D)(5)–2.ii would provide that a card issuer would not satisfy the condition if the card issuer imposes a $50 annual fee on a consumer's credit card account if the credit feature is linked as described in proposed § 1026.61(a)(5)(iii)(D)(2), but does not impose an annual fee on the consumer's credit card account if there is no such link.

The Bureau believes that an appropriate comparison standard for determining whether the same specified terms and conditions are being provided to the consumer is to compare the specified terms and conditions on the consumer's account if there is a link to the prepaid account as described above with the specified terms and conditions that apply to the consumer's account if there is no such link. This proposed approach would ensure that the application and solicitation disclosures provided to the consumer under § 1026.60 with respect to the credit card account would reflect the same specified terms and conditions regardless of whether the consumer decides to link the two accounts, which will make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex. In addition, the Bureau believes that this proposed comparison approach would capture situations when the specified terms and conditions vary based on whether there is a link, but would avoid capturing situations where they vary due to risk based pricing based on consumers' creditworthiness.[90]

The Bureau solicits comment on whether proposed § 1026.61(a)(5)(iii)(D)(*5*) provides an appropriate standard for comparing specified terms and conditions offered on the credit card account for purposes of the proposed exception, and if not, what the appropriate standard should be. The Bureau also solicits comment on whether additional guidance or examples would be helpful related to this comparability standard, and if so, what additional guidance is needed.

Same specified terms and conditions regardless of whether credit is extended through prepaid card or traditional credit card. For the proposed exception in proposed § 1026.61(a)(5)(iii)(D) to apply, proposed § 1026.61(a)(5)(iii)(D)(5) provides that the card issuer must apply the same specified terms and conditions to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card. As discussed above, under proposed § 1026.61(a)(5)(iii)(D)(1), to qualify for the proposed exception, the credit feature must be a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card.[91]

Proposed comment 61(a)(5)(iii)(D)(*5*)–3 would provide several examples illustrating the condition described above. Proposed comment 61(a)(5)(iii)(D)(*5*)–3.i would set forth examples of circumstances in which a card issuer that has an arrangement with a prepaid account issuer would not meet the condition of proposed § 1026.61(a)(5)(iii)(D)(*5*) described above. For example, proposed comment 61(a)(5)(iii)(D)(*5*)–3.i.A would provide that the card issuer would not meet this condition if it considers transactions using the traditional credit card to obtain goods or services from an unaffiliated merchant of the card issuer as purchase transactions with certain APRs, fees, and a grace period that applies to those purchase transactions, but treats transactions involving extensions of credit using the prepaid card to obtain goods or services from an unaffiliated merchant of the card issuer as a cash advance that is subject to different APRs, fees, grace periods, and other specified terms and conditions. As another example, proposed comment 61(a)(5)(iii)(D)(*5*)–3.i.B would provide that the card issuer would not satisfy this condition if it generally treats one-time transfers of credit using the credit card account number to asset accounts as cash advance transactions with certain APRs and fees, but treats one-time transfers of credit using the prepaid card to the prepaid account as purchase transactions that are subject to different APRs and fees.

The Bureau solicits comment on this condition generally and whether card issuers would have any difficulty knowing the type of transaction that is being conducted on the prepaid account, such as whether it is a transaction to obtain goods or services, whether it is a P2P transaction, or whether it is a transfer of credit to the prepaid account outside the course of a transaction to obtain goods or services, obtain cash, or conduct P2P transactions. The Bureau also requests comment on how likely there are to be circumstances where the prepaid card can be used for a particular type of transaction while the traditional credit card could not be used for those types of transactions (*e.g.,* the prepaid card

[88] In some cases, a card issuer may impose different terms and conditions to extensions of credit from a credit card account depending on how that credit is accessed. For example, a card issuer may impose a higher annual percentage rate on transactions made with a check that accesses the credit card account than it imposes on purchase transactions made with the credit card. In addition, the limits on liability for unauthorized use in § 1026.12(b) and the claims and defenses rights in § 1026.12(c) generally only apply to credit extended through use of a credit card, and do not apply to credit accessed by use of a check. This proposed condition would ensure that a card issuer could not vary the specified terms and conditions depending on whether the transactions are conducted with the linked prepaid card or the traditional credit card, which would make consumers' decisions about account acquisition, retention, and link authorization simpler and less prone to undue pressure and the consequences of linking the two accounts less complex.

[89] The term ''charge card'' is defined in § 1026.2(a)(15)(iii) to mean a credit card on an account for which no periodic rate is used to compute a finance charge.

[90] See note 83 above for a discussion of how this proposed approach differs from the approach for comparing terms, conditions, and features on the prepaid account in connection with a covered separate credit features as adopted in the 2016 Final Rule.

[91] As discussed above, for purposes of proposed § 1026.61(a)(5)(iii)(D), proposed comment 61(a)(5)(iii)(D)(*1*)–1 would define the term ''traditional credit card'' to mean a credit card that is not a hybrid prepaid-credit card.

can be used to purchase goods or services at merchants but the traditional credit card can only be used to obtain cash advances at automated teller machines and cannot be used to purchase goods or services at merchants). The Bureau also solicits comment on whether additional guidance or examples would be helpful with respect to how to comply with this condition, and if so, what additional guidance is needed.

Proposed comment 61(a)(5)(iii)(D)(*5*)–3.ii would provide guidance on how a card issuer must comply with this condition in proposed § 1026.61(a)(5)(iii)(D)(*5*) with respect to the claims and defenses rights set forth in § 1026.61(c). These rights apply in certain circumstances to purchases of property or services made with a credit card. Proposed comment 61(a)(5)(iii)(D)(*5*)–3.ii would explain that to satisfy this condition in proposed § 1026.61(a)(5)(iii)(D)(*5*) with respect to the claims and defenses rights in § 1026.12(c), the card issuer must treat the prepaid card when it is used to access credit from the credit card account to purchase property or services as if it is a credit card and provide the same rights under § 1026.12(c) as it applies to property or services purchased with the traditional credit card.

The Bureau solicits comment on this proposed guidance for how to apply the same claims and defenses rights in § 1026.12(c) to extensions of credit with the prepaid card and with the traditional credit card and whether there are other options the Bureau should consider for how to ensure that the same rights under § 1026.12(c) are provided with respect to credit transactions made with the prepaid card and transactions made with the traditional credit card. The Bureau also solicits comment on whether additional guidance or examples would be helpful with respect to how to comply with this condition.

Proposed comment 61(a)(5)(iii)(D)(*5*)–3.iii would provide guidance on how a card issuer must comply with this condition in proposed § 1026.61(a)(5)(iii)(D)(*5*) with respect to limits on liability set forth in § 1026.12(b). Section 1026.12(b) sets forth certain limits on liability for unauthorized use of a credit card. Proposed comment 61(a)(5)(iii)(D)(5)–3.iii would provide that to apply the same limits on liability for unauthorized extensions of credit from the credit card account using the prepaid card as it applies to unauthorized extensions of credit from the credit card account using the traditional credit card, the card issuer must treat the prepaid card as if it were an accepted credit card for purposes of the limits on liability for unauthorized extensions of credit set forth in § 1026.12(b) and impose the same liability under § 1026.12(b) as it applies to unauthorized transactions using the traditional credit card.

The Bureau solicits comment on this proposed guidance for how to apply the same limits on liability under § 1026.12(b) to extensions of credit with the prepaid card and with the traditional credit card and whether there are other options the Bureau should consider for how to ensure that the same rights under § 1026.12(b) are provided with respect to credit transactions made with the prepaid card and transactions made with the traditional credit card. The Bureau also solicits comment on whether additional guidance or examples would be helpful with respect to how to comply with this condition.

VI. Proposed Effective Date

The Bureau is proposing that this rule take effect at the same time as the general effective date of the Prepaid Accounts Rule, which is currently April 1, 2018. This rule thus would become effective more than 30 days after publication in the **Federal Register**, as required under section 553(d) of the Administrative Procedure Act.[92] The Bureau seeks comment on this aspect of the proposal.

A. General Effective Date of the Prepaid Accounts Rule

In response to the 2017 Effective Date Proposal, some commenters argued that the Bureau should delay the effective date of the 2016 Final Rule by longer than the six months proposed (and ultimately finalized) by the Bureau. These commenters generally argued that the Bureau should extend the effective date by 12 or 18 months, citing a number of concerns regarding their ability to comply with the rule by April 1, 2018. Some commenters supported a six-month delay of the effective date, contingent on the Bureau revisiting the rule to address certain substantive provisions that they asserted necessitated changes to disclosures and business models that could not be implemented by April 1, 2018. The Bureau believes that several of the amendments proposed herein would reduce compliance burden and address the concerns raised by commenters on the 2017 Effective Date Proposal related to the effective date of the rule.

[92] 5 U.S.C. 553(d).

While the Bureau is not proposing to further extend the effective date of the Prepaid Accounts Rule, the Bureau solicits comment on whether a further delay of the effective date would be necessary and appropriate in light of the specific amendments proposed herein. Specifically, the Bureau requests comment on which provisions in particular might cause financial institutions to need additional time, and whether any further modifications to any of the particular amendments proposed herein would reduce or eliminate that need. The Bureau also solicits comment on the appropriate length of such a further delay.

B. Safe Harbor for Early Compliance

Two trade association commenters on the 2017 Effective Date Proposal urged the Bureau to establish a safe harbor for financial institutions that comply with the Prepaid Accounts Rule (or portions of it) prior to the rule's effective date. These commenters expressed concerns that financial institutions may be exposed to potential liability if they comply with the rule prior to the effective date, as they suggested the possibility that there may be some conflict between the Prepaid Accounts Rule and current requirements for payroll card accounts and government benefit accounts, though they did not provide any specific examples. One commenter stated that early compliance would benefit consumers and should not be discouraged.

As noted in the 2017 Effective Date Final Rule, the Bureau agrees that early compliance with the Prepaid Accounts Rule could benefit both industry and consumers. The Bureau is not aware of any conflicts between the requirements of the Prepaid Accounts Rule and current Federal regulations applying to accounts that will be covered by the rule.[93] Thus, the Bureau is not at this time proposing language for a specific provision addressing early compliance with the Prepaid Accounts Rule. Nonetheless, the Bureau seeks comment on whether a specific provision addressing early compliance with the Prepaid Accounts Rule is necessary and appropriate to address conflicts between the Prepaid Accounts Rule and current Federal requirements for accounts that

[93] Regulation E, for example, currently contains protections for consumers who use payroll card accounts and certain government benefit accounts, as well as consumers who use certain gift cards and similar products. *See* §§ 1005.18, 1005.15, and 1005.20, respectively. Regulations promulgated by the Department of the Treasury also require prepaid cards that are eligible to receive Federal payments to comply with the rules governing payroll card accounts, among other requirements. 31 CFR 210.5(b)(5)(i).

will be covered by the rule. In particular, the Bureau solicits comment on whether specific provisions of current requirements for such accounts conflict with provisions of the Prepaid Accounts Rule. To the extent that a specific provision addressing early compliance is necessary and appropriate, the Bureau solicits comment on the proper scope of such a provision. The Bureau also solicits comment regarding whether a specific provision addressing early compliance should only be available to financial institutions that comply with the entire Prepaid Accounts Rule prior to its effective date, or whether it should also cover financial institutions that comply with portions of the Prepaid Accounts Rule prior to its effective date. If the latter, the Bureau solicits comment regarding which portions of the Prepaid Accounts Rule a financial institution should be required to comply with in order to be covered by a provision addressing early compliance.

VII. Section 1022(b)(2)(A) of the Dodd-Frank Act

In developing this proposed rule, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2) of the Dodd-Frank Act. Specifically, section 1022(b)(2) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of consumer access to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with the objectives those agencies administer. The Bureau consulted, or offered to consult with, the prudential regulators, the Department of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission regarding consistency with any prudential, market, or systemic objectives administered by these agencies.

The Bureau previously considered the benefits, costs, and impacts of the 2016 Final Rule's major provisions [94] as well as those of the 2017 Effective Date Final Rule.[95] The baseline [96] for this discussion is the market for prepaid accounts as it would exist ''but for'' this proposed rule; that is, the Bureau considers the benefits, costs, and impacts of this proposed rule on consumers and covered persons relative to the baseline established by the 2016 Final Rule, as amended by the 2017 Effective Date Final Rule.[97] There are two major provisions in this proposed rule; the discussion below considers them both, as well as certain alternatives that the Bureau considered in the development of this proposed rule:

1. Amending the Prepaid Accounts Rule so that it would not require financial institutions to resolve errors or limit consumers' liability pursuant to Regulation E for prepaid accounts, other than payroll card accounts or government benefit accounts, for which a financial institution has not successfully completed its consumer identification and verification process; [98] and

2. Adding an exception to the Prepaid Accounts Rule's definition of ''business partner'' in Regulation Z, which would have the effect of not subjecting certain credit card accounts, or the prepaid accounts to which they are linked, to provisions of the Prepaid Accounts Rule that are applicable in connection with covered separate credit features accessible by hybrid prepaid-credit cards, provided certain conditions are met.[99]

The Bureau also is proposing to make clarifications and minor adjustments to certain discrete aspects of the Prepaid Accounts Rule. Similarly to the major provisions discussed, these clarifications and minor adjustments would provide industry participants with additional options for compliance and should not increase burden on covered persons. In addition, the Bureau does not believe that this proposed rule's minor modifications to the Prepaid Accounts Rule's disclosure requirements would appreciably decrease transparency or have an adverse impact on informed consumer choice.[100]

In considering the relevant potential benefits, costs, and impacts of this proposed rule, the Bureau has used feedback received to date and has applied its knowledge and expertise concerning consumer financial markets. Because the Prepaid Accounts Rule is not yet in effect and this proposed rule addresses specialized issues encountered by some industry participants for a subset of prepaid accounts, this discussion of the potential benefits, costs, and impacts on consumers and covered persons, evaluated relative to the baseline established by that rule, is largely qualitative. Nonetheless, the Bureau requests comment on this discussion generally as well as the submission of data or other information that could inform the Bureau's consideration of the potential benefits, costs, and impacts of this proposed rule.

The proposed rule's provisions generally decrease burden incurred by industry participants and provide more options for complying with the provisions of the Prepaid Accounts Rule. As is described in more detail below, the Bureau does not believe that the proposed rule's provisions would reduce consumer access to consumer financial products and services. In particular, the provisions relating to error resolution and limited liability for unverified accounts may increase consumer access to consumer financial products and services relative to the baseline established by the Prepaid Accounts Rule.

Error resolution and limited liability for unverified accounts. The Bureau is proposing to amend §§ 1005.11(c)(2)(i), 1005.18(d)(1)(ii) and (e)(3), and Appendix A–7(c) to provide that Regulation E's error resolution and

[94] 81 FR 83934, 84269 (Nov. 22, 2016).

[95] 82 FR 18975, 18979 (Apr. 25, 2017).

[96] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits, costs, and impacts and an appropriate baseline.

[97] As discussed above, the Bureau refers to the 2016 Final Rule, as amended by the 2017 Effective Date Final Rule, as the Prepaid Accounts Rule in this proposed rule.

[98] However, for prepaid accounts that are later verified, financial institutions would be required to resolve errors and limit liability with regard to unauthorized transfers or other errors that occurred prior to verification.

[99] Although a credit card account would be subject to the credit card provisions of Regulation Z in its own right if the account and the arrangement between the prepaid account issuer and credit card account issuer meet all conditions for this exception, it would not be subject to the provisions in Regulations Z that apply only to covered separate credit features accessible by a hybrid prepaid-credit card. In addition, the prepaid account with which it is linked would not be subject to the provisions in Regulation E that apply only to prepaid accounts connected to covered separate credit features.

[100] For example, proposed § 1005.18(b)(1)(ii)(D) would allow financial institutions offering prepaid accounts that qualify for the retail location exception in § 1005.18(b)(1)(ii) to satisfy the requirement that they provide long form disclosures after acquisition by allowing such disclosures to be delivered electronically without receiving consumer consent under the E-Sign Act if the financial institution does not provide it inside the prepaid account packaging material and is not otherwise mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information.

limited liability requirements do not extend to prepaid accounts held by consumers who have not successfully completed the financial institution's consumer identification and verification process (*i.e.,* consumers who have not concluded the process, consumers who have completed the process but whose identity could not be verified, and consumers holding accounts belonging to prepaid account programs for which there is no such process).[101] In addition, the Bureau is proposing related changes to model language in Appendix A–7(c) and is proposing to require that financial institutions offering prepaid account programs that do not have a consumer identification and verification process disclose to consumers any error resolution and limited liability protections they do offer (or, if applicable, that no such protections are offered) and comply with any error resolution and limited liability protections that are disclosed to consumers.

If adopted, covered persons would benefit from avoiding the burdens associated with providing Regulation E's error resolution and limited liability protections for those prepaid accounts held by consumers who have not successfully completed the consumer identification and verification process.[102] The Bureau considered the costs associated with providing error resolution and limited liability protections in its section 1022(b)(2) discussion for the 2016 Final Rule.[103] Potential sources of burden include, among other things, receiving oral or written error claims, investigating error claims, providing consumers with investigation results in writing, responding to consumer requests for copies of the documents that the financial institution relied on in making its determination, and correcting any errors discovered within the required timeframes.

These proposed changes would also permit covered persons to avoid any additional burdens that could result from providing these protections for unverified accounts in particular. During the Bureau's outreach efforts to industry regarding implementation, industry participants have expressed concern that offering these consumer protections for holders of unverified accounts would significantly increase fraud risk. To mitigate this risk, financial institutions that currently have verification processes in place may choose to issue check refunds, rather than allow the consumer to spend down the account balance, for those accounts that fail the consumer identification and verification process. Other financial institutions that currently do not have such processes in place may choose to institute one to avoid the additional fraud risk arising from providing these protections for unverified accounts. Some financial institutions have suggested that they may further limit the functionality offered to holders of unverified accounts; they therefore believe that they may need to replace retail packaging to accurately reflect this decreased functionality, notwithstanding the Bureau's decision to allow financial institutions to use non-compliant packaging manufactured in the normal course of business prior to the effective date. Covered persons would avoid incurring these costs were the proposed changes adopted.

Consumers holding unverified prepaid accounts may both incur costs and derive benefits from these proposed provisions relative to the baseline requirements established by the Prepaid Accounts Rule. Under this proposed rule's approach, consumers holding unverified accounts would no longer benefit from the error resolution and limited liability protections offered by the Prepaid Accounts Rule.[104] However, if financial institutions were to attempt to mitigate potential fraud losses arising from the Prepaid Accounts Rule by not offering unverified prepaid accounts, consumers desiring to hold unverified accounts would lose the benefits from the error resolution and limited liability protections as they would no longer have access to unverified accounts. Alternatively, if financial institutions were to respond to the Prepaid Accounts Rule's requirement to provide error resolution and limited liability protections for unverified accounts by decreasing the functionality associated with unverified accounts, this proposed rule would enable current and future holders of such accounts to retain that functionality, though they would not have the error resolution and limited liability protections they would have enjoyed under the Prepaid Accounts Rule. Therefore, consumers holding unverified prepaid accounts (or those desiring to hold unverified accounts) may experience increased product access or functionality relative to the baseline established by the Prepaid Accounts Rule's requirements.

In addition to these impacts on consumers holding (or desiring to hold) unverified prepaid accounts, consumers holding verified prepaid accounts may also benefit relative to the baseline established by the Prepaid Accounts Rule's requirement that financial institutions offer error resolution and limited liability protections for unverified accounts. Financial institutions may pass through some portion of the cost savings arising from not providing error resolution and limited liability protections on unverified accounts to holders of verified accounts in the form of lower prices, or they may invest cost savings into innovation efforts to create higher quality products.

Credit card accounts linked to prepaid accounts. As adopted in the 2016 Final Rule, the term ''business partner'' means a person (other than the prepaid account issuer or its affiliate) that can extend credit through a separate credit feature where the person or its affiliate has an arrangement with a prepaid account issuer or its affiliate. The Bureau is proposing to move most of the current guidance in comment 61(a)(5)(iii)–1 on when there is an arrangement to proposed § 1026.61(a)(5)(iii)(A) through (C) and to revise it for clarity. The Bureau is also proposing to add an exception to the definition of ''business partner.'' Specifically, proposed § 1026.61(a)(5)(iii)(D) would provide that a person that can extend credit through a credit card account is not a business partner of a prepaid account issuer with which it has an arrangement, as defined in proposed § 1026.61(a)(5)(iii)(A) through (C), with regard to such a credit card account so long as certain conditions are met. For example, under these conditions, the credit card account would remain subject to Regulation Z's credit card requirements in its own right, and both the credit card and prepaid accounts' pricing terms would be independent of whether the two accounts were linked. So long as they meet certain conditions, prepaid account issuers would be able to enter into certain business arrangements with credit card issuers without subjecting the credit card accounts and the prepaid accounts to coverage by those provisions of the Prepaid Accounts Rule that apply only to covered separate credit features accessible by hybrid prepaid-credit

[101] Given current business practices, the Bureau believes that this amendment would predominately affect financial institutions distributing prepaid accounts to consumers through the retail channel.

[102] Covered persons that choose not to offer Regulation E's error resolution and limited liability protections for unverified prepaid accounts would need to disclose which protections they do offer or that they do not offer such protections.

[103] 81 FR 83934, 84292 (Nov. 22, 2016).

[104] For prepaid accounts that are later verified, financial institutions would be required to resolve errors and limit liability with regard to disputed transactions that occurred prior to verification.

cards and prepaid accounts with such credit features.

Although the Bureau believes that few industry participants would qualify for this exception at present, the proposed exception would relieve burden for those industry participants that currently qualify and would decrease the cost incurred by industry participants entering into qualifying relationships in the future. For example, under the Prepaid Accounts Rule's current definition of ''business partner,'' a provider of a digital wallet that can store funds that has a cross-marketing arrangement with a credit card issuer could be subject to those provisions of the Prepaid Accounts Rule applicable to covered separate credit features accessible by a hybrid prepaid-credit card if the prepaid card from time to time can access credit from the credit card account in the course of a transaction to obtain goods or services, obtain cash, or conduct P2P transactions. Among other things, the digital wallet provider would be required to wait 30 days after the digital wallet account is registered before allowing the consumer to add a credit card account issued by a ''business partner'' of the provider to his or her digital wallet, though there would be no such required waiting period for credit card accounts offered by unaffiliated card issuers with whom there is no such relationship. Under the 2016 Final Rule, such a requirement applies even if the credit card account is subject to the provisions of Regulation Z that apply to credit card accounts in its own right.

Because the Bureau has narrowly tailored the proposed exception to the definition of ''business partner,'' consumers likely will not incur many costs as a result of this exception. For example, proposed § 1026.61(a)(5)(iii)(D)(*1*) would provide that for the credit card account to be eligible for the exception, it must be a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card and thus subject to the applicable credit card provisions of Regulation Z in its own right. Therefore, consumers would still enjoy the credit card protections provided by Regulation Z with respect to the linked credit card account.

The Bureau also believes that when the conditions of the proposed exception are met, consumers would be further protected. For example, proposed § 1026.61(a)(5)(iii)(D)(*3*) would prohibit both the prepaid account issuer and the credit card issuer from conditioning the acquisition or retention of either the prepaid or credit card account on whether the consumer authorizes their linkage. Also, under proposed § 1026.61(a)(5)(iii)(D)(*4*) and (*5*), both the prepaid account issuer and card issuer generally would be prohibited from varying the prepaid and credit card account terms and conditions based on whether the consumer chooses to link the accounts.[105] These provisions would help to ensure that the consumer's choice to acquire or retain a prepaid account or a credit card account is distinct from his or her choice to link a credit card account and a prepaid account. By ensuring that the pricing structures do not depend on the individual consumer's choice to link the accounts, the proposed provisions would help to give the consumer the opportunity to independently identify and appreciate the costs associated with each product. Proposed § 1026.61(a)(5)(iii)(D)(*2*) would require that the consumer provide either the prepaid account issuer or the card issuer a written request that is separately signed or initialized authorizing the prepaid card to access the credit card account, thereby helping to ensure that any account linkages are transparent to and represent the deliberate choice of the consumer.

Further, absent the proposed exception, there would be more instances in which the Prepaid Accounts Rule's provisions would apply to some, but not all, credit card accounts provisioned to a digital wallet. This uneven application could result in increased consumer confusion because credit card payment credentials stored within the same digital wallet would be subject to different disclosure regimes and use restrictions with greater frequency than would be experienced under the proposed exception. By helping to foster uniformity in application, the proposed exception could benefit consumers relying on digital wallet products.

In terms of alternatives, the Bureau also considered amending the definition of ''business partner'' in current § 1026.61(a)(5)(iii) to restrict it to situations in which a person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate where (1) the separate credit feature provides overdraft protection to the asset feature of a prepaid account; or (2) the prepaid account can access a separate credit feature either of a type or in a manner that is not also offered by or available from a person or its affiliate (other than the prepaid account issuer or its affiliate) with which the prepaid account issuer or its affiliate has no business, marketing, or promotional agreement. The Bureau believes that the proposed exception would provide clearer guidance to industry regarding which credit features would qualify for the exception, thereby reducing potential confusion relative to this alternative. In addition, the Bureau's approach, which provides for a more narrowly tailored exception to the definition of ''business partner,'' would help to ensure that consumers retain the benefits of the protections offered by provisions of the Prepaid Accounts Rule applicable to covered separate credit features and prepaid accounts with those credit features in more situations potentially presenting risk to consumers.

Potential specific impacts of the proposed rule. The requirements of the proposed rule would apply uniformly across covered financial institutions without regard to their asset size. The Bureau does not expect the proposed rule to have a differential impact on depository institutions and credit unions with $10 billion or less in total assets, as described in section 1026 of the Dodd-Frank Act. The Bureau solicits comment regarding the proposed rule's impact on those depository institutions and credit unions with $10 billion or less in total assets and how those impacts may be distinct from those experienced by larger institutions.

The Bureau has no reason to believe that the additional flexibility offered to covered persons by this proposed rule would differentially impact consumers in rural areas. The Bureau requests comment regarding the impact of the proposed provisions on consumers in rural areas and how those impacts may differ from those experienced by consumers generally.

[105] More specifically, proposed § 1026.61(a)(5)(iii)(D)(*4*) would ensure that the prepaid account issuer applies the same terms, conditions, or features to the prepaid account regardless of whether a consumer authorizes linking the prepaid card to the credit card account offered by the card issuer subject to the exception. In addition, the prepaid account issuer would be required to apply the same fees to load funds from a linked credit card account to the prepaid account as it charges for a comparable load from a credit feature offered by a person who is not the prepaid account issuer, its affiliate, or person with whom the prepaid account issuer has an arrangement. With respect to the credit card account, proposed § 1026.61(a)(5)(iii)(D)(*5*) would require that the card issuer apply the same specified terms and conditions to the credit card account regardless of whether the consumer authorizes its linkage to the prepaid account and additionally would require that the same specified terms and conditions apply to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act,[106] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[107] (RFA) requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[108] The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration (SBA) pursuant to the Small Business Act.[109]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.[110] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.[111]

This proposed rule would be the second rule promulgated by the Bureau to amend the 2016 Final Rule, which created comprehensive consumer protections for prepaid accounts under Regulations E and Z. In the 2014 Proposal, the Bureau concluded that rule would not have a significant economic impact on a substantial number of small entities and that an IRFA was therefore not required.[112] That conclusion remained unchanged for the 2016 Final Rule.[113] In addition, the Bureau determined that the 2017 Effective Date Final Rule, which extended the general effective date of the 2016 Final Rule by six months, likewise would not have a significant economic impact on a substantial number of small entities.[114]

Similarly, the Bureau concludes that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, and therefore an IRFA is not required. As discussed above, the proposed rule would amend certain provisions of the Prepaid Accounts Rule. Specifically, the Bureau is proposing to amend the Prepaid Accounts Rule so that it does not require financial institutions to resolve errors or limit consumers' liability on prepaid accounts (other than payroll card accounts or government benefit accounts) which are unverified. In addition, the Bureau is proposing to except certain prepaid account issuers and unaffiliated card issuers with business arrangements from coverage under the tailored provisions of the Prepaid Accounts Rule applicable only to covered separate credit features accessible by hybrid prepaid-credit cards and prepaid accounts with those credit features. The Bureau is also proposing to make clarifications or minor adjustments to certain other discrete aspects of the Prepaid Accounts Rule.

As discussed below, the proposed amendments would generally benefit small entities by providing additional flexibility with respect to their implementation of the Prepaid Accounts Rule and would not increase burden on small entities. The Bureau seeks comment on the methodology for estimating burden described in this analysis and requests any relevant data, including information regarding the implementation costs and ongoing costs associated with the proposed rule, especially as they pertain to small entities.

Error resolution and limited liability for unverified accounts. The Bureau is proposing to amend §§ 1005.11(c)(2)(i), 1005.18(d)(1)(ii) and (e)(3), and Appendix A–7(c) to provide that Regulation E's error resolution and limited liability requirements do not extend to prepaid accounts held by consumers who have not successfully completed the financial institution's consumer identification and verification process. If adopted, small entities would benefit from avoiding the burdens associated with providing Regulation E's error resolution and limited liability protections for those prepaid accounts held by consumers who have not successfully completed the consumer identification and verification process. In addition, any increase in fraud risk arising from the Prepaid Accounts Rule's requirement that financial institutions offer error resolution and limited liability protections to consumers holding unregistered accounts may be avoided. However, these benefits would be limited if small entities tend not to distribute prepaid accounts that can be used before verification or that offer significant pre-verification functionality and thus may not have the same concerns regarding increased fraud risk associated with offering error resolution and limited liability protections for unverified prepaid accounts.

Credit card accounts linked to prepaid accounts. The Bureau is proposing to add an exception in proposed § 1026.61(a)(5)(iii)(D) to the definition of ''business partner.'' If the conditions of the proposed exception are met, an unaffiliated credit card issuer and a prepaid account issuer with a business arrangement as described in proposed § 1026.61(a)(5)(iii)(A) through (C) would not be business partners with respect to the credit card account even if the credit card account is linked to a prepaid account to access credit during the course of a transaction. The linked credit card account would not be considered to be a ''covered separate credit feature'' accessible by a hybrid prepaid-credit card and therefore would not be subject to the provisions of the Prepaid Accounts Rule that only apply to those credit features or prepaid accounts with those credit features. Under this proposed exception, the consumer holding the linked credit card account would still receive the protections in Regulation Z that generally apply to a credit card account under an open-end (not home-secured) consumer credit plan, but the tailored provisions in the Prepaid Accounts Rule applicable to covered separate credit features or prepaid accounts with those credit features would not apply. The proposed amendment would facilitate compliance with the Prepaid Accounts Rule by digital wallet providers that both offer the ability to store funds (such that the digital wallet is a prepaid account) and permit consumers to use the digital wallet account number from time to time to access stored credentials for credit card accounts in the course of a transaction by excepting such providers from the tailored provisions in the Prepaid Accounts Rule applicable only to covered separate credit features or prepaid accounts with those features so long as they meet the conditions described above. The Bureau believes that, at present, this exception would apply to few entities.

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[106] Public Law 96–354, 94 Stat. 1164 (1980).

[107] Public Law 104–21, section 241, 110 Stat. 847, 864–65 (1996).

[108] 5 U.S.C. 601 through 612. The term '' 'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition under notice and comment].'' 5 U.S.C. 601(4). The term '' 'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment].'' 5 U.S.C. 601(5).

[109] 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consulting with the SBA and providing an opportunity for public comment. *Id.*

[110] 5 U.S.C. 601 *et seq.*

[111] 5 U.S.C. 609.

[112] 79 FR 77102, 77283 (Dec. 23, 2014).

[113] 81 FR 83934, 84308 (Nov. 22, 2016).

[114] 82 FR 18975, 18979 (Apr. 25, 2017).

Other modifications. In addition to these provisions, the Bureau is proposing to make clarifications or minor adjustments to certain other discrete aspects of the Prepaid Accounts Rule. Similar to those provisions discussed, these clarifications or minor adjustments would provide additional options for compliance and should not increase burden on small entities.

In summary, this proposed rule would not increase costs incurred by small entities relative to the baseline established by the Prepaid Accounts Rule because small entities retain the option of complying with the Prepaid Accounts Rule as it currently exists. Therefore, small entities would not experience a significant economic impact as a result of this proposed rule.

Certification

Accordingly, the undersigned hereby certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[115] Federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. The collections of information related to the Prepaid Accounts Rule have been reviewed and approved by OMB previously in accordance with the PRA and assigned OMB Control Numbers 3170–0014 (Regulation E) and 3170–0015 (Regulation Z). Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB.

The Bureau has determined that this proposed rule would provide firms with additional flexibility and clarity with respect to what must be disclosed under the Prepaid Accounts Rule; therefore, it would have only minimal impact on the industry-wide aggregate PRA burden relative to the baseline. The Bureau welcomes comments on this determination or any other aspects of this proposal for purposes of the PRA. Comments should be submitted to the Bureau as instructed in the **ADDRESSES** part of this notice and to the attention of the Paperwork Reduction Act Officer. All comments will become a matter of public record.

[115] 44 U.S.C. 3501 *et seq.*

List of Subjects

12 CFR Part 1005

Automated teller machines, Banking, Banks, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittance transfers, Reporting and recordkeeping requirements, Savings associations.

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 proposes to further amend 12 CFR parts 1005 and 1026, as amended November 22, 2016, at 81 FR 83934, and April 25, 2017, at 82 FR 18975, as follows:

PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 1005 continues to read as follows:

Authority: 12 U.S.C. 5512, 5532, 5581; 15 U.S.C. 1693b. Subpart B is also issued under 12 U.S.C. 5601 and 15 U.S.C. 1693o–1.

Subpart A—General

■ 2. Section 1005.2 is amended by revising paragraph (b)(3)(ii)(D)(*3*) to read as follows:

§ 1005.2 Definitions.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(D) * * *

(*3*) A loyalty, award, or promotional gift card as defined in § 1005.20(a)(4), or that satisfies the criteria in § 1005.20(a)(4)(i) and (ii) and is excluded from § 1005.20 pursuant to § 1005.20(b)(4); or

* * * * *

■ 3. Section 1005.11 is amended by removing paragraph (c)(2)(i)(C) and revising paragraphs (c)(2)(i)(A) and (B) to read as follows:

§ 1005.11 Procedures for resolving errors.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) The institution requires but does not receive written confirmation within 10 business days of an oral notice of error; or

(B) The alleged error involves an account that is subject to Regulation T of the Board of Governors of the Federal Reserve System (Securities Credit by Brokers and Dealers, 12 CFR part 220).

* * * * *

■ 4. Section 1005.18 is amended by revising paragraphs (b)(1)(i), (b)(1)(ii)(D), (b)(2)(ix)(C), (b)(6)(i)(B), (b)(6)(i)(C), (b)(9)(i)(C), (d)(1)(ii), and (e)(3) as follows:

§ 1005.18 Requirements for financial institutions offering prepaid accounts.

* * * * *

(b) * * *

(1) * * *

(i) *General.* Except as provided in paragraphs (b)(1)(ii) or (iii) of this section, a financial institution shall provide the disclosures required by paragraph (b) of this section before a consumer acquires a prepaid account. When a prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, for purposes of this paragraph, the disclosures required by paragraph (b) of this section may be provided at the time the consumer receives the prepaid account.

(ii) * * *

(D) The long form disclosure required by paragraph (b)(4) of this section is provided after the consumer acquires the prepaid account. If a financial institution does not provide the long form disclosure inside the prepaid account packaging material, and it is not otherwise already mailing or delivering to the consumer written account-related communications within 30 days of obtaining the consumer's contact information, it may provide the long form disclosure pursuant to this paragraph in electronic form without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

* * * * *

(2) * * *

(ix) * * *

(C) *Fee variations in additional fee types.* If an additional fee type required to be disclosed pursuant to paragraph (b)(2)(ix)(A) of this section has more than two fee variations, or when providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(*2*) of this section, the financial institution must disclose the name of the additional fee type and the highest fee amount in accordance with paragraph (b)(3)(i) of this section; for disclosures other than for multiple

service plans, it may, but is not required to, consolidate the fee variations into two categories and disclose the names of those two fee variation categories and the fee amounts in a format substantially similar to that used to disclose the two-tier fees required by paragraphs (b)(2)(v) and (vi) of this section and in accordance with paragraphs (b)(3)(i) and (b)(7)(ii)(B)(*1*) of this section. Except when providing a short form disclosure for multiple service plans pursuant to paragraph (b)(6)(iii)(B)(*2*) of this section, if an additional fee type has two fee variations, the financial institution must disclose the name of the additional fee type together with the names of the two fee variations and the fee amounts in a format substantially similar to that used to disclose the two-tier fees required by paragraphs (b)(2)(v) and (vi) of this section and in accordance with paragraph (b)(7)(ii)(B)(*1*) of this section. If a financial institution only charges one fee under a particular fee type, the financial institution must disclose the name of the additional fee type and the fee amount; it may, but is not required to, disclose also the name of the one fee variation for which the fee amount is charged, in a format substantially similar to that used to disclose the two-tier fees required by paragraphs (b)(2)(v) and (vi) of this section, except that the financial institution would disclose only the one fee variation name and fee amount instead of two.

* * * * *

(6) * * *

(i) * * *

(B) *Electronic disclosures.* Unless provided in written form prior to acquisition pursuant to paragraph (b)(1)(i) of this section, the disclosures required by paragraph (b) of this section must be provided in electronic form when a consumer acquires a prepaid account through electronic means, including via a Web site or mobile application, and must be viewable across all screen sizes. The long form disclosure must be provided electronically through a Web site when a financial institution is offering prepaid accounts at a retail location pursuant to the retail location exception in paragraph (b)(1)(ii) of this section. Electronic disclosures must be provided in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account, in a responsive form, and using machine-readable text that is accessible via Web browsers or mobile applications, as applicable, and via screen readers. Electronic disclosures provided pursuant to paragraph (b) of this section need not meet the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(C) *Oral disclosures.* Unless provided in written form prior to acquisition pursuant to paragraph (b)(1)(i) of this section, disclosures required by paragraphs (b)(2) and (5) of this section must be provided orally when a consumer acquires a prepaid account orally by telephone pursuant to the exception in paragraph (b)(1)(iii) of this section. For prepaid accounts acquired in retail locations or orally by telephone, disclosures required by paragraph (b)(4) of this section provided by telephone pursuant to paragraph (b)(1)(ii)(B) or (b)(1)(iii)(B) of this section also must be made orally.

* * * * *

(9) * * *

(i) * * *

(C) The financial institution provides a means for the consumer to acquire a prepaid account by telephone or electronically principally in a foreign language, except for payroll card accounts and government benefit accounts where the foreign language is offered by telephone only via a real-time language interpretation service provided by a third party.

* * * * *

(d) * * *

(1) * * *

(ii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph (b) of appendix A–7 of this part, in place of the notice required by § 1005.7(b)(10). Alternatively, for prepaid account programs for which the financial institution does not have a consumer identification and verification process, the financial institution must describe its error resolution process and limitations on consumers' liability for unauthorized transfers or, if none, state that there are no such protections.

* * * * *

(e) * * *

(3) *Limitations on liability and error resolution for unverified accounts*—(i) For prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in §§ 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process.

(ii) For purposes of paragraph (e)(3)(i) of this section, a financial institution has not successfully completed its consumer identification and verification process where:

(A) The financial institution has not concluded its consumer identification and verification process with respect to a particular prepaid account, provided that it has disclosed to the consumer the risks of not registering and verifying the account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix A–7 of this part.

(B) The financial institution has concluded its consumer identification and verification process with respect to a particular prepaid account, but could not verify the identity of the consumer, provided that it has disclosed to the consumer the risks of not registering and verifying the account using a notice that is substantially similar to the model notice contained in paragraph (c) of appendix A–7 of this part; or

(C) The financial institution does not have a consumer identification and verification process for the prepaid account program, provided that it has made the alternative disclosure described in paragraph (d)(1)(ii) of this section and complies with the process it has disclosed.

(iii) *Resolution of pre-verification errors following successful verification.* Once a financial institution successfully completes its consumer identification and verification process with respect to a prepaid account, the financial institution must limit the consumer's liability for unauthorized transfers and resolve errors that occurred prior to verification with respect to any unauthorized transfers or other errors that satisfy the timing requirements of §§ 1005.6 or 1005.11, or the modified timing requirements in this paragraph (e), as applicable.

* * * * *

■ 5. Section 1005.19, is amended by revising paragraphs (b)(2), (b)(6)(ii), (b)(6)(iii), and (f)(2) as follows:

§ 1005.19 Internet posting of prepaid account agreements.

* * * * *

(b) * * *

(2) *Amended agreements.* If a prepaid account agreement previously submitted to the Bureau is amended, the issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, no later than 30 days after the change becomes effective. An issuer may delay submitting a change in the names of other relevant parties to the agreement until such time as the issuer is submitting an amended agreement pursuant to this paragraph or changes to other identifying information about the

issuer and its submitted agreements pursuant to paragraph (b)(1)(i) of this section, in lieu of submitting such a change no later than 30 days after the change becomes effective.

* * * * *

(6) * * *

(ii) *Fee information.* Fee information must be set forth either in the prepaid account agreement or in addenda to that agreement that attach either or both the short form disclosure for the prepaid account pursuant to § 1005.18(b)(2) and the fee information and statements required to be disclosed in the long form disclosure for the prepaid account pursuant to § 1005.18(b)(4). The agreement or addenda thereto must contain all of the fee information, as defined by paragraph (a)(3) of this section.

(iii) *Integrated agreement.* An issuer may not provide provisions of the agreement or fee information to the Bureau in the form of change-in-terms notices or riders (other than the optional fee information addenda described in paragraph (b)(6)(ii) of this section). Changes in provisions or fee information must be integrated into the text of the agreement, or the optional fee information addenda, as appropriate.

* * * * *

(f) * * *

(2) *Compliance date for the agreement submission requirement.* The compliance date for the requirement to make submissions of prepaid account agreements to the Bureau on a rolling basis pursuant to paragraph (b) of this section is October 1, 2018. An issuer must submit to the Bureau no later than October 31, 2018 all prepaid account agreements it offers as of October 1, 2018.

* * * * *

■ 6. In Appendix A to part 1005, Model Clause A–7 is amended by revising paragraph (c), including the heading, as follows:

Appendix A to Part 1005—Model Disclosure Clauses and Forms

* * * * *

A–7—Model Clauses for Financial Institutions Offering Prepaid Accounts (§ 1005.18(d) and (e)(3))

* * * * *

(c) *Warning regarding unverified prepaid accounts (§ 1005.18(e)(3)).*

It is important to register your prepaid account as soon as possible. Until you register your account and we verify your identity, we are not required to research or resolve any errors regarding your account. To register your account, go to [Internet address] or call us at [telephone number]. We will ask you for identifying information about yourself (including your full name, address, date of birth, and [Social Security Number] [government-issued identification number]), so that we can verify your identity. Once we have done so, we will address your complaint or question as set forth above.

* * * * *

■ 7. In Supplement I to part 1005:

■ a. Under *Section 1005.2—Definitions,* in subsection *Paragraph 2(b)(3)(ii),* paragraph 4 is added.

■ b. Under *Section 1005.18—Requirements for Financial Institutions Offering Prepaid Accounts:*

■ i. In subsection *18(a) Coverage,* paragraph 1 is revised.

■ ii. In subsection *18(b)(1)(i) General,* paragraph 1 is revised.

■ iii. In subsection *18(b)(1)(ii) Disclosures for Prepaid Accounts Acquired in Retail Locations,* paragraph 4 is revised.

■ iv. In subsection *18(b)(2)(ix)(C) Fee Variations in Additional Fee Types,* paragraph 1.ii is revised.

■ v. In subsection *18(b)(6)(i) General,* paragraph 1 is added.

■ vi. In subsection *18(b)(6)(i)(B) Electronic Disclosures,* paragraph 1 is revised.

■ vii. In subsection *18(e) Modified Limitations on Liability and Error Resolution Requirements,* paragraphs 4, 5, and 6 are revised.

■ c. Under *Section 1005.19 Internet Posting of Prepaid Account Agreements:*

■ i. In subsection *19(a)(2) Amends,* paragraph 1.vii is revised.

■ ii. In subsection *19(b)(6) Form and Content of Agreements Submitted to the Bureau,* paragraph 3 is revised.

■ iii. In subsection *19(f) Effective Date,* paragraph 1 is revised.

The revisions and additions read as follows:

Supplement I to Part 1005—Official Interpretations

Section 1005.2—Definitions

* * * * *

2(b) Account

* * * * *

Paragraph 2(b)(3)

* * * * *

Paragraph 2(b)(3)(ii)

* * * * *

4. *Loyalty, award, or promotional gift cards.* Section 1005.2(b)(3)(ii)(D)(*3*) excludes loyalty, award, or promotional gift cards as defined in § 1005.20(a)(4); those cards are excluded from coverage under § 1005.20 pursuant to § 1005.20(b)(3). Section 1005.2(b)(3)(ii)(D)(*3*) also excludes cards that satisfy the criteria in § 1005.20(a)(4)(i) and (ii) and are excluded from coverage under § 1005.20 pursuant to § 1005.20(b)(4) because they are not marketed to the general public; such products are not required to set forth the disclosures enumerated in § 1005.20(a)(4)(iii) in order to be excluded pursuant to § 1005.2(b)(3)(ii)(D)(*3*).

* * * * *

Section 1005.18—Requirements for Financial Institutions Offering Prepaid Accounts

18(a) Coverage

1. *Issuance of access device.* Consistent with § 1005.5(a) and except as provided, as applicable, in § 1005.5(b), a financial institution may issue an access device only in response to an oral or written request for the device, or as a renewal or substitute for an accepted access device. A consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive salary or other compensation through a payroll card account. A consumer is deemed to request an access device for a prepaid account when, for example, the consumer acquires a prepaid account offered for sale at a retail location or applies for a prepaid account by telephone or online. If an access device for a prepaid account is provided on an unsolicited basis where the prepaid account is used for disbursing funds to a consumer, and the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account, in order to satisfy § 1005.5(b)(2), the financial institution must inform the consumer that he or she has no other means by which to receive any funds in the prepaid account if the consumer disposes of the access device.

* * * * *

18(b) Pre-Acquisition Disclosure Requirements

* * * * *

18(b)(1) Timing of Disclosures

18(b)(1)(i) General

1. *Disclosing the short form and long form before acquisition.* Section 1005.18(b)(1)(i) generally requires delivery of a short form disclosure as described in § 1005.18(b)(2), accompanied by the information required to be disclosed by § 1005.18(b)(5), and a long form disclosure as described in § 1005.18(b)(4) before a consumer acquires a prepaid account.

i. For purposes of § 1005.18(b)(1)(i), a consumer acquires a prepaid account by purchasing, opening or choosing to be paid via a prepaid account, as illustrated by the following examples:

A. A consumer inquires about obtaining a prepaid account at a branch location of a bank. A consumer then receives the disclosures required by § 1005.18(b). After receiving the disclosures, a consumer then opens a prepaid account with the bank. This consumer received the short form and long form pre-acquisition in accordance with § 1005.18(b)(1)(i).

B. A consumer learns that he or she can receive wages via a payroll card account, at which time the consumer is provided with a payroll card and the disclosures required by § 1005.18(b) to review. The consumer then chooses to receive wages via a payroll card account. These disclosures were provided

pre-acquisition in compliance with § 1005.18(b)(1)(i). By contrast, if a consumer receives the disclosures required by § 1005.18(b) to review at the end of the first pay period, after the consumer received the first payroll payment on the payroll card, these disclosures were provided to a consumer post-acquisition, and thus not provided in compliance with § 1005.18(b)(1)(i).

ii. Section 1005.18(b)(1)(i) permits delivery of the disclosures required by § 1005.18(b) at the time the consumer receives the prepaid account, rather than prior to acquisition, for prepaid accounts that are used for disbursing funds to consumers when the financial institution or third party making the disbursement does not offer any alternative means for the consumer to receive those funds in lieu of accepting the prepaid account. For example, a utility company refunds consumers' initial deposits for its utility services via prepaid accounts delivered to consumers by mail. Neither the utility company nor the financial institution that issues the prepaid accounts offer another means for a consumer to receive that refund other than by accepting the prepaid account. In this case, the financial institution may provide the disclosures required by § 1005.18(b) together with the prepaid account (*e.g.,* in the same envelope as the prepaid account); it is not required to deliver the disclosures separately prior to delivery of the prepaid account.

* * * * *

18(b)(1)(ii) Disclosures for Prepaid Accounts Acquired in Retail Locations

* * * * *

4. *Providing the long form disclosure by telephone and Web site pursuant to the retail location exception.* Pursuant to § 1005.18(b)(1)(ii), a financial institution may provide the long form disclosure described in § 1005.18(b)(4) after a consumer acquires a prepaid account in a retail location, if the conditions set forth in § 1005.18(b)(1)(ii)(A) through (D) are met. Pursuant to § 1005.18(b)(1)(ii)(C), a financial institution must make the long form disclosure accessible to consumers by telephone and via a Web site when not providing a written version of the long form disclosure pre-acquisition. A financial institution may, for example, provide the long form disclosure by telephone using an interactive voice response or similar system or by using a customer service agent. A financial institution that has not obtained the consumer's contact information is not required to comply with the requirements set forth in § 1005.18(b)(1)(ii)(D). A financial institution is able to contact the consumer when, for example, it has the consumer's mailing address or email address.

* * * * *

18(b)(2) Short Form Disclosure Content

* * * * *

18(b)(2)(ix) Disclosure of Additional Fee Types

* * * * *

18(b)(2)(ix)(C) Fee Variations in Additional Fee Types

* * * * *

1. * * *

ii. *More than two fee variations.* A financial institution offers two methods of bill payment—via ACH and paper check—and offers two modes of delivery for bill payments made by paper check—regular standard mail service and expedited delivery. The financial institution charges $0.25 for bill pay via ACH, $0.50 for bill pay via paper check sent by regular standard mail service, and $3 for bill pay via paper check sent via expedited delivery. The financial institution must calculate the total revenue generated from consumers for all methods of bill pay and all modes of delivery during the required time period to determine whether it must disclose bill payment as an additional fee type pursuant to § 1005.18(b)(2)(ix). Because there are more than two fee variations for the fee type ''bill payment,'' if bill payment is required to be disclosed as an additional fee type pursuant to § 1005.18(b)(2)(ix)(A), the financial institution has two options for the disclosure. The financial institution may disclose the highest fee, $3, followed by a symbol, such as an asterisk, linked to a statement explaining that the fee could be lower depending on how and where the prepaid account is used, pursuant to § 1005.18(b)(3)(i). Thus, the financial institution would disclose on the short form the fee type as ''Bill payment'' and the fee amount as ''$3.00*''. Alternatively, the financial institution may consolidate the fee variations into two categories, such as regular delivery and expedited delivery. In this case, the financial institution would make this disclosure on the short form as: ''Bill payment (regular or expedited delivery)'' and the fee amount as ''$0.50* or $3.00''.

* * * * *

18(b)(6) Form of Pre-Acquisition Disclosures

18(b)(6)(i) General

1. *Written pre-acquisition disclosures.* If a financial institution provides the disclosures required by § 1005.18(b) in written form prior to acquisition pursuant to § 1005.18(b)(1)(i), they need not also be provided electronically or orally. For example, an employer distributes to new employees printed copies of the disclosures required by § 1005.18(b) for a payroll card account, together with instructions to complete the payroll card account acquisition process online if the employee wishes to be paid via a payroll card account. The financial institution is not required to provide the § 1005.18(b) disclosures electronically via the Web site because the consumer has already received the disclosures pre-acquisition in written form.

18(b)(6)(i)(B) Electronic Disclosures

1. *Providing pre-acquisition disclosures electronically.* Unless provided in written form prior to acquisition pursuant to § 1005.18(b)(1)(i), § 1005.18(b)(6)(i)(B) requires electronic delivery of the disclosures required by § 1005.18(b) when a consumer acquires a prepaid account through electronic means, including via a Web site or mobile application, and, among other things, in a manner which is reasonably expected to be accessible in light of how a consumer is acquiring the prepaid account. For example, if a consumer is acquiring a prepaid account via a Web site or mobile application, it would be reasonable to expect that a consumer would be able to access the disclosures required by § 1005.18(b) on the first page or via a direct link from the first page of the Web site or mobile application or on the first page that discloses the details about the specific prepaid account program. See comment 18(b)(1)(i)–2 for additional guidance on placement of the short form and long form disclosures on a Web page.

* * * * *

18(e) Modified Limitations on Liability and Error Resolution Requirements

* * * * *

4. *Verification of accounts.* Section 1005.18(e)(3)(i) provides that for prepaid accounts that are not payroll card accounts or government benefit accounts, a financial institution is not required to comply with the liability limits and error resolution requirements in §§ 1005.6 and 1005.11 for any prepaid account for which it has not successfully completed its consumer identification and verification process. Consumer identifying information may include the consumer's full name, address, date of birth, and Social Security number or other government-issued identification number. Section 1005.18(e)(3)(iii) provides that once a financial institution successfully completes its consumer identification and verification process with respect to a prepaid account, a financial institution must limit the consumer's liability for unauthorized transfers and resolve errors that occurred prior to verification with respect to any unauthorized transfers or other errors that satisfy the timing requirements of §§ 1005.6 or 1005.11, or the modified timing requirements in § 1005.18(e), as applicable. For an unauthorized transfer or other error asserted on a previously unverified prepaid account, whether a consumer has timely reported the unauthorized transfer or other error is based on the date the consumer contacts the financial institution to report the unauthorized transfer or other error, not the date the financial institution successfully completes its consumer identification and verification process. For an error asserted on a previously unverified prepaid account, the time limits for the financial institution's investigation pursuant to § 1005.11(c) begin on the day following the date the financial institution successfully completed its consumer identification and verification process.

5. *Financial institution has not successfully completed verification.* Section 1005.18(e)(3)(ii)(A) states that, provided it discloses to the consumer the risks of not registering and verifying a prepaid account, a financial institution has not successfully completed its consumer identification and verification process where it has not concluded the process with respect to a particular prepaid account. For example, a financial institution initiates its consumer identification and verification process by collecting identifying information about a consumer, and attempts to verify the consumer's identity. The financial institution is unable to conclude the process because of

conflicting information about the consumer's current address. The financial institution informs the consumer about the nature of the information at issue and requests additional documentation, but the consumer does not provide the requested documentation. As long as the information needed to complete the verification process remains outstanding, the financial institution has not concluded its consumer identification and verification process with respect to that consumer. A financial institution may not delay completing its consumer identification and verification process or refuse to verify a consumer's identity based on the consumer's assertion of an error.

6. *Account verification prior to acquisition.* A financial institution that collects and verifies consumer identifying information, or that obtains such information after it has been collected and verified by a third party, prior to or as part of the account acquisition process, is deemed to have successfully completed its consumer identification and verification process with respect to that account. For example, a university contracts with a financial institution to disburse financial aid to students via the financial institution's prepaid accounts. To facilitate the accurate disbursal of aid awards, the university provides the financial institution with identifying information about the university's students, whose identities the university had previously verified. The financial institution is deemed to have completed its consumer identification and verification process with respect to those accounts.

* * * * *

Section 1005.19 Internet Posting of Prepaid Account Agreements

19(a) Definitions

* * * * *

19(a)(2) Amends

* * * * *

1. * * *

vii. Changes to the names of other relevant parties, such as the employer for a payroll card program or the agency for a government benefit program. But see § 1005.19(b)(2) regarding the timing of submitting such changes to the Bureau.

* * * * *

19(b) Submission of Agreements to the Bureau

* * * * *

19(b)(6) Form and Content of Agreements Submitted to the Bureau

* * * * *

3. *Integrated agreement requirement.* Issuers may not submit provisions of the agreement or fee information in the form of change-in-terms notices or riders. The only addenda that may be submitted as part of an agreement are the optional fee information addenda described in § 1005.19(b)(6)(ii). Changes in provisions or fee information must be integrated into the body of the agreement or the optional fee information addenda. For example, it would be impermissible for an issuer to submit to the Bureau an agreement in the form of a terms and conditions document on January 1 and subsequently submit a change-in-terms notice to indicate amendments to the previously submitted agreement. Instead, the issuer must submit a document that integrates the changes made by each of the change-in-terms notices into the body of the original terms and conditions document and the optional addenda displaying variations in fee information.

* * * * *

19(f) Effective Date

1. *Compliance date for the agreement submission requirement.* Section 1005.19(f)(2) provides that the compliance date for the requirement to make submissions of prepaid account agreements to the Bureau on a rolling basis pursuant to § 1005.19(b) is October 1, 2018. An issuer must submit to the Bureau no later than October 31, 2018 all prepaid account agreements it offers as of October 1, 2018. After October 1, 2018, issuers must submit on a rolling basis prepaid account agreements or notifications of withdrawn agreements to the Bureau no later than 30 days after offering, amending, or ceasing to offer the agreements.

* * * * *

PART 1026—TRUTH IN LENDING (REGULATION Z)

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

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

■ 9. Section 1026.61 is amended by revising paragraph (a)(5)(iii) to read as follows:

§ 1026.61 Hybrid prepaid-credit cards.

* * * * *

(a) * * *

(5) * * *

(iii) *Business partner* means a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature where the person or its affiliate has an arrangement with a prepaid account issuer or its affiliate except as provided in paragraph (a)(5)(iii)(D) of this section.

(A) *Arrangement defined.* For purposes of paragraph (a)(5)(iii) of this section, a person that can extend credit through a separate credit feature or the person's affiliate has an arrangement with a prepaid account issuer or its affiliate if the circumstances in either paragraph (a)(5)(iii)(B) or (C) of this section are met.

(B) *Arrangement by agreement.* A person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate if the parties have an agreement that allows the prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

(C) *Marketing arrangement.* A person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate if:

(*1*) The parties have a business, marketing, or promotional agreement or other arrangement which provides that prepaid accounts offered by the prepaid account issuer will be marketed to the customers of the person that can extend credit; or the separate credit feature offered by the person who can extend credit will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to encourage them to authorize the prepaid card to access the separate credit feature as described in paragraph (a)(5)(iii)(C)(*2*) of this section); and

(*2*) At the time of the marketing agreement or arrangement described in paragraph (a)(5)(iii)(C)(*1*) of this section, or at any time afterwards, the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the separate credit feature offered by the person that can extend credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. This requirement is satisfied even if there is no specific agreement between the parties that the card can access the credit feature, as described in paragraph (a)(5)(iii)(B) of this section.

(D) *Exception for certain credit card account arrangements.* For purposes of paragraph (a)(5)(iii) of this section, a person that can extend credit through a credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in paragraphs (a)(5)(iii)(A) through (C) of this section with regard to such credit card account if all of the following conditions are met:

(*1*) The credit card account is a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card.

(*2*) The prepaid account issuer and the card issuer will not allow the prepaid card to draw, transfer, or authorize the draw or transfer of credit from the credit card account from time to time in the course of authorizing, settling, or otherwise completing transactions conducted with the card to

obtain goods or services, obtain cash, or conduct person-to-person transfers, except where the prepaid account issuer or the card issuer has received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account as described above.

(*3*) The prepaid account issuer and the card issuer do not condition the acquisition or retention of the prepaid account or the credit card account on whether a consumer authorizes the prepaid card to access the credit card account as described in paragraph (a)(5)(iii)(D)(*2*) of this section.

(*4*) The prepaid account issuer applies the same terms, conditions, or features to the prepaid account when a consumer authorizes linking the prepaid card to the credit card account as described in paragraph (a)(5)(iii)(D)(*2*) of this section as it applies to the consumer's prepaid account when the consumer does not authorize such a linkage. In addition, the prepaid account issuer applies the same fees to load funds from the credit card account that is linked to the prepaid account as described above as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement as described in paragraphs (a)(5)(iii)(A) through (C) of this section.

(*5*) The card issuer applies the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account as described in paragraph (a)(5)(iii)(D)(*2*) of this section as it applies to the consumer's credit card account when the consumer does not authorize such a linkage. In addition, the card issuer applies the same specified terms and conditions to extensions of credit from the credit card account made with the prepaid card as with the traditional credit card. For purposes of this paragraph, ''specified terms and conditions'' means the terms and conditions required to be disclosed under § 1026.6(b), any repayment terms and conditions, and the limits on liability for unauthorized credit transactions.

* * * * *

■ 10. In Supplement I to part 1026—Official Interpretations:

■ a. Under *Section 1026.61—Hybrid Prepaid-Credit Cards:*

■ i. In subsection *Paragraph 61(a)(5)(iii),* paragraph 1 is revised.

■ ii. Subsections *61(a)(5)(iii)(D) Exception For Certain Credit Card Account Arrangements, Paragraph 61(a)(5)(iii)(D)(1), Paragraph 61(a)(5)(iii)(D)(2), Paragraph 61(a)(5)(iii)(D)(4),* and *Paragraph 61(a)(5)(iii)(D)(5)* are added.

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

* * * * *

Section 1026.61—Hybrid Prepaid-Credit Cards

* * * * *

61(a) Hybrid Prepaid-Credit Card

* * * * *

61(a)(5) Definitions

Paragraph 61(a)(5)(iii)

1. *Card network or payment network agreements.* A draw, transfer, or authorization of the draw or transfer from a credit feature may be effectuated through a card network or a payment network. However, for purposes of § 1026.61(a)(5)(iii), agreements to participate in a card network or payment network themselves do not constitute an ''agreement'' or a ''business, marketing, or promotional agreement or other arrangement'' described in § 1026.61(a)(5)(iii)(B) or (C), respectively.

* * * * *

61(a)(5)(iii)(D) Exception For Certain Credit Card Account Arrangements

1. *When the exception applies.* If the exception in § 1026.61(a)(5)(iii)(D) applies, a person that can extend credit through the credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in § 1026.61(a)(5)(iii)(A) through (C). Accordingly, where a consumer has authorized his or her prepaid card in accordance with § 1026.61(a)(5)(iii)(D) to be linked to the credit card account in such a way as to allow the prepaid card to access the credit card account as described in § 1026.61(a)(5)(iii)(D)(*2*), the linked prepaid card is not a hybrid prepaid-credit card with respect to the linked credit card account. Rather, the linked credit card account is a non-covered separate credit feature as discussed in § 1026.61(a)(2)(ii). *See* comment 61(a)(2)–5. In this case, by definition, the linked credit card account will be subject to the credit card rules in this regulation in its own right because it is a credit card account under an open-end (not home-secured) consumer credit plan, pursuant to the condition set forth in § 1026.61(a)(5)(iii)(D)(*1*).

Paragraph 61(a)(5)(iii)(D)(1)

1. *Traditional credit card.* For purposes of § 1026.61(a)(5)(iii)(D), ''traditional credit card'' means a credit card that is not a hybrid prepaid-credit card. Thus, the condition in § 1026.61(a)(5)(iii)(D)(*1*) is not satisfied if the only credit card that a consumer can use to access the credit card account under an open-end (not home-secured) consumer credit plan is a hybrid prepaid-credit card.

Paragraph 61(a)(5)(iii)(D)(2)

1. *Written request.* Under § 1026.61(a)(5)(iii)(D)(*2*), any accountholder on either the prepaid account or the credit card account may make the written request.

Paragraph 61(a)(5)(iii)(D)(4)

1. *Account terms, conditions, or features.* Account terms, conditions, and features subject to § 1026.61(a)(5)(iii)(D)(*4*) include, but are not limited to:

i. Interest paid on funds deposited into the prepaid account, if any;

ii. Fees or charges imposed on the prepaid account (see comment 61(a)(5)(iii)(D)(*4*)–3 for additional guidance on this element with regard to load fees);

iii. The type of access device provided to the consumer;

iv. Minimum balance requirements on the prepaid account; or

v. Account features offered in connection with the prepaid account, such as online bill payment services.

2. *The same terms, conditions, and features apply to the consumer's prepaid account.* For the exception in § 1026.61(a)(5)(iii)(D) to apply, under § 1026.61(a)(5)(iii)(D)(*4*), the prepaid account issuer must not vary the terms, conditions, and features on the consumer's prepaid account depending on whether the consumer has authorized linking the prepaid card to the credit card account as described in § 1026.61(a)(5)(iii)(D)(*2*). For example, a prepaid account issuer would not satisfy this condition of § 1026.61(a)(5)(iii)(D)(*4*) if it provides on a consumer's prepaid account reward points or cash back on purchases with the prepaid card where the consumer has authorized a link to the credit card account as discussed above while not providing such reward points or cash back on the consumer's account if the consumer has not authorized such a linkage.

3. *Example of impermissible variations in load fees.* For the exception in § 1026.61(a)(5)(iii)(D) to apply, under § 1026.61(a)(5)(iii)(D)(*4*), the prepaid account issuer must apply the same fees to load funds from the credit card account that is linked to the prepaid account as described in § 1026.61(a)(5)(iii)(D)(*2*) as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliates, or a person with which the prepaid account issuer has an arrangement as described in § 1026.61(a)(5)(iii)(A) through (C). For example, a prepaid account issuer would not satisfy this condition of § 1026.61(a)(5)(iii)(D)(*4*) if it charges on the consumer's prepaid account $0.50 to load funds in the course of a transaction from a credit card account offered by a card issuer with which the prepaid account issuer has an arrangement, but $1.00 to load funds in the course of a transaction from a credit card account offered by a card issuer with which it does not have an arrangement.

Paragraph 61(a)(5)(iii)(D)(5)

1. *Specified terms and conditions.* For purposes of § 1026.61(a)(5)(iii)(D), ''specified terms and conditions'' on a credit card account means:

i. The terms and conditions required to be disclosed under § 1026.6(b), which include pricing terms, such as periodic rates, annual percentage rates, and fees and charges imposed on the credit card account; any security interests acquired under the credit account; claims and defenses rights under § 1026.12(c); and error resolution rights under § 1026.13;

ii. Any repayment terms and conditions, including the length of the billing cycle, the payment due date, any grace period on the transactions on the account, the minimum payment formula, and the required or permitted methods for making conforming payments on the credit feature; and

iii. The limits on liability for unauthorized credit transactions.

2. *Same specified terms and conditions regardless of whether the credit card account is linked to the prepaid account.* For the exception in § 1026.61(a)(5)(iii)(D) to apply, under § 1026.61(a)(5)(iii)(D)(*5*), the card issuer must not vary the specified terms and conditions on the consumer's credit card account depending on whether the consumer has authorized linking the prepaid card to the credit card account as described in § 1026.61(a)(5)(iii)(D)(*2*). The following are examples of circumstances in which a card issuer would not meet the condition described above:

i. The card issuer structures the credit card account as a ''charge card account'' (where no periodic rate is used to compute a finance charge on the credit card account) if the credit feature is linked to the prepaid card as described in § 1026.61(a)(5)(iii)(D)(*2*), but applies a periodic rate to compute a finance charge on the consumer's account (and thus does not use a charge card account structure) if there is no such link. See § 1026.2(a)(15)(iii) for the definition of ''charge card.''

ii. The card issuer imposes a $50 annual fee on a consumer's credit card account if the credit feature is linked to the prepaid card as described in § 1026.61(a)(5)(iii)(D)(*2*), but does not impose an annual fee on the consumer's credit card account if there is no such link.

3. *Same specified terms and conditions regardless of whether credit is extended through the prepaid card or the traditional credit card.* To satisfy the condition of § 1026.61(a)(5)(iii)(D)(*1*), the credit card account must be a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card. As explained in comment 61(a)(5)(iii)(D)(*1*)–1, for purposes of § 1026.61(a)(5)(iii)(D), ''traditional credit card'' means a credit card that is not a hybrid prepaid-credit card. For the exception in § 1026.61(a)(5)(iii)(D) to apply, under § 1026.61(a)(5)(iii)(D)(*5*), a card issuer must not vary the specified terms and conditions on the credit card account when a consumer authorizes linking the account with the prepaid card as described in § 1026.61(a)(5)(iii)(D)(*2*) depending on whether a particular credit extension from the credit card account is made with the prepaid card or with the traditional credit card.

i. The following examples are circumstances in which a card issuer would not meet the condition of § 1026.61(a)(5)(iii)(D)(*5*) described above:

A. The card issuer considers transactions using the traditional credit card to obtain goods or services from an unaffiliated merchant of the card issuer as purchase transactions with certain annual percentage rates (APRs), fees, and a grace period that applies to those purchase transactions, but treats transactions involving extensions of credit using the prepaid card to obtain goods or services from an unaffiliated merchant of the card issuer as a cash advance that is subject to different APRs, fees, grace periods, and other specified terms and conditions.

B. The card issuer generally treats one-time transfers of credit using the credit card account number to asset accounts as cash advance transactions with certain APRs and fees, but treats one-time transfers of credit using the prepaid card to the prepaid account as purchase transactions that are subject to different APRs and fees.

ii. To apply the same rights under § 1026.12(c) regarding claims and defenses applicable to use of a credit card to purchase property or services, the card issuer must treat the prepaid card when it is used to access credit from the credit card account to purchase property or services as if it is a credit card and provide the same rights under § 1026.12(c) as it applies to property or services purchased with the traditional credit card.

iii. To apply the same limits on liability for unauthorized extensions of credit from the credit card account using the prepaid card as it applies to unauthorized extensions of credit from the credit card account using the traditional credit card, the card issuer must treat the prepaid card as if it were an accepted credit card for purposes of the limits on liability for unauthorized extensions of credit set forth in § 1026.12(b) and impose the same liability under § 1026.12(b) as it applies to unauthorized transactions using the traditional credit card.

* * * * *

Dated: June 15, 2017.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2017–12845 Filed 6–28–17; 8:45 am]

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Part III

National Transportation Safety Board

49 CFR Part 831
Investigation Procedures; Final Rules

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 831

[Docket No. NTSB–GC–2012–0002]

RIN 3147–AA01

Investigation Procedures

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Final rule.

SUMMARY: This final rule adopts revisions to the NTSB's regulations regarding its investigative procedures. The intent of these revisions is to reorganize, clarify and update the regulations to reflect the last 20 years of NTSB's experience in conducting transportation investigations. These regulations affect investigations of transportation accidents within the NTSB's statutory authority, except marine casualty investigations.

DATES: This rule is effective July 31, 2017.

ADDRESSES: A copy of this Final Rule, published in the **Federal Register** (FR), is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza SW., Washington, DC 20594–2003. Alternatively, a copy is available on the government-wide Web site on regulations at *http://www.regulations.gov* (Docket ID Number NTSB–GC–2012–0002).

FOR FURTHER INFORMATION CONTACT: Ann Gawalt, Deputy General Counsel, (202) 314–6088.

SUPPLEMENTARY INFORMATION:

I. Abbreviations and Acronyms Used in This Document

ARSA—Aeronautical Repair Station Association
AIA—Aerospace Industries Association
ALPA—Air Line Pilots Association, International
ATSAP—Air Traffic Safety Action Program
AOPA—Aircraft Owners and Pilots Association
A4A—Airlines for America
AAJ—American Association for Justice
ATA—American Trucking Associations
AAR/ASLRRA—Association of American Railroads and American Short Line and Regional Railroad Association
ASAP—Aviation Safety Action Program
Aidyn—Aidyn Corporation
Boeing—The Boeing Company
CPUC/RTSB—California Public Utilities Commission, Rail Transit Safety Branch
CVR—Cockpit voice recorder
DHHS—Department of Health and Human Services
DOT—Department of Transportation
DOT OAs—Department of Transportation Operating Administrations
EAR—Export Administration Regulations
FAA—Federal Aviation Administration
FAA COS—Federal Aviation Administration Continued Operational Safety
FDR—Flight data recorder
FOQA—Flight Operational Quality Assurance
FOIA—Freedom of Information Act
GE—GE Aviation
GAMA—General Aviation Manufacturers Association
HIPAA—Health Insurance Portability and Accountability Act of 1996
HAI—Helicopter Association International
IPA—Independent Pilots Association
ICAO—International Civil Aviation Organization
ITAR—International Traffic in Arms Regulations
IIC—Investigator-in-charge
Kettles—The Kettles Law Firm, PLLC
NADAF—National Air Disaster Alliance/Foundation
NATCA—National Air Traffic Controllers Association
NBAA—National Business Aviation Association
NTSB—National Transportation Safety Board
NJASAP—Net Jets Association of Shared Aircraft Pilots
RMA—Rubber Manufacturers Association
Sikorsky—Sikorsky Aircraft Corporation
SWAPA—Southwest Airlines Pilots' Association
Textron—Textron Aviation
United—United Airlines
USCG or Coast Guard—United States Coast Guard
VSI—Voluntarily submitted information

II. Background

In June 2012, the NTSB published a proposed rule stating the agency's intent to review its regulations (77 FR 37865, June 25, 2012). That review was undertaken in response to Executive Order 13579, ''Regulation and Independent Regulatory Agencies'' (76 FR 41587, July 14, 2011). That Order sought to ensure that all independent regulatory agencies address the key principles of Executive Order 13563, ''Improving Regulation and Regulatory Review'' (76 FR 3821, January 21, 2011). Together, the Executive Orders encourage agencies to review their regulations with an eye to promoting public participation in rulemaking, improving integration and innovation, promoting flexibility and freedom of choice, and ensuring scientific integrity during the rulemaking process in order to create a regulatory system that protects public health, welfare, safety, and the environment while also promoting economic growth, innovation, competitiveness, and job creation. In undertaking its review, the NTSB stated that it is committed to updating its regulations and incorporating these principles. The NTSB proposed rule also described NTSB's commitment to reviewing, in particular, 49 CFR part 831, titled ''Investigative Practices and Procedures,''

The previous revision to part 831 of the NTSB's regulations on accident investigation procedures was published in 1997 (62 FR 3806, January 27, 1997). In August 2014, the NTSB published an NPRM proposing substantive changes to and reorganization of 49 CFR part 831, (79 FR 47064, August 12, 2014). In this revision to part 831, the NTSB sought to reorganize its investigative rules to reflect its authority to investigate accidents that occur in different modes of transportation, and to update those regulations based on its investigative experience of the previous 20 years.

III. Reorganization and Reformatting

The 2014 NPRM proposed various changes to the organizational structure of the investigative rules and sought to present a set of regulations applicable to all modes of transportation (Subpart A) and individual subparts that address matters specific to modes of transportation (subparts B, C and D). In view of the unique nature of the NTSB's relationship with the USCG in conducting marine casualty investigations, as codified in statute, the NTSB will address its marine casualty investigative procedures in a separate rulemaking. New Subpart E of part 831 appears as an interim final rule published elsewhere in this issue of the **Federal Register**.

In this final rule, the regulations in part 831 reflect this separation of transportation modes by subpart. This final rule also reformats several sections to make them easier to read, understand and reference. The reformatting was not intended to introduce any substantive change not addressed in the disposition of comments below.

IV. Comments Received

The NTSB received 38 comments in response to the August 12, 2014 NPRM. Commenters included organizations from various sectors of the transportation industry, nonprofit organizations, law firms, individuals, two Federal Government agencies, and one state government agency.

The USCG submitted a comprehensive comment on the regulations as they relate to marine casualties within its jurisdiction. The NTSB has a unique relationship with the USCG as evidenced by the NTSB's statutory authority (49 U.S.C. 1131(a)(1)(E)), its joint marine casualty regulations with the Coast Guard (codified at 49 CFR part 850 for the NTSB and at 46 CFR subpart 4.40 for the Coast Guard), and a Memorandum of

Understanding outlining cooperation and coordination between the two agencies when conducting marine casualty investigations. The NTSB determined that it is appropriate to exclude the USCG from the general investigative rules of subpart A of part 831, and instead include the rules applicable to marine investigations in a new subpart E of part 831 to be titled ''Marine Investigations.'' Therefore, the language proposed in August 2014 as sections 831.50 and 831.51 has been stricken from this rule. As mentioned above, the NTSB is publishing an interim final rule containing these changes and additions to subpart E concurrent with this final rule.

IV. Analysis of Issues

A. Section 831.1 and the Term ''Event''

The NTSB proposed adoption of the more general term ''event'' when referencing the various types of accidents and incidents that it has the authority to investigate. The new term was proposed to function as a general descriptor and eliminate the need for reference to a laundry list of mode-specific terms such as collision, crash, mishap, or rupture in sections that apply across modes.

Commenters almost universally expressed concern that a change to the broader term ''event'' could be viewed as an attempt to expand the NTSB's investigative authority. The DOT suggested inclusion of the phrase ''consistent with statutory authority'' in the regulatory text to prevent this perception. Aviation industry commenters noted that the NTSB's regulations already define ''accident'' and ''incident'' in part 830, concluding that the term ''event'' might later be distinguished from these widely understood terms used by the aviation industry. The commenters also noted the proposed rule did not include a definition of event, raising question of how that term might differ from the well-known definitions of accident and incident.

Based on these comments, we are not adopting the term event in this final rule. In its place, we are adopting the term ''accident'' as a general descriptor. Section 831.1(b) includes a list of transportation events that are the responsibility of the NTSB to investigate, as well as a statement that the use of the term ''accident'' in part 831 subparts A through D is intended to include all such listed events in the NTSB's authority.

Section 831.1(a) contains a more general reference to the NTSB's statutory authority. A new paragraph (c) was added to address the use of the abbreviation ''IIC'' (for ''Investigator-in-charge) throughout the part.

B. Section 831.2 Responsibility of the NTSB

This final rule adopts a different format for § 831.2 than was proposed. The section was reformatted to better identify the subject of the new modal subparts. No substantive changes were made, and the section is otherwise adopted as proposed.

ATA requested that the agency develop a definition for of the term ''catastrophic'' outside of the rail and aviation modes. We did not propose language to define catastrophic in this rulemaking and decline to do so at this time. What is considered a catastrophic accident can vary by mode of transportation and the circumstances surrounding the accident. Our statute leaves it to the discretion of the Board to determine whether to investigate ''any other [catastrophic] accident related to the transportation of individuals or property'' as specified in 49 U.S.C. 1131(a)(1)(F).

C. Section 831.3 Authority of Directors

This section was revised for grammatical content only. It is otherwise adopted as proposed.

D. Section 831.4 Nature of Investigation

We proposed retention of the regulatory text that describes the characteristics and purposes of the NTSB's investigations, including the statement that investigations are fact-finding proceedings in which the NTSB does not attempt to determine the rights or liabilities of any person or entity. The section also states that the NTSB determines the probable cause of the accident after gathering all necessary information. We proposed adding that the NTSB also ''causes investigations to be conducted,'' because other Federal agencies gather records and other evidence and provide information to the NTSB in furtherance of an investigation. We noted the phrase ''on behalf of'' and ''authorized representatives of the [NTSB]'' already appear throughout various sections of part 831. We also proposed adding a phrase indicating that one of the goals of our investigations is to mitigate the effects of future accidents. New subparagraphs in § 831.4 were proposed to identify the phases of investigations, including preliminary and formal. In the preamble to the NPRM, we explained that we may upgrade or downgrade investigations between these categories as we proceed with each investigation. We received several comments on these proposed changes.

1. ''Causes Investigations To Be Conducted'' and ''Mitigate the Effects of''

DOT opposed inclusion of the phrase ''causes investigations to be conducted'' since DOT modal agencies ''have their own responsibilities'' and do not perform work on behalf of the NTSB. GE suggested we reference ''authorized representative'' in the description of ''on-scene investigation'' in proposed § 831.4(b)(3)(i).

The CPUC/RTSB, the state agency charged with oversight of rail transit system safety in California, agreed with including the phrase ''mitigate the effects of'' any future occurrences. Since the NTSB shares investigative information with parties, the CPUC/RTSB concluded that including this phrase may help in its own information gathering and the mitigation of effects of similar future accidents.

This final rule adopts the phrase ''conducts investigations'' to reflect the NTSB's statutory authority.[1] This final rule includes the phrase ''mitigate the effects of.'' The NTSB acknowledges the independent authority of other agencies and the assistance they provide to the NTSB following an accident.

2. ''Preliminary and Formal Investigations'' and ''Manner of Investigations''

The majority of commenters, including Boeing, HAI, Airbus Helicopters, GAMA, United, and Textron, found the proposed description of the phases of investigation (''preliminary'' and ''formal'') to be unnecessary or requiring more clarification than was provided in the proposed rule. Several commenters also stated that including these terms raised new questions of the exact timing of when one phase ends and the next begins, whether and how the NTSB would inform parties of the relevant phase as an investigation proceeds, and when the NTSB might downgrade an investigation from formal to preliminary. Boeing suggested we retain flexibility with all investigations and refrain from adopting a ''one-size-fits-all approach,'' especially for formal investigations. Commenters, including GE and NBAA, also recommended that we clarify whether activities listed in the proposed rule text (*e.g.,* visiting the site of an accident, interviewing

[1] 49 U.S.C. 1131(a)(1), requires the NTSB to ''investigate or have investigated (in detail the Board prescribes) and establish the facts, circumstances, and cause or probable cause of'' the accidents listed in section 1131(a)(1)(A)–(F).

witnesses, conducting testing, extracting data, gathering documentation, or engaging in any other activities), are simply examples or are to be considered exhaustive.

We are not adopting the proposed descriptions of and distinctions between preliminary and formal investigations. While the NPRM sought to explain the activities we conduct in a typical investigation, in reality, investigative activities may vary widely from case to case. Decisions by NTSB investigators at the site of an accident are often made immediately, without reference to a formalized determination of status of the investigation. In some cases, the NTSB may choose to forego a preliminary investigation and immediately launch a full investigative staff. In some cases, a Board Member may accompany staff. In other cases, we may review records and other evidence, choose not to travel to the site of an accident or incident, and close the investigation following a review of all information collected. Since most of these decisions and actions are internal to the NTSB based on the unique circumstances of an accident, we have determined that formalized discussions of the status of an investigation are not necessary or appropriate for regulatory text. Similarly, we are removing the list describing the manner of and activities associated with investigations. Since the list may be too restrictive or the descriptions not applicable across transportation modes, we are placing this information in the mode-specific new subparts that address them, as described in § 831.2.

3. Cost-Benefit Analysis for Recommendations

In its comment, ATA suggested we include cost-benefit analyses in reports that contain safety recommendations. ATA stated that because regulatory agencies ''cannot promulgate regulatory standards that fail a cost-benefit test, recommendations with costs that exceed benefits are exceedingly unlikely to be adopted,'' limiting the effectiveness of recommendations. The ATA concluded that agencies may fail to enact NTSB recommendations that are cost beneficial because they become ''lost'' in a ''growing list of perpetually open recommendations'' that do not get cost-benefit analyses.

The NTSB is sensitive to the reality of safety recommendations that are not feasible for regulatory agencies to adopt because of their cost. As a result, the NTSB often recommends non-regulatory actions, such as promulgating guidance, conducting evaluations, or exploring the feasibility of various other actions to improve safety. Further, various sectors of the transportation industry may find value in NTSB recommendations and may choose to develop means to implement them as good business practice even when not required by regulation.

There are several reasons the NTSB does not perform the type of cost-benefit analyses undertaken by regulatory agencies. NTSB recommendations are often articulated broadly, while agency regulations implementing them may necessarily be very specific and require specialized knowledge of equipment, practices, and industry economics to be implemented effectively. Recommendations are not always issued specific to certain equipment or certain operations, while estimated costs must be described specifically. Cost-benefit analyses are resource and time intense using specialized staff, and could result in delayed issuance of safety critical recommendations. Cost benefit analyses are often modified by the information gained during the rulemaking process, possibly rendering any initial cost-benefit analytical efforts by the NTSB of little value. The timely accomplishment of a cost-benefit analysis is best left to the regulatory agencies subject to the standards for their completion at the time a specific solution is proposed by the agency. A duplicative or untimely product by the NTSB would not serve the public interest in advancing transportation safety.

E. Section 831.5 Priority of NTSB Investigations

In the NPRM, the NTSB proposed reorganizing § 831.5 into two paragraphs and revising the text to address how the NTSB will exercise its priority over other Federal investigations when other Federal agencies seek to interview witnesses and gather evidence. In the preamble to the NPRM, we stated the proposed regulatory language sought to balance our need to conduct investigative activities while remaining cognizant of the need for other agencies to fulfill their statutory mandates, such as rulemaking and enforcement.

We described one proposed change as stating that other Federal agencies must conduct their work in a manner consistent with our statutorily granted priority.[2] To carry out this objective, we proposed: (1) Employees of other Federal agencies who are involved in parallel activities contact the NTSB IIC prior to questioning a witness, gathering records or other evidence, or otherwise obtaining any type of information relevant to the non-NTSB investigation; (2) Federal agencies communicate with us about the information they collect relevant to an investigation; and (3) Federal agencies inform us of corrective or mitigating actions they are taking during the course of an investigation.

In their comments, other government entities generally expressed concern that the NTSB was overstating its authority and had proposed language that could result in interference with investigations conducted by other agencies. We have redrafted § 831.5 to reflect these concerns by more closely tracking the language of our statutory authorization, primarily that found in 49 U.S.C. 1131(a)(2)(A). It was apparent that not all commenters were familiar with the several provisions in that section regarding the priority of NTSB investigations and the participation of other Federal agencies. We address some of the particular issued raised below.

1. NTSB Authority To Exercise Priority Over Other Federal Investigations

In its comment, DOT recognized that the NTSB ''certainly'' has priority in investigations, but stated ''[h]owever, this 'priority' does not authorize the Board to exercise 'exclusive' authority to determine how all information is gathered by another agency, nor does it confer the Board with 'advance approval' authority over other agencies' investigations.'' DOT stated that these requirements could interfere with a DOT operating administration's exercise of its own authority.[3] DOT indicated that our proposal stating we have ''exclusive authority'' to decide when, and the manner in which, testing, extraction of data, and examination of evidence will occur is ''precisely what 49 U.S.C. Section 1131(a)(3) appears to prohibit.'' DOT noted that the statute ''makes it clear that the NTSB's authorities 'do not affect' the authority of another agency from investigating matters within its jurisdiction.'' DOT feared the language could serve to ''undermine transportation safety'' by

[2] For all investigations except major marine casualty investigations, 49 U.S.C. 1131(a)(2)(A) provides that the NTSB's investigation has priority over other federal agencies' investigation. The NTSB must provide for the ''appropriate participation'' of other agencies in its investigation. Nonetheless, determining the probable cause of an accident is exclusively the duty and responsibility of the NTSB. *See also* 49 U.S.C. 1135(a) (requiring the Secretary of the Department of Transportation to respond to NTSB safety recommendations within 90 days of the issuance of such recommendations).

[3] DOT listed the authorities of the Federal Railroad Administration, the Pipeline and Hazardous Materials Safety Administration, and the Federal Transit Administration. Later in its comment on this issue, DOT mentioned the Federal Motor Carrier Safety Administration and the FAA.

restricting agencies with expertise from making ''independent and timely safety determinations.'' DOT also noted that the authority granted to its operating administrations to address imminent hazards may mean that they arrive on site before NTSB investigators arrive, ''or may otherwise need to commence an investigation while evidence is still present, with an eye towards taking potential immediate corrective action.'' DOT stated that the proposed requirement to obtain IIC approval before collecting evidence could impair the effectiveness of its investigations, and possibly delay or prevent ''immediate corrective action'' taken through DOT orders.

The NBAA was concerned that the proposed priority language might adversely affect FAA continued operational safety (COS) activities. They also raised concern with the requirement that other agencies coordinate with the IIC regarding fact-gathering, which could delay investigations, particularly when the IIC is ''resource constrained.''

United stated it appreciated the efforts of the NTSB and FAA to reach agreement concerning FAA access to COS information during an NTSB investigation [known as the Ashburn agreement, included in the public docket for this rulemaking].

United recommended inclusion of provisions of the policy agreement in § 831.5 as appropriate. United stated that the FAA may obtain information while participating in NTSB investigations, and may use that information to carry out ''COS responsibilities, which also frequently migrate into disciplinary actions against individual certificated employees or the company involved in the event.'' United suggested that when the FAA is going to use such information obtained through an investigation, the FAA inform the IIC and the company so that appropriate internal actions can be taken.

The CPUC/RTSB noted that although the NTSB's authorizing legislation, provides for investigative priority when other Federal agencies are involved, the language does not include priority over state agencies. CPUC/RTSB stated that when a state agency is a party to an NTSB investigation, the state agency should be granted concurrent access in reviewing evidence as long as it does not release or publish such information.

CPUC/RTSB also expressed concern regarding NTSB's priority over other agencies' investigations. CPUC/RTSB recognized the ''importance of keeping NTSB investigators informed of all actions of state and/or local regulators,'' but remained concerned that the NTSB investigation could hamper a state agency's ability to take corrective action as a regulator. CPUC/RTSB stated that it has encountered delays in collecting or gaining access to evidence or information that have ''limited [its] abilities to take timely action to address identified concerns.''

We have reviewed the considerable concerns and suggestions made by commenters regarding proposed § 831.5. As stated above, we realized that some commenters may not have fully distinguished the different statutory provisions related to the scope and priority of the NTSB's investigations. We have redrafted that section to more closely track the language of the statute regarding investigative priority, right of first access, and the relationship between the NTSB and other authorities investigating transportation accidents.

The legislative history concerning NTSB's priority establishes that, since 1981, Congress intended the NTSB to have ''first priority'' for its accident investigations. H.R. Rep. No. 97–108, pt. 1, 1981 U.S.C.C.A.N. 1729, 1730. This priority was established ''to reduce duplicate Federal accident investigations,'' to prevent ''waste,'' and to eliminate unnecessary ''burdens'' associated with duplicative investigations by multiple agencies. *Id.* ''[I]t is desirable to have one Federal agency responsible for coordinating accident investigations. Designating a lead agency will help prevent duplicate investigations and unnecessary disputes over jurisdiction.'' [4] The statutory priority ''protects the legitimate roles of other agencies,'' given that ''participation by these agencies in the Board's investigations shall be assured.'' *Id.* The Committee further stated, ''all appropriate information obtained or developed by the Board . . . shall be exchanged in a timely manner with other Federal agencies.'' *Id.* The Committee reasoned Federal agencies should obtain substantial information through participating in NTSB investigations, reducing the need for those agencies to conduct their own parallel investigations.

This priority is critical to the conduct of independent, comprehensive investigations that the Congress has tasked the NTSB with completing. The NTSB is aware that Congress intended that it share information with other agencies in a timely manner while remaining independent of enforcement and other regulatory activities intrinsic to those agencies.

This final rule adopts the term ''priority'' to indicate the status of the NTSB's investigation of an accident in which another Federal agency has a significant role. Pursuant to its statutory responsibility, the NTSB will provide for the participation of other Federal agencies. Notwithstanding its responsibility to share information with other Federal agencies, the NTSB exercises its authority to gain first access to witnesses, wreckage, and other evidence. The NTSB considers this a fair reading of the statute, while remaining mindful of the requirement other government entities may have to investigate and take action after accidents. We will continue our long-held practices that provide the opportunity for Federal, state, and local agencies participating in an investigation to receive the information that we collect in a timely manner, and avoid the need for duplicative requests.

For example, in a recent rail investigation, another Federal agency participating in the investigation informed the NTSB IIC of the agency's need to provide information to additional employees within that agency. After coordinating with the IIC, the NTSB accommodated the other agency's request by permitting its employees who were not party participants to obtain the necessary factual information. Similarly, when an operator who is a party in an investigation sends records or information to the NTSB via email or in some electronic format, we generally do not oppose the operator sending a copy to another Federal agency. While we maintain that we have priority in an investigation, we appreciate that the timely sharing of information is a best practice for all agencies involved in investigating a transportation accident.

As to the meeting we held with the FAA in January 2014, we consider the resulting policy letter to be a step forward in cooperation between the agencies. However, such policy was negotiated only with the FAA, and the content of the letter is not appropriate for inclusion in a more general regulation. We used our experience with that negotiation in drafting this final rule, and believe that the spirit of that agreement is reflected in the regulations we are adopting here.

Regarding our relationships with state agencies, we intend to continue working with them in a manner similar to our practices with Federal agencies. We often rely on the local knowledge

[4] H.R. Rep. No. 97–108, pt. 2, 1981 U.S.C.C.A.N. 1734, 1736. This is from a report of the House of Representatives' Committee on Public Works and Transportation, the predecessor of the current Committee on Transportation and Infrastructure, which exercises primary oversight jurisdiction in the U.S. House of Representatives with respect to the NTSB.

intrinsic to state agencies following an accident, and usually coordinate with them concerning the timing of certain investigative activities and releases of information to ensure we do not impede a state agency's contemplated enforcement or other activities.

Each investigation presents challenges we must review on a case-by-case basis, and investigators in each NTSB safety office may vary its activities in response to the needs of the investigation. We are adopting language that indicates the expectation that other Federal agencies will coordinate their investigative efforts, and remain cognizant of the priority and authority granted to the NTSB by Congress. The language of § 831.5 must remain sufficiently general to encompass our interactions with other agencies in all types of investigations.

2. Authority of Other Federal Agencies

We have included language suggested by DOT that states nothing in our regulations limits the authority of other Federal agencies to conduct their own investigations.

We recognize that other agencies have separate, distinct responsibilities. The FAA and other agencies within DOT assist the NTSB during investigations as parties. As with other parties, we will ask DOT agencies for assistance and expertise. We are not adopting the term ''authorized representative'' as proposed, since commenters interpreted it as the NTSB authorizing other agencies to act for it. Since that has never been true, we are eliminating that term from the final rule.

3. Testing

As discussed previously, some commenters questioned the NTSB's authority to determine the manner and method of testing. In reviewing the comments, it appeared that several commenters may not be aware of the specific language of 49 U.S.C. 1134(d), titled ''Exclusive authority of the Board,'' which states ''Only the Board has the authority to decide on the way in which testing under this section will be conducted.'' The commenters were concerned with the use of the word exclusive, but none explained a perceived difference between it and word ''only'' when used in the context of testing. This exclusive authority has been upheld by the courts. *See, Thomas Brooks Chartered* v. *Burnett,* 920 F.2d 634, 647 (10th Cir. 1990); *Graham* v. *Teledyne-Continental Motors,* 805 F.2d 1386, 1389 (9th Cir. 1986); *Miller* v. *Rich,* 723 F.Supp. 505 (C.D. Cal. 1989). Commenters may have interpreted the exclusive testing language to mean the NTSB was asserting a broader exclusive authority to investigate an accident. That was not intended. The NTSB continues to acknowledge that other agencies may be authorized to conduct other investigations.

4. Provision of Information Relating to Other Federal Agencies' Activities

We proposed a requirement that other Federal agencies coordinate and communicate with the NTSB about their activities to avoid duplication and to ensure more efficient Federal investigations.

Commenters objected to the proposal that Federal agencies provide the results of their investigations to us when such investigations are for purposes of remedial action or safety improvement. The proposed language stated, ''[i]n general, this requirement will not apply to enforcement records or enforcement investigation results.'' The DOT requested that the NTSB clarify the circumstances under which we might demand enforcement records or enforcement investigation results. DOT recommended that we clarify whether we would seek such records upon request, or in every instance, and noted that a request in every instance would be unduly burdensome.

We are adopting language in § 831.5(b)(3) stating that the NTSB may request the results of any reviews undertaken by other Federal agencies aimed at safety improvements or remedial action. Examples of these results might be copies of reviews that result in advisory materials, rulemaking actions, or interpretive guidance. We will not routinely request enforcement investigation reports or results.

We anticipate that we might need to request documents that reflect another Federal agency's preliminary deliberations, and we understand that these documents would be exempt from public disclosure under Exemption 5 of the FOIA. If the NTSB received a FOIA request regarding such deliberative documents, we would refer the request to the submitting agency to make a public release determination. This approach is consistent with standard practice among government agencies.

We note that we had proposed language in this section indicating the NTSB may take possession of wreckage or other evidence. Boeing commented that this language was unnecessary given NTSB statutory authority, or in the alternative, that such language is more appropriately placed in § 831.9, which addresses NTSB authority during investigations. We agree with Boeing that the language is more appropriately included in section 831.9, and thus have moved it to that section.

F. Section 831.6 Request To Withhold Information

In the NPRM, the NTSB proposed changes to § 831.6 that include reformatting the section into different paragraphs and adding language that differentiates treatment of information in domestic accidents and international accidents.

Proposed provisions regarding the non-release of commercial information under the Trade Secrets Act and the FOIA generated significant comments. Boeing stated that the NTSB should conform its practice ''more closely to the statutory requirement'' with regard to the Trade Secrets Act. Boeing noted that 49 U.S.C. 1114(b)(1) allows disclosure only in four limited circumstances, one of which is to protect health and safety after providing the entity notice of the planned release and an opportunity to comment.[5] Boeing asserted that the NTSB has in recent years read more broadly the health and safety exception that allows release to the public. Boeing stated that this position may lead to the disclosure of ''a broad range of Boeing trade secrets to the public'' while the connection of the information to public health and safety is ''attenuated at best.'' Boeing suggested limiting the scope of the exception ''to the disclosure of data necessary to prevent imminent risks to the traveling public'' to ''better comport with the Congressional intent of ensuring strong trade-secret protections subject only to carefully defined exceptions.''

Textron stated that while it will continue to provide proprietary data relevant to an investigation, it is concerned that the proposed language in § 831.6 ''potentially inhibits the free flow of information during an investigation.'' GAMA requested that we establish a consistent process to ensure the continued protection of proprietary data.

1. Confidential Business Information

We have reformatted § 831.6. The NTSB retains the authorization to disclose ''information related to a trade secret,'' as defined by 18 U.S.C. 1905, without the consent of the owner when

[5] Boeing notes the remaining three exceptions that permit release other than to the general public are narrow, with a minimal risk of public disclosure. The three exceptions permit release to other government agencies for official use, to a committee of Congress that has jurisdiction over the subject matter to which the information is related, or in judicial proceedings pursuant to a court order that preserves the confidentiality of the information. 49 U.S.C. 1114(b)(1).

necessary to ''to protect public health and safety'' under 49 U.S.C. 1114(b)(1)(D). We interpret this to mean disclosure is necessary to support a key finding, a safety recommendation, or the NTSB's statement of probable cause of an accident or incident.

When we release information related to a trade secret or confidential commercial information without consent, we do so in a manner designed to preserve confidentiality.[6] We interpret this to require that the agency minimize the scope and extent of information released. The NTSB is also subject to the limitations on disclosure in FOIA Exemption 4 (5 U.S.C. 552(b)(4)), and relevant case law, when a FOIA request is made that requests disclosure of trade secrets or confidential commercial information.[7]

In § 831.6(c), we set out the procedure for informing the owner of the subject information under consideration for disclosure. When a party has identified information as a trade secret that the NTSB believes needs to be disclosed to protect public health and safety, we engage in a process of negotiation to limit the disclosure while still meeting the agency's needs to explain the accident or issue safety recommendations. NTSB investigative staff makes initial decisions about what to include in its reports based on investigative needs and understandings of company confidentiality concerns obtained by working with the party representatives. When submitters of information to the NTSB claim information is confidential and should be withheld from public disclosure, such as in the public docket, the NTSB Office of General Counsel will address these issues with the submitter's counsel. A submitter must identify in writing information it objects to releasing. The NTSB Office of General Counsel discusses the submitter's objections internally (with NTSB report writers and investigative staff) to understand whether and why the identified information is necessary to support a finding, safety recommendations, or probable cause statement. The NTSB Office of the General Counsel will generally negotiate with the submitter's counsel until an agreement regarding release of the material can be reached.

If the submitter and the NTSB cannot reach agreement, the NTSB will notify the submitter in writing of the NTSB's intent to release the information under its statutory authority. This written notification will provide at least 10 days' advance notice of the NTSB's intent to disclose the information.

Confidential business information material considered for release is reviewed using the same analytical framework as the agency employs in determining whether submitted information is subject to withholding in accordance with FOIA Exemption 4. If the agency could not withhold information in response to a FOIA request, we will use it in agency reports as desired. If an Exemption 4 analysis concludes that information should be withheld, we will consider whether release is necessary and release the information only as is consistent with NTSB statutory authority.

We proposed limiting the applicability of § 831.6 to domestic matters, and considering information we receive regarding international aviation investigations under proposed § 831.23 (now renumbered as § 831.22). We also stated we would not release information from an international investigation if the information would be protected by the Trade Secrets Act. Our statements regarding this change raised questions of ambiguity of our intent. For example, an accident or incident occurring in U.S. territory will often involve both foreign and domestic entities. As a recent example, these questions arose in the context of the Asiana Flight 214 investigation (involving a foreign operator) and the Boeing 787 Battery Fire investigation (involving foreign component manufacturers).

There is no practical difference in our process or authority for treating trade secrets or confidential commercial information based on identifying the source of the information as domestic or foreign, even though the foreign entities participate as advisors to accredited representatives in accordance with ICAO Annex 13 (''Aircraft Accident and Incident Investigation''). The Trade Secrets Act does not differentiate between information received from domestic or foreign companies. *See* 18 U.S.C. 1905. Similarly, FOIA Exemption 4 applies to information ''obtained from a person,'' which is read broadly to include both foreign and domestic entities. *See, e.g., Maryland Dep't of Human Resources* v. *Dep't of Health and Human Serv.,* 763 F.2d 1441, 1445 n.1 (D.C. Cir. 1985) (citing, Stone v. Export-Import Bank, 552 F.2d 132, 136 (5th Cir. 1977).

Accordingly, we are not adopting the domestic vs. foreign distinction in this final rule. We will continue to treat information from both domestic and foreign sources consistently for purposes of determining whether disclosure of information related to a trade secret or confidential commercial information is authorized.

The NTSB's release of investigative information from a foreign accident investigation is limited by statute (49 U.S.C. 1114(f)) and by these regulations. We have included this information in § 831.22.

2. Voluntarily Submitted Information (VSI)

We specifically requested comments concerning the protection of VSI from disclosure. In the NPRM, we proposed language that more closely replicates 49 U.S.C. 1114(b)(3).[8] We recognize this topic is of significant interest to the transportation industry and other government agencies, and specifically invited comments on the issue of the NTSB's disclosure of VSI.

The agency will issue interpretative guidance to more fully explain the process for the NTSB's use and protection of VSI. In the interim, the language adopted in § 831.6(d) represents the need of the NTSB to access such information and protect that information from public release.

A4A, which had previously submitted a comment on this issue in response to our plan for retrospective review of our regulations in 2012, reiterated its view that we should protect all VSI. In its comment in response to our NPRM, A4A stated the NTSB's ''supposition that the collection and dissemination of such information that may be used in a Board investigation cannot be protected is wrong and is not in the public interest.'' A4A emphasizes the importance of protecting VSI, and states the success of the effectiveness of VSI systems ''depends on participants' confidence that inappropriate disclosure will not occur.'' A4A further stated that the NTSB's protection of such information will not inhibit the conduct of our investigations or our ability to disclose ''relevant information and conclusions to the public.'' A4A concluded that the NTSB ''should adopt a policy of invoking Exemption 4'' to deny release of any voluntarily submitted safety information. A4A also suggested the NTSB publish a ''non-exclusive list of categories of information that it will not publicly disclose,'' and pursue legislation to provide assurance it may need to do so. HAI also urged us to explore a statutory exemption ''or any other possible

[6] 49 U.S.C. 1114(b)(2).

[7] Exemption states ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'' are exempt from disclosure under the FOIA.

[8] Section 1114(b)(3) describes the conditions under which the NTSB, or any agency receiving VSI from the NTSB, is prohibited from disclosing VSI.

methods to safeguard the disclosure of safety-related proprietary data and trade secrets.'' HAI stated that protection of safety information is critical to the effectiveness of safety risk management and the development of effective safety recommendations.

RMA and ARSA also raised FOIA exemption 4 as a basis for maintaining the confidentiality of information submitted to us voluntarily. As with the other commenters, the RMA stated that strengthening our protections for VSI will ''remove potential barriers for companies providing such information voluntarily.''

Boeing, NATCA, and AAR/ASLRRA suggested removing the term ''in general'' from proposed § 831.6(b)(1) and (2), which they read as a misstatement of the statutory prohibition. Boeing states 49 U.S.C. 1114(b)(3) ''flatly prohibits the release of such information, if the NTSB 'finds that the disclosure of the information would inhibit the voluntary provisions of that type of information.' ''

3. Comments Adverse to Greater Protections for VSI

The NTSB received comments from attorneys who oppose greater protection of VSI. The Chair of the Aviation Section of AAJ stated ''manufacturer-parties have the expanded capability of hiding evidence in a civil case by turning it over to the NTSB as 'voluntarily-provided safety information' and then seeking protection from disclosure of such evidence based on their party status.''

We found commenters' suggestions regarding our access to, and use of, VSI to be worthy of more careful consideration. To that end, and as mentioned previously in this preamble, the NTSB will issue separate guidance to further explain its use and treatment of VSI. For the purposes of this Final Rule, we adopt the language we proposed for § 831.6, with one revision. We find that the language proposed is sufficiently broad for the NTSB to accept information received as voluntarily submitted under 49 U.S.C. 1114(b)(3). We decline to adopt the phrase ''in general'' because this phrase is not consistent with our statutory authority.

We disagree with commenters' concerns that our proposed text sought to inhibit a free flow of information. We do not seek to frustrate any agency's practices regarding the acquisition and safeguarding of VSI. To the extent we believe we may access such information, we will only do so when 49 U.S.C. 1114(b)(3) applies to the information.

We did not propose any regulatory text regarding information covered by ITAR and/or EAR. While we appreciate commenters' feedback concerning this type of information, we decline to add any specific text.

4. Objections To Release of Other Information

Original paragraph (b) of § 831.6 addresses objection to public disclosure of other information that does not qualify for protection as trade secret or confidential commercial information under § 831.6(a). It has been retained as new paragraph (e), with a revision to note that interview summaries and transcripts are examples of documents that could be the subject of such an objection, if the requirements of the paragraph are met.

G. Section 831.7 Witness Interviews

In the NPRM, we proposed to: (1) Retain regulatory text that permits a witness to be accompanied by a representative; (2) permit NTSB investigators to remove a representative who is disruptive; and (3) add text stating NTSB will release interview transcripts or notes with the witness's name.

The proposed rule included the title ''Witness Interviews'' for this section, but the content was in actuality more limited. This final rule is adopted with the section title revised to ''Representation During an Interview'' to more accurately describe the material in the section. We have also reformatted the material into list form to make it easier to understand. The following issues with the proposed rule were raised by commenters.

1. More Than One Representative

Five commenters, including A4A, urged us to permit more than one representative to be present. A4A stated that when a witness is both an employee and a member of a labor union, the witness is occupying distinctly different roles. As a result, witnesses should be able to be accompanied by representatives from both the employer and the union. Comments from IPA, NJASAP, ATA, AAR/ASLRRA, and ATA agreed with A4A's.

We decline to adopt the commenters' recommendation to permit each witness to be accompanied by more than one representative during an interview. Three commenters agreed with our rationale.

We recognize the concerns expressed by the five commenters and the perceived benefit of having more than one representative accompany a witness. While we understand that a representative from the employer and a representative from a labor union have different interests, the purpose of representation is to provide counsel to the individual in the safety investigation, not to ensure various interests are represented in the course of witness interviews. Witness interviews are a means of gaining factual information. They are not part of an adjudicatory proceeding, and are not a means to support questions of future employee discipline or employer liability. Further, multiple representatives could give conflicting advice to an interviewee, complicating the process, confusing the interviewee, and delaying the collection of data without benefitting the investigation. This final rule retains the limit on one representative at an interview.

2. Exclusion of Representatives or Parties

We proposed to allow an interviewer to exclude a witness's representative if the representative becomes disruptive. NATCA found this provision too subjective, and requested that we adopt a clear standard to apply to such exclusions. GE suggested that we add language indicating that if a representative is excluded for disruptive conduct, the witness may elect to be accompanied by another representative.

This final rule allows an NTSB investigator to exclude a disruptive witness representative. Disruptive behavior might come in the form of repeatedly interrupting questions or the interviewee's answers, or arguing excessively with NTSB investigators or party members. We will not attempt to list all possible disruptive behaviors. Witness interviews are often critical to obtaining factual information following an accident, and disruptive behavior may unnecessarily delay and complicate the gathering of time-sensitive information. Further, we do not find a need to specify that an alternate representative may accompany a witness during an interview. Any attempt to list the alternatives that might occur in a given situation suggests all situations can be foreseen and that list would be inclusive. A determination of how to handle the removal and possible replacement of a representative is best left to the discretion of the IIC to assess under the circumstances of the investigation.

3. Roles of Individuals Present at Interviews

Airbus Helicopters requested that we ''clarify the role of parties and technical advisors participating in witness interviews.'' It also stated that party and

technical advisor participation in witness interviews can add considerable value to an investigation.

We appreciate the suggestion, but do not find that such clarification would be proper for regulatory text. We will consider this suggestion in the development of guidance for investigators in relating the role of each party member and any technical advisors participating in an interview.

4. Release of Transcripts or Summaries of Interviews

We proposed to place the transcripts or summaries of witness interview in a public docket for an investigation. Commenters opposed this proposal. Boeing noted that the international standard, Paragraph 5.12 of ICAO Annex 13, prohibits making available, for purposes other than the investigation, statements authorities took from a person in the course of the investigation unless the appropriate authority determines disclosure outweighs the possible adverse impact on that or future investigations. Other commenters urged that we adopt the same practice, both to protect the flow of information and to remain consistent with international standards. SWAPA suggested releasing the full transcript of an interview only when a consensus of all parties finds release to be appropriate.

The NTSB is retaining its discretion to release any part of an interview transcript, including the name of the witness, when we find it is appropriate to an investigation. The NTSB filed a formal difference with ICAO on this point, indicating in part that ''The laws of the United States require the determination and public reporting of the facts, circumstances, and cause(s) or probable cause(s) of every civil aviation accident. This requirement does not confine the disclosure of such information to an accident investigation or report.'' [9] By not including the text of paragraph 5.12 of Annex 13 in our regulation regarding disclosure of any specific information, we maintain our discretion to release or withhold certain information, including names, from interviews depending on relevant circumstances; attempts to categorize information are not appropriate for regulatory text.

Because we have changed the title of § 831.7 to ''Representation during an interview'', we have moved this provision on disclosure in a docket to § 831.6(e) and included the right of any person to object to the public disclosure of information in the same paragraph so that the two are not unnecessarily separated.

H. Section 831.8 Investigator-in-Charge

In our NPRM, we included a reference to § 800.27 of the NTSB regulations in describing the IIC's authority to sign and issue subpoenas, administer oaths and affirmations, and take or order depositions in furtherance of an investigation. We stated such a reference ensures the public and participants in NTSB investigations are aware of an IIC's authority. In addition, we proposed removing the word ''considerable'' from the final sentence in § 831.8, because we believed it was unnecessary.

Comments from DOT, Textron, and Airbus Helicopters supported adoption of our proposed changes to § 831.8. DOT believes the changes will enhance the clarity of the IIC's role and authority.

This final rule adopts a different format for this information by more clearly providing the authority in a list format. We have moved the description of the role of a Board Member to § 831.13(c)(1)(ii) as the official spokesperson who may release investigative information in coordination with the IIC; the role of a Board Member is not related to the scope of authority of the IIC. No substantive change was made to the proposed description of the IIC's authority or to the role of the Board Member when that provision was moved.

I. Section 831.9 Authority of NTSB Representatives

Proposed § 831.9 generally discussed the NTSB's authority to inspect and collect evidence. We first proposed using the term *authorized representative of the NTSB* in lieu of ''employee'' because we may request the assistance of the FAA, law enforcement agencies, or other party representatives to inspect or photograph the site of an accident or to collect evidence. We also proposed language to reflect accurately the NTSB's authority to obtain health and medical information as a ''public health authority'' and to collect data and records from electronic and wireless devices. The proposed rule recognized the use of electronic devices from which the NTSB would need to extract and analyze data.

1. Authorized Representatives

The joint comment we received from six railroad labor organizations supported our proposed amendments and recognizes our need for text concerning authorized representatives of the NTSB. Other commenters, including GAMA, requested further clarification of proposed changes to § 831.9. Textron and Airbus Helicopters requested an explanation of whether our use of the term ''any other party representative,'' could be a manufacturer's representative, union representative, or operator whom we could consider, at any time, to be an authorized representative of the NTSB when we direct such a person to conduct or oversee testing. Textron and Airbus Helicopters were concerned we could designate a person or entity as an ''authorized representative of the NTSB'' to inspect or gather evidence when ''the person or entity has no background in transportation accident investigation.'' GAMA also noted the NTSB relies on salvage companies to gather wreckage, and asks whether individuals from salvage companies would be ''authorized representative[s] of the NTSB'' under the proposed rule.

As indicated in the discussion of § 831.4, we have determined that the term ''authorized representative'' is confusing and we have not included it in this final rule. Instead, the rule title has been changed to ''Authority during investigations'', and sets out the authority and discretion of NTSB investigators (including the IIC) to direct the gathering of information by others.

2. Medical and Personal Records

Several commenters addressed our proposed access to medical records for investigative purposes. ALPA opposed our proposed language over concern that personal health information could be made available to the public, either as part of a pubic docket or in response to a FOIA request to the NTSB for the information. ALPA, IPA and A4A noted our current subpoena process already affords important protections. ALPA stated the process ''provides for independent judicial review of requests for information and therefore provides checks and balances to minimize inappropriate access to private information.''

Commenters, including A4A, also disagreed with the finding that the NTSB has the status of a ''public health authority'' under the HIPAA.[10] ALPA noted that the NTSB's authorizing legislation ''makes no reference to activities as neither a public health authority nor does its authorized budget provide for such activity.''

We disagree. The NTSB may need to obtain and review medical records in

[9] See Annex 13, Section 5.12.1, citing 49 U.S.C. 1114.

[10] Public Law 104–191, 100 Stat. 2548 (Aug. 21, 1996).

furtherance of a complete investigation. The agency is authorized to require production of necessary evidence. 49 U.S.C. 1113(a)(1). Historically, the NTSB has obtained records containing medical information from hospitals and healthcare providers using our statutory subpoena authority and our status as a public health authority under the HIPAA, and we will continue to use both as circumstances require. We have reworded § 831.9(b)(2) to include the basis for our authority and clarify that we may receive medical and health information from HIPAA ''covered entities'' without the prior written authorization of the subject of the records. We note that the NTSB employs well-qualified medical and public health professionals to address medical and survivability issues in transportation accidents. These issues include whether operators were affected by medication or medical conditions. The DHHS regulation addressing disclosures to public health authorities does not attempt to list all known public health authorities, but describes them functionally, to include agencies that seek to prevent injuries, disability, or deaths. (See 45 CFR 164.512(b)(1)(i)) Moreover, in the preamble to the NPRM promulgating that regulation, DHHS included the NTSB as an example of this functional description:

> Other government agencies and entities carry out public health activities in the course of their missions. For example, the Occupational Safety and Health Administration, the Mine Safety and Health Administration, and the National Institute for Occupational Safety and Health conduct public health investigations related to occupational health and safety. The National Transportation Safety Board investigates airplane and train crashes in an effort to reduce mortality and injury by making recommendations for safety improvements.

Standards for Privacy of Individually Identifiable Health Information, 64 FR 59918, 59956 (Nov. 3, 1999). We discussed this language in a notice advising the public that we exercise status as a public health authority under HIPAA. *Notice of National Transportation Safety Board Public Health Authority Status,* 79 FR 28970 (May 20, 2014). This final rule reiterates this NTSB authority by including it in our regulations.

3. Examination of the Evidence

As we noted in the discussion of § 831.5, some commenters disagreed with the proposed language regarding the exclusive authority of the NTSB to decide when and in what manner evidence will be examined and data extracted. The same comments were reiterated for proposed § 831.9 in reference to whether this interpretation of our authority to oversee or conduct testing or extract data will impinge on another agency's authority to pursue its own enforcement or other responsibilities. Commenters also stated that we appear to have asserted the authority to extract data even when we do not launch a formal investigation.

Sikorsky suggested that we include language that we will provide ''copies of the extracted data as soon as possible to the technical advisers for the purpose of directing potential immediate safety actions.'' Sikorsky also stated that such data should be used for safety purposes only; and should be restricted from any legal use(s).

In the reformatted § 831.9, paragraph (c) was redrafted to cite to our statutory authority to decide on the manner and method of testing, including the phrase ''extraction of data,'' since the distinction appeared unclear to some commenters. Our analysis of any type of data recorder requires us to extract data, and the language now reflects our standard practice.

The commenters that stated the NTSB might use the proposed language to determine the manner and method of tests performed in furtherance of another regulatory agency's administrative action, or even when the NTSB does not decide to launch a formal investigation, are incorrect. The language of our regulation cannot extend our authority beyond that granted for the investigation of transportation accidents and cannot be validly read to do so. We did not add language to indicate this limitation as it is inherent in our statutory authority and each regulation that implements it.

To prevent any confusion regarding this authority, we state it primarily in § 831.9(c) and reference that paragraph in § 831.5(a)(4).

The regulation is adopted with these changes.

J. Section 831.10 Autopsies and Postmortem Testing

This section was redrafted to more clearly state its content. No substantive changes were made from the proposed text. The regulation is adopted with these changes.

K. Section 831.11 Parties to the Investigation

In the NPRM, we proposed adoption of the term ''technical advisor'' in lieu of ''party.'' We noted that with the exception of the statutory inclusion of the FAA in aviation accidents (49 U.S.C. 106(g)(1)(A)), no individual or organization has a right to party status. We proposed that participants in an investigation ''should, to the extent practicable, be personnel who had no direct involvement in the event under investigation'' to help ensure independence from the accident under investigation; this restriction would also apply to employees of Federal entities. We have often requested that party participants also engaged in enforcement activities erect a figurative ''wall'' between their agency's enforcement and investigative duties, especially when the same person must serve in both roles. Because our investigations vary significantly, we found it impracticable to propose a regulatory prohibition on the participation of individuals with enforcement duties.

Our proposed language included the NTSB maintaining the discretion to disclose party representatives' names, and that information might be shared among parties for purposes of the investigation. We also indicated we would preserve confidentiality, to the extent possible, of information gained in the course of an investigation, and adhere to our statutory authority to disclose and use information (49 U.S.C. 1114(b)). We indicated that we would not share confidential information between parties without considerable analysis of the need to do so. We also indicated that we would consider a party's requests for imposing limits on sharing certain information. We proposed that employees of other Federal agencies would not be required to sign the Statement of Party Representatives.

Regarding party inquiries and reviews, we proposed that parties that conduct reviews or audits based on a transportation accident (1) inform the IIC in a timely manner of such reviews or audits; (2) obtain IIC approval to conduct a post-accident activity that overlaps with the NTSB's work or anticipated work; and (3) provide the NTSB with a copy of the results of the separate audit, inquiry, or other review. We indicated that a party that engages in such activities without the prior approval of the IIC, or without disclosing the results of its reviews, may lose party status.

1. Use of the Term ''Party''

Several commenters, including HAI, United, Textron, ALPA, and NATCA, opposed the adoption of the term ''technical advisor'' stating it was confusing, and preferred we continue to use the term ''party.'' Commenters concluded that the public might interpret a ''technical advisor'' to be someone who maintains technical

expertise on a certain subject matter related to technology, while the term ''party,'' reflects the many duties of the participants that are broader than technical expertise.

Some commenters, including Sikorsky, supported the use of both terms since the term ''technical advisor'' would be consistent with the terminology of ICAO Annex 13. The joint comment we received from six railroad labor organizations stated they did not strongly oppose our use of the term ''technical advisor,'' but suggested we refer to a party representative as an 'authorized technical advisor' as a more proper name for a party representative based on their relationship to the NTSB investigation process.

The CPUC/RTSB supported a change to ''technical advisor'' as being a more suitable description of a participant's role. ''[I]n CPUC parlance,'' it noted, the term ''party'' has ''a specific meaning.'' Such change could minimize confusion for its ''staff and decision-makers.''

After assessing all the comments, we are retaining the term ''party.'' The word ''advisor'' seemed to provide the most concern, since ICAO Annex 13 defines ''adviser'' as a person assisting the ''*a*ccredited representative.'' A party, however, provides assistance under the authority of the IIC, not another representative. Since the two systems differ in approach, we decline to add confusion by eliminating a term already understood in the transportation community. We have included a more detailed discussion of international aviation investigations as part of § 831.22 below.

2. Right to Party Status and Party Agreement

A4A, IPA and SWAPA recommended we not exempt other Federal agencies from signing the party statement. These organizations contend that signing the statement reminds each party of its responsibilities during the investigation, and all parties need the benefit of this reminder.

Textron expressed concern about our proposed language that we ''will provide for the participation of the [FAA] in the investigation of an aircraft accident when participation is necessary to carry out the duties and powers of the FAA.'' Textron suggested this statement potentially limits the FAA's involvement, and therefore could create a ''contentious relationship'' between the NTSB and FAA. Other commenters were concerned that such a limit on the FAA's involvement could hinder COS programs. The commenters suggested that any decision of the FAA's involvement rest with FAA.

The ATA stated its concern how we might enforce our proposal that parties should refrain from having the same participant who is involved in our safety investigation also be involved in enforcement action arising out of the accident we are investigating. ATA stated that ''enforcement personnel should, to the extent possible, be personnel who have no direct enforcement role regarding the accident under investigation. Such a provision would clarify that the NTSB's investigation covers safety outcomes only.'' ATA recommended we ''adopt language that limits enforcement personnel just as it does private sector parties.''

The CPUC/RTSB agreed that we should not expressly prohibit employees with enforcement duties from participating in NTSB investigations. CPUC/RTSB stated it ''has its own team of experts in its Safety and Enforcement Division to investigate rail incidents on both railroad and public rail fixed guideway systems,'' while it is ''involved in the safety oversight of rail public guideway system operations . . . and railroads,'' as well as the enforcement of CPUC General Orders and provisions.

We have carefully considered these comments. First, we have a statutory requirement to provide for the appropriate participation of other Federal agencies in NTSB investigations found at 49 U.S.C. 1131(a)(2)(A). We are merely reiterating that language in our regulation. We are also required to cooperate with states in highway investigations (49 U.S.C. 1131(a)(1)(B)), and we remain mindful of our relationship as an equal partner with the USCG in marine investigations (49 U.S.C. 1131(a)(1)(E),46 U.S.C. Chapters 61 and 63, and 14 U.S.C. 141). However, using the term ''party'' to describe other Federal agencies in all investigations may not always be accurate. As discussed in the context of § 831.5, other Federal agencies may have statutory obligations in addition to participation in NTSB accident investigations, and the NTSB cannot ignore the duties and roles of other agencies, which distinguishes them from private-sector parties. Our proposed text that included the language of our authorizing statute was not intended to suggest that other Federal agencies would not participate in NTSB investigations, but rather a statement of the relationship we have with other Federal agencies when we conduct the investigation of a transportation accident.

Our general practice is for the NTSB IIC to inform a Federal agency's representative of his or her responsibilities and obligations when participating in an NTSB accident investigation. We have found this to be sufficient notice to Federal agencies, and it is consistent with SWAPA's suggestion that ''at minimum, if the representatives from other Federal agencies are not required to sign, they should be given a copy of the Statement, instructed by the NTSB IIC that they are obligated to abide by the Statement and the IIC record that such instruction and copy of the Statement was given.'' Section 831.11(a) and (c) are adopted as proposed, with non-substantive revisions that are consistent with the section as reformatted.

3. Removal of Parties

Both A4A and United recommended we provide a formal process for the removal of a designated party. A4A ''recognizes [our] authority in this regard,'' but stated that removal is a serious action after ''senior representatives from the NTSB, the FAA and the air carrier have discussed the matter.''

United recommended we create a process that allows for removal of a party only after ''a hearing by third party, such as a Federal district judge,'' to maintain the integrity of our party procedures. United further recommended we not release media statements until the hearing process is complete, and consider sanctions, in lieu of removal, ''against a party for an activity that has been identified to be contrary to party rules.''

Several commenters requested the NTSB adopt a formal procedure when removal of a party is found necessary.

This final rule does not include a formal removal procedure nor, in our view, is removal of a party a deprivation of a significant property interest that implicates due process rights that would necessitate a hearing. See, *Cleveland Bd. Of Educ.* V. *Loudermill,* 470 U.S. 532 (1985). Removal is a tool of last resort that the NTSB has found to be rarely necessary. Further, any number of actions might precipitate removal. The NTSB's *Certification of Party Representative* addresses the possibility of removal, stating: ''I understand that as a party participant, I and my organization shall be responsive to the direction of NTSB personnel and *may lose party status* for conduct that is prejudicial to the investigation or inconsistent with NTSB policies or instructions.'' If a party continues to fail to abide by NTSB rules, we inform the party that the agency may exercise its removal authority. Each investigation is unique, and the exact course of action

will vary depending on the facts and circumstances. Adopting a formal procedure in a regulation that would apply to all circumstances would be so general as to be no more informative than the statements in the Certification document and in the regulation as adopted. Removal remains an option available to the IIC when no other solution has worked.

4. Internal, Independent Reviews

Commenters, including A4A, Boeing, Textron, GE, and DOT, expressed concerns with the proposal the IIC be informed of a party's internal review. Specifically, Textron found a discrepancy in the NPRM, stating that the preamble to our NPRM said that parties should seek approval from the IIC before undertaking an internal review, while the proposed regulatory text stated parties ''shall inform the [IIC] in a timely manner of the nature of its inquiry or review to coordinate such efforts with the NTSB's investigation.''

DOT suggested we add ''consistent with applicable law'' to the end of § 831.11(d)of the NPRM since some internal reviews may involve personnel investigations or attorney-client privileged communications. DOT cited the example of an aviation accident necessitating a ''prompt evaluation by the FAA of the Government's civil liability exposure,'' which would consist of attorney work product and information subject to attorney-client privilege. GE requested we clarify that nothing in § 831.11(d) of the NPRM would require a party to inform the IIC of a review to which attorney-client or work product privileges would apply. In general, the commenters requested we further define the scope of materials to which this provision would apply. The NBAA questioned whether we have the authority to enforce such a requirement.

Boeing, Textron and GE expressed concern about the impact of the proposed regulation on their operations, and suggested that if companies have to obtain approval to conduct a review, safety improvements could be delayed. Textron noted ''this new level of approval/rejection authority over post-accident activity would create a new arm of regulatory oversight and control that even the FAA does not have.'' Textron acknowledged that our ''concern about so-called 'parallel' or 'rogue' investigations is legitimate,'' but § 831.11(d)of the NPRM should not obstruct a party's ''continuous, daily operation'' or normal business processes.

Commenters requested that we clarify what information from internal reviews we would seek, indicating that the receipt of irrelevant data and information could hinder our investigation. Commenters also expressed concern about this proposal in the context of voluntary disclosure reporting programs. Commenters asserted that our definition may be too broad and may inhibit the utilization of voluntary safety programs such as ASAP and FOQA.

The Families of Continental Flight 3407 submitted a comment expressing support for our proposed requirement to ensure parties inform us of ongoing internal reviews that may overlap with our investigations, stating ''[t]o our group, this section perfectly illustrates the importance of requiring complete transparency on the part of all parties to the investigation in the interest of safety over all other considerations.''

Similarly, NADAF supported broad disclosure of information we might collect from parties. NADAF stated we should disclose ''all names of those participating in the party process, who they are representing, and breakdown of who is serving on which sub-groups or sub-committees, and when the sub-groups met, who was in attendance, and who chaired the individual working group meetings, and who wrote the summary of those meetings.'' NADAF added that we should consider including, as party participants, individuals who represent ''a family member organization, an incorporated 501(c)(3) non-profit public interest organization with long term credentials in promoting aviation safety and security.'' These participants, NADAF stated, should be considered ''technical experts'' whose participation would counter the perception that a ''conflict of interest'' exists ''with the party process, dominated by industry representatives who have a strong economic interest in the outcomes'' of NTSB investigations. To this end, NADAF recommended we remove the proposed phrase ''only those'' from the proposed description of party participants, to broaden the availability of party status to anyone who may have been involved in the accident or who can offer experience and expertise to the investigation. NADAF characterized our proposed language as an attempt to ''limit participation in disaster investigation, but in conflict with allowing each member to include a wide range of others from his/her company.'' NADAF recommended we permit family member organizations to take part in our investigations, because ''[a]n air crash investigation can be a long process, and family member representatives could be helpful in assuring victims' families that a thorough investigation is working for them.''

We recognize that organizations that have participated in our investigations as parties believe the proposed text could create an impediment to their internal reviews or act as a barrier to their taking actions to improve safety of their products or operations. We strongly support all actions to make safety improvements and will not hinder such improvements based on information in internal reviews or audits. We have no intention of preventing parties from the conducting such reviews, nor will we in any way impede communications parties have with other Federal agencies in the course of making safety improvements.

In this final rule, § 831.11(a)(4) has been redesignated as § 831.11(b) and §§ 831.11(b),(c), and (d) in the NPRM have been redesignated as §§ 831.11(c),(d), and (e), respectively. Section 831.11(e)(1) states that a party conducting or authorizing an inquiry or review of its own processes and procedures as a result of a transportation accident the NTSB is investigating must *inform* the NTSB IIC in a timely manner of the nature of its inquiry or review as a means of coordinating such efforts with the NTSB's investigation, and must provide the IIC with the findings of such review.

Our awareness of such internal reviews and/or audits is important for ensuring we remain abreast of all information that could impact our investigation. The NTSB's goal is to assure coordination of concurrent efforts while an investigation is ongoing. Accordingly, § 831.11(e) refers to such coordination, and gives more specific meaning to the statement already present in the party certification document.[11] The regulation now clearly states that signing the agreement means the party agrees to provide information regarding any internal reviews to the IIC.

The NTSB is generally not interested in obtaining information that would be considered privileged in litigation as it would usually have no purpose in an investigation. Paragraph (d)(2) instructs parties on how to inform the IIC that material being submitted contains privileged information, such that it may be properly reviewed for whether it is

[11] The party agreement includes the statements ''No information pertaining to the accident, or in any manner relevant to the investigation, may be withheld from the NTSB by any party or party participant,'' and ''[T]his includes, but is not limited to, the provisions of 49 CFR 831.11 and 831.13, which, respectively, specify certain criteria for participation in NTSB investigations and limitations on the dissemination of investigation information.''

even relevant to the investigation. If it is not relevant, it will be excluded from the submission. If included in the submission, it will also be evaluated against the need for disclosure beyond the NTSB (referencing § 831.6).

Paragraph 831.11(d)(4) states that investigations performed by other Federal agencies are addressed in § 831.5.

The NTSB recognizes NADAF's concerns regarding the needs of victims and their families for information following an accident. The agency has a division whose responsibility is to ensure victims and family members are aware of factual developments in investigations, the overall status of the investigation, and other relevant information. However, we disagree with NADAF that representatives from family-member organizations and 501(c)(3) charitable organizations should be considered technical experts as that term is understood in our investigations. We also disagree that there is a conflict of interest in the party process. NTSB investigations are factual and not adversarial, and no legal consequences result from an NTSB investigation. NTSB parties participate in the fact gathering process, but the analysis and determination of probable cause are NTSB responsibilities.

L. Section 831.12 Access to and Release of Wreckage, Records, Mail and Cargo

In the NPRM, we proposed removing from § 831.12 the reference to a specific form that the NTSB completes upon the return of wreckage to its owner. We determined that reference to a specific form number was unnecessary.

We also discussed a comment previously received from A4A that suggested we revise § 831.12 to allow for remote read-outs of digital flight data recorders and cockpit voice recorders as a means to preclude the need for transporting recorders to NTSB Headquarters. A4A also recommended we ''establish a firm deadline for returning [recorders] to the [air] carrier.'' We did not propose any language as a result of this comment, having found that no regulatory change was necessary to adopt any specific procedures related to our possession, review of data from recorders, or release of wreckage. We reiterate that such suggested changes are more appropriate for internal agency policies and procedures and will be reviewed in that context.

1. Wreckage

Several commenters suggested we adopt a standardized practice of providing documentation when we obtain material, components, and parts from parties, and when we return such items to parties. United suggested language directing investigators ''to always provide receipting for material obtained and returned'' and that ''the receipting should clearly document from whom the items were received or returned as well as clear description of the material including part/serial number when appropriate.''

Commenters disagreed with our proposed removal of the reference to the Release of Wreckage form. Textron stated it had experienced cases which NTSB investigators have not communicated the release of wreckage to owners or operators. Textron stated that use of the form could specify such release has occurred, and that if confusion exists about whether wreckage has been released, ''critical safety evidence could be obscured or lost if the wreckage is disturbed prior to the appropriate phase of the investigation.'' Comments support retaining the sentence.

Commenters who mentioned our procedures for releasing wreckage recommended we formally indicate our release of wreckage via NTSB Form 6120.15 as standard practice.

Elimination of the reference to a specific form should not be interpreted as indicating the NTSB intends to not use some type of form to confirm release of wreckage. Our practice is to document release of wreckage, though our specific procedures or form may change. We have added a statement that recipients of released wreckage must sign a form provided by the NTSB, but we must retain flexibility regarding the process and the form itself as investigations vary considerably and the information needed on forms evolves.

2. Return of Recorders

We did not propose any regulatory language that changed how recorders are obtained, the data extracted, or recorders returned. A4A, however, suggested we adopt a remote readout program for flight recorders that would eliminate the need to physically remove the recorders and transport them. A4A stated that ''most operators'' have established readout capability networks, some of which work in conjunction with information submitted via FOQA programs, that a chain of custody of the data could be documented, that remotely reading out the data would not jeopardize its integrity, and that data on the recorder remains on the device until it is replaced. These factors, they contend, counsel in favor of the NTSB adopting a practice of ''assuring speedy access to the [digital flight data recorder] uniformly occurs.'' A4A recommended the NTSB work with air carriers to establish a protocol permitting such readouts. The IPA disagreed with A4A's suggestions concerning the processes for examining and testing equipment such as FDRs and CVRs. The IPA states the NTSB ''has a highly talented and experienced group of engineers in the NTSB Recorder Labs,'' and the NTSB maintains ''processes, procedures and protocol (controls)'' to handle sensitive information. The IPA ''strongly opposes'' using different technologies to provide remote readouts of flight data from FDRs, and suggests that bypassing NTSB procedures and facilities would be simply for an air carrier's convenience or economic gain. The IPA also believes the current language of § 831.12 as it applies to release of recorders is adequate, and states we should not release such items prior to the conclusion of the investigation.

We have reviewed the commenters' concerns regarding recorder readouts. While immediate readouts and timely return of recorders are important issues, we cannot find that recorder handling procedures belong in our regulations. Rather, such matters are better placed in NTSB practice manuals where they can be fine-tuned to the needs of a particular investigation. Moreover, the NTSB did not propose to include recorder readouts at the scene of an accident as an option. The suggested change would be beyond the scope of the NPRM to include in a rulemaking, and might require changes to companion regulations by other Federal agencies.

M. Section 831.13 Flow and Dissemination of Investigative Information

Our proposed revisions to this section included edits such as removing the reference to a ''field investigation,'' and substantive proposals addressing the circumstances when a party may share and release investigative information. We also proposed including a statement that § 831.13 applies from the time an investigation commences until the NTSB completes its investigation.

Regarding the release of investigative information, we stated that we need to remain the sole disseminator of that information. We remain concerned that a premature release of information during an investigation could result in the release of incorrect or incomplete information requiring additional effort

to correct, possibly impeding the progress of an investigation, and eroding public confidence in the credibility of an investigation.

The NPRM also addressed that a party may need to share information with another Federal agency in response to that agency's need. We stated we would not prohibit or seek to impede the sharing of such information while noting that the IIC should be informed when records and information are provided to another agency and should be included in communications concerning the existence of records or information relevant to the investigation. We stated we will work with other agencies to share information obtained in the course of the NTSB investigation to minimize duplicative requests to NTSB parties and others for information.

1. Definition of ''Investigative Information''

Sikorsky suggested we add the phrase ''relevant to the investigation'' in both § 831.13(b) and (c), as follows ''[a]ll information *relevant to the investigation* obtained by any person or organization during the investigation, as described in paragraph (a) of this section, must be provided to the NTSB,'' and ''Parties are prohibited from publicly releasing information *relevant to the investigation* obtained. . . .'' Sikorsky stated these suggested additions would clarify that we are intending paragraphs (b) and (c) to apply to the investigative information, as defined in paragraph (a).

Other comments suggested our proposed definition of investigative information is too broad. SWAPA's comment stated our proposed text might be interpreted to include ''reports submitted through codified and established voluntary safety programs including, but not limited to, ASAP and FOQA.'' SWAPA is concerned with the disclosure of such information because the NTSB does not have the authority the FAA has to protect the information from disclosure. SWAPA stated that this lack of protection ''compromises the integrity of these programs.'' As a result, SWAPA recommended we amend § 831.13(a) to include an ''express exemption of voluntary safety reports submitted through codified and established voluntary safety programs including, but not limited to, ASAP and FOQA.''

The Kettles Law Firm suggested we add the following regarding record release: ''Parties are allowed to release records and documents that existed before the NTSB commenced its investigation and such information is not subject to the restrictions on the release of information in 49 CFR 831.'' The commenter sent a copy of a letter from an NTSB General Counsel dated October 31, 2008, stating records that pre-existed the commencement of the NTSB investigation are not considered investigative information subject to the restrictions of § 831.13. In referring to this letter, the commenter described investigative material subject to § 831.13 as ''documents, *e.g.,* analyses or data compilations . . . created after the accident at the request of NTSB staff—solely by virtue of the [entity's] status as a party the NTSB investigation.'' The firm suggested we clearly articulate this concept in the text of § 831.13, to resolve the question of whether the regulation applies to records that existed ''before the accident sequence'' or records that existed ''at the time'' the accident occurred. The firm contends these two phrases could be subject to varying interpretations; hence, the need for clarity.

In defining investigate information, the NTSB is not limiting the scope of information the agency may obtain or consider under its statutory authority. The NTSB has broad authority to require the production of evidence it deems necessary for the investigation. 49 U.S.C. 1113(a)(1). The regulatory definition of investigative information limits the scope of information that may be released outside the investigation. The scope of investigative information depends on the nature of the accident or incident. An accident may be the result of a series of events or actions, and is not defined exclusively by the time of impact. For example, if the NTSB is conducting a limited investigation, the investigative information may be limited to information created or originating immediately prior to impact. If the NTSB, however, is conducting a major investigation in which it is examining potential causes of the accident that include a number of complex safety issues, investigative information could include documents and data leading up to the accident. Crewmember training records and maintenance records may be critical to such an investigation, even though they pre-date the accident or incident. Determining the probable cause of an accident or incident, in lieu of simply describing what happened, expands what the NTSB considers investigative information. The NTSB has determined the definition of investigative information must therefore be flexible.

In response to the concerns regarding release of ASAP or FOQA data, the NTSB recognizes that these data are VSI. Although the agency may rely on these and other types of data and VSI during the course of an investigation, as discussed in reference to § 831.6, the NTSB is prohibited by statute from releasing such information.

In this final rule, we have redrafted § 831.13 to more clearly describe the applicability of the NTSB's regulations on the release of investigative information. Paragraph (a) describes the applicability of the section and more clearly limits it to information relevant to an investigation. The timeframe covered by the definition will necessarily be flexible based on the circumstances of each investigation. For this reason, coordination with the IIC is important. Revised § 831.9(a)(5) makes clear that an NTSB investigator is authorized to examine records regardless of the date they were created if necessary for the investigation.

2. IIC Approval

Several commenters opposed our proposal regarding restriction on information release within a party organization, stating that we should permit release of information within an organization more freely when the goal is safety improvement.

Comments supported the principle that maximizing the flow of useful information between the NTSB and parties is critical to ensure safety improvements can occur. Commenters stated that the changes we proposed create requirements that are cumbersome and may be contrary to the duties outlined in our Statement of Party Representatives. Commenters emphasized that dissemination of investigative information within party organizations is often necessary to advance the investigation. GE recommended that parties should not be required to notify the NTSB IIC when internally disseminating information for purposes of the investigation. GE suggested that we add language restricting the dissemination to ''those possessing technical expertise and/or product knowledge whose participation is beneficial to the investigation.'' ATA requested that we adopt language allowing disclosure of information to owner-operators, independent drivers, and outsourced drivers.

DOT stated that our proposed rule could prohibit non-Federal entities from providing information to DOT's OAs. DOT acknowledged, however, the release of investigative information prior to the conclusion of an investigation ''could impact the investigation'' and stated ''not every corrective measure ordered by the Department must contain detailed information gathered during an investigation.'' DOT did not present

specific text, but noted it will continue its ''past practice of closely coordinating with the NTSB, to ensure that its investigation is not compromised.''

Commenters raised concerns that parties may disseminate investigative information only to decision-makers within the party organization. Boeing and ATA suggested we permit dissemination to individuals with a ''need to know.''

Commenters were concerned that the proposed language could have a chilling effect on the flow of safety information within a party. GAMA recommended we maintain the existing regulation and policies concerning dissemination of information, stating that manufacturers ''monitor, maintain, and upgrade their products on a daily basis,'' and ''some of these activities could be construed as overlapping an NTSB investigation, but in reality, have nothing to do with the findings or probable cause of an accident or incident.''

The regulation has been revised to more clearly state our intent to balance the interest of improved safety through timely sharing of information with the need to ensure such sharing does not compromise the integrity of the investigation. The large number and widely varying size and character of parties to NTSB investigations has led us to conclude that decisions on dissemination of investigative information within an organization cannot be left completely to parties as was suggested by commenters.

The reformatting of § 831.13 includes a detailed paragraph (c) on the release of investigative information. Paragraphs (c)(1) and (2) describe release of information at the scene of an accident investigation by the NTSB. Paragraph (c)(3) describes the dissemination of information by the parties to persons in its organization that have a need to know for the purpose of addressing a safety issue or planned improvement. As stated in paragraph (c)(4) any other release of information must be coordinated with the IIC including within a party's organization for a reason other than specified in (c)(3).

The NTSB and commenters agree that a release of information should not cause public confusion and speculation. The regulations promulgated here balance the need to know for certain persons inside a party organization with the general rule that investigative information is not to be released publicly. The NTSB does not seek to inhibit the flow of information where a safety purpose is served, but the IIC, as the primary director of an investigation, needs to remain cognizant of the information flow. Since investigations can differ dramatically in their scope and timing, we retain the right to direct the flow of information except in the limited case stated in the regulation. This final rule does not adopt the proposed term ''decision-makers;'' we agree with the commenters that it could inhibit the appropriate persons from taking remedial action.

The regulation is adopted to include the revised format of this section and the comments as discussed.

N. Section 831.14 Proposed Findings

The NTSB did not propose any substantive changes to § 831.14, ''Proposed findings.'' In the preamble to the NPRM, we summarized A4A's prior suggestion that we include a statement that the NTSB will provide a copy of the NTSB draft final report, including analytical conclusions (but not necessarily probable cause and recommendations), before the Board schedules a meeting on an investigation. A4A had recommended that the NTSB adopt the practice of ICAO Annex 13 regarding the release of draft reports to accredited representatives of the States participating in an aviation investigation who often seeks the input of their technical advisers.

In the NPRM, we disagreed with A4A's comment regarding rule text in § 831.14, but said that we would consider such a practice to be addressed outside a regulation and that any such sharing would involve timely notice to party representatives.

1. Sharing of Draft Reports

Fourteen commenters to the NPRM addressed the sharing of draft reports.

We maintain that the most appropriate means to undertake such a change would be through internal agency policies. While we appreciate consistency with the best practices of ICAO, § 831.14 applies to investigations in all modes of transportation and the sharing of draft reports may be not be workable across all modes. Further, the NTSB needs to consider the specific circumstances of an investigation before we can determine whether such advance sharing would be a benefit. We will continue to examine our policies with regard to sharing draft reports and we will share them when we determine it would benefit an investigation. We will use the comments received on this issue when revising our internal policies and study whether such sharing might be most appropriate in a certain category of investigation.

2. Timing of Submissions

While we did not propose any change to the language on timing of submissions from parties, we received comment on it. Textron noted that the proposed rule states that submissions ''must be received before the matter is announced in the **Federal Register** for consideration at a Board meeting. All written submissions shall be presented to staff in advance of the formal scheduling of the meeting. This procedure ensures orderly and thorough consideration of all views.'' Textron requested that we establish a predictable deadline for the timing of submissions, and suggests that we provide advance notice of the announcement of a Board meeting in the **Federal Register**, since preparing a submission can take considerable time and would be done before the meeting is formally announced.

Both GAMA and Airbus agreed that we should provide a means of advance notice to provide sufficient time to develop their submissions.

We have revised § 831.14 based on the comments. Paragraph (a) now refers to submissions by a party rather than ''any person,'' since it is parties who have access to the information at issue and are in a position to be notified of the scheduled date of a Board meeting. Paragraph (b) has been revised to include the statement that the IIC will inform parties when submissions are due, and that such submissions must be received by the IIC before the matter is formally announced.

We have removed paragraph (c) because the limitation provision was found to be confusing, since by its terms, safety enforcement cases are already handled under Part 821 of this chapter, which contains ex parte rules in subpart J. Repeating this information in paragraph (c) was not appropriate.

O. Comments on Mode-Specific Sections

We received seven comments addressing proposed Subpart B on regulations specific to aviation investigations. We received one comment addressing Subpart E specific to marine investigations.

We did not receive any comments on proposed § 831.20 addressing the responsibility of the NTSB, or on § 831.21 regarding the authority of NTSB representatives in aviation investigations.

We have revised § 831.20 to more clearly present the scope of the NTSB's authority based on the type of aircraft involved in an accident. We have also included the authority of NTSB representatives as paragraph (b) of this section, rather than as a separate section in the subpart. Therefore, we have renumbered sections 831.22 and 831.23 to 831.21 and 831.22, respectively. The

changes were intended to be stylistic and not substantive.

P. Section 831.21 [NPRM § 831.22] Aviation Investigations: Other Government Agencies

A4A stated that it is important to air carriers to know which government agency is responsible for an investigation, and the responsible agency's supporting and reporting functions. A4A stated ''[o]f particular importance to us is the need for the NTSB to underscore that it, and not any other agency, is responsible for the retrieval and custody of aircraft cockpit voice and data recorders.'' A4A requests that this concept be ''broadly communicated to other agencies.''

A4A stated that describing the FAA as conducting fact-gathering ''on behalf of'' the NTSB introduces confusion because both act as parties to an investigation, and each fulfills a role in COS. A4A stated that the NTSB does not delegate investigations to the FAA and that the text of § 831.22 (now § 831.21) should not suggest any delegation. Other commenters acknowledged similar concerns. United asked how an operator is to know whether an FAA employee at the scene of an accident or incident is working on behalf of the NTSB. United indicated it has encountered situations where FAA employees have been mistaken in this capacity and have impeded access to the site by the carrier. United suggested we add a statement to § 831.22(c) (now § 831.21(c)) to clarify how an FAA employee is granted authority to act on behalf of the NTSB, or whether parties should assume the FAA employee arriving at the site ''automatically possesses this authority.'' United said a similar concern exists for the Federal Bureau of Investigation and questioned whether its employees are considered representatives of the NTSB. United is concerned that each agency differs in the way it handles information it obtains.

The comments concerning § 831.22 (now § 831.21) echo many of the concerns expressed in comments to § 831.5 regarding the scope of authority of various agencies at an aviation accident site. We reiterate here that DOT employees, including those employed by the FAA, do not become NTSB employees during an investigation. Instead, DOT employees participate in our investigations and are able to collect evidence and question witnesses when participating in our investigations under the direction of the IIC.

Similarly, there should be no confusion regarding which government agency is responsible for an investigation—the NTSB is responsible by statute for investigating *all* civil aviation accidents and certain aviation incidents. The FAA participates in—but does not oversee—each investigation. In some limited investigations in which the NTSB has not launched a full inquiry, the FAA may collect evidence and gather various types of information for its owns purposes, which the FAA then shares with the NTSB. For larger-scale investigations, the FAA only collects information and evidence at the request of the NTSB.

The request for the assistance of the Secretary of the Department of Transportation and the FAA reaches back to an NTSB letter from 1977, which appears as an appendix to 49 CFR part 800. The NTSB remains mindful of the important role the FAA maintains in ensuring aviation safety. Given the varying nature of aviation accidents and incidents, maintaining flexibility allows for the most efficient use of investigative resources. The NTSB appreciates the FAA's and parties' respect for this model.

In response to the comment we received from the DOT, and concerns recently expressed by the FAA to the NTSB, we have redrafted NPRM § 831.22 (now § 831.21) to clarify that we provide for FAA participation in aviation accident investigations as a matter of statute; that the FAA has the same rights and privileges as other parties to an investigation; that the FAA may obtain information from others as part of its statutory responsibilities; that an FAA employee may have the same authority as an NTSB investigator when granted such by the IIC for purposes of the NTSB investigation; and that the FAA is expected to timely share information and coordinate its activities with the NTSB during an accident investigation. We remain cognizant that aviation accidents result in significant overlap of the NTSB's and FAA's need for information to satisfy statutory responsibilities. Our regulations seek to acknowledge this overlap, while affirming the investigative priority granted to the NTSB by statute. The NTSB and FAA share the goal of improving aviation safety.

Q. Section 831.22 [NPRM § 831.23] International Aviation Investigations

We received six comments on proposed § 831.23 (now § 831.22), international aviation investigations.

United observed occasions in which the NTSB representative appeared to have a ''reduced interest in supporting a foreign investigation'' and requested that our regulations specify that we will give sufficient support to affected airlines.

Textron agreed with our proposed reorganization of the text, but stated that we are ''over reaching [our] authority by stating '[t]he NTSB considers the provisions of § 831.13 to apply to U.S. advisers working under the supervision of the U.S. accredited representative.''' Textron stated that the NTSB is attempting to interject itself between an adviser and a foreign authority, and that Textron is unaware of ''any statutes that allow the NTSB to limit and control the communication an entity has with a foreign authority.'' GAMA reacted to the same proposed language, stating that it ''seems to infer that the NTSB desires to apply its authority when an investigation is conducted by a foreign state under its authority.'' GAMA does not believe § 831.13 ''and its surrounding policy framework'' can be applied to foreign aviation investigations.

In commenting on international investigations, GE referred to its comment on § 831.6 which requested we make the protections afforded to trade secrets apply to both domestic and international investigations. In the alternative, GE suggested we include in § 831.23 a description of how we will handle information subject to protection as a trade secret or as confidential commercial information.

Boeing asserts our proposed version of § 831.23(c)(1) (now § 831.22(c)(1)) is inconsistent with ICAO Annex 13 in that NTSB regulations require technical advisors to ''work at the direction and under the supervision of the NTSB accredited representative.'' Boeing stated that ''[w]hile these advisors certainly perform their function under the supervision of the accredited representative,'' the foreign state's IIC is the person who remains in control of the investigation and directs the investigative work. Accordingly, Boeing suggested the following language for paragraph (c)(1): ''Such technical advisors *shall perform their role* under the supervision of the NTSB accredited representative.'' [Italics in original].

Boeing also commented on the proposed application of § 831.13 to foreign investigations, stating that Annex 13 recognizes the State responsible for conducting the investigation with the responsibility for determining the circumstances and content of information that will be released. As a result, the NTSB's regulation can apply only to accidents that occur in the United States and not to technical advisors in a foreign investigation.

NADAF supported the proposed application of § 831.13 to foreign investigations as providing ''a way of releasing information and documents to promote global aviation safety and is an important part of Investigation Procedures.''

We have reformatted NPRM § 831.23 (now § 831.22) to clarify the application of ICAO Annex 13, the role and responsibility of the NTSB and the position of appointed technical advisers.

We agree with Boeing that § 831.22 should indicate that technical advisers work under the supervision of the NTSB accredited representative and we have revised the language of § 831.22(c) accordingly. We use a common understanding of the term ''supervision,'' that of having oversight and direction of. Thus, an NTSB accredited representative receives direction from a foreign state's IIC, and in turn the NTSB oversees both the conduct of its technical advisers during the investigation and the responses the technical advisers provide to foreign states' IICs. We consider this practice consistent with the process described in Annex 13, and most effective in ensuring a fully coordinated investigation. U.S. technical advisers are generally already familiar with the NTSB's manner of conducting investigations and the NTSB's expectations.

We agree that the application of § 831.13 to foreign investigations needs clarification. We have revised § 831.22(c)(2) to state that the proscription on release of information from § 831.13 applies to U.S. advisers invited by the NTSB to participate and work under the supervision of the NTSB as the U.S. accredited representative in an international investigation. For example, if a foreign state's IIC contacts a U.S. technical adviser directly and instructs the adviser to collect certain documents or engage in certain work, the adviser should respond to the request by informing the NTSB accredited representative and then directly providing the information to both the foreign state's IIC and the NTSB accredited representative. We do not interpret § 831.13 as preventing the sharing of information between the foreign state's IIC and a U.S. technical adviser.

We proposed that § 831.13 apply to foreign investigations because technical advisers have disseminated information to organizations that were not participating in the investigation. In one instance, a technical adviser's organization disseminated information to the media without informing the NTSB accredited representative or the foreign state's IIC of its plan to share the information. To prevent any recurrence of this situation, we find that the provisions of § 831.13 are appropriate for and can be effectively applied to U.S. technical advisers invited by the NTSB to participate in a foreign investigation without unduly delay to the investigation.

We received no comments regarding proposed subparts C and D. We have reformatted the proposed language to be consistent with subpart B, but otherwise adopt the language as proposed.

VI. Regulatory Analysis

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order. As such, the Office of Management and Budget has not reviewed this rule under Executive Order 12866. Likewise, this rule does not require an analysis under the Unfunded Mandates Reform Act, 2 U.S.C. 1501–1571, or the National Environmental Policy Act, 42 U.S.C. 4321–4347.

In addition, the NTSB has considered whether this rule would have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act (5 U.S.C. 601–612). The NTSB certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. Moreover, in accordance with 5 U.S.C. 605(b), the NTSB will submit this certification to the Chief Counsel for Advocacy at the Small Business Administration.

Moreover, the NTSB does not anticipate this rule will have a substantial, direct effect on state or local governments or will preempt state law; as such, this rule does not have implications for Federalism under Executive Order 13132, Federalism. This rule also complies with all applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden. In addition, the NTSB has evaluated this rule under: Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights''; Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks''; Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments''; Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''; and the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note. The NTSB has concluded this rule does not contravene any of the requirements set forth in these Executive Orders and statutes, nor does this rule prompt further consideration with regard to such requirements.

List of Subjects in 49 CFR Part 831

Aircraft accidents, Aircraft incidents, Aviation safety, Hazardous materials transportation, Highway safety, Investigations, Marine safety, Pipeline safety, Railroad safety.

For the reasons discussed in the preamble, the NTSB amends Title 49 of the CFR by revising part 831 to read as follows:

PART 831—INVESTIGATION PROCEDURES

Subpart A—General

Subpart B—Aviation Investigations

Subpart C—Highway Investigations

Subpart D—Railroad, Pipeline, and Hazardous Materials Investigations

Authority: 49 U.S.C. 1113(f).

Subpart A—General

§ 831.1 Applicability of this subpart.

(a) Except as provided in Subpart E of this part regarding marine casualties, and unless specified by the National Transportation Safety Board (NTSB), the provisions of this subpart apply to all NTSB investigations conducted under its statutory authority.

(b) Consistent with its statutory authority, the NTSB conducts investigations of transportation accidents that include, but are not limited to: accidents, collisions, crashes, derailments, explosions, incidents, mishaps, ruptures, or other similar accidents. Use of the term ''accident'' throughout this part includes all such occurrences.

(c) Throughout this part, the term ''IIC'' means the NTSB investigator-in-charge.

§ 831.2 Responsibility of the NTSB.

The NTSB is required to investigate—

(a) Aviation accidents as described in subpart B of this part;

(b) Highway accidents as described in subpart C of this part;

(c) Railroad, pipeline, and hazardous materials accidents as described in subpart D of this part; and

(d) Any accident that occurs in connection with the transportation of people or property that, in the judgment of the NTSB, is catastrophic, involves problems of a recurring nature or would otherwise carry out the intent of its authorizing statutes. This authority includes selected events involving the transportation of hazardous materials, including their release.

§ 831.3 Authority of Directors.

Subject to the provisions of § 831.2 of this part and part 800 of this chapter, the Directors of the Office of Aviation Safety, Office of Highway Safety, or Office of Railroad, Pipeline and Hazardous Materials Investigations, may order an investigation into any transportation accident.

§ 831.4 Nature of investigation.

(a) *General.* The NTSB conducts investigations, or has them conducted, to determine the facts, conditions, and circumstances relating to an accident. The NTSB uses these results to determine one or more probable causes of an accident, and to issue safety recommendations to prevent or mitigate the effects of a similar accident. The NTSB is required to report on the facts and circumstances of accidents it investigates. The NTSB begins an investigation by monitoring the situation and assessing available facts to determine the appropriate investigative response. Following an initial assessment, the NTSB notifies persons and organizations it anticipates will be affected as to the extent of its expected investigative response.

(b) *NTSB products.* An investigation may result in a report or brief of the NTSB's conclusions or other products designed to improve transportation safety. Other products may include factual records, safety recommendations, and other safety information.

(c) NTSB investigations are fact-finding proceedings with no adverse parties. The investigative proceedings are not subject to the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), and are not conducted for the purpose of determining the rights, liabilities, or blame of any person or entity, as they are not adjudicatory proceedings.

§ 831.5 Priority of NTSB investigations.

(a) *Relationships with other agencies.* (1) Except as provided in 49 U.S.C. 1131(a)(2)(B) and (C) regarding suspected criminal actions, an investigation conducted under the authority of the NTSB has priority over any investigation conducted by another Federal agency.

(2) The NTSB will provide for appropriate participation by other Federal agencies in any NTSB investigation. Such agencies may not participate in the NTSB's probable cause determination.

(3) The NTSB has first right to access wreckage, information, and resources, and to interview witnesses the NTSB deems pertinent to its investigation.

(4) As indicated in § 831.9(c) of this part, the NTSB has exclusive authority to decide when and how the testing and examination of evidence will occur.

(5) The NTSB and other Federal agencies will exchange information obtained or developed about the accident in the course of their investigations in a timely manner. Nothing in this section prohibits the NTSB from sharing factual information with other agencies.

(6) *Incident command system.* The NTSB recognizes the role of incident command systems to address emergencies. The NTSB does not assume the role of a first responder agency.

(i) The NTSB IIC or his designee will participate in the incident command system to identify and coordinate investigative needs related to the preservation and collection of information and evidence.

(ii) The NTSB may collect information and evidence from the incident command in a timely and reasonable manner so as not to interfere with its operations.

(b) *Investigations by other Federal agencies.* (1) Nothing in this section limits the authority of any Federal agency to conduct an investigation of an accident or incident under applicable provisions of law or to obtain information directly from parties involved in, and witnesses to, a transportation accident. Other agencies are expected to coordinate with the NTSB IIC to avoid interference with, and duplication of, the NTSB's investigative efforts. These agencies will not participate in the NTSB's probable cause determination.

(2) The NTSB recognizes that state and local agencies may conduct activities related to an accident under investigation by the NTSB. These agencies will not participate in the NTSB's probable cause determination.

(3) Except as described in § 831.30 of this part regarding highway investigations, the NTSB may request that a Federal agency provide to the NTSB the results of that agency's investigation of an accident when such investigation is intended to result in safety improvements or remedial action. The NTSB will not routinely request regulatory enforcement records or investigation results.

§ 831.6 Request to withhold information.

(a) *Applicability.* This section applies to information the NTSB receives from any source that may be subject to the Trade Secrets Act (18 U.S.C. 1905) or the Freedom of Information Act (FOIA, 5 U.S.C. 552).

(b) *Disclosure.* The NTSB is authorized by 49 U.S.C. 1114(b) to disclose, under certain circumstances, confidential commercial information that would otherwise be subject to penalties for disclosure under the Trade Secrets Act, or excepted from disclosure under FOIA. The NTSB may exercise this authority when disclosure is necessary to support a key finding, a safety recommendation, or the NTSB's statement of probable cause of an accident.

(c) *Disclosure procedures.* Information submitted to the NTSB that the submitter believes qualifies as a trade secret or as confidential commercial information subject either to the Trade Secrets Act or Exemption 4 of FOIA must be so identified by the submitter on each page that contains such information. In accordance with 49 U.S.C. 1114(b), the NTSB will provide the submitter of identified information (or information the NTSB has reason to believe qualifies as subject to the Trade Secrets Act or Exemption 4 of FOIA) the opportunity to comment on any disclosure contemplated by the NTSB. In all instances in which the NTSB decides to disclose such information pursuant to 49 U.S.C. 1114(b) or 5 U.S.C. 552, the NTSB will provide at least 10 days' advance notice to the submitter.

(d) *Voluntarily provided safety information.* (1) The NTSB will not disclose safety-related information voluntarily submitted to the NTSB if the information is not related to the exercise of the NTSB's investigation authority, and if the NTSB finds disclosure of the information might inhibit the voluntary provision of that type of information.

(2) The NTSB will review voluntarily provided safety information for confidential content, and will de-identify or anonymize any confidential content referenced in its products.

(e) *Other.* Any person may make written objection to the public disclosure of any other information, such as interview summaries or transcripts, contained in any report or document filed, or otherwise obtained by the NTSB, stating the grounds for such objection. The NTSB on its own initiative or if such objection is made, may order such information withheld from public disclosure, when, in its judgment, the information may be withheld under the provisions of an exemption to the FOIA (see part 801 of this chapter), and its release is found not to be in the public interest.

§ 831.7 Representation during an interview.

(a) Any person interviewed in any manner by the NTSB has the right to be accompanied during the interview by no more than one representative of the witness's choosing. The representative—

(1) May be an attorney;

(2) May provide support and counsel to the witness;

(3) May not supplement the witness's testimony; and

(4) May not advocate for the interests of a witness's other affiliations (*e.g.,* the witnesses employer).

(b) An investigator conducting the interview may take any necessary action (including removal of the representative from the interview) to ensure a witness's representative acts in accordance with the provisions of paragraph (a) of this section during the interview, and to prevent conduct that may be disruptive to the interview.

§ 831.8 Investigator-in-charge.

In addition to the subpoena and deposition authority delegated to investigative officers under this chapter, a person designated as IIC for an investigation is authorized to—

(a) Organize, conduct, control, and manage the field phase of an investigation, even when a Board Member is present;

(b) Coordinate all resources and supervise all persons (including persons not employed by the NTSB) involved in an on-site investigation; and

(c) Continue his or her organizational and management responsibilities through all phases of the investigation, including consideration and adoption of a report or brief determining one or more probable causes of an accident.

§ 831.9 Authority during investigations.

(a) *General authority of investigators.* To carry out the statutory responsibilities of the agency, an NTSB investigator may—

(1) Conduct hearings;

(2) Administer oaths;

(3) Require, by subpoena or otherwise, the production of evidence and witnesses;

(4) Enter any property where an accident subject to the NTSB's jurisdiction has occurred, or wreckage from any such accident is located, and take all actions necessary to conduct a complete investigation of the accident;

(5) Inspect, photograph, or copy any records or information (including medical records pursuant to paragraph (b)(2) of this section), and correspondence regardless of the date of their creation or modification, for the purpose of investigating an accident;

(6) Take possession of wreckage, records or other information if it determines such possession is necessary for an investigation; and

(7) Question any person having knowledge relevant to a transportation accident.

(b) *Subpoenas.* The NTSB may issue a subpoena, enforceable in Federal District Court, to obtain testimony or evidence related to an accident, including but not limited to personal electronic devices.

(1) The NTSB's authority to issue subpoenas includes access to medical records and specimens.

(2) For purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, and the regulations promulgated by the DHHS, 45 CFR 164.501 *et seq.,* the NTSB is a ''public health authority'' to which protected health information may be disclosed by a HIPAA ''covered entity'' without the prior written authorization of the subject of the records. In addition, the NTSB may issue a subpoena to gain access to such information.

(c) *Examination of evidence.* In accordance with 49 U.S.C. 1134(d), the NTSB has exclusive authority to decide timing, manner and method of testing and examination of evidence, and extraction of data.

§ 831.10 Autopsies and postmortem testing.

When a person dies as a result of having been involved in a transportation accident within the jurisdiction of the NTSB—

(a) The NTSB is authorized to obtain, with or without reimbursement, a copy of a report of autopsy performed by a State or local authority on such person.

(b) The NTSB may order an autopsy or other postmortem tests of any person as may be related to its investigation of a transportation accident. The IIC may direct that an autopsy or other test be performed if necessary for an investigation. Provisions of local law protecting religious beliefs with respect to autopsies shall be observed to the extent they are consistent with the needs of the investigation.

§ 831.11 Parties to the investigation.

(a) *Participants.* (1) The IIC may designate one or more entities to serve as parties in an investigation. Party status is limited to those persons, Federal, state, or local government agencies and organizations whose employees, functions, activities, or products were involved in the accident and that can provide suitable qualified technical personnel to actively assist in an investigation. To the extent practicable, a representative proposed by party organizations to participate in the investigation may not be a person who had direct involvement in the accident under investigation.

(2) Except for the FAA, no entity has a right to participate in an NTSB investigation as a party.

(3) The participation of the Administrator of the FAA and other Federal entities in aviation accident investigations is addressed in § 831.21 of this part.

(4) Participants in an investigation (*e.g.,* party representatives, party coordinators, and/or the larger party organization) must follow all directions and instructions from NTSB representatives. Party status may be revoked or suspended if a party fails to comply with assigned duties and instructions, withholds information, or otherwise acts in a manner prejudicial or disruptive to an investigation.

(b) *Prohibitions on serving as party representatives.* (1) In accordance with § 845.6 of this chapter, no party representative may occupy a legal position or be a person who also represents claimants or insurers.

(2) Failure to comply with these provisions may result in sanctions, including loss of party status.

(c) *Disclosures.* (1) The name of a party and its representative may be

disclosed in documents the NTSB places in the public docket for the investigation.

(2) The NTSB may share information considered proprietary or confidential by one party with other parties during the course of an investigation, but will preserve the confidentiality of the information to the greatest extent possible.

(3) Section 831.6(d) of this part describes how the NTSB will handle voluntarily submitted safety information, and the NTSB's determination whether to share any such information. The NTSB will de-identify the source of such information when deciding to share it.

(d) *Party agreement.* Except for representatives of other Federal agencies, all party representatives must sign the ''Statement of Party Representatives to NTSB Investigation'' (Statement) upon acceptance of party status. Failure to timely sign the statement may result in sanctions, including loss of party status. Representatives of other Federal agencies, while not required to sign the Statement, will be provided notice of and must comply with the responsibilities and limitations set forth in the agreement.

(e) *Internal review by a party.* (1) To assure coordination of concurrent efforts, a party to an investigation that conducts or authorizes a review of its own processes and procedures as a result of an accident the NTSB is investigating, by signing the party agreement, agrees to, in a timely manner—

(i) Inform the IIC of the nature of the review; and

(ii) Provide the IIC with the findings from the review.

(2) If the findings from a review contain privileged information—,

(i) The submitting party must inform the IIC that the review contains privileged information;

(ii) The submitting party must identify the privileged content at the time of submission to the IIC; and

(iii) The NTSB must, if informed that such information is being submitted, review the information for relevancy to the investigation, and determine whether public disclosure of the information is necessary for the investigation.

(3) The NTSB may use the protections described in § 831.6 of this part, as applicable, to protect certain findings from public disclosure.

(4) Investigations performed by other Federal agencies during an NTSB investigation are addressed in § 831.5 of this part.

§ 831.12 Access to and release of wreckage, records, mail, and cargo.

(a) Only persons authorized by the NTSB IIC may be permitted access to wreckage, records, mail, or cargo.

(b) Wreckage, records, mail, and cargo in the NTSB's custody will be released when the NTSB determines it has no further need for such items. Recipients of released wreckage must sign an acknowledgement of release provided by the NTSB.

§ 831.13 Provision and dissemination of investigative information.

(a) *Applicability.* This section applies to:

(1) Information related to the accident or incident;

(2) Any information collected or compiled by the NTSB as part of its investigation, such as photographs, visual representations of factual data, physical evidence from the scene of the accident, interview statements, wreckage documentation, flight data and cockpit voice recorder information, and surveillance video; and

(3) Any information regarding the status of an investigation, or activities conducted as part of the investigation.

(b) *Provision of information.* All information described in paragraph (a) of this section and obtained by any person or organization participating in the investigation must be promptly provided to the NTSB, except where the NTSB authorizes the party to retain the information.

(c) *Release of information.* Parties are prohibited from releasing information obtained during an investigation at any time prior to the NTSB's public release of information unless the release is consistent with the following criteria:

(1) Information released at the scene of an accident—

(i) Is limited to factual information concerning the accident and the investigation released in coordination with the IIC; and

(ii) Will be made by the Board Member present at the scene as the official spokesperson for the NTSB. Additionally, the IIC or representatives from the NTSB's Office of Safety Recommendations and Communications may release information to media representatives, family members, and elected officials as deemed appropriate.

(2) The release of information described in paragraph (a)(1) of this section by the NTSB at the scene of an accident does not authorize any party to the investigation to comment publicly on the information during the course of the investigation. Any dissemination of factual information by a party may be made only as provided in this section.

(3) A party may disseminate information related to an investigation to those individuals within its organization who have a need to know for the purpose of addressing a safety issue including preventive or remedial actions. If such internal release of information results in a planned safety improvement, the party must inform the IIC of such planned improvement in a timely manner before it is implemented.

(4) Any other release of factual information related to the investigation must be approved by the IIC prior to release, including:

(i) Dissemination within a party organization, for a purpose not described in paragraph (b)(3) of this section;

(ii) Documents that provide information concerning the investigation, such as written directives or informational updates for release to employees or customers of a party;

(iii) Information related to the investigation released to an organization or person that is not a party to the investigation;

(d) The release of recordings or transcripts from certain recorders may be made only in accordance with the statutory limitations of 49 U.S.C. 1114(c) and (d).

§ 831.14 Proposed findings.

(a) *General.* Any party to the investigation designated under § 831.11 may submit to the NTSB written proposed findings to be drawn from the evidence produced during the course of the investigation, a proposed probable cause, and/or proposed safety recommendation(s) designed to prevent future accidents.

(b) *Timing of submissions.* The IIC will inform parties when submissions are due. All written submissions must be received by the IIC by the due date. If there is a Board meeting, the due date will be set prior to the date the matter is published in the **Federal Register**.

Subpart B—Aviation Investigations

§ 831.20 Authority of NTSB in aviation accident investigations.

(a) *Scope.* The NTSB is authorized to investigate—

(1) Each accident involving a civil aircraft in the United States, and any civil aircraft registered in the United States when an accident occurs in international waters;

(2) Each accident involving a public aircraft as defined in 49 U.S.C. 40102(a)(41), except for aircraft operated by the U.S. Armed Forces or by an intelligence agency of the United States;

(3) With the participation of appropriate military authorities, each

accident involving a military aircraft and—

(i) a civil aircraft; or

(ii) certain public aircraft as described in paragraph (a)(2) of this section.

(b) *Authority to examine or test.* Pursuant to § 831.9 of this part, a credentialed employee of the NTSB is authorized to examine or test any civil or certain public aircraft, aircraft engine, propeller, appliance, or property aboard such aircraft involved in an accident or incident subject to the NTSB's authority.

§ 831.21 Other Government agencies and NTSB aviation investigations.

(a) Pursuant to 49 U.S.C. 1132(c) and 106(g)(1)(A), the NTSB will provide for the participation of the Administrator of the FAA in the investigation of an aircraft accident when participation is necessary to carry out the duties and powers of the FAA Administrator.

(b) Title 49 U.S.C. 1131(a)(2) provides for the appropriate participation by other departments, agencies, or instrumentalities of the United States Government in the investigation of an aircraft accident by the NTSB.

(c) *Rights and duties of other Federal agencies.* (1) The FAA and other Federal agencies named as parties to an aircraft accident investigation will be accorded the same rights and privileges, and are subject to the same limitations, as other parties. Participation in an investigation includes the duty to timely share with the NTSB any information that has been developed by the FAA or other Federal agency in the exercise of that agency's investigative authority.

(2) In exercising its authority, the FAA or other Federal agency may obtain information directly from a party to an accident or incident under investigation by the NTSB.

(3) Information obtained by another Federal agency must be timely shared with the NTSB.

(4) Investigative activities by another Federal agency must be coordinated to ensure that they do not interfere with the NTSB's investigation.

(5) Under no circumstances may an NTSB aviation accident investigation for which the FAA or any other Federal agency has conducted fact-finding be considered a joint investigation with shared responsibility. Decisions about what information to include in the public docket will be made by the NTSB.

(6) Notwithstanding the rights and duties described in paragraphs (c)(1) through (5) of this section, determining the probable cause of an accident is exclusively the right and duty of the NTSB.

(d) An FAA employee designated to act by the NTSB IIC has the same authority as an NTSB investigator when conducting activities under this part. The investigation remains that of the NTSB.

(e) Nothing in this section may be construed as inhibiting the FAA from proceeding with activities intended to fulfill a statutory requirement or objective, including the collection of data for safety management or enforcement purposes. Section 831.5 of this part also applies to the investigation of aviation accidents.

§ 831.22 International aviation investigations.

(a) *General.* (1) Annex 13 to the Convention on International Civil Aviation, *Aircraft Accident and Incident Investigation* (Annex 13) contains standards and recommended practices for the notification, investigation, and reporting of certain accidents involving international civil aviation.

(2) Annex 13 provides that the state of occurrence of an accident or incident is responsible for the investigation when the state is a signatory to the Convention.

(b) The NTSB—

(1) Is the U.S. agency that fulfills the obligations of the United States under Annex 13, in coordination with and consistent with the requirements of the United States Department of State.

(2) Participates in the investigation as the accredited representative to an international investigation when the accident involves a civil aircraft—

(i) of a U.S. operator;

(ii) of U.S. registry;

(iii) of U.S. manufacture; or

(iv) when the U.S. is the state of design or manufacture of the aircraft or parts thereof.

(c) *Technical advisers.* Once designated the accredited representative in an international investigation, the NTSB may elect to receive assistance by appointing one or more advisers to serve under the NTSB's direction. Such technical advisers—

(1) Work at the direction and under the supervision of the NTSB accredited representative.

(2) Are subject to the provisions of § 831.13 of this part while working under the supervision of the NTSB accredited representative.

(d) If an accident occurs in a foreign state that is not a signatory to the Convention, or if an accident or incident involves an aircraft that is not a civil aircraft, the NTSB will participate in the investigation in accordance with any agreement between the United States and the foreign state that addresses such occurrences.

(e) The NTSB's disclosure of records of a foreign investigation is limited by statute (49 U.S.C 1114(f)) and by § 831.6 of this part.

Subpart C—Highway Investigations

§ 831.30 Authority of NTSB in highway investigations.

(a) *Scope.* The NTSB is responsible for the investigation of selected highway accidents (*e.g.,* collisions, crashes and explosions), including at railroad grade-crossing accidents. Such investigations will be conducted in cooperation with the designated authorities of the state or local jurisdiction in which the accident occurred.

(b) *Authority to examine or test.* Pursuant to § 831.9 of this part, a credentialed employee of the NTSB is authorized to examine or test any item, including any vehicle, part of a vehicle, equipment, or contents of any vehicle or equipment involved in an accident subject to the NTSB's authority. Examination or testing will be conducted—

(1) To the extent practicable, so as to not interfere with or obstruct the transportation services provided by the owner or operator of a vehicle or equipment; and

(2) In a manner that preserves evidence relating to the transportation accident, in cooperation with the owner or operator of the vehicle or equipment, and consistent with the needs of the investigation.

(c) Any Federal, state, or local agency that conducts an investigation of the same highway accident the NTSB is investigating shall provide the results of its investigation to the NTSB.

Subpart D—Railroad, Pipeline, and Hazardous Materials Investigations

§ 831.40 Authority of NTSB in railroad, pipeline, and hazardous materials investigations.

(a) *Scope.* (1) *Railroads.* Consistent with its statutory authority, the NTSB is responsible for the investigation of railroad accidents, collisions, crashes, derailments, explosions, incidents, and releases in which there is a fatality, substantial property damage, or which involve a passenger train, as described in part 840 of this chapter.

(2) *Pipelines.* The NTSB is responsible for the investigation of pipeline accidents, explosions, incidents, and ruptures in which there is a fatality, significant injury to the environment, or substantial property damage. This excludes accidents involving pipelines only carrying water or sewage.

(3) *Hazardous Materials.* The NTSB is responsible for evaluating the adequacy

of safeguards and procedures for the transportation of hazardous materials, and the performance of other entities of the Federal government responsible for the safe transportation of hazardous materials. Such evaluations may take place as part of the investigation of a transportation accident subject to the NTSB's authority and include applicable regulations in other subparts of this part.

(b) *Authority to examine or test.* Pursuant to § 831.9 of this part, during an investigation, a credentialed employee of the NTSB is authorized to examine or test any rolling stock, track, or pipeline component, or any part of any such item (or contents therein) when such examination or testing is determined to be required for purposes of such investigation. Examination or testing will be conducted—

(1) To the extent practicable, so as to not interfere with or obstruct the transportation services provided by the owner or operator of such rolling stock, track, signal, rail shop, property, or pipeline component; and

(2) In a manner that preserves evidence relating to the transportation accident consistent with the needs of the investigation.

Robert L. Sumwalt, III,

Acting Chairman.

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NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 831

[Docket No. NTSB–GC–2012–0002]

RIN 3147–AA01

Investigation Procedures: Marine Investigations

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Interim final rule; request for comments.

SUMMARY: The NTSB adds to its accident investigation procedures regulations a new subpart for marine casualty investigations. This interim final rule adopts a number of substantive and technical changes the NTSB proposed in its August 12, 2014 Notice of Proposed Rulemaking (NPRM), as those proposals were intended to apply to marine investigations. It also sets forth several changes specific to marine casualty investigations.

DATES: This rule is effective July 31, 2017. Comments must be received by July 31, 2017. Comments received after the deadline will be considered to the extent possible.

ADDRESSES: A copy of this interim final rule, published in the **Federal Register**, is available for inspection and copying in the NTSB's public reading room, located at 490 L'Enfant Plaza SW., Washington, DC 20594–2003. Alternatively, a copy is available on the government-wide Web site on regulations at *http://www.regulations.gov* (Docket ID Number NTSB–GC–2012–0002).

You may send comments identified by Docket ID Number NTSB–GC–2012–0002 using any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

Mail: Send comments to NTSB Office of General Counsel, 490 L'Enfant Plaza East SW., Washington, DC 20594–2003.

Facsimile: Fax comments to 202–314–6090.

Hand Delivery: Bring comments to 490 L'Enfant Plaza East SW., 6th Floor, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

PRIVACY: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ann Gawalt, Deputy General Counsel, 202–314–6088.

SUPPLEMENTARY INFORMATION:

I. Background

A. Justification for Use of an Interim Final Rule

The NTSB issues this interim final rule to create a distinct set of regulations for NTSB marine casualty investigations. As explained in further detail below, marine accident investigations involve unique factors that are not present in other NTSB investigations. To address these differences, NTSB promulgates several changes to subpart E that did not appear in the NPRM for part 831. 79 FR 47064 (Aug. 12, 2014).

The Administrative Procedure Act (APA) generally requires an agency to provide notice of proposed rulemaking and a period of public comment before the promulgation of a new regulation. 5 U.S.C. 553(b) and (c). Section 553(b) of the APA provides that notice and comment requirements do not apply when the agency, for good cause, finds that notice and public comment procedure are impracticable, unnecessary, or contrary to the public interest. The NTSB will issue an interim final rule when it is in the public interest to promulgate an effective rule while keeping the rulemaking open for further refinement. 49 CFR 800.45.

The interim final rule procedure is appropriate for this new subpart involving marine casualty investigations. Many provisions of subpart E, as implemented in this interim final rule, are similar to those the NTSB proposed in the NPRM dated August 12, 2014. When the NTSB solicited comments concerning its proposed changes to part 831, it received one comment specific to marine casualty investigations, submitted by the United States Coast Guard (USCG). As a result, utilizing the notice and comment rulemaking process anew for this subpart is unnecessary.

B. NTSB and USCG: Statutory and Regulatory Considerations

In accordance with NTSB statutory authority (49 U.S.C. 1131(a)(1)(E)) and USCG statutory authorities (46 U.S.C. Chapters 61 and 63, and 14 U.S.C. 141)), for investigations involving any major marine casualty or any casualty involving public and nonpublic vessels, the NTSB works closely with the USCG, pursuant to the joint USCG–NTSB Marine Casualty Investigation Regulations. The NTSB's version of the joint regulations is codified at 49 CFR part 850 and the USCG's version is codified at 46 CFR subpart 4.40. Also as provided in those regulations, either agency may conduct investigations of certain types of marine casualties on its own, or with assistance from the other. As a result, the NTSB's relationship with the USCG during marine casualty investigations is distinct from the NTSB's relationship with other Federal agencies for investigations of transportation accidents in other modes, as described at § 831.5 of this part.

In addition, because of their separate authorities, NTSB and USCG investigations differ in some significant ways. The NTSB has the responsibility to evaluate the effectiveness of USCG regulations, policies, and practices in preventing casualties and examine the transport of hazardous materials. In addition to reporting on the probable cause, facts and circumstances of certain types of marine casualties, the NTSB also makes safety recommendations to reduce the likelihood of future casualties. The USCG is responsible for reporting on the cause of the casualty and identifying certification and licensure issues and potential criminal conduct. Specifically, Congress charged the USCG with the responsibility of

enforcing, or assisting in the enforcement of, all applicable laws on, under, and over the ''high seas and waters subject to the jurisdiction of the United States.'' 14 U.S.C. 2. In furtherance of this responsibility, 14 U.S.C. 89 authorizes USCG personnel to prevent, detect, and suppress violations of laws of the United States on waters subject to U.S. jurisdiction and in international waters, as well as on all vessels subject to U.S. jurisdiction. To carry out their respective missions, the NTSB and USCG closely coordinate to share evidence and information pertaining to marine casualty investigations.

In conducting marine casualty investigations, the USCG and NTSB adhere to joint regulations and the terms of a memorandum of understanding, which states the two agencies are equal partners in collecting evidence, and presumes where one of the two agencies maintains expertise, the other agency will assist in the investigative activities. Moreover, the NTSB and USCG joint regulations describe which of the two agencies will serve as the lead during an investigation. 49 CFR 850.15 and 850.25; 46 CFR subpart 4.40.

In this interim final rule, where appropriate and necessary, the NTSB has drafted text to exclude the USCG from certain requirements and/or otherwise accommodate the USCG's role in participating in NTSB marine safety casualty investigations. More generally, the agency promulgates this subpart for the purpose of establishing requirements for party participants in NTSB marine casualty investigations. In such investigations, the NTSB invites the participation of a variety of organizations and individuals. For example, the NTSB invites vessel operators, labor unions, manufacturers, and other organizations that can provide subject matter expertise in the specific marine casualty to participate in NTSB investigations. The investigative rules promulgated herein are distinct from the USCG investigative rules, due to the agencies' distinguishable missions, and to ensure the NTSB conducts independent investigations.

We intend the following discussion to resolve the concerns the USCG expressed with regard to our NPRM's proposed changes to § 831.1 Applicability, § 831.2 Responsibility of NTSB, § 831.4 Nature of investigation, § 831.5 Priority of NTSB investigations, § 831.7 Witness interviews, § 831.8 Investigator-in-charge, § 831.9 Authority of NTSB representatives, § 831.11 Parties to the investigation, and § 831.13 Flow and dissemination of investigative information.

A companion Final Rule that finalizes changes to part 831, subparts A through D, appears elsewhere in this issue of the **Federal Register**.

C. Section 831.50 Applicability

This section states that subpart E will apply to marine and major marine casualties for which the NTSB leads the investigation. When the USCG leads an investigation, that agency's rules and procedures apply. The section also enumerates two situations where these rules apply when the USCG leads an investigation: (1) When the USCG requests the NTSB to conduct an investigative activity and (2) when the NTSB seeks to collect evidence outside the scope of the USCG investigation.

D. Section 831.51 Definitions

The terms ''casualty'' and investigative activities are defined in § 831.51 in this Interim Final Rule. The NTSB adopts the term ''casualty'' as a general descriptor of marine occurrences that NTSB has the authority to investigate. In the NTSB's August 12, 2014, NPRM, the NTSB proposed using the term ''event'' to describe a lengthy listing of occurrences the NTSB would investigate under its rules codified at 49 CFR part 831. The USCG comment questioned the NTSB's proposed use of the term because it indicated the NTSB may investigate more than accidents and incidents (or, in the case of marine investigations, casualties). The NTSB agrees the term ''event,'' could cause confusion as to the types of occurrences NTSB will investigate, and therefore declines to adopt it.

Based on a USCG suggestion, the NTSB incorporates the definition of ''marine casualty'' in 46 CFR 4.03–1. We also add subparagraph (3) to the definition of ''marine casualty,'' to include, other marine occurrences that the NTSB or USCG, or both, determine require investigation.''

This regulatory definition of ''marine casualty'' does not expand or affect the NTSB's authority and responsibility; in receiving notifications from the USCG of casualties, the NTSB's actions will continue to be circumscribed by 49 U.S.C. 1131 and the agencies' joint regulations at 49 CFR part 850 and 46 CFR subpart 4.40.

Although requested by the USCG, we decline to remove the term ''abandonment'' from the definition of marine casualty because we have conducted investigations of vessel abandonments. For example, the NTSB investigated the abandonment of *Trinity II,* which personnel abandoned September 8, 2011.[1]

In this subpart, we also use the term ''investigative activity.'' Section 831.51 defines ''investigative activity'' as activities the NTSB directs during an investigation the USCG is leading. For example, the NTSB operates materials and recorder laboratories and employs experts who offer specialized skills and knowledge. When the USCG leads an investigation but seeks the NTSB's assistance with downloading data from a recorder or creating a transcript from an audio recording, the NTSB will create a group and supervise the actions of that particular investigative activity. In those instances, the NTSB's regulations will apply to the activity. Also, the NTSB may engage in investigative activities when the NTSB examines USCG regulations, policies, and practices. In doing so, the NTSB is fulfilling its statutory responsibility to evaluate the effectiveness of other departments responsible for transportation safety. 49 U.S.C. 1116(b)(4).

Finally, we add text to define the use of the abbreviation ''IIC'' throughout the subpart.

E. Section 831.52 Responsibility of NTSB in Marine Investigations

This section describes the authority of the NTSB to investigate marine and major marine casualties. This section also recognizes that while the NTSB may conduct separate investigative activities from the USCG, the two agencies will coordinate to avoid duplicative efforts.

F. Section 831.53 Authority of Director, Office of Marine Safety

The majority of text of § 831.53 derives from the final language adopted in § 831.3 of the final rule to subpart A of this part, but replaces the term ''accident'' with the phrase ''major marine casualty or marine casualty.''

[1] The 78.5-foot-long liftboat *Trinity II* sustained damage from severe weather associated with Hurricane Nate about fifteen miles offshore in the Gulf of Mexico. The four crewmembers and six contractors on board abandoned ship. All ten persons, wearing lifejackets, entered the water where they clung to a life float. By the time rescuers located the survivors three days later, three had died and another would die later at a hospital. The six survivors sustained serious injuries. See National Transportation Safety Board. 2013. *Personnel Abandonment of Weather-Damaged US Liftboat Trinity II, with Loss of Life, Bay of Campeche, Gulf of Mexico, September 8, 2011,* NTSB/MAR–13/01. Washington, DC. NTSB, available at *http://www.ntsb.gov/investigations/AccidentReports/Reports/MAR1301.pdf.*

G. Section 831.54 Nature of Investigation

Section 831.54, also includes language similar to that found in § 831.4 of the final rule. This regulatory text describes the general nature of NTSB investigations, including language confirming that our investigations are not for the purpose of assigning blame and are not subject to the APA. The NTSB agrees with the USCG's concern that the use of the proposed term ''preliminary'' investigation would not accurately reflect the process codified in our joint regulations at 49 CFR part 850 and 46 CFR 4.40–10. Specifically, these joint regulations call for the USCG to conduct preliminary investigations to assess whether a casualty constitutes a major marine casualty or if the occurrence appears to meet any other criteria outlined in the joint regulations.

H. Section 831.55 Relationship With Other Agencies

Section 831.55 describes the NTSB's relationship with the USCG and other Federal agencies during a marine casualty investigation. With respect to the USCG, we note the NTSB's authorizing legislation, at 49 U.S.C. 1131(a)(1)(E), specifies the NTSB and USCG will maintain a joint-working relationship in conducting investigations, and must prescribe joint regulations to do so. The NTSB joint regulations are codified at part 850 of this chapter.

As the regulatory text makes clear, the NTSB will inform the USCG and coordinate with it, as necessary, in activities relating to the collection of evidence. This will ensure both agencies have the information and evidence they need.

This section also describes how the NTSB interacts with other Federal agencies in marine casualty investigations. We have codified in this section the principle that the NTSB maintains priority in marine safety investigations over agencies other than the USCG. For example, for certain investigations, the Environmental Protection Agency, the Occupational Safety and Health Administration, the National Oceanic and Atmospheric Administration, the Navy, and the Army Corps of Engineers may need information. The NTSB will exchange such information in a timely manner, while maintaining its priority to work first with the USCG in achieving a robust, comprehensive collection of evidence and information. Similarly, the NTSB will require other Federal agencies coordinate with the NTSB to ensure their activities do not interfere with the safety investigation for the reasons explained in the preamble to subpart A of part 831 (as published elsewhere in this issue of the **Federal Register**).

The USCG also raised a concern about the NTSB's exclusive authority to decide the time and manner to extract data from evidence. The NTSB retains this proposed language now found in § 831.55(c). The complete discussion of the USCG comments can be found in the preamble discussion for § 831.59.

As requested by the USCG, the NTSB adopts language that clarifies that Federal agencies are not prohibited from conducting investigations under their own statutory authorities. To avoid duplicative efforts, we have also adopted language stating that those Federal agencies that conduct separate investigations are expected to coordinate with the NTSB.

By this interim final rule, the NTSB clarifies regulatory text proposed in the part 831 NPRM as it relates to evidence collection from USCG incident command systems. The revised text defines the role of the NTSB in the incident command system which is to identify investigative needs and request preservation of evidence. The text makes clear that the NTSB will coordinate these requests with the USCG investigative officer. The text also states that the NTSB will collect casualty information in a manner so as not to interfere with the operations of the incident command.

In the comment, the USCG questioned whether the NTSB is authorized to compel the production of information from incident or unified command systems during an ongoing marine casualty response. We note our authorizing legislation specifically tasks us with developing and issuing reports to ''propose corrective action to make the transportation of individuals as safe and free from risk of injury as possible, including action to minimize personal injuries that occur in transportation accidents.'' 49 U.S.C. 1116(a)(2). Moreover, the legislation requires us to ''examine techniques and methods of accident investigation and periodically publish recommended procedures for accident investigations,'' and ''evaluate, examine the effectiveness of, and publish the findings of the Board about the transportation safety consciousness of other departments, agencies, and instrumentalities of the Government and their effectiveness in preventing accidents.'' *Id.* § 1116(b)(2), (4). Also, when transportation of hazardous materials is a subject of an investigation, Congress has charged the NTSB with ''[evaluating] the adequacy of safeguards and procedures for the transportation of hazardous material and the performance of other departments, agencies, and instrumentalities of the Government responsible for the safe transportation of that material.'' *Id.* § 1116(b)(5). The NTSB cannot accomplish these mandated objectives without collecting evidence from incident command systems. The NTSB does not intend the regulatory text to lead to an interpretation that the NTSB could impede on-going USCG activities in an incident command system.

In recent years, the NTSB was a part of the Federal, state, and local incident command structures in certain accidents. These include the NTSB's investigation into transportation accidents in Paulsboro, New Jersey; Marshall, Michigan; Port Arthur, Texas; Cherry Valley, Illinois; Casselton, North Dakota; Graniteville, South Carolina; and San Bruno, California. Based on these investigations, the NTSB has issued dozens of safety recommendations in the interest of improving safety of various modes of transportation.

Furthermore, the NTSB's authority to participate in the incident command structure during an investigation is consistent with the Department of Homeland Security's *National Incident Management System: Intelligence/Investigations Function Guidance and Field Operations Guide* (Oct. 2013).[2] The Guide specifically describes the NTSB's participation in the Intelligence/Investigation element at the site of investigations as part of the unified command system structure. *Id.* at 3, 5, 11.

I. Section 831.56 Request To Withhold Information

We adopt the same language in this section as set forth in the final rule § 831.6. For a discussion of the comments, see the discussion in the preamble to the final rule for that section.

J. Section 831.57 Representation During an Interview

We agree with the USCG comment that the proposed phrase ''an investigator working on behalf of the NTSB'' could be problematic and we decline to include such language. We adopt the same language in this section as set forth in the final rule § 831.7. For a discussion of the comments, see the discussion in the preamble to the final rule for that section.

[2] Available at *https://publicintelligence.net/dhs-nims-intel-guide/.*

K. Section 831.58 Investigator-in-Charge

Section 831.58 largely parallels the language we codified in § 831.8. The section provides IICs the authority to sign and issue subpoenas, administer oaths and affirmations, and take depositions (or cause them to be taken) in furtherance of an investigation. In addition, the NTSB removes the word ''considerable'' from the final sentence in § 831.8, because it is unnecessary.

The USCG requested we add language that investigations be conducted in accordance with the joint regulations instead of adopting the language from § 831.8. The USCG suggests its personnel could be subject to the direction of the NTSB's IIC and such an interpretation is contrary to the current memorandum of understanding to which the USCG and the NTSB have agreed. We respectfully disagree that describing the authority of the IIC would be contrary to the NTSB–USCG memorandum of understanding. Rather, the memorandum of understanding recognizes the importance of designating one agency to lead during the on-scene portion of the investigation, while the agencies work together as equal partners in the collection of evidence. This designation serves to avoid confusion and duplication. When the NTSB leads a marine casualty investigation, the rules of part 831, subpart E, will apply. In this regard, accurately describing the IIC's role is critical.

We add paragraphs (c) and (d), which specifically state the NTSB IIC is responsible for ensuring that Federal agencies have the information they need. The newly added paragraphs also make clear that the IIC is responsible for coordinating with the USCG during the investigation.

L. Section 831.59 Authority During Investigations

The NTSB adopts the language of § 831.9 of this part. Consistent with that section, we remove the term ''authorized representative.'' We retain the text concerning our exclusive authority to conduct testing. This text closely follows the statutory text found in 49 U.S.C. 1134(d).

The USCG expressed concern that potential conflicts between NTSB and USCG investigators could arise during the course of an investigation, due to our proposed language concerning the NTSB's exclusive authority to test and/or extract data. We note that § 831.9 has long contained similar language and the USCG did not identify any specific investigation where a conflict regarding testing and extraction of data arose between the NTSB and USCG. Nor are we aware of any instances where the USCG investigation was impeded as a result of this text. The operational history between the agencies shows that the NTSB consults with the USCG when testing evidence or extracting data. This authority primarily functions to ensure private-sector parties do not conduct independent testing in the absence of NTSB approval. Courts have recognized the NTSB's authority in this regard. *See U.S.* v. *Pizzitola,* No. 4:14–CV–2335 (S.D. Tex. Dec. 4, 2014)(order to comply with subpoena).

M. Section 831.60 Autopsies and Postmortem Testing

This section was redrafted to more clearly state the content. No substantive changes were made from the proposed text. The regulation is adopted with these changes.

N. Section 831.61 Parties to the Investigation

The USCG requested that we revise our proposed statement indicating no entity maintains a right to party status. In its comment, the USCG stated this provision does not recognize its ''independent statutory investigative authority to conduct marine casualty investigations,'' nor does the rule recognize the USCG's authority to partner with the NTSB in marine casualty investigations. The USCG stated this partnership is outlined in the agencies' memorandum of understanding. The USCG recommended we add the following sentence to the section concerning parties: ''With regard to the investigation of marine casualties, the USCG has the right to participate as an equal partner in gathering evidence and establishing facts.''

In this interim final Rule, the NTSB has added text that the NTSB will provide the USCG the opportunity to participate as a party in all NTSB marine casualty investigations and investigative activities. In paragraph (a)(2) of the section, the NTSB specifically exempts the USCG from the statement that no entity shall automatically have the right to participate in an NTSB investigation as a party. These edits are intended to ensure the public is aware the two agencies function as investigative partners.

All other changes are consistent with § 831.11 and the preamble for that section sets forth the agency's reasons for the changes.

O. Section 831.62 Access to and Release of Wreckage, Records, Mail, and Cargo

This section adopts the text of § 831.12. For a discussion of the comments, please see the preamble to the final rule for that section.

P. Section 831.63 Provision and Dissemination of Investigative Information

For the regulatory text pertaining to release of information, the USCG requested we include text stating we will coordinate with its personnel prior to public release of investigative information. We include regulatory text that states we will inform the USCG concerning releases and decisions to disseminate information, as long as such coordination would not affect the investigation. Because we understand the USCG needs to be aware of a planned release of information from an investigation by the NTSB, we will coordinate to the maximum extent practicable.

The USCG also stated our proposed text for § 831.13 ''does not consider the privacy protection laws and requirements to which the Coast Guard must adhere.'' In addition, as with its comments on other proposed regulatory sections, the USCG states the section does not consider ''the Coast Guard's role as a joint-investigating agency (or, in some circumstances, the lead investigating agency) and its policies and discretion on the release of information.'' Based on these concerns, the USCG recommends we explicitly recognize, in the regulatory text of § 831.13, ''other agencies' responsibilities to protect privacy information under applicable Federal laws.''

The NTSB takes seriously its obligations under Federal privacy and information laws. Regulatory text, however, stating our practices for complying with applicable Federal law is unnecessary. For example, if information would be exempt from public disclosure under Exemption 6 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(6), and that record originated from the USCG, we would refer the document to the USCG for any redactions. Analysis under FOIA Exemption 6 requires a balancing of the privacy interest and the public interest in the information. If such information is related to the probable or contributory cause of a casualty, we limit the release to only that information required to explain a finding or a recommendation.

We note the practice the NTSB and USCG have agreed to follow with

respect to Privacy Act protected information from USCG system of records. If the NTSB determines it needs to disclose information for safety purposes in a final NTSB report or supporting factual material, and the USCG has already redacted the information on privacy grounds, the NTSB will provide the USCG notice of, and an opportunity to comment on, the proposed release and rationale. The NTSB will also comply with the USCG's requested redaction. The NTSB and the USCG have been successfully using this practice.

Q. Section 831.64 Proposed Findings

This section adopts the text of § 831.14. For a discussion of the comments, please see the preamble to the final rule for that section.

II. Regulatory Analysis

This interim final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order. As such, the Office of Management and Budget has not reviewed this interim final rule under Executive Order 12866. Likewise, this interim final rule does not require an analysis under the Unfunded Mandates Reform Act, 2 U.S.C. 1501–1571, or the National Environmental Policy Act, 42 U.S.C. 4321–4347.

In addition, the NTSB has considered whether this interim final rule would have a significant economic impact on a substantial number of small entities, under the Regulatory Flexibility Act (5 U.S.C. 601–612). The NTSB certifies under 5 U.S.C. 605(b) that this interim final rule would not have a significant economic impact on a substantial number of small entities. Moreover, in accordance with 5 U.S.C. 605(b), the NTSB will submit this certification to the Chief Counsel for Advocacy at the Small Business Administration.

The NTSB does not anticipate this interim final rule will have a substantial, direct effect on state or local governments or will preempt state law; as such, this interim final rule does not have implications for Federalism under Executive Order 13132, Federalism. This interim final rule also complies with all applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. In addition, the NTSB has evaluated this interim final rule under: Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights; Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use; and the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note. The NTSB has concluded this interim final rule does not contravene any of the requirements set forth in these Executive Orders or statutes, nor does this rule prompt further consideration with regard to such requirements.

List of Subjects in 49 CFR Part 831

Aircraft accidents, Aircraft incidents, Aviation safety, Hazardous materials transportation, Highway safety, Investigations, Marine safety, Pipeline safety, Railroad safety.

For the reasons discussed in the preamble, the NTSB adds 49 CFR part 831, subpart E, to read as follows:

PART 831—ACCIDENT/INCIDENT INVESTIGATION PROCEDURES

■ 1. The authority citation for part 831 continues to read as follows:

Authority: 49 U.S.C. 1113(f).

■ 2. Add subpart E to read as follows:

Subpart E—Marine Investigations

Sec.

Authority: 49 U.S.C. 1113(f), 1116, 1131, 1134, unless otherwise noted.

Subpart E Marine Investigations

§ 831.50 Applicability of this subpart.

(a) The regulations in this subpart apply when the NTSB is leading a marine or major marine casualty investigation.

(b) In a marine or major marine casualty investigation led by the United States Coast Guard (USCG), this subpart applies if:

(1) Upon USCG's request for assistance, the NTSB is leading an associated investigative activity; or

(2) Upon coordination with the USCG, the NTSB elects to collect, test or analyze additional evidence beyond the scope of the USCG's investigation.

§ 831.51 Definitions.

The following definitions apply throughout this subpart.

IIC means the NTSB investigator-in-charge.

Investigative activity means an activity performed by or under the direction of the NTSB during a casualty investigation led by the USCG.

Major marine casualty is defined in joint regulations of the NTSB and USCG at 49 CFR 850.5(e) and 46 CFR 4.40–5(d), respectively.

Marine casualty means—

(1) Any casualty, accident or event described in 46 CFR 4.03–1

(2) An occurrence that results in an abandonment of a vessel

(3) Other marine occurrences that the NTSB or USCG, or both, determine require investigation.

§ 831.52 Responsibility of NTSB in marine investigations.

(a) The NTSB may conduct an investigation of a major marine casualty or a marine casualty of a vessel (including, but not limited to, allisions, abandonments, and accidents) alone or jointly with the USCG pursuant to the joint regulations in part 850 of this chapter.

(b) Nothing in this part may be construed to conflict with the regulations in part 850 of this chapter, which were prescribed jointly by the NTSB and USCG under the authority of 49 U.S.C. 1131(a)(1)(E).

(c) In an investigation led by the USCG, the NTSB may perform separate activities in furtherance of its own analysis or at the request of the USCG. The NTSB and USCG will coordinate to ensure the agencies do not duplicate work or hinder the progress of the investigation.

(d) Pursuant to 49 U.S.C. 1131(a)(1)(F), the NTSB is responsible for the investigation of other accidents that may include marine and boating accidents not covered by part 850 of this chapter, and certain accidents involving transportation and/or release of hazardous materials.

§ 831.53 Authority of Director, Office of Marine Safety.

The Director, Office of Marine Safety, subject to the provisions of § 831.52 of this part and part 800 of this chapter, may order an investigation into any

major marine casualty or marine casualty.

§ 831.54 Nature of investigation.

(a) *General.* The NTSB conducts investigations, or has them conducted, to determine the facts, conditions, and circumstances relating to a major marine casualty or a marine casualty. The NTSB uses these results to determine one or more probable causes of a major marine casualty or a marine casualty, and to issue safety recommendations to prevent or mitigate the effects of a similar major marine casualty or a marine casualty. The NTSB is required to report on the facts and circumstances of major marine casualties or marine casualties it investigates. The NTSB begins an investigation by monitoring casualty situations and assessing available facts to determine the appropriate investigative response. Following an initial assessment, the NTSB notifies persons and organizations it anticipates will be affected as to the extent of its expected investigative response.

(b) *NTSB products.* An investigation may result in a report or brief of the NTSB's conclusions and other products designed to improve transportation safety. Other products may include factual records, safety recommendations, and other safety information.

(c) NTSB investigations are fact-finding proceedings with no adverse parties. The investigative proceedings are not subject to the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), and are not conducted for the purpose of determining the rights, liabilities, or blame of any person or entity, as they are not adjudicatory proceedings.

§ 831.55 Relationships with other agencies.

(a) *Relationship with the USCG.* (1) The NTSB conducts marine casualty and major marine casualty investigations, in accordance with 49 U.S.C. 1131(a)(1)(E) and (F), and part 850 of this chapter. The NTSB and USCG work together to collect evidence related to marine casualties and major marine causalities.

(2) The NTSB and USCG coordinate to avoid duplicative efforts to the maximum extent practicable.

(3) The NTSB independently analyzes the evidence and determines the probable cause of marine casualties and major marine causalities.

(b) *Relationships with other Federal agencies.* (1) Except as provided in 49 U.S.C. 1131(a)(2)(B) and (C) regarding suspected criminal actions, an investigation conducted under the authority of the NTSB has priority over any investigation conducted by another Federal agency.

(2) The NTSB will provide for appropriate participation by other Federal agencies in any NTSB investigation. Such agencies may not participate in the NTSB's probable cause determination.

(3) The NTSB has first right to access wreckage, information, and resources, and to interview witnesses the NTSB deems pertinent to its investigation.

(4) The NTSB and other Federal agencies will exchange information obtained or developed in the course of their investigations in a timely manner. Nothing in this section prohibits the NTSB from sharing factual information with other agencies.

(c) As indicated in § 831.59(c) of this part, the NTSB has exclusive authority to determine when and how the testing and examination of evidence will occur.

(d) The NTSB may take possession of records, wreckage, or information if it determines such possession is necessary for an investigation.

(e) *Investigations by Federal agencies.* (1) Nothing in this section impairs the authority of any other Federal agency to conduct an investigation of a marine casualty or major marine casualty.

(f) *Incident command system.* (1) The NTSB recognizes the role of incident command systems to address emergencies. The NTSB does not assume the role of a first responder agency.

(2) The NTSB IIC or his designee will participate in the incident command system to identify and coordinate investigative needs as it relates to the preservation and collection of information and evidence.

(3) The NTSB IIC or his designee will coordinate with the Coast Guard Investigation Officer to identify and coordinate investigative needs as it relates to the preservation and collection of information and evidence.

(4) The NTSB may collect information and evidence from an incident command in a timely and reasonable manner so as not to interfere with its operations.

§ 831.56 Request to withhold information.

(a) *Applicability.* This section applies to information the NTSB receives from any source that may be subject to the Trade Secrets Act (18 U.S.C. 1905) or the Freedom of Information Act (FOIA, 5 U.S.C. 552).

(b) *Disclosure.* The NTSB is authorized by 49 U.S.C. 1114(b) to disclose, under certain circumstances, confidential commercial information that would otherwise be subject to penalties for disclosure under the Trade Secrets Act, or excepted from disclosure under FOIA. The NTSB may exercise this authority when disclosure is necessary to support a key finding, a safety recommendation, or the NTSB's statement of probable cause of a major marine casualty or a marine casualty.

(c) *Disclosure procedures.* Information submitted to the NTSB that the submitter believes qualifies as a trade secret or as confidential commercial information subject either to the Trade Secrets Act or Exemption 4 of FOIA must be so identified by the submitter on each page that contains such information. In accordance with 48 U.S.C. 1114(b), the NTSB will provide the submitter of identified information (or information the NTSB has reason to believe qualifies as subject to the Trade Secrets Act or Exemption 4 of FOIA) the opportunity to comment on any disclosure contemplated by the NTSB. In all instances in which the NTSB decides to disclose such information pursuant to 49 U.S.C. 1114(b) or 5 U.S.C. 552, the NTSB will provide at least 10 days' notice to the submitter.

(d) *Voluntarily provided safety information.* (1) The NTSB will not disclose safety-related information voluntarily submitted to the NTSB if the information is not related to the exercise of the NTSB's investigation authority, and if the NTSB finds disclosure of the information might inhibit the voluntary provision of that type of information.

(2) The NTSB will review voluntarily provided safety information for confidential content, and will de-identify or anonymize any confidential content referenced in its products.

(e) *Other.* Any person may make written objection to the public disclosure of any other information, such as interview summaries or transcripts, contained in any report or document filed, or otherwise obtained by the Board, stating the grounds for such objection. The Board, on its own initiative or if such objection is made, may order such information withheld from public disclosure when, in its judgment, the information may be withheld under the provisions of an exemption to the Freedom of Information Act (5 U.S.C. 552, see part 801 of this chapter), and its release is found not to be in the public interest.

§ 831.57 Representation during an interview.

(a) Any person interviewed in any manner by the NTSB has the right to be accompanied during the interview by no more than one representative of the witness's choosing. The representative—

(1) May be an attorney;

(2) May provide support and counsel to the witness;

(3) May not supplement the witness's testimony; and

(4) May not advocate for the interests of a witness's other affiliations.

(b) An investigator conducting the interview may take any necessary action (including removal of the representative from the interview) to ensure a witness's representative acts in accordance with the provisions of paragraph (a) of this section during the interview, and to prevent conduct that may be disruptive to the interview.

§ 831.58 Investigator-in-charge.

(a) In addition to the subpoena and deposition authority delegated to investigative officers under this chapter, a person designated as IIC for an investigation is authorized to—

(1) Organize, conduct, control, and manage the field phase of an investigation, even when a Board Member is present.

(2) Coordinate all resources and provide direction to all persons (including persons not employed by the NTSB) involved in an on-site investigation.

(3) Work with other Federal agencies in the investigation of a marine casualty or major marine casualty when other agencies are participating, to ensure all agencies will obtain the information, evidence, and resources needed for the investigation(s) or investigative activities.

(4) Work with the USCG to ensure the agencies do not duplicate work to the maximum extent practicable.

(5) Continue his or her organizational and management responsibilities through all phases of the investigation, including consideration and adoption of a report or brief determining one or more probable causes of a marine casualty or major marine casualty.

§ 831.59 Authority during investigations.

(a) *General authority of investigators.* To carry out the statutory responsibilities of the agency, an NTSB investigator may—

(1) Conduct hearings;

(2) Administer oaths;

(3) Require, by subpoena or other means, the production of evidence and witnesses;

(4) Enter any property where a major marine casualty or marine casualty subject to the NTSB's jurisdiction has occurred, or wreckage from any such major marine casualty or marine casualty is located, and take all actions necessary to conduct a complete investigation;

(5) Inspect, photograph, or copy any records or information (including medical records pursuant to paragraph (b)(2) of this section), and correspondence regardless of the date of its creation or modification, for the purpose of investigating an accident;

(6) Question any person having knowledge relevant to a marine casualty or major marine casualty.

(b) *Subpoenas.* The NTSB may issue a subpoena, enforceable in Federal District Court, to obtain testimony or evidence related to its investigation of a marine casualty or major marine casualty, including but not limited to personal electronic devices.

(1) The NTSB's authority to issue subpoenas includes access to medical records and specimens.

(2) For purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, and the regulations promulgated by the Department of Health and Human Services, 45 CFR 164.501 *et seq.,* the NTSB is a ''public health authority'' to which protected health information may be disclosed by a HIPAA ''covered entity'' without the prior written authorization of the subject of the records. In addition, the NTSB may issue a subpoena to gain access to such information.

(c) *Examination of evidence.* In accordance with 49 U.S.C. 1134(d), the NTSB has exclusive authority to decide when, and in what manner, testing, extraction of data, and examination of evidence will occur.

§ 831.60 Autopsies and postmortem testing.

When a person dies as a result of having been involved in a marine casualty or major marine casualty within the jurisdiction of the NTSB—

(a) The NTSB is authorized to obtain, with or without reimbursement, a copy of a report of autopsy performed by a State or local authority on such person.

(b) The NTSB may order an autopsy or other postmortem tests of any person as may be related to its investigation of a marine casualty or major marine casualty. The IIC may direct that an autopsy or other test be performed if necessary for an investigation. Provisions of local law protecting religious beliefs with respect to autopsies shall be observed to the extent they are consistent with the needs of the investigation.

§ 831.61 Parties to the investigation.

(a) *Participants.* (1) The IIC may designate one or more entities to serve as parties in an investigation. The NTSB will provide to the USCG the opportunity to participate in all NTSB investigations and investigative activities the NTSB conducts under this subpart. For all other organizations, party status is limited to those persons, government agencies (Federal, state, or local), companies, and organizations whose employees, functions, activities, or products were involved in the marine casualty or major marine casualty and that can provide suitable qualified technical personnel actively to assist in an investigation. To the extent practicable, a representative proposed by party organizations to participate in the investigation may not be a person who had direct involvement in the major marine casualty or marine casualty under investigation.

(2) Except the USCG, no entity has a right to participate in an NTSB marine investigation as a party.

(3) Participants in an investigation (*e.g.,* party representatives, party coordinators, and the larger party organization) must respond to direction from NTSB representatives.

(4) No party representative may—

(i) Occupy a legal position; or

(ii) Be a person who also represents claimants or insurers.

(5) Party status may be revoked or suspended if a party fails to comply with either paragraph (a)(3) or (a)(4) of this section. Sanctions may also be imposed if a party withholds information or acts in a manner prejudicial or disruptive to an investigation.

(b) *Disclosures.* (1) The name of a party or its representative may be disclosed in documents the NTSB places in the public docket for the investigation.

(2) The NTSB may share information considered proprietary or confidential by one party with other parties during the course of an investigation, but will preserve the confidentiality of the information to the greatest extent possible.

(3) Section 831.6(c) of this part describes how the NTSB will handle voluntarily submitted safety information, and the NTSB's determination whether to share any such information. The NTSB will de-identify the source of such information when deciding to share it.

(c) *Party agreement.* All party representatives must sign the ''Statement of Party Representatives to NTSB Investigation'' (Statement) upon acceptance of party status. Failure to timely sign the Statement may result in sanctions, including loss of party status. Representatives of Federal agencies are not required to sign the Statement, but

must comply with the responsibilities and limitations set forth in the agreement.

(d) *Internal review by a party.* (1) To assure coordination of concurrent efforts, a party to an investigation that conducts or authorizes a review of its own processes and procedures as a result of a major marine casualty or a marine casualty the NTSB is investigating must inform the IIC in a timely manner of the nature of its review. A party performing such review must provide the IIC with the findings from this review.

(2) If the findings from a review contain privileged information—

(i) The submitting party must inform the IIC that the review contains privileged information;

(ii) The submitting party must identify the privileged content at the time of submission to the IIC;

(iii) The NTSB must, when informed that such information is being submitted, review the information for relevancy to the investigation, and determine whether the information is needed for the investigation or may be excluded from the party's response.

(3) The NTSB may use the protections described in § 831.56 of this part, as applicable, to protect certain findings from public disclosure.

(4) Investigations performed by other Federal agencies during an NTSB investigation are addressed in § 831.55 of this part.

§ 831.62 Access to and release of wreckage, records, mail, and cargo.

(a) Only persons authorized by the NTSB to participate in any particular investigation, examination or testing may be permitted access to wreckage, records, mail, or cargo.

(b) Wreckage, records, mail, and cargo in the NTSB's custody will be released when the NTSB determines it has no further need for such items. Prior to release, the NTSB will inform the USCG of the upcoming release of wreckage or evidence. Recipients of released wreckage must sign an acknowledgement of release provided by the NTSB.

§ 831.63 Provision and dissemination of investigative information.

(a) *Applicability.* This section applies to:

(1) Any information related to a marine casualty or major marine casualty;

(2) Any information collected or compiled by the NTSB as part of its investigation, such as photographs, visual representations of factual data, physical evidence from the scene of the major marine casualty or the marine casualty, interview statements, wreckage documentation, voyage data recorder information, and surveillance video;

(3) Any information regarding the status of an investigation, or activities conducted as part of the investigation.

(b) *Provision of information.* All information described in paragraph (a) of this section and obtained by any person or organization participating in the investigation must be provided to the NTSB, except for information the NTSB authorizes the party to retain.

(c) *Release of information.* Parties are prohibited from releasing information obtained during an investigation at any time prior to the NTSB's public release of information unless the release is consistent with the following criteria:

(1) Information released at the scene of a marine casualty or major marine casualty:

(i) Is limited to factual developments concerning the accident and the investigation released in coordination with the IIC; and

(ii) Will be made by the Board Member present at the scene as the official spokesperson for the NTSB. If no Board Member is present, information will be released by a representative of the NTSB's Office of Media Relations or the IIC. To the maximum extent practicable, the NTSB will inform the USCG of its planned releases of information before the release occurs.

(2) The release of information described in paragraph (a)(1) of this section by the NTSB at the scene of a marine casualty or major marine casualty does not authorize any party to the investigation to comment publicly on the information during the course of the investigation. Any dissemination of factual information by a party may be made only as provided in this section.

(3) A party may disseminate information related to an investigation to those individuals within its organization who have a need to know for the purpose of addressing a safety issue, including preventive or remedial actions. If such internal release of information results in a planned safety improvement, the party must inform the IIC of such planned improvement in a timely manner before it is implemented.

(4) Any other release of factual information related to the investigation must be approved by the IIC prior to release, including:

(i) Dissemination within a party organization, for a purpose not described in paragraph (b)(3) of this section;

(ii) Documents that provide information concerning the investigation, such as written directives or informational updates for release to employees or customers of a party; and

(iii) Information related to the investigation released to an organization or person that is not a party to the investigation.

(d) The release of recordings or transcripts from certain recorders may be made only in accordance with the statutory limitations of 49 U.S.C. 1114(c), 1114(d), and 1154(a).

§ 831.64 Proposed findings.

(a) *General.* Any party to an investigation designated under § 831.61 may submit to the NTSB written proposed findings to be drawn from the evidence produced during the course of the investigation, a proposed probable cause, and/or proposed safety recommendation(s) designed to prevent future major marine casualties and marine casualties.

(b) *Timing of submissions.* The IIC will inform parties when submissions are due. All written submissions must be received by the due date. If there is a Board meeting, the due date will be set prior to the date the matter is published in the **Federal Register**.

Robert L. Sumwalt, III,

Acting Chairman.

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