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## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

### 9 CFR Parts 530, 531, 532, 533, 534, 537, 539, 540, 541, 544, 548, 550, 552, 555, 557, 559, 560, and 561

**[Docket No. FSIS–2017–0032]**

## Educational Meeting on the Mandatory Inspection of Fish of the Order Siluriformes and Products Derived From Such Fish Final Rule Implementation

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notification of educational meeting.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is announcing an educational meeting to discuss the enforcement and implementation of the Final Rule, ''Mandatory Inspection of Fish of the Order Siluriformes and Products Derived from Such Fish.'' Fish of the order Siluriformes include fish of several families, including catfish (fish of the family Ictaluridae), basa, tra, and swai (fish of the family Pangasiidae), and clarias (fish of the Clariidae family). FSIS will present information on the upcoming full implementation of the regulatory requirements at official domestic establishments that process Siluriformes fish and fish products, as well as information on entry procedures and reinspection at official import inspection establishments. FSIS is particularly interested in soliciting participation from representatives from domestic wild-caught operations that process Siluriformes fish and fish products.

The primary objectives of the meeting are to provide updated information to stakeholders and to encourage dialogue between FSIS and the Siluriformes fish industry. Affected industry and interested individuals, organizations, and other stakeholders are invited to participate in the meetings.

**DATES:** The meeting will be held in Memphis, TN, on Thursday, August 24, 2017; 9 a.m.–3 p.m. CT.

**ADDRESSES:** The meeting will be held at the Holiday Inn Memphis Airport and Convention Center located at 2240 Democrat Rd., Memphis, TN 38132. For directions and parking instructions, please visit: *https://www.ihg.com/holidayinn/hotels/us/en/memphis/memdr/hoteldetail.*

**FOR FURTHER INFORMATION CONTACT:** Evelyn Arce, Outreach and Partnership Division, Office of Outreach, Employee Education and Training, FSIS, 1400 Independence Ave. SW., Mail Stop 3778, Washington, DC 20250; Telephone: (202) 418–8903; Fax: (202) 690–6519; Email: *Evelyn.Arce@fsis.usda.gov,* regarding additional information about this meeting or to arrange for special accommodations.

Questions regarding the mandatory inspection of fish of the order Siluriformes and products derived from such fish may be directed to *AskFish@fsis.usda.gov.*

**SUPPLEMENTARY INFORMATION:** Further information on these meetings will be posted on FSIS Web site at: *https://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings* and through the *FSIS Constituent Update.*

The final rule may be accessed from the FSIS Web site at: *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register/interim-and-final-rules.*

*Registration:* To pre-register for the either of meetings, please go to *http://www.fsis.usda.gov/wps/portal/fsis/newsroom/meetings.*

The cutoff dates for pre-registration is August 22, 2017.

### Background

On December 2, 2015, FSIS published the final rule to establish a mandatory inspection program for fish of the order Siluriformes and products derived from these fish (80 FR 75590). The final rule and other resources and information on Siluriformes fish can be found on the FSIS ''Inspection Program For Siluriformes Fish, Including Catfish'' Web page: *https://www.fsis.usda.gov/wps/portal/fsis/topics/inspection/siluriformes.*

The final rule was effective March 1, 2016; however, the Agency provided an 18-month transitional period until September 1, 2017, to give domestic establishments time to prepare and comply with the final regulations. The transitional period also provided foreign countries with time to submit the documentation necessary to continue exporting Siluriformes fish and fish products to the United States and to show that they have equivalent inspection systems.

FSIS began inspecting domestic establishments on March 1, 2016, and began selecting imported Siluriformes fish shipments for reinspection on April 15, 2016. During the transitional period, FSIS inspection personnel have exercised broad discretion in enforcing the regulatory requirements, focusing primarily on preventing adulterated or misbranded Siluriformes fish and fish products from entering commerce.

As of August 2, 2017, to abide with direction from Congress, all shipments of imported Siluriformes fish and fish products entering the United States must be presented at an Official Import Inspection Establishment for reinspection by FSIS personnel. Specifically, the explanatory statement accompanying the Consolidated Appropriations Act, 2017, Public Law 115–31 Stat. 135, enacted May 5, 2017, directed FSIS to immediately begin reinspecting all imported Siluriformes fish and fish product shipments *https://www.congress.gov/crec/2017/05/03/CREC-2017-05-03-bk2.pdf*). FSIS announced its intention to begin this reinspection in a **Federal Register** notice on July 3, 2017 (''Import Reinspection of Fish of the Order Siluriformes'' (82 FR 30721)).

FSIS held a series of domestic and import educational meetings when the final rule initially published in December 2015. In June and July 2017, FSIS held additional educational meetings in Richmond, VA, and Baltimore, MD. FSIS has gained significant insight into the domestic and importing Siluriformes fish industries during the transitional period. FSIS is announcing this educational meeting to provide collect more information and to provide updates regarding full implementation of the regulatory requirements.

In addition, the Agency is interested in exchanging information with operations that process wild-caught Siluriformes fish and fish products, and encourages representatives and parties involved in this industry to attend the

educational meetings. The Agency is particularly interested in gaining insight into how the wild-caught Siluriformes fish arrive at processing facilities, where the wild-caught Siluriformes fish are sourced, daily production volume information for these facilities, and where the final Siluriformes fish and fish products are being sold or distributed after processing.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

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*Mail:* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

*Fax:* (202) 690–7442.

*Email: program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on: August 7, 2017.

**Carmen M. Rottenberg,**

*Acting Deputy Under Secretary, Office of Food Safety.*

[FR Doc. 2017–16895 Filed 8–9–17; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2017–0788; Product Identifier 2017–NE–27–AD; Amendment 39–18988; AD 2017–16–11]**

**RIN 2120–AA64**

## Airworthiness Directives; Lycoming Engines Reciprocating Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain models of Lycoming Engines reciprocating engines. This AD requires an inspection of connecting rods and replacement of affected connecting rod small end bushings. This AD was prompted by several reports of connecting rod failures resulting in uncontained engine failure and in-flight shutdowns (IFSDs). We are issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective August 15, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 15, 2017.

We must receive comments on this AD by September 25, 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:* 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 final rule, contact Lycoming Engines, 652 Oliver Street, Williamsport, PA 17701; phone: 800–258–3279; fax: 570–327–7101; Internet: *www.lycoming.com/Lycoming/SUPPORT/TechnicalPublications/ServiceBulletins.aspx.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0788.

**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–2017–0788; 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 final rule, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Norman Perenson, Aerospace Engineer, New York ACO Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7337; fax: 516–794–5531; email: *norman.perenson@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We have received 5 reports of uncontained engine failures and IFSDs due to failed connecting rods on various models of Lycoming Engines reciprocating engines listed in Table 1 of Lycoming Engines Mandatory Service Bulletin (MSB) No. 632B, dated August 4, 2017, that were overhauled or repaired using any replacement part listed in Table 2 of Lycoming Engines MSB No. 632B, dated August 4, 2017,

which was shipped from Lycoming Engines during the dates listed in Table 2 of Lycoming Engines MSB No. 632B, dated August 4, 2017. This AD requires accomplishing the instructions in Lycoming Engines MSB No. 632B, dated August 4, 2017, except for the instruction to complete the online survey as specified in the MSB. This condition, if not corrected, could result in uncontained engine failure, total engine power loss, IFSD, and possible loss of the airplane. We are issuing this AD to prevent connecting rod failure.

**Related Service Information Under 1 CFR Part 51**

Lycoming Engines Mandatory Service Bulletin (MSB) No. 632B, dated August 4, 2017. The MSB describes procedures for inspecting connecting rods and replacing connecting rod small end bushings. 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**

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

**AD Requirements**

This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the AD and the Service Information''.

**Differences Between This AD and the Service Information**

Lycoming Engines MSB No. 632B, dated August 4, 2017 requires you to complete an online survey at *www.lycoming.com/SB632,* review your inventory of any part listed in Table 2 of the MSB, and sending certain parts to Lycoming Engines. This AD does not include those requirements.

**FAA's Justification and Determination of the Effective Date**

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because compliance is required within 10 operating hours. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2017–0788 and Product Identifier 2017–NE–27–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the closing date and may amend this final rule because of 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 final rule.

**Costs of Compliance**

We estimate that this AD affects 778 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection ..... | 15 work-hours × $85 per hour = $1,275 per inspection cycle. | $150.00 | $1,425 | $1,108,650.00 per inspection cycle. |

We estimate the following costs to do any necessary replacements that would be required based on the results of the 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 |
|---|---|---|---|
| Connecting rod replacement on 4-cylinder engine ..... | 12 work-hours × $85 per hour = $1,020.00 ..... | $1,150.00 | $2,170.00 |
| Connecting rod replacement on 6-cylinder engine ..... | 18 work-hours × $85 per hour = $1,530.00 ..... | 5,150.00 | 6,680.00 |
| Connecting rod replacement on 8-cylinder engine ..... | 20 work-hours × $85 per hour = $1,700.00 ..... | 5,150.00 | 6,850.00 |

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.

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

**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):

**2017–16–11 Lycoming Engines Reciprocating Engines:** (Type Certificate previously held by Textron Lycoming Division, AVCO Corporation): Amendment 39–18988; Docket No. FAA–2017–0788; Product Identifier 2017–NE–27–AD.

**(a) Effective Date**

This AD is effective August 15, 2017.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to:

(1) All Lycoming Engines reciprocating engines listed in Table 1 of Lycoming Engines Mandatory Service Bulletin (MSB) No. 632B, dated August 4, 2017, and

(2) all Lycoming Engines reciprocating engines that were overhauled or repaired using any replacement part listed in Table 2 of Lycoming Engines MSB No. 632B, dated August 4, 2017, which was shipped from Lycoming Engines during the dates listed in Table 2 of Lycoming Engines MSB No. 632B, dated August 4, 2017.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 8520, Reciprocating Engine Power Section.

**(e) Unsafe Condition**

This AD was prompted by several reports of connecting rod failures resulting in uncontained engine failure and in-flight shutdowns (IFSDs). We are issuing this AD to prevent connecting rod failure. The unsafe condition, if not corrected, could result in uncontained engine failure, total engine power loss, IFSD, and possible loss of the airplane.

**(f) Compliance**

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

**(g) Required Actions**

(1) For all affected engines, within 10 operating hours after the effective date of this AD, inspect all affected connecting rods as specified in Lycoming Engines MSB No. 632B, dated August 4, 2017, except for the instruction to complete the online survey and the instruction to review your inventory.

(2) Replace all connecting rods that fail the inspection required by paragraph (g)(1) of this AD with parts eligible for installation.

**(h) Installation Prohibition**

After the effective date of this AD:

(1) Do not install any Lycoming Engines reciprocating engine that was overhauled or repaired using any replacement part listed in Table 2 of Lycoming Engines MSB No. 632B, dated August 4, 2017, which was shipped from Lycoming Engines during the dates listed in Table 2 of Lycoming Engines MSB No. 632B, dated August 4, 2017, and

(2) do not install any part listed in Table 2 of Lycoming Engines MSB No. 632B, dated August 4, 2017 into any Lycoming Engines reciprocating engine.

**(i) Credit for Previous Actions**

You may take credit for the actions required by paragraph (g) of this AD if you performed those actions before the effective date of this AD using Lycoming Engines MSB No. 632A, dated July 23, 2017 or earlier versions.

**(j) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, New York ACO Branch, 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 certification office, send it to the attention of the person identified in paragraph (j) 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.

**(k) Related Information**

For more information about this AD, contact Norman Perenson, Aerospace Engineer, New York ACO Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7337; fax: 516–794–5531; email: *norman.perenson@faa.gov.*

**(l) 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) Lycoming Engines Mandatory Service Bulletin No. 632B, dated August 4, 2017.

(ii) Reserved.

(3) For Lycoming Engines service information identified in this AD, contact Lycoming Engines, 652 Oliver Street, Williamsport, PA 17701; phone: 800–258–3279; fax: 570–327–7101; Internet: *www.lycoming.com/Lycoming/SUPPORT/TechnicalPublications/ServiceBulletins.aspx.*

(4) You may view this service information at FAA, Engine and Propeller Standards Branch. For information on the availability of this material at the FAA, call 781–238–7125.

(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 Burlington, Massachusetts, on August 7, 2017.

**Robert J. Ganley,**

*Manager, Engine and Propeller Standards Branch, Aircraft Certification Service.*

[FR Doc. 2017–16968 Filed 8–9–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2017–0761]**

### Drawbridge Operation Regulation; Norwalk River, Norwalk, CT

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Washington Street S136 Bridge across the Norwalk River, mile 0.0 at Norwalk, Connecticut. This deviation is necessary to facilitate electrical repairs and will allow the owner to temporarily close the draw for a period not to exceed 10 hours.

**DATES:** This deviation is effective from 7 p.m. on August 14, 2017 through 5 a.m. on August 15, 2017.

**ADDRESSES:** The docket for this deviation, USCG–2017–0761, is available at *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 deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email James M. Moore, Bridge Management Specialist, First District Bridge Branch, U.S. Coast Guard; telephone 212–514–4334, email *James.M.Moore2@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The owner of the bridge, the Connecticut Department of Transportation, requested a temporary deviation in order to facilitate repair and replacement of electrical conduits controlling span power lock and control.

The Washington Street S136 Bridge across the Norwalk River, mile 0.0 at Norwalk, Connecticut is a double-leaf bascule bridge with a vertical clearance of 9 feet at mean high water and 16 feet at mean low water in the closed position. The existing drawbridge operating regulations are listed at 33 CFR 117.217(a).

The temporary deviation will allow the Washington Street S136 Bridge to remain closed from 7 p.m. on August 14, 2017 through 5 a.m. on August 15, 2017. The waterway is used primarily by seasonal recreational vessels and occasional tug/barge traffic. Coordination with waterway users has indicated no objections to the proposed short-term closure of the draw.

Vessels that can pass under the bridge without an opening may do so at all times. The bridge will not be able to open for emergencies. There is no alternate route for vessels to pass.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: August 4, 2017.

**Christopher J. Bisignano,**

*Supervisory Bridge Management Specialist, First Coast Guard District.*

[FR Doc. 2017–16825 Filed 8–9–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2017–0738]**

### Safety Zones; Recurring Events in Captain of the Port Duluth Zone—Superior Man Triathlon

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone for the Superior Man Triathlon in Duluth, MN from 5:30 a.m. through 10 a.m. on August 27, 2017. This action is necessary to protect participants and spectators during the Superior Man Triathlon. 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 5:30 a.m. through 10 a.m. on August 27, 2017, for the Superior Man Triathlon safety zone, § 165.943(a)(8).

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice of enforcement, 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 Superior Man Triathlon in 33 CFR 165.943(a)(8) from 5:30 a.m. through 10 a.m. on August 27, 2017, on all waters of the Duluth Harbor Basin, Northern Section, including the Duluth entry encompassed in an imaginary line beginning at point 46°46′36.12″ N. 092°06′06.99″ W., running southeast to 46°46′32.75″ N. 092°06′01.74″ W., running northeast to 46°46′45.92″ N. 092°05′45.18″ W., running northwest to 46°46′49.47″ N. 092°05′49.35″ W. and finally running southwest to the starting point.

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 via telephone at (218) 529–3100.

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 via telephone at (218) 529–3100.

Dated: July 31, 2017.

**E.E. Williams,**

*Commander, U.S. Coast Guard, Captain of the Port Duluth.*

[FR Doc. 2017–16845 Filed 8–9–17; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2016–0547; FRL–9965–85-Region 4]**

### Air Plan Approval; SC: Revisions to New Source Review Rules

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve changes to the South Carolina State Implementation Plan (SIP) to revise New Source Review (NSR) regulations. EPA is approving portions of SIP revisions submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), on the following dates: July 18, 2011, April 10, 2014, August 12, 2015, and

January 20, 2016. This action is being taken pursuant to the Clean Air Act (CAA or Act).

**DATES:** This direct final rule is effective October 10, 2017 without further notice, unless EPA receives adverse comment by September 11, 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–2016–0547 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. What action is EPA taking today?

On July 18, 2011, April 10, 2014, August 12, 2015, and January 20, 2016, SC DHEC submitted SIP revisions to EPA for approval that involve changes to South Carolina's NSR permitting regulations to make them consistent with federal requirements for NSR permitting, correct typographical errors, make internal references consistent, and clarify certain provisions. In this action, EPA is approving certain portions of these SIP submissions that make changes to South Carolina's NSR regulations at SC DHEC Regulation 61–62.5, Standard No. 7—''Prevention of Significant Deterioration (PSD),'' and Regulation 61–62.5, Standard No. 7.1—''Nonattainment New Source Review (NNSR),'' which apply to the construction or modification of any major stationary source in areas designated as attainment or unclassifiable as required by part C of title I of the CAA, and in nonattainment areas as required by part D of title I of the CAA, respectively.

South Carolina's PSD regulations at Regulation 61–62.5, Standard No. 7, were originally approved into the SIP on June 10, 1982 (47 FR 6017), with periodic revisions approved through April 3, 2013 (78 FR 19997). South Carolina's NNSR regulations at Regulation 61–62.5, Standard No. 7.1, were conditionally approved into the SIP on June 2, 2008 (73 FR 31369), and were fully approved on June 23, 2011 (76 FR 36875).

South Carolina's July 18, 2011, SIP revision modifies the PSD regulations to make minor edits for internal consistency and modifies the NNSR regulations to reflect changes to the federal NNSR regulations at 40 CFR 51.165,[1] including provisions promulgated in the following federal rule: ''Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard-Phase 2; Final Rule To Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter and Ozone NAAQS; Final Rule for Reformulated Gasoline,'' Final Rule, 70 FR 71612 (November 29, 2005) (hereinafter referred to as the Phase 2 Rule). South Carolina's April 10, 2014, SIP revision modifies the PSD regulations to reflect changes to the federal PSD regulations at 40 CFR 51.166, including provisions promulgated in the following federal rule: ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$): [2] Amendment to the Definition of 'Regulated NSR Pollutant' Concerning Condensable Particulate Matter,'' (October 25, 2012) (hereinafter referred to as the $PM_{2.5}$ Condensables Correction Rule). South Carolina's August 12, 2015, SIP revision makes changes to South Carolina's PSD and NNSR regulations for consistency with federal provisions and to correct typographical errors. Finally, South Carolina's January 20, 2016, SIP revision modifies the State's NNSR rules to correct typographical errors and to make internal references consistent.

At this time, the Agency is not acting on changes included in the July 18, 2011, submittal to the following regulations in South Carolina's SIP: Regulation 61–62.1, Section I—''Definitions;'' Regulation 61–62.1, Section II—''Permit Requirements;'' Regulation 61–62.3—''Air Pollution Episodes;'' Regulation 61–62.5, Standard No. 1—''Emissions from Fuel Burning Operations;'' Regulation 61–62.5, Standard No. 4—''Emissions from Process Industries;'' or Regulation 61–62.5, Standard No. 6—''Alternative Emission Limitation Options (Bubble).'' EPA approved the changes to Regulation 61–62.5, Standard No. 2—''Ambient Air Quality Standards,'' included in the July 18, 2011, submittal, on April 3, 2013 (78 FR 1994). EPA is not acting on the changes included in the April 10, 2014,

[1] EPA's regulations governing the implementation of NSR permitting programs are contained in 40 CFR 51.160—51.166; 52.21, 52.24; and part 51, Appendix S. The CAA NSR program is composed of three separate programs: PSD, NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies to major stationary sources in areas that meet the NAAQS—''attainment areas''—as well as areas where there is insufficient information to determine if the area meets the NAAQS—''unclassifiable areas.'' The NNSR program is established in part D of title I of the CAA and applies to major stationary sources in areas that are not in attainment of the NAAQS—''nonattainment areas.'' The Minor NSR program applies to stationary sources that do not require PSD or NNSR permits. Together, these programs are referred to as the NSR programs.

[2] Airborne particulate matter (PM) with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair) are considered to be ''fine particles'' and are also known as $PM_{2.5}$. Fine particles in the atmosphere are made up of a complex mixture of components including sulfate; nitrate; ammonium; elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as ''crustal'' material, although it may contain material from other sources. The health effects associated with exposure to $PM_{2.5}$ include potential aggravation of respiratory and cardiovascular disease (*i.e.,* lung disease, decreased lung function, asthma attacks and certain cardiovascular issues). On July 18, 1997, EPA revised the NAAQS for PM to add new standards for fine particles, using $PM_{2.5}$ as the indicator. Previously, EPA used $PM_{10}$ (inhalable particles smaller than or equal to 10 micrometers in diameter) as the indicator for the PM NAAQS. EPA established health-based (primary) annual and 24-hour standards for $PM_{2.5}$, setting an annual standard at a level of 15.0 micrograms per cubic meter ($\mu g/m^3$) and a 24-hour standard at a level of 65 $\mu g/m^3$ (62 FR 38652). At the time the 1997 primary standards were established, EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of $PM_{2.5,}$ such as visibility impairment, soiling, and materials damage. On October 17, 2006, EPA revised the primary and secondary 24-hour NAAQS for $PM_{2.5}$ to 35 $\mu g/m^3$ and retained the existing annual $PM_{2.5}$ NAAQS of 15.0 $\mu g/m^3$ (71 FR 61236). On January 15, 2013, EPA published a final rule revising the primary annual $PM_{2.5}$ NAAQS to 12 $\mu g/m^3$ (78 FR 3086).

submittal to the following regulations: Regulation 61–62.1, Section I—''Definitions;'' Regulation 61–62.2—''Prohibition of Open Burning;'' Regulation 61–62.5, Standard No. 7—''Prevention of Significant Deterioration,'' at paragraph (b)(32)(i)(a);[3] or Regulation 61–62.6—''Control of Fugitive Particulate Matter.'' EPA is not acting on the changes included in the August 12, 2015, submittal to the following regulations: Regulation 61–62.5, Standard No. 1—''Emissions from Fuel Burning Operations,'' or Regulation 61–62.5, Standard No. 2—''Ambient Air Quality Standards.'' Additionally, EPA is not acting on the changes included in the January 20, 2016, submittal to the following regulations: Regulation 61–62.1, Section II—''Permit Requirements;'' Regulation 61–62.5, Standard No. 5—''Volatile Organic Compounds;'' or Regulation 61–62.6—''Control of Fugitive Particulate Matter.'' EPA will address these proposed changes to the South Carolina SIP in a separate action.

The August 12, 2015, submittal includes a change to South Carolina's NNSR regulation, Regulation 61–62.5, Standard No. 7.1 at paragraph (d)(1)(C)(v)(b)(2) regarding the calculation of emission offsets. However, this change had previously been submitted to EPA on April 14, 2009, in response to a June 2, 2008, conditional approval of the NNSR program revisions (73 FR 31368), and was approved on June 23, 2011 (76 FR 36875). Therefore, this change is not presently before EPA for consideration.[4] There are other changes to the NNSR regulation included in the August 12, 2015, submittal that EPA is approving in this action, as detailed in Section III of this preamble.

EPA is not acting on the following changes originally included in the August 12, 2015, submittal because they have been withdrawn from EPA's consideration via a December 20, 2016, letter. The August 12, 2015, submittal originally included new language in Regulation 61–62.5, Standard No. 7 at paragraphs (b)(30)(v) and (b)(34)(iii)(d) to exclude fugitive emissions from the determination of creditable emission increases and decreases. This submittal also originally included a revision to the definition of ''best available control technology (BACT)'' in Regulation 61–62.5, Standard No. 7 at paragraph (b)(8), which reverted language in the definition to that included in a previous version of the South Carolina regulations. Both sets of revisions were withdrawn from EPA's consideration subsequent to the August 12, 2015, final submittal in the December 20, 2016, letter. Finally, a revision to the definition of ''net emissions increase'' in Regulation 61–62.5, Standard No. 7 at paragraph (b)(34)(iii)(c) was withdrawn in a June 27, 2017, letter. Both the December 20, 2016, and June 27, 2017, letters are included in the docket for this action.

## II. Background

This direct final action will revise South Carolina's PSD and NNSR regulations in the SIP as described in Section III, below. Many of these changes are administrative in nature, including updating internal references and correcting typographical errors. The July 18, 2011, SIP revision also makes changes to the NNSR regulations to adopt provisions from EPA's Phase 2 Rule for ozone nonattainment areas. The April 10, 2014, submittal makes changes to PSD regulations to reflect EPA's $PM_{2.5}$ Condensables Correction Rule. Background information on these federal rules is provided below.

### *A. Phase 2 Rule*

Part of South Carolina's July 18, 2011, SIP submittal to revise its NNSR regulations relates to EPA's Phase 2 Rule regarding updates to the implementation of the 1997 8-hour Ozone NAAQS. On November 29, 2005, EPA published the Phase 2 Rule, which addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS[5] such as reasonably available control technology, reasonably available control measures, reasonable further progress, modeling and attainment demonstrations, NSR, and the impact to reformulated gas for the 1997 8-hour ozone NAAQS transition (70 FR 71612). The NSR permitting requirements established in the rule included the following provisions: (1) Recognized nitrogen oxides as an ozone precursor for PSD purposes; (2) changes to the NNSR rules establishing major stationary source thresholds (marginal, moderate, serious, severe, and extreme nonattainment area classifications) and significant emission rates for the 8-hour ozone, $PM_{10}$, and carbon monoxide NAAQS; and (3) revised the criteria for crediting emission reductions credits from operation shutdowns and curtailments as offsets, and changes to offset ratios for marginal, moderate, serious, severe, and extreme ozone nonattainment areas. For additional information on provisions in the Phase 2 Rule, see the November 29, 2005, final rule (70 FR 71612).

### *B. NSR $PM_{2.5}$ Rule and $PM_{2.5}$ Condensables Correction Rule*

On May 16, 2008, EPA finalized the rule entitled ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' Final Rule, 73 FR 28321 (May 16, 2008) (hereinafter referred to as the NSR $PM_{2.5}$ Rule). The NSR $PM_{2.5}$ Rule revised the federal NSR program requirements to establish the framework for implementing preconstruction permit review for the $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. South Carolina previously adopted most of the provisions promulgated in the NSR $PM_{2.5}$ Rule, as approved on June 23, 2011 (76 FR 36875).

In the NSR $PM_{2.5}$ Rule, EPA revised the definition of ''regulated NSR pollutant'' for PSD to add a paragraph providing that ''particulate matter (PM) emissions, $PM_{2.5}$ emissions, and $PM_{10}$ emissions'' must include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures and that on or after January 1, 2011, such condensable particulate matter must be accounted for in applicability determinations and in establishing emissions limitations for PM, $PM_{2.5}$ and

[3] The change to paragraph (b)(32)(i)(a) modifies the definition of ''major stationary source'' to spell out the acronym for ''NAICS'' as ''North American Industrial Classification System'' within the phrase ''except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140.'' EPA is not taking action on this change because the phrase regarding ethanol production facilities is not in the SIP. SC DHEC submitted the original phrase regarding ethanol production facilities for approval on April 14, 2009; however, EPA has not approved it into the SIP.

[4] South Carolina also submitted changes to Regulation 61–62.5, Standard No. 7.1 regarding the calculation of emission offsets in a June 17, 2013, SIP submittal. These changes, at paragraphs (d)(1)(C)(v)(a)(2) and (3), were submitted to EPA on April 14, 2009, along with the change to paragraph (d)(1)(C)(v)(b)(2) described above, and were approved by EPA on June 23, 2011 (76 FR 36875). Therefore, these changes are not presently before EPA for consideration. All changes in the June 17, 2013, submittal regarding NNSR have been addressed by EPA.

[5] On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million—also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as unclassifiable/attainment, nonattainment, or unclassifiable for the 1997 8-hour ozone NAAQS. In addition, on April 30, 2004, as part of the framework to implement the 1997 8-hour ozone NAAQS, EPA promulgated an implementation rule in two phases (Phase I and II). The Phase I Rule (effective on June 15, 2004), provided the implementation requirements for designating areas under subpart 1 and subpart 2 of the CAA (69 FR 23951).

$PM_{10}$ in permits. *See* 73 FR 28348–49 (changes made to 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(vi), and 40 CFR part 51, Appendix S—Emissions Offset Interpretative Ruling). A similar paragraph added to the NNSR rule does not include the phrase ''particulate matter (PM) emissions'' or the term ''PM''[6] within the definition of ''regulated NSR pollutant.'' *See* 73 FR 28347.

On October 25, 2012, EPA finalized a rulemaking to amend the definition of ''regulated NSR pollutant'' promulgated in the NSR $PM_{2.5}$ Rule regarding the PM condensable provision at 40 CFR 51.166(b)(49)(vi), 52.21(b)(50)(i), and 40 CFR part 51, Appendix S—''Emissions Offset Interpretative Ruling.'' 77 FR 65107. The rulemaking simply removed the phrase ''particulate matter (PM) emissions'' and the term ''PM'' from the definition of ''regulated NSR pollutant'' in these rules thereby eliminating the inadvertent requirement in the NSR $PM_{2.5}$ Rule that the measurement of condensable ''particulate matter (PM) emissions'' be included as part of the measurement and regulation of condensable PM for the NAAQS. The phrase ''particulate matter (PM) emissions'' includes particles that are larger than $PM_{2.5}$ and $PM_{10}$ and is an indicator measured under various New Source Performance Standards (NSPS) (40 CFR part 60).

## III. Analysis of the State's Submittals

### *A. Submittal Dated July 18, 2011*

South Carolina's July 18, 2011, SIP revision made changes to the PSD regulation, Regulation 61–62.5, Standard No. 7, to make internal references consistent. These changes are made to Standard No. 7 at paragraphs (q)(2) and (q)(3)—''Public participation;'' (r)(4)—''Source obligation;'' and (w)(1)—''Permit rescission'' and were state effective on May 27, 2011. EPA is approving these administrative edits to the SIP.

This SIP submittal also made changes to the NNSR regulation, Regulation 61–62.5, Standard No. 7.1, at paragraph (c)(7)(A)(i), adopting thresholds in the definition of ''major stationary source'' for different classifications of ozone nonattainment areas (as codified at 40 CFR 51.165(a)(1)(iv)(A)(*1*)). These thresholds correspond to precursors of ozone in ''serious'' and ''extreme'' nonattainment areas. EPA is approving these changes to the NNSR regulations as consistent with the Phase 2 Rule. South Carolina adopted other provisions promulgated in the Phase 2 Rule previously, and EPA approved them into the South Carolina SIP on June 2, 2008 (73 FR 31368) and June 23, 2011 (76 FR 36875).

EPA has concluded that incorporating these change into the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. The changes to Regulation 61–62.5, Standard No. 7 are administrative in nature, and the changes to Standard No. 7.1 increase the number of sources potentially subject to NNSR permitting by establishing lower emissions thresholds.

### *B. Submittal Dated April 10, 2014*

South Carolina's April 10, 2014, SIP revision made changes to the definitions in the PSD regulation, Regulation 61–62.5, Standard No. 7. The only changes that EPA is adopting from the April 10, 2014, submittal in this rulemaking are at paragraph (b)(44) regarding the definition of ''regulated NSR pollutant.'' These changes were state effective on December 27, 2013. This definition is revised to be consistent with the $PM_{2.5}$ Condensables Correction Rule, detailed in Section II, above, by removing the phrase ''particulate matter (PM) emissions'' and the term ''PM'' which were originally included in the federal definition in error and by rearranging the formatting structure of the definition.

A March 14, 2011, SIP submittal adopted provisions promulgated in the NSR $PM_{2.5}$ Rule, as approved into the SIP on June 23, 2011 (76 FR 36875). This previous approval also adopted the phrase ''particulate matter (PM) emissions'' and the term ''PM'' as promulgated in error in the $PM_{2.5}$ NSR Rule. The April 10, 2014, submittal in effect only removes the problematic language to be consistent with the current federal definition and rearranges the definition because EPA approved the remaining changes to (b)(44) in the June 23, 2011, action discussed above.

In today's action, EPA is approving the changes that remove the phrase ''particulate matter (PM) emissions'' and the term ''PM'' and that rearrange the formatting structure of the definition for consistency with the $PM_{2.5}$ Condensables Correction Rule. EPA has concluded that incorporating these change into the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. The changes merely correct an inadvertent error in the PSD regulations as discussed above.

### *C. Submittal Dated August 12, 2015*

The August 12, 2015, SIP revision modifies the definitions of ''baseline actual emissions'' and ''projected actual emissions'' in Regulation 61–62.5, Standard No. 7 at paragraphs (b)(4)(i)(a), (b)(4)(ii)(a), and (b)(41)(ii)(b) and in Standard No. 7.1 at paragraphs (c)(2)(A)(i), (c)(2)(B)(i), and (c)(11)(B)(ii) to include emissions associated with ''malfunctions'' in determining PSD and NNSR applicability, respectively. These changes were state effective on June 26, 2015.

EPA added malfunction emissions to the federal definitions of ''baseline actual emissions'' and ''projected actual emissions'' as part of its NSR reform rules.[7] In its July 1, 2005, SIP revision addressing NSR reform, the State sought to exclude this change from its SIP-approved PSD and NNSR regulations. The State's primary motivation for seeking the exclusion was its belief that it would be difficult for the regulated community to predict and quantify malfunction emissions when estimating projected actual emissions. EPA conditionally approved South Carolina's SIP revision on June 2, 2008 (73 FR 31368), noting in the associated September 12, 2007, notice of proposed rulemaking (72 FR 52031) that the exclusion of malfunction emissions did not lessen the stringency of the State's NSR program. South Carolina updated its regulations in a submittal dated April 14, 2009, to satisfy the conditional approval, resulting in a formal approval on June 23, 2011 (76 FR 36875).

South Carolina's August 12, 2015, submittal seeks to add malfunction emissions to the definitions of ''baseline actual emissions'' and ''projected actual emissions'' in its SIP-approved PSD and NNSR regulations. The State retains the requirement that ''baseline actual emissions'' exclude any non-compliant emissions that occur while the source was operating above any emission limitation that was legally enforceable during the 24-month period used to calculate baseline emissions. EPA has concluded that incorporating these changes into the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. The State is

[6] The terms ''$PM_{2.5}$'' and ''$PM_{10}$'' remain in the definition.

[7] EPA published rules on December 31, 2002 (67 FR 80186), November 7, 2003 (68 FR 63021), on June 13, 2007 (72 FR 32526), revising the methodology for determining ''baseline actual emissions'' among other things. Sometimes, these rules taken together are referred to as ''NSR reform.'' For more information on NSR reform, see *https://www.epa.gov/nsr/nsr-regulatory-actions#nsrreform.*

requesting the change for consistency with the federal rules because the discrepancy was causing confusion among the regulated community and because the regulated community had not substantiated the State's initial concerns regarding the potential difficulty in projecting malfunction emissions. In its July 1, 2005, SIP submittal, the State concluded that there would be no environmental benefit to excluding malfunction emissions from the definitions at issue because the inclusion of malfunction emissions in both baseline actual emissions and projected actual emissions ''would cancel each other out because they typically would be the same before and after a change.[8]'' In correspondence associated with the August 12, 2015, submittal, the State affirms that the exclusion has provided no environmental benefit.[9] Furthermore, EPA notes that there are no nonattainment areas in South Carolina, and that air quality is below the NAAQS for all criteria pollutants.[10]

The August 12, 2015, submittal made other changes to the PSD regulation, Regulation 61–62.5, Standard No. 7, to correct typographical errors, clarify certain provisions, and mirror Federal provisions. These changes are made to the following paragraphs: (a)(2)(iv)(f) Regarding ''Applicability procedures;'' (b)(5)(ii)(b), (b)(32)(i)(a), and (b)(34)(vi)(c) regarding the definitions of ''baseline area,'' ''major stationary source,'' and ''net emissions increase,'' respectively; (i)(8)(ii) and (i)(10)— ''Exemptions;'' (m)(1)(i)(a) regarding ''Air quality analysis;'' (n)(1) regarding ''Source information;'' (u)(4) regarding class III areas; and (aa)(6)(ii) and (aa)(8)(ii)(b)(2) regarding ''Actuals [Plantwide Applicability Limits] PALs.'' The August 12, 2015, submittal made other changes to the NNSR regulation, Regulation 61–62.5, Standard No. 7.1, at paragraph (i)(6)(ii) regarding ''Actuals PALs'' for consistency with Federal regulations. EPA is approving these changes to the SIP with the exception of the change to Regulation 61–62.5, Standard No. 7, paragraph (b)(32)(i)(a) as noted in Section I, above. EPA has concluded that incorporating these changes into the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. These changes are primarily administrative and do not substantively impact applicability requirements or emissions from subject units.

*D. Submittal Dated January 20, 2016*

The January 20, 2016, submittal made changes to the NNSR regulation, Regulation 61–62.5, Standard No. 7.1, only to correct typographical errors and to make internal references consistent. These changes, state effective on November 27, 2015, are made to paragraphs (c)(6)(C)(v)(a) and (c)(7)(A)(i)(d) regarding the definitions of ''major modification'' and ''major stationary source;'' and paragraph (d)(1)(C)(viii) regarding ''Permitting requirements.'' EPA is approving these changes to the SIP. EPA has concluded that incorporating these changes into the SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA because the changes are administrative in nature.

## 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, EPA is finalizing the incorporation by reference of the SC DHEC regulatory paragraphs identified above in Section III within SC DHEC Regulation No. 61–62.5, Standard No. 7, entitled ''Prevention of Significant Deterioration,'' state effective on May 27, 2011 (paragraphs identified in Section III.A, above), December 27, 2013 (paragraphs identified in Section III.B, above), and June 26, 2015 (paragraphs identified in Section III.C, above), and the SC DHEC regulatory paragraphs identified above in Section III within Standard No. 7.1, entitled ''Nonattainment New Source Review,'' state effective on May 27, 2011 (paragraphs identified in Section III.A, above), June 26, 2015 (paragraphs identified in Section III.C, above), and November 27, 2015 (paragraphs identified in Section III.D, above). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[11] 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).

## V. Final Action

EPA is approving the changes to the SIP identified in Section III, above, because they are consistent with the CFR and 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 October 10, 2017 without further notice unless the Agency receives adverse comments by September 11, 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 adverse 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 October 10, 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.

## 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 action merely approves state law as meeting federal requirements and does not impose additional requirements beyond

[8] *See* South Carolina's July 1, 2005, SIP submittal which is included in the docket for today's action.

[9] *See* email communication from Elizabeth Basil, SC DHEC, to Brad Akers, EPA Region 4 dated September 1, 2016, included in the docket for this action.

[10] Air quality design values for all criteria air pollutants are available at: *https://www.epa.gov/air-trends/air-quality-design-values.*

[11] 62 FR 27968 (May 22, 1997).

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

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

In addition, this direct final action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the state of South Carolina. 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 this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. 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 October 10, 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 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, Volatile organic compounds.

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

Dated: July 26, 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 PP—South Carolina

■ 2. Section 52.2120(c) is amended by revising entries under Regulation No. 62.5 for ''Standard No. 7'' and ''Standard No. 7.1'' and by revising footnote 1 to the table to read as follows:

**§ 52.2120 Identification of plan.**

* * * * *

(c) * * *

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

| State citation | Title/subject | State effective date | EPA approval date | Federal Register Notice |
|---|---|---|---|---|
| * | * * * | * | * | * |
| *Standard No. 7* ..... | Prevention of Significant Deterioration ..... | June 26, 2015 [1] ..... | 8/10/2017 | [Insert citation of publication] |
| *Standard No. 7.1* ..... | Nonattainment New Source Review ..... | November 27, 2015 [1] ... | 8/10/2017 | [Insert citation of publication] |

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA—Continued

| State citation | Title/subject | State effective date | EPA approval date | Federal Register Notice |
|---|---|---|---|---|
| * | * | * | * | * |

[1] EPA did not take action on the version of Regulation 61–62.5, Standard No. 7, paragraph (b)(32)(i)(a) state effective on December 27, 2013, included in a SIP revision submitted by the State on April 10, 2014, because this version contains changes to a phrase regarding ethanol production facilities that is not in the SIP. South Carolina submitted a SIP revision on April 14, 2009, that includes the phrase ''except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140,'' as amended in the Ethanol Rule (72 FR 24060 (May 1, 2007)), at Standard No. 7, paragraphs (b)(32)(i)(a), (b)(32)(iii)(b)(t), and (i)1(vii)(t) and at Standard No. 7.1, paragraphs (c)7(C)(xx) and (e)(T). EPA has not taken action to approve that portion of the April 14, 2009, SIP revision and incorporate this phrase into the SIP. The version of Standard No. 7, paragraphs (b)(32)(i)(a), (b)(32)(iii)(b)(t), and (i)1(vii)(t) and Standard No. 7.1, paragraphs (c)(7)(C)(xx) and (e)(T) was state effective on June 24, 2005 and conditionally approved by EPA on June 2, 2008 (73 FR 31369), and were fully approved on June 23, 2011 (76 FR 36875).

* * * * *

[FR Doc. 2017–16810 Filed 8–9–17; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2016–0267; FRL–9965–73–Region 3]**

## Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Regional Haze Five-Year Progress Report State Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a revision to the District of Columbia state implementation plan (SIP) submitted by the District of Columbia (the District) through the District of Columbia Department of Energy and Environment (DOEE). The District's SIP submittal addresses requirements of the Clean Air Act (CAA) and EPA's rules that require states to submit periodic reports describing progress towards reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the state's existing SIP addressing regional haze (regional haze SIP). No comments were received in response to EPA's proposed rulemaking action published on May 30, 2017. EPA is approving the District's SIP submittal because EPA has determined that it satisfactorily addresses the progress report and adequacy determination requirements for the first implementation period for regional haze.

**DATES:** This final rule is effective on September 11, 2017.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2016–0267. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Sara Calcinore, (215) 814–2043, or by email at *calcinore.sara@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On May 30, 2017 (82 FR 24617), EPA published a notice of proposed rulemaking (NPRM) for the District. In the NPRM, EPA proposed approval of the District's regional haze five-year progress report SIP, a report on progress towards RPGs, for the first implementation period. This progress report SIP and accompanying cover letter also included a determination that the District's existing regional haze SIP requires no substantive revision to achieve the established regional haze visibility improvement and emissions reduction goals for 2018. No comments were received in response to EPA's proposed rulemaking notice.

States were required to submit, in the form of a SIP revision, a progress report every five years that evaluates progress towards the RPGs for each mandatory Class I Federal area within the state and in each mandatory Class I Federal area outside the state which may be affected by emissions from within the state. *See* 40 CFR 51.308(g). In addition, the provisions under 40 CFR 51.308(h) require states to submit, at the same time as the 40 CFR 51.308(g) progress report, a determination of the adequacy of the state's existing regional haze SIP. On October 27, 2011, DOEE submitted its first regional haze SIP in accordance with the requirements of 40 CFR 51.308 as they existed at the time. The progress report SIP revision was submitted by DOEE on March 2, 2016 and EPA finds that it satisfies the requirements of 40 CFR 51.308(g) and (h).

### II. Summary of SIP Revision

On March 2, 2016, the District submitted a SIP revision to address progress made towards RPGs. This progress report SIP submittal also included a determination of the adequacy of the District's existing regional haze SIP.

The provisions in 40 CFR 51.308(g) require a progress report SIP to address seven elements. EPA finds that the District's progress report SIP addressed each element under 40 CFR 51.308(g). The seven elements and EPA's conclusion are briefly summarized later in this preamble; however, the detailed rationale for EPA's action is explained in the NPR and will not be restated here.

The provisions in 40 CFR 51.308(g) require progress reports SIPs to include a description of the status of measures in the approved regional haze SIP; a summary of emissions reductions achieved; an assessment of visibility conditions for each Class I area in the state; an analysis of changes in emissions from source and activities within the state; an assessment of any significant changes in anthropogenic emissions within or outside the state that have limited or impeded progress in Class I areas impacted by the state's sources; an assessment of the sufficiency of the approved regional haze SIP; and a review of the state's visibility monitoring strategy. As explained in detail in the NPR, EPA finds that the District's progress report SIP submittal addressed each element and has therefore satisfied the requirements under 40 CFR 51.308(g).

In addition, pursuant to 40 CFR 51.308(h), states are required to submit, at the same time as the progress report submission, a determination of the adequacy of their existing regional haze SIP and to take one of four possible actions based on information in the progress report. One possible action is submission of a negative declaration to EPA that no further substantive revision to the state's existing regional haze SIP is needed. In its progress report, the District submitted a negative declaration that it had determined that the existing regional haze SIP requires no substantive revision to achieve the RPGs for Class I areas. As explained in detail in the NPR, EPA concludes that the District adequately addressed 40 CFR 51.308(h) because decreasing emissions of visibility impairing pollutants, lack of Class I area impact from pollution sources within the District,[1] and progress of regional Class I areas near the District towards RPGs for 2018 indicate that no further revisions to the District's SIP are necessary for this first regional haze implementation period. Therefore, EPA concludes that the District's progress report SIP meets the requirements of 40 CFR 52.308(h).

## III. Final Action

In accordance with section 110 of the CAA, EPA is approving the District's regional haze five-year progress report SIP revision, submitted on March 2, 2016, as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and (h).

## IV. Statutory and Executive Order Reviews

### *A. General Requirements*

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

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

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

### *B. Submission to Congress and the Comptroller General*

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

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 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 to approve the District's regional haze five-year progress report SIP revision 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, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 21, 2017.

**Cecil Rodrigues,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (e) is amended by adding an entry entitled ''Regional Haze Five-Year Progress Report'' to the end of the table to read as follows:

**§ 52.470 Identification of plan.**

* * * * *

(e) * * *

[1] *See* 77 FR 5191, February 2, 2012 (discussing the District's lack of impacts on Class I areas).

| Name of non-regulatory SIP revision | Applicable geographic area | State submittal date | EPA approval date | Additional explanation |
|---|---|---|---|---|
| * * | * | * | * | * * |
| Regional Haze Five-Year Progress Report. | District of Columbia | 03/02/16 | 08/10/17 [Insert **Federal Register** citation]. | Addresses requirements of 40 CFR 51.308(g) and (h) for Regional Haze Five-Year Progress Report. |

[FR Doc. 2017–16821 Filed 8–9–17; 8:45 am]
**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R10–OAR–2017–0040; FRL–9965–76–Region 10]**

## Air Plan Approval; Alaska: Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Whenever a new or revised National Ambient Air Quality Standard (NAAQS) is promulgated, each state must submit a plan for the implementation, maintenance, and enforcement of such standard, commonly referred to as infrastructure requirements. On July 9, 2012, Alaska submitted a plan to address the infrastructure requirements for the lead (Pb) NAAQS promulgated on October 15, 2008. The Environmental Protection Agency (EPA) is approving the plan as meeting Clean Air Act (CAA) requirements.

**DATES:** This final rule is effective September 11, 2017.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2017–0040. All documents in the docket are listed on the *https://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available only in hard copy form. Public docket materials are available at *https://www.regulations.gov* or at the EPA Region 10 Office of Air and Waste, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below, to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kristin Hall, Air Planning Unit, Office of Air and Waste (OAW–150), Environmental Protection Agency—Region 10, 1200 Sixth Ave., Seattle, WA 98101; telephone number: (206) 553–6357; email address: *hall.kristin@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

### Table of Contents



### I. Background

On July 9, 2012, Alaska submitted a SIP to meet the infrastructure requirements of CAA sections 110(a)(1) and (2) for multiple NAAQS, including the Pb NAAQS. On May 31, 2017, the EPA proposed to approve the submission as meeting certain infrastructure requirements for the Pb NAAQS (82 FR 24914). Please see our proposed rulemaking for further explanation and the basis for our finding. The public comment period for this proposal ended on June 30, 2017. We received no comments.

### II. Final Action

The EPA is approving Alaska's July 9, 2012, SIP submission as meeting the following CAA section 110(a)(2) infrastructure elements for the 2008 Pb NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We note that this action does not address CAA section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS, which was approved on August 4, 2014 (79 FR 45103).

### III. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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 this action does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, 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 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 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 CAA section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 10, 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* CAA section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

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

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

Dated: July 26, 2017.

**Michelle L. Pirzadeh,**

*Acting Regional Administrator, Region 10.*

For the reasons set forth in the preamble, 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 C—Alaska

■ 2. In § 52.70, the table in paragraph (e) is amended by adding the entry ''110(a)(2) Infrastructure Requirements—2008 Lead NAAQS'' at the end of the table to read as follows:

**§ 52.70 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

| Name of SIP provision | Applicable geographic or nonattainment area | State submittal date | EPA approval date | Comments |
|---|---|---|---|---|
| * | * | * | * | * * * |
| **Section 110(a)(2) Infrastructure and Interstate Transport** | | | | |
| * | * | * | * | * * * |
| 110(a)(2) Infrastructure Requirements—2008 Lead NAAQS. | Statewide ..... | 7/9/12 | 8/10/17 [insert **Federal Register** citation]. | Approves SIP for purposes of CAA sections 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2008 Lead NAAQS. |

[FR Doc. 2017–16805 Filed 8–9–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R02–OAR–2016–0766; FRL–9965–79–Region 2]**

## Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for Specific Sources in the State of New Jersey

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing approval of two revisions to the State Implementation Plan (SIP) for ozone submitted by the State of New Jersey. This SIP revision consists of two source-specific reasonably available control technology (RACT) determinations for controlling oxides of nitrogen. One is for the Transcontinental Gas Pipeline Corp., LNG Station 240 located in Carlstadt, New Jersey and the other is for Joint Base McGuire-Dix-Lakehurst in Lakehurst, New Jersey. This action approves the source-specific RACT determinations that were made by New Jersey in accordance with the provisions of its regulation to help meet the national ambient air quality standard for ozone. The intended effect of this rule is to approve source-specific emissions limitations required by the Clean Air Act.

**DATES:** This rule is effective on September 11, 2017.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2016–0766. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Anthony (Ted) Gardella, *gardella.anthony@epa.gov* at the United States Environmental Protection

Agency, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

**SUPPLEMENTARY INFORMATION:**

## I. What action is the EPA taking today?

The EPA is approving two source-specific State Implementation Plans (SIP) revisions for ozone submitted by the State of New Jersey. These SIP revisions relate to New Jersey's oxides of nitrogen ($NO_X$) reasonably available control technology (RACT) determinations for the Transcontinental Gas Pipeline Corp., LNG Station 240 (Transco-240) located in Carlstadt, New Jersey in Bergen County and for Joint Base McGuire-Dix-Lakehurst (JB–MDL) located in Lakehurst, New Jersey in Ocean County. The determinations are for the four natural gas-fired water bath heaters (U7–U10) at the Transco-240 facility and the two natural gas-fired boilers (Nos. 2 and 3) at the JB–MDL facility. These SIP revisions were submitted to the EPA for approval by the New Jersey Department of Environmental Protection on July 1, 2014 and July 25, 2016 respectively.

## II. What comments were received in response to EPA's proposed action?

On May 8, 2017 (82 FR 21343), the EPA proposed to approve New Jersey's two source-specific SIP revisions addressing $NO_X$ RACT requirements for the Transco-240 and the JB–MDL facilities. For a detailed discussion on the content and requirements of the revisions to New Jersey's two SIP revisions, the reader is referred to the EPA's proposed rulemaking action. In response to the EPA's May 8, 2017 proposed rulemaking action, the EPA received no public comments.

## III. Conclusion

The EPA has determined that New Jersey's two SIP revision for the $NO_X$ RACT determinations for the affected sources at the Transco-240 and the JB–MDL facilities are consistent with New Jersey's $NO_X$ RACT regulation and the EPA's guidance. The EPA has determined that New Jersey's SIP revision will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Clean Air Act. Therefore, the EPA is approving the $NO_X$ emission limits and other requirements identified in New Jersey's Conditions of Approval document and alternative emission limit compliance plan for Transco-240 and JB–MDL, respectively. The $NO_X$ RACT requirements specify emissions limits, work practice standards, testing, monitoring, and recordkeeping/reporting requirements. These conditions are consistent with the $NO_X$ RACT requirements specified in Subchapter 19 of Chapter 27, Title 7 of the New Jersey Administrative Code and conform to the EPA's $NO_X$ RACT guidance.

More specifically, the EPA approves the current Conditions of Approval document for the four water bath heaters (U7–U10) at the Transco-240 facility which includes the following limits:

1. The alternative $NO_X$ emission limit (AEL) from each water bath heater, while combusting natural gas, shall not exceed 0.10 pounds per million British Thermal Units (lb/MMBTU);

2. The total $NO_X$ emissions from all four water bath heaters, while combusting natural gas, shall not exceed 6.7 tons per year;

3. The hours of operation for the four natural gas-fired water bath heaters shall be for a combined total of 1600 hours per year or less;

4. The four water bath heaters shall not be operated during the ozone season; and,

5. The flue gas recirculation control system shall operate at all times the heater is operating.

Also, the EPA approves the alternate emission limit compliance plan for the two natural gas-fired boilers (Nos 2 and 3) at the JB–MDL facility which includes the following limits:

1. An alternative $NO_X$ emission limit of 0.10 lb/MMBTU for boiler #2 and boiler #3 pursuant to N.J.A.C. 7:27–19.13; and,

2. A decrease in natural gas use from 181.43 to 108.6 million cubic feet ($MMft^3$) per year for boiler #2 and from 113.04 to 57 $MMft^3$ per year for boiler #3.

## 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, EPA is finalizing the incorporation by reference of: ''Conditions of Approval, Alternative Emission Limit for $NO_X$ For Four (4) Water Bath Heaters, Transcontinental Gas Pipelines Corp., LNG Station 240, 718 Paterson Plank Road, Carlstadt Borough, Program Interest No. 02626,'' approved by New Jersey Department of Environmental Protection on June 12, 2014 and ''Revision to the NJ State Implementation Plan for Joint Base McGuire-Dix-Lakehurst (JB–MDL), Lakehurst, NJ'' including Enclosure 2 (''AEL Compliance Plan'') (dated July 14, 2016) to Attachment I (''Site-specific and source specific $NO_X$ RACT SIP Information for Joint Base McGuire-Dix-Lakehurst (JB–MDL) (Lakehurst), for Boiler Nos 2 and 3''), permit activity number of BOP150001, approved by New Jersey Department of Environmental Protection on August 26, 2016. The summary of emission limits and other enforceable requirements for the two SIP revisions are included in section III (Conclusion) of this rulemaking. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 2 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 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 Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

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

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 October 10, 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)).

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

**List of Subjects in 40 CFR Part 52**

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

Dated: July 25, 2017.

**Catherine R. McCabe,**

*Acting Regional Administrator, Region 2.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart FF—New Jersey

■ 2. In § 52.1570, the table in paragraph (d) is amended by adding entries ''Transcontinental Gas Pipelines Corp., LNG Station 240'' and ''Joint Base McGuire-Dix-Lakehurst (Lakehurst, NJ)'' to the end of the table to read as follows:

**§ 52.1570 Identification of plan.**

* * * * *

(d) * * *

EPA-APPROVED NEW JERSEY SOURCE-SPECIFIC PROVISIONS

| Name of source | Identifier No. | State effective date | EPA approval date | Comments |
|---|---|---|---|---|
| * | * * | * | * * | * |
| Transcontinental Gas Pipelines Corp., LNG Station 240. | 02626 | June 12, 2014 | August 10, 2017 [insert **Federal Register** citation]. August 10, 2017 [insert **Federal Register** citation]. | Alternate $NO_X$ Emission Limit and other requirements pursuant to NJAC 7:27–19.13 for four natural gas-fired water bath heaters ((U7–U10). |
| Joint Base McGuire-Dix-Lakehurst (Lakehurst, NJ). | BOP15001 | August 26, 2016 | | Alternate $NO_X$ Emission Limit and other requirements pursuant to NJAC 7:27–19.13 for two natural gas-fired boilers (Nos 2 and 3). |

* * * * *

[FR Doc. 2017–16804 Filed 8–9–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2014–0507; FRL–9965–83-Region 4]**

## Air Plan Approval; Florida: Infrastructure Requirements for the 2010 $NO_2$ NAAQS

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a portion of the State Implementation Plan (SIP) submission, submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP), on January 22, 2013, addressing a portion of the Clean Air Act (CAA or Act) infrastructure requirements for the 2010 1-hour nitrogen dioxide ($NO_2$) 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 submission.'' Specifically, EPA is approving the portion of Florida's January 22, 2013, SIP submission addressing element B of the infrastructure requirements, which relates to monitoring requirements. EPA finds that Florida's infrastructure SIP submission, provided to EPA on January 22, 2013, satisfies the infrastructure requirements related to monitoring for the 2010 1-hour $NO_2$ NAAQS.

**DATES:** This direct final rule is effective October 10, 2017 without further notice, unless EPA receives adverse comment by September 11, 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–2014–0507 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:** Andres Febres of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Febres can be reached via telephone at (404) 562–8966 or via electronic mail at *febres-martinez.andres@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. What action is the Agency taking?

On January 22, 2013, FDEP submitted a SIP revision for EPA's approval addressing the CAA's infrastructure requirements for the 2010 1-hour $NO_2$ NAAQS. In this action, EPA is approving a portion of Florida's infrastructure SIP submission related to the ambient air quality monitoring and data system requirements of section 110(a)(2)(B). EPA approved all other portions of Florida's January 22, 2013 infrastructure SIP submission in previous actions. *See* 80 FR 14019, March 18, 2015, and 81 FR 84479, November 23, 2016. Additionally, on February 3, 2017, Florida submitted a SIP submission addressing the provisions related to prongs 1 and 2 of section 110(a)(2)(D)(i) and EPA will act on that submission in a separate action. For the aspects of the portion of Florida's submittal being approved, EPA notes that the Agency is not approving any specific rule, but rather taking final action to approve that Florida's already approved SIP meets this CAA requirement.

## II. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of 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 section 169A of the CAA, and nonattainment new source review permit program submissions to address the permit requirements of CAA, Title I, part D.

Sections 110(a)(1) and (2) require 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 newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The content of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

On January 22, 2010, EPA established a new 1-hour primary NAAQS for $NO_2$ at a level of 100 parts per billion, based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474 (February 9, 2010). This NAAQS is designed to protect against exposure to the entire group of nitrogen oxides ($NO_X$). $NO_2$ is the component of greatest concern and is used as the indicator for the larger group of $NO_X$. Emissions that lead to the formation of $NO_2$ generally also lead to the formation of other $NO_X$. Therefore, control measures that reduce $NO_2$ can generally be expected to reduce population exposures to all gaseous $NO_X$ which may have the co-benefit of reducing the formation of ozone and fine particles both of which pose significant public health threats.

States were required to submit infrastructure SIP submissions for the 2010 1-hour $NO_2$ NAAQS to EPA no later than January 22, 2013.[1] Through this action, EPA is approving Florida's January 22, 2013 submission as meeting the requirements of 110(a)(2)(B) for the 2010 NO2 NAAQS. As mentioned above, EPA has already taken final action on the remainder of Florida's January 22, 2013 submission.

## III. What is EPA's approach to the review of infrastructure SIP submissions?

The requirement for states to make a SIP submission of this type arises out of

[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 ''Florida Administrative Code'' or ''F.A.C.'' indicates that the cited regulation has been approved into Florida's federally-approved SIP. The term ''Florida statute'' or ''F.S.'' indicates cited Florida state statutes, which are not a part of the SIP unless otherwise indicated.

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 ''each such plan'' submission must address.

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.[2] 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 CAA, which specifically address nonattainment SIP requirements.[3] 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.[4] 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 section 110(a)(1) and (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 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.[5] 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.[6]

Ambiguities within section 110(a)(1) and (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.[7]

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 attainment plan SIP submissions required by part D to meet the ''applicable requirements'' of section 110(a)(2); thus, 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

[2] 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.

[3] *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)).

[4] 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.

[5] *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).

[6] 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.

[7] 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.

Prevention of Significant Deterioration (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.[8] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[9] 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.[10] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). EPA interprets section 110(a)(1) and (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 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 section 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. 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 Particulate Matter 2.5 ($PM_{2.5}$) 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 SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* 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 (SSM) that may be contrary to the CAA and EPA's policies addressing such excess emissions; [11] (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)

[8] 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.

[9] ''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.

[10] 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 U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d 7 (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.

[11] Subsequent to issuing the 2013 Guidance, EPA's interpretation of the CAA with respect to the approvability of affirmative defense provisions in SIPs has changed. See ''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,'' 80 FR 33839 (June 12, 2015). As a result, EPA's 2013 Guidance (p. 21 & n.30) no longer represents the EPA's view concerning the validity of affirmative defense provisions, in light of the requirements of section 113 and section 304.

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 that 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.[12] 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 section 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 section 110(a)(1) and (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 SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[13]

Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[14] 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 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.[15]

## IV. Section 110(a)(2)(B) Ambient Air Quality Monitoring/Data System for Florida

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. In its January 22, 2013, SIP infrastructure submittal, Florida cites F.A.C. Chapters 62–204, 62–210, 62–212 as establishing requirements for the use of Federal Reference Method or equivalent monitors and provides authority for FDEP to establish monitoring requirements through SIP-approved permits. In addition, states develop and submit to EPA for approval annual 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, includes the annual ambient monitoring network design plan, and includes a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[16] On June 30, 2017, Florida submitted its most recent plan to EPA, which was approved by EPA on July 24, 2017. Florida's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2014–0507. EPA has made the preliminary determination that Florida's SIP and practices are adequate for the ambient air quality monitoring and data system related and meet the requirements of sub-element 110(a)(2)(B) for the 2010 1-hour $NO_2$ NAAQS.

## V. Final Action

EPA is taking a direct final action to approve a portion of Florida's January 22, 2013, SIP submission addressing the CAA infrastructure requirements for the 2010 1-hour $NO_2$ NAAQS. Specifically, EPA is taking direct final action to approve the portions of Florida's January 22, 2013, SIP submission addressing section 110(a)(2)(B) of the

[12] 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 or affirmative defense 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.

[13] 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).

[14] 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 section 110(k)(6) of the CAA 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).

[15] *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 (January 26, 2011) (final disapproval of such provisions).

[16] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

infrastructure requirements, which requires SIPs to provide for the 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. EPA is approving this portion of Florida's infrastructure submission for the 2010 1-hour $NO_2$ NAAQS because this submission is consistent with section 110 of 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 October 10, 2017 without further notice unless the Agency receives adverse comments by September 11, 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 adverse 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 October 10, 2017 and no further action will be taken on the proposed rule.

## 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 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 October 10, 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 EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

### List of Subjects in 40 CFR Part 52

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

Dated: July 26, 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 K-Florida

■ 2. In § 52.520, the table in paragraph (e) is amended by adding the entry ''110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour $NO_2$ NAAQS (Element B only)'' at the end of the table to read as follows:

**§ 52.520 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

| Provision | State effective date | EPA approval date | **Federal Register** notice | Explanation |
|---|---|---|---|---|
| * * | * | * | * | * * |
| 110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour $NO_2$ NAAQS (Element B only). | 1/22/2013 | 8/10/2017 | [insert **Federal Register** citation]. | Addressing section 110(a)(2)(B) concerning ambient air quality monitoring and data system only. |

[FR Doc. 2017–16809 Filed 8–9–17; 8:45 am]
**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2017–0204; FRL–9965–75–Region 3]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to Allegheny County Regulations for Open Burning

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the Commonwealth of Pennsylvania state implementation plan (SIP). The revisions update Allegheny County's portion of the Pennsylvania SIP, which includes regulations concerning open burning. Pennsylvania submitted updated regulations, on behalf of Allegheny County, which clarify and codify existing regulations in order to more effectively address emissions from open burning and protect public health. EPA is approving the SIP submittal of Allegheny County's regulations for open burning in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This rule is effective on November 8, 2017 without further notice, unless EPA receives adverse written comment by September 11, 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–R03–OAR–2017–0204 at *https://www.regulations.gov,* or via email to *stahl.cynthia@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Gregory A. Becoat, (215) 814–2036, or by email at *becoat.gregory@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On June 25, 2015, the Commonwealth of Pennsylvania through the Pennsylvania Department of Environmental Protection submitted a formal revision to the Pennsylvania SIP. The SIP revision consists of amended versions of Allegheny County Health Department's (ACHD) regulations under Article XXI (Air Pollution Control), section 2101.20, ''Definitions,'' and section 2105.50, ''Open Burning.'' Allegheny County does not currently meet the federal air quality standards for fine particulate matter under 2.5 microns in size ($PM_{2.5}$), including the 2015 $PM_{2.5}$ national ambient air quality standard (NAAQS), as measured annually. Wood smoke contains air toxics and contributes to high levels of $PM_{2.5}$ in Allegheny County. The revised regulations clarify and codify existing regulations regarding open burning in order to more effectively address emissions due to the numerous pollutants, including air toxics, found in wood smoke. The revised ACHD regulations, effective January 1, 2015, specify the following details related to various aspects of open burning: (1) Materials that may be burned; (2) the size of burn piles; (3) setback requirements; (4) use of chimineas, fire pits, and outdoor fireplaces; and (5) burning restrictions on air quality action days.

### II. Summary of SIP Revision and EPA Analysis

In the June 25, 2015 SIP submittal, Pennsylvania included revisions to Article XXI, sections 2101.20 and 2105.50 with a state effective date of January 1, 2015. The revision to section 2101.20 (Definitions) under Article XXI amends the definition of ''open burning'' to additionally include any fire or combustion that occurs in a chiminea, fire pit, outdoor fireplace or grill. The revisions to section 2105.50 (Open Burning) under Article XXI consist of the following: (1) Limit any open burning to clean wood, propane, or natural gas, and establishes specific exceptions to the limits; (2) limit the volume of clean wood being burned and limiting the distance permitted between open burning locations and inhabited areas; (3) establish the exceptions to burning clean wood for chimineas, fire pits, outdoor fireplaces and grills. These exceptions pertain to the use of charcoal, propane, or natural gas when pertaining to cooking, the use of commercially available fire logs, paraffin logs and wood pellets, and the use of paper or commercial smokeless fire starters to start an allowed fire; (4) prohibit wood burning activities on air quality action days, with the exception of commercial food preparation; (5) allow ACHD to prohibit or reduce open burning based on severity, duration, topography, and meteorological conditions; (6) restrict open burning activities on air quality action days, with the exception of conducting such burning for the commercial preparation of food; and (7) make the necessary

administrative word changes and paragraph renumbering in order to clarify and codify various regulatory and existing policies.

These SIP revisions further address emissions from open burning, which should reduce $PM_{2.5}$ pollution and assist Pennsylvania with the 2015 $PM_{2.5}$ NAAQS. These revised regulations limit the times and fuel types permitted for open burning which should reduce pollutants emitted during open burning including $PM_{2.5}$. The revised provisions are expected to reduce $PM_{2.5}$ emissions throughout Allegheny County. EPA finds that the submittal strengthens the Commonwealth of Pennsylvania SIP and is in accordance with section 110 of the CAA. Therefore, approving these regulation revisions will not interfere with attainment of the NAAQS, rate of progress, reasonable further progress, or any other applicable requirement of the CAA. For additional analysis, see EPA's Technical Support Document available in the docket for this rulemaking and online at *www.regulations.gov.*

## III. Final Action

EPA is approving the Pennsylvania June 2015 SIP submittal which contained revised provisions of ACHD's Article XXI (Air Pollution Control), section 2101.20, ''Definitions,'' and section 2105.50, ''Open Burning'' as the revisions meet requirements in CAA section 110. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on November 8, 2017 without further notice unless EPA receives adverse comment by September 11, 2017. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## 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, EPA is finalizing the incorporation by reference of section 2101.20 and section 2105.50 under Article XXI (Air Pollution Control). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update of 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 III 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

### *A. General Requirements*

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

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

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

### *B. Submission to Congress and the Comptroller General*

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

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 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

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

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 EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action. This action, which approves revisions to section 2101.20 and section 2105.50 under Article XXI (Air Pollution Control), 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 24, 2017.

**Cecil Rodrigues,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52–APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(2) is amended by:

■ a. Adding an entry for ''2101.20'' in numerical order under ''Part A—General''.

■ b. Revising the entry for ''2105.50''.

The addition and revision read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(c) * * *

(2) * * *

| Article XX or XXI citation | Title/subject | State effective date | EPA approval date | Additional explanation/ § 52.2063 citation |
|---|---|---|---|---|
| **Part A—General** | | | | |
| * | * | * | * | * * * * |
| 2101.20 .. | Definitions ..... | 01/01/15 | 8/10/17, [insert **Federal Register** citation]. | Revised existing definition of ''Open burning.'' All remaining definitions are unchanged as approved on June 24, 2015 (80 FR 36239). |
| * | * | * | * | * * * * |
| **Subpart 5—Open Burning and Abrasive Blasting Sources** | | | | |
| 2105.50 .. | Open Burning ..... | 01/01/15 | 8/10/17, [insert **Federal Register** citation]. | Adding 2105.50(a)(1) subparagraphs A through C.<br>Revising 2105.50(a)(3) and recodifying as 2105.50(a)(5)<br>Adding 2105.50(a)(4)<br>Revising 2105.50(e) to replace ''Enforcement'' with ''Coal Refuse Piles''<br>Revising 2105.50(f) to replace ''Permits'' with ''Enforcement'' and recodifying ''Permits'' as 2105.50(d)<br>Revising 2105.50(d) by removing previous language in 2105.50(d)(1)(E) and recodifying to replace with language in 2105.50(d)(1)(F). Recodifying 2105.50(d)(1)(F) to replace with language in 2105.50(d)(1)(G). Removing 2105.50(d)(1)(G).<br>Adding 2105.50(d)(6)<br>Prior Approval—6/24/2015, 80 FR 36239 |
| * | * | * | * | * * * * |

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[FR Doc. 2017–16806 Filed 8–9–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

**[EPA–HQ–OAR–2017–0223; FRL–9965–97–OAR]**

## Withdrawal of Extension of Deadline for Promulgating Designations for the 2015 Ozone National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of extension of deadline for promulgating designations.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing that it is withdrawing the 1-year extension of the deadline for promulgating initial area designations for the ozone national ambient air quality standards (NAAQS) that were promulgated in October 2015. Thus, unless and until the Administrator takes additional final action, the 2-year deadline for promulgating designations provided in the Clean Air Act (CAA) applies.

**DATES:** The deadline for the EPA to promulgate initial designations for the 2015 ozone NAAQS is October 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding this action, contact

Carla Oldham, Air Quality Planning Division, Office of Air Quality Planning and Standards, Mail Code C539–04, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3347; email address: *oldham.carla@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

Entities potentially affected by this action include state, local and tribal governments that would participate in the initial area designation process for the 2015 ozone standards.

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

The EPA has established a docket for designations for the 2015 ozone NAAQS under Docket ID No. EPA–HQ–OAR–2017–0223. All documents in the docket are listed in the *http://www.regulations.gov* index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

An electronic copy of this notice is also available at *http://www.epa.gov/ozone-designations* along with other information related to designations for the 2015 ozone NAAQS.

## II. Designations Requirements

On October 1, 2015, the EPA signed a notice of final rulemaking that revised the 8-hour primary and secondary ozone NAAQS (80 FR 65292; October 26, 2015). Both standards were lowered from 0.075 parts per million (ppm) to a level of 0.070 ppm.

After the EPA establishes or revises a NAAQS pursuant to CAA section 109, the CAA directs the EPA and the states to begin taking steps to ensure that those NAAQS are met. The first step is to identify areas of the country that meet or do not meet that NAAQS. This step is known as the initial area designations. Section 107(d)(1)(A) of the CAA provides that, ''By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised national ambient air quality standard for any pollutant under section [109], the Governor of each State shall * * * submit to the Administrator a list of all areas (or portions thereof) in the State'' that designates those areas as nonattainment, attainment, or unclassifiable.

The CAA further provides, ''Upon promulgation or revision of a national ambient air quality standard, the Administrator shall promulgate the designations of all areas (or portions thereof) * * * as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised national ambient air quality standard. Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations.'' 42 U.S.C. 7407(d)(1)(B)(i).

In the EPA guidance, ''Area Designations for the 2015 Ozone National Ambient Air Quality Standards,'' the EPA indicated it expected to complete the initial area designations by October 1, 2017, consistent with the statutory requirement that the EPA designate areas no later than 2 years following promulgation of a revised NAAQS.[1]

## III. Withdrawal of Extension of Deadline for Promulgating Designations for the 2015 Ozone NAAQS

In letters sent to states on June 6, 2017, and in a **Federal Register** notice published on June 28, 2017 (82 FR 29246), the EPA Administrator Scott Pruitt announced that he was using his authority under section 107(d)(1)(B)(i) of the CAA to extend by 1 year, to October 1, 2018, the deadline for promulgating initial area designations for the 2015 ozone NAAQS. At that time (*i.e.,* in early June), it was not clear that the agency would be in the position to complete designations for all areas for the 2015 ozone NAAQS in accordance with the 2-year statutory deadline of October 1, 2017. For a variety of other NAAQS in the past, previous EPA Administrators have used the authority under section 107(d)(1)(B)(i) to take additional time to complete designations.[2] The Administrator decided to similarly invoke the extension with regard to designations for the 2015 ozone NAAQS.

The EPA has continued to discuss and work with states concerning designations, and now understands that the information gaps that formed the basis of the extension may not be as expansive as we previously believed. The EPA now intends to reassess whether there are areas with underlying technical issues, whether there are state designation recommendations that the EPA intends to modify, and whether for any area there is insufficient information to promulgate the designation. The EPA believes this reevaluation will help ensure that more Americans are living and working in areas that meet national air quality standards. The agency believes that there may be areas of the United States for which designations could be promulgated in the next few months. Therefore, the EPA is withdrawing its prior announced 1-year extension of the deadline for promulgating initial area designations for the 2015 ozone NAAQS, and the 2-year deadline for promulgating designations provided in section 107(d)(1)(B) of the CAA applies. The Administrator may still determine that an extension of time to complete designations is necessary, but is not making such a determination at this time.

### List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: August 2, 2017.

**E. Scott Pruitt,**

*Administrator.*

[FR Doc. 2017–16901 Filed 8–9–17; 8:45 am]

**BILLING CODE 6560–50–P**

[1] Memorandum from Janet G. McCabe, Acting Assistant Administrator, to Regional Administrators, Regions 1–10. February 25, 2016.

[2] For the 2008 ozone NAAQS, *see* 75 FR 2936 (January 19, 2010); for the 2008 lead NAAQS, *see* 75 FR 71033 (November 22, 2010); for the 2010 sulfur dioxide NAAQS, *see* 77 FR 46295 (August 3, 2012); and for the 2012 fine particulate matter NAAQS, *see* 80 FR 2206 (January 15, 2015).

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 271

**[EPA–R03–RCRA–2014–0407; FRL–9965–87–Region 3]**

## Delaware: Final Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** Delaware has applied to the United States Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these revisions satisfy all requirements needed to qualify for final authorization and is authorizing Delaware's revisions through this direct final rule. In the ''Proposed Rules'' section of this issue of the **Federal Register**, EPA is also publishing a separate document that serves as the proposal to authorize these revisions. EPA believes this action is not controversial and does not expect comments that oppose it. Unless EPA receives written comments that oppose this authorization during the comment period, the decision to authorize Delaware's revisions to its hazardous waste program will take effect. If EPA receives comments that oppose this action, EPA will publish a document in the **Federal Register** withdrawing this direct final rule before it takes effect and the separate document in the ''Proposed Rules'' section of this issue of the **Federal Register** will serve as the proposal to authorize the revisions.

**DATES:** This final authorization will become effective on October 10, 2017, unless EPA receives adverse written comments by September 11, 2017. If EPA receives any such comments, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that this authorization will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–RCRA–2014–0407, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Evelyn Sorto, U.S. EPA Region III, RCRA Waste Branch, Mailcode 3LC32, 1650 Arch Street, Philadelphia, PA 19103–2029; Phone: (215) 814–2123; Email: *sorto.evelyn@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Why are revisions to State programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program is revised to become more stringent or broader in scope, States must revise their programs and apply to EPA to authorize the revisions. Authorization of revisions to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other revisions occur. Most commonly, States must revise their programs because of revisions to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

### B. What decisions has EPA made in this rule?

On August 19, 2016, Delaware submitted a final program revision application (with subsequent corrections) seeking authorization of revisions to its hazardous waste program that correspond to certain Federal rules promulgated between July 30, 2003 and July 28, 2006. EPA concludes that Delaware's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA grants Delaware final authorization to operate its hazardous waste program with the revisions described in its authorization application, and as outlined below in Section G of this document.

Delaware has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions for which Delaware has not been authorized, including issuing HSWA permits, until the State is granted authorization to do so.

### C. What is the effect of this authorization decision?

This action serves to authorize revisions to Delaware's authorized hazardous waste program. This action does not impose additional requirements on the regulated community because the regulations for which Delaware is being authorized by this action are already effective and are not changed by this action. Delaware has enforcement responsibilities under its state hazardous waste program for violations of its program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether Delaware has taken its own actions.

### D. Why wasn't there a proposed rule before this rule?

Along with this direct final rule, EPA is publishing a separate document in the ''Proposed Rules'' section of this issue of the **Federal Register** that serves as the proposal to authorize these State program revisions. EPA did not publish a proposal before this rule because EPA views this action as a routine program change and does not expect comments that oppose its approval. EPA is providing an opportunity for public comment now, as described in Section E of this document.

### E. What happens if EPA receives comments that oppose this action?

If EPA receives comments that oppose this authorization, EPA will withdraw this direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of Delaware's program revisions on the proposal mentioned in the previous section, after considering all comments received during the comment period. EPA will then address all such comments in a later final rule. You may not have another opportunity to comment. If you want to comment on

this authorization, you must do so at this time.

If EPA receives comments that oppose only the authorization of a particular revision to the State's hazardous waste program, EPA will withdraw that part of this rule, but the authorization of the program revisions that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

### F. What has Delaware previously been authorized for?

Delaware initially received final authorization effective June 22, 1984 (June 8, 1984; 49 FR 23837). EPA granted authorization for revisions to Delaware's regulatory program on August 8, 1996, effective October 7, 1996 (61 FR 41345); August 18, 1998, effective October 19, 1998 (63 FR 44152); July 12, 2000, effective September 11, 2000 (65 FR 42871); August 8, 2002, effective August 8, 2002 (67 FR 51478); March 4, 2004, effective May 3, 2004 (69 FR 10171); and October 7, 2004, effective December 6, 2004 (69 FR 60091).

### G. What revisions is EPA authorizing with this action?

On August 19, 2016, Delaware submitted a final program revision application (with subsequent corrections), seeking authorization of additional revisions to its program in accordance with 40 CFR 271.21. Delaware's revision application includes various regulations that are equivalent to, and no less stringent than, selected Federal final hazardous waste rules, as published in the **Federal Register** between July 30, 2003 and July 28, 2006.

EPA now makes a direct final rule, subject to receipt of written comments that oppose this action, that Delaware's hazardous waste program revision application satisfies all of the requirements necessary to qualify for final authorization. Therefore, EPA grants Delaware final authorization for the following program revisions:

*1. Program Revision Changes for Federal Rules*

Delaware seeks authority to administer the Federal requirements that are listed in Table 1 below. This table lists the Delaware analogs that have been revised; these revisions are being recognized as no less stringent than the analogous Federal requirements.

Delaware's regulatory references are to Delaware's Regulations Governing Hazardous Waste (DRGHW), amended and effective August 21, 2006, December 21, 2007, December 21, 2008, May 21, 2009, and April 21, 2016. Additionally, there are some minor corrections that were promulgated and became effective on or before April 21, 2016. The statutory references are to 7 Delaware Code annotated (1991).

TABLE 1—DELAWARE'S ANALOGS TO THE FEDERAL REQUIREMENTS

| Description of Federal requirement (revision checklists [1]) | Federal Register | Delaware authority [2] |
|---|---|---|
| **RCRA Cluster XIV** | | |
| Recycled Used Oil Management Standards, Revision Checklist 203. | 68 FR 44659, 7/30/2003 | DRGHW 279.74.<br>More stringent provisions: 261.5(j) and 279.10(i). |
| **RCRA Cluster XV** | | |
| Nonwastewaters from Dyes and Pigments, Revision Checklist 206. | 70 FR 9138, 2/24/2005; as amended at 70 FR 35032, 6/16/2005. | DRGHW 261.4(b)(15), 261.32, 261 Appendix VII–VIII, 268.20, 268.40/Treatment Standards Table, 268.48/Universal Treatment Standards Table. |
| Uniform Hazardous Waste Manifest Rule, Revision Checklist 207. | 70 FR 10776, 6/16/2005; as amended at 70 FR 35034, 6/16/2004. | DRGHW 260.10, 261.7(b)(1)(iii)(A)–(B), 262.20(a)(1)–(2) [April 21, 2016], 262.21, 262.27, 262.32(b), 262.33, 262.34(m), 262.54(c) and (e), 262.60(c)–(e), 262/Appendix, 263.20(a), 263.20(g), 263.21, 264.70, 264.71(a), 264.71(b)(4), 264.71(e), 264.72, 264.76, 265.70, 265.71(a), 265.71(b)(4), 265.71(e), 265.72, 265.76. |
| **RCRA Cluster XVI** | | |
| Universal Waste Rule: Specific Provisions for Mercury Containing Equipment, Revision Checklist 209. | 70 FR 45508, 8/5/2005 | DRGHW 260.10, 261.9(c), 264.1(g)(11)(iii), 265.1(c)(14)(iii), 268.1(f)(3), 122.1(c)(2)(viii)(C), 273.1(a)(3), 273.4, 273.9, 273.13(c), 273.14(d), 273.32(b)(4)–(5), 273.33(c)–(d). |
| Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures, Revision Checklist 211. | 70 FR 57769, 10/4/2005 | DRGHW 261.3(a)(2)(iv)(A)–(B), (D), (F)–(G). |
| **RCRA Cluster XVII** | | |
| Corrections to Errors in the Code of Federal Regulations, Revision Checklist 214. | 71 FR 40254, 7/14/2006 | Part 260, Subpart B. DRGHW 260.10 [2016].<br>Part 260, Subpart C.<br>DRGHW 260.22(a)(1), 260.22(d)(1)(ii), 260.40(a), 260.41 introductory paragraph.<br>Part 261, Subpart A.<br>DRGHW 261.2(c)(1)(i), 261.3(a)(2)(i), 261.4(a)(20)(v), 261.4(b)(6)(i)(B), 261.4(b)(6)(ii) introductory paragraph, 261.4(b)(6)(ii)(D), 261.4(b)(6)(ii)(F), 261.4(b)(9), 261.4(e)(2)(vi), 261.4(e)(3)(i), 261.6(a)(2)(i)–(iv), [April 21, 2016], 261.6(c)(2).<br>Part 261, Subpart C.<br>DRGHW 261.21 [April 21, 2016], 261.24(b).<br>Part 261, Subpart D. |

TABLE 1—DELAWARE'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

| Description of Federal requirement (revision checklists [1]) | **Federal Register** | Delaware authority [2] |
|---|---|---|
| | | DRGHW 261.31(a)/Table, 261.32 Table "K107" and "K069" entries, 261.33(e), 261.33(e)/Table [2016], 261.33(f), 261.33(f)/Table, 261.38(c)(1)(i)(C)(*4*), 261/Appendix VII–VIII.<br>Part 262, Subpart C.<br>DRGHW 262.34(a)(1)(iv).<br>Part 262, Subpart E.<br>DRGHW 262.53(b), 262.56(b), 262.58(a)(1).<br>Part 262, Subpart G.<br>DRGHW 262.70.<br>Part 262, Subpart H.<br>DRGHW 262.83(b)(1)(i), 262.83(b)(2)(i), 262.84(e), 262.87(a), 262.87(a)(5) introductory paragraph [2016].<br>Part 264, Subpart A.<br>DRGHW 264.1(g)(2), 264.4.<br>Part 264, Subpart B.<br>DRGHW 264.13(b)(7)(iii)(B), 264.17(b) introductory paragraph, 264.18(a)(2)(iii), 264.18(b)(2)(iii).<br>Part 264, Subpart F.<br>DRGHW 264.97(a)(1) introductory paragraph, 264.97(a)(1)(i), 264.97(i)(5), 264.98(a)(2), 264.98(g)(4)(i), 264.99(h)(2) introductory text, 264.101(d).<br>Part 264, Subpart G.<br>DRGHW 264.111(c), 264.112(b)(8), 264.115, 264.116, 264.118(c), 264.119(b)(1)(ii).<br>Part 264, Subpart H.<br>DRGHW 264.140(d)(1), 264.142(b)(2), 264.143(b)(7)–(8), 264.143(e)(5), 264.145(a)(3)(i), 264.145(d)(6), 264.145(f)(11) introductory paragraph, 264.147(h)(1), 264.151(b), 264.151(f) introductory paragraph, 264.151(g) Letter from Chief Financial Officer (including fifth paragraph; item 3; Part A/Alternative I, item *3; Part B/Alternative I, items 10 and 15; Part B/Alternative II, item *7), 264.151(h)(2) (including Guarantee for Liability Coverage; Certification of Valid Claim, Recitals, item 13.(a); Recitals, item 14), 264.151(i), item 2.(e), 264.151(j), item 2.(d), 264.151(k) (including Irrevocable Standby Letter of Credit and Certificate of Valid Claim), 264.151(l), 264.151(l) Certification of Valid Claim, 264.151(m)(1) Certification of Valid Claim/Section 8.(c), 264.151(n)(1) Standby Trust Agreement/Section 3.(c)(1), 264.151(n)(1) Section 3.(e)(3) [April 21, 2016], 264.151(n)(1) Sections 12 and 16.<br>Part 264, Subpart I.<br>DRGHW 264.175(b)(1).<br>Part 264, Subpart J.<br>DRGHW 264.193(c)(4) Note, 264.193(d)(4), 264.193(e)(2)(ii)–(iii), 264.193(e)(2)(v)(A)–(B), 264.193(e)(3)(i)–(ii), 264.193(g)(1)(iii)–(iv), 264.193(g)(2)(i)(A).<br>Part 264, Subpart K.<br>DRGHW 264.221(c)(1)(i)(B), 264.221(c)(2)(ii), 264.221(e)(1), 264.221(e)(2)(i)(B)–(C), 264.223(b)(1), 264.226(a)(2).<br>Part 264, Subpart L.<br>DRGHW 264.251(a)(2)(i)(A), 264.252, 264.259(b).<br>Part 264, Subpart M.<br>DRGHW 264.280(c)(7), 264.280(d) introductory paragraph, 264.283(a).<br>Part 264, Subpart N.<br>DRGHW 264.301(c)(2), 264.301(e)(2)(i)(B), 264.302, 264.304(b)(1), 264.314(e)(2), 264.317(a) introductory paragraph.<br>Part 264, Subpart O.<br>DRGHW 264.344(b).<br>Part 264, Subpart S.<br>DRGHW 264.552(e)(4)(iii), 264.552(e)(6)(iii)(E), 264.553(e) introductory paragraph, 264.554(a) introductory paragraph.<br>Part 264, Subpart W.<br>DRGHW 264.555(e)(6), 264.573(a)(1), 264.573(a)(4)(i), 264.573(a)(5), 264.573(b) introductory paragraph, 264.573(m)(2)–(3).<br>Part 264, Subpart X.<br>DRGHW 264.600, 264.601(a) introductory paragraph, 264.601(b)(11), 264.601(c)(4).<br>Part 264, Subpart AA.<br>DRGHW 264.1030(c), 264.1033(f)(2)(vii)(B), 264.1034(b)(2), 264.1035(c)(4)(i)–(ii). |

TABLE 1—DELAWARE'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

| Description of Federal requirement (revision checklists [1]) | Federal Register | Delaware authority [2] |
|---|---|---|
| | | Part 264, Subpart BB.<br>DRGHW 264.1050(f), 264.1058(c)(1), 264.1064(c)(3).<br>Part 264, Subpart CC.<br>DRGWH 264.1080(a) and (c), 264.1090(c).<br>Part 264, Subpart DD.<br>DRGHW 264.1101(b)(3)(iii), 264.1101(c)(3) introductory paragraph, 264.1101(c)(3)(i), 264.1101(d) introductory paragraph, 264.1102(a), 264/Appendix I/Table 1 and Table 2 (Section 2.(d)).<br>Part 265, Subpart A.<br>DRGHW 265.1(c)(4)(i), 265.1(c)(6).<br>Part 265, Subpart B.<br>DRGHW 265.12(a)(1), 265.14(b)(1), 265.16(b), 265.19(c)(2).<br>Part 265, Subpart D.<br>DRGHW 265.56(b).<br>Part 265, Subpart F.<br>DRGHW 265.90(e).<br>Part 265, Subpart G.<br>DRGHW 265.110(b)(4), 265.111(c), 265.112(b)(5), 265.112(d)(4), 265.113(b) introductory paragraph, 265.117(b) introductory paragraph, 265.119(b)(1)(ii).<br>Part 265, Subpart H.<br>DRGHW 265.140(b) introductory paragraph, 265.140(b)(2), 265.142(a), 265.145(e)(11), 265.147(a)(1)(i), 265.147(b)(1)(i)–(ii).<br>Part 265, Subpart I.<br>DRGHW 265.174.<br>Part 265, Subpart J.<br>DRGHW 265.193(e)(2)(v), 265.193(i)(2), 265.194(b)(1)–(2), 265.197(b), 265.201(c) introductory paragraph.<br>Part 265, Subpart K.<br>DRGHW 265.221(a), 265.221(d)(2)(i)(A)–(B), 265.223(b)(1)(Response Actions), 265.228(a)(2)(iii)(D), 265.228(b)(2), 265.229(b)(2) and (b)(3).<br>Part 265, Subpart L.<br>DRGHW 265.255(b), 265.259(b)(1).<br>Part 265, Subpart M.<br>DRGHW 265.280(a)(4), 265.281(a)(1).<br>Part 265, Subpart N.<br>DRGHW 265.301(a), 265.301(d)(1), 265.301(d)(2)(i)(B), 265.302(b), 265.303(b)(1), 265.312(a)(1), 265.314(f)(1)(ii), 265.314(g)(2), 265.316 introductory paragraph, 265.316(c)–(d).<br>Part 265, Subpart Q.<br>DRGHW 265.405(a)(1)(i).<br>Part 265, Subpart W.<br>DRGHW 265.441(c), 265.443(a)(4)(i), 265.443(b) introductory paragraph, 265.445(b).<br>Part 265, Subpart AA.<br>DRGHW 265.1033(f)(2)(ii), 265.1035(b)(2) introductory paragraph, 265.1035(b)(2)(i), 265.1035(c)(4)(i), 265.1063(b)(4)(ii).<br>Part 265, Subpart CC.<br>DRGHW 265.1080(a), 265.1085(h)(3) introductory paragraph, 265.1087(b), 265.1090(f)(1).<br>Part 265, Subpart DD.<br>DRGHW 265.1100(d), 265.1101(b)(4)(i)(B), 265.1101(b)(4)(iii), 265.1101(c)(3) introductory paragraph, 265.1101(d) introductory paragraph, 265 Appendix I/Tables 1 and 2, 265 Appendix V/Table, 265 Appendix VI [2016].<br>Part 266, Subpart F.<br>DRGHW 266.70(a).<br>Part 266, Subpart G.<br>DRGHW 266.80(a)/Table.<br>Part 266, Subpart H.<br>DRGHW 266.100(b)(2)(iii), 266.100(d)(3)(i)(A), 266.100(g) introductory paragraph, 266.102(a)(2)(vi), 266.102(e)(3)(i)(E), 266.102(e)(5)(i)(C), 266.102(e)(6)(ii)(B)(2), 266.102(e)(8)(iii), 266.103(a)(4)(vii), 266.103(b)(2)(v)(B)(2), 266.103(b)(5)(ii)(A), 266,103(b)(6)(viii)(A), 266.103(c)(1)(i), 266.103(c)(1)(ii)(A)(2), 266.103(c)(1)(ix) introductory paragraph, 266.103(c)(1)(ix)(A), 266.103(c)(4)(iv)(C)(1), 266.103(g)(1)(i), 266.106(d)(1), 266.109(a)(2)(ii), 266.109(b) introductory paragraph.<br>Part 266, Subpart N.<br>DRGHW Part 266 subpart N heading. |

TABLE 1—DELAWARE'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

| Description of Federal requirement (revision checklists [1]) | Federal Register | Delaware authority [2] |
|---|---|---|
| | | Part 266, Appendices.<br>DRGHW Part 266 Appendix III–VI, VIII, IX, and XIII.<br>Part 268, Subpart A.<br>DRGHW 268.2(g), 268.4(a)(3) introductory paragraph, 268.6(c)(5) introductory paragraph, 268.7(a)(1) [more stringent provision], 268.7(a)(3)(ii), 268.7(a)(4)/Table (entry 8), 268.7(b)(3)(ii)/Table (entry 5), 268.7(b)(4)(ii), 268.7(c)(2) [2016], 268.7(d) introductory paragraph, 268.7(d)(1) introductory paragraph, 268.7(d)(1)(i)–(iii), 268.7(d)(2)–(3).<br>Part 268, Subpart B.<br>DRGHW 268.14(b)–(c).<br>Part 268, Subpart D.<br>DRGHW 268.40(g), 268.40/Table ''Treatment Standards for Hazardous Wastes,'' 268.42/Table 1, 268.44(c), 268.45/Table 1, 268.48/Table ''Universal Treatment Standards,'' 268.49(d).<br>Part 268, Subpart E.<br>DRGHW 268.50(c) and (g), Part 268 Appendix VIII. |
| 40 CFR 270.1(c)(1)(iii), 270.1(c)(3)(i) introductory paragraph, 270.2. | ..... | DRGHW 122.1(a)(2), 122.1(c)(1)(iii), 122.1(c)(3)(i) introductory paragraph, 122.2. |
| 40 CFR 270.10(j), 270.11(d)(1)–(2), 270.13(k)(7), 270.14(a), 270.14(b)(11)(ii)(B), 270.14(b)(19)(iii), 270.14(b)(21), 270.17(f), 270.18(b), 270.18(g), 270.20(i)(2), 270.26(c)(15). | ..... | DRGHW 122.10(j), 122.11(d)(1)–(2), 122.13(k)(7), 122.14(a), 122.14(b)(11)(ii)(B), 122.14(b)(19)(iii), 122.14(b)(21), 122.17(f), 122.18(b) and (g), 122.20(i)(2), 122.26(c)(15). |
| 40 CFR 270.33(b) introductory paragraph. | ..... | DRGHW 122.33(b) introductory paragraph. |
| 40 CFR 270.41(c), 270.42(d)(2)(i), 270.42 Appendix I. | ..... | DRGHW 122.41(c), 122.42(d)(2)(i), 122.42 Appendix I. |
| 40 CFR 270.70(a) introductory paragraph, 270.72(b)(2). | ..... | DRGHW 122.70(a) introductory paragraph, 122.72(b)(2).<br><br>Part 273, Subpart A.<br>DRGHW 273.9.<br>Part 273, Subpart B.<br>DRGHW 273.13(b) introductory paragraph, 273.14(a).<br>Part 273, Subpart C.<br>DRGHW 273.34(a).<br>Part 279, Subpart A.<br>DRGHW 279.1.<br>Part 279, Subpart B.<br>DRGHW 279.10(b)(2), 279.11, 279.11/Table 1.<br>Part 279, Subpart E.<br>DRGHW 279.43(c)(3)(i), 279.43(c)(5), 279.44(a), 279.44(c)(2), 279.45(a).<br>Part 279, Subpart F.<br>DRGHW 279.52, 279.55(a) introductory paragraph, 279.55(b)(2)(i)(B) [2016], 279.56(a)(2), 279.57(a)(2)(ii), 279.59.<br>Part 279, Subpart G.<br>DRGHW 279.63(b)(3), 279.64(e).<br>Part 279, Subpart H.<br>DRGHW 279.70(b)(1). |
| Cathode Ray Tubes Rule, Revision Checklist 215. | 71 FR 42928, 7/28/2006 ..... | DRGHW 260.10, 261.4(b)(16), 261.39, 261.40, 262.20 (Certain portions of the regulations are considered broader in scope; see discussion in Section H.1(a)). |

[1] A Revision Checklist is a document that addresses the specific revisions made to the Federal regulations by one or more related final rules published in the **Federal Register**. EPA develops these checklists as tools to assist States in developing their authorization applications and in documenting specific State analogs to the Federal regulations. For more information see EPA's RCRA State Authorization Web page at *https://www.epa.gov/rcra/state-authorization-under-resource-conservation-and-recovery-act-rcra.*

[2] Unless otherwise indicated, all Delaware citations are from the state's 2009 regulations. Minor modifications that became effective in 2016, but for which the exact effective date is unknown are denoted with a ''[2016]'' following the regulatory citation.

*2. State-Initiated Changes*

Delaware's program revision application includes State-initiated changes that are not directly related to any of the Revision Checklists in Table 1. These State-initiated revisions to some of Delaware's existing regulations are for the purposes of correcting errors and adding consistency or clarification to the existing regulations. EPA has evaluated the changes and has determined that the State's regulations remain consistent with, and are no less stringent than, the corresponding Federal regulations. EPA grants Delaware final authorization for the State provisions listed in Table 2. The following State-initiated revisions are

equivalent and analogous to the numerically identical provisions of the Federal RCRA regulations found at relevant or applicable 40 CFR sections as of July 1, 2007.

TABLE 2—EQUIVALENT STATE-INITIATED CHANGES

| Federal RCRA citation (40 CFR) | State citation (DRGHW) |
|---|---|
| 262.21 | 262.21. |
| 262.23 | 262.23. |
| 263.21, 264/265.72 | 263.21, 264/265.72. |
| 264/265.119, 264/265.276 | 264/265.119, 264/265.276. |
| 264.143(h), 264.145(h), 265.143(g), 265.145(g), 264.151(a) and (m) | 264.143(h), 264.145(h), 265.143(g), 265.145(g), 264.151(a) and (m). |
| 264.151(a)(1) Section 8(c) | 264.151(a)(1) Section 8(c). |
| 266, Appendix IX | 266, Appendix IX. |

**H. Where are the revised Delaware rules different from the Federal rules?**

*1. Delaware Requirements That Are Broader in Scope*

The Delaware hazardous waste program contains certain provisions that are broader in scope than the Federal program. These broader in scope provisions are not part of the program being authorized by this action. EPA cannot enforce requirements that are broader in scope, although compliance with such provisions is required by Delaware law. Examples of broader in scope provisions of Delaware's program include, but are not limited to, the following:

(a) DRGHW 260.10 includes the definition of ''cathode ray tube (CRT) generator,'' which is not found in the Federal regulations. Furthermore, the definition of ''CRT processing'' found at DRGHW 260.10, and the requirements at DRGHW 261.39, DRGHW 261.40, and DRGHW 261.4(b)(16)(i)–(iii), contain language regarding the management of cathode ray tubes as a solid waste. Under the Federal requirements, used CRTs that meet certain conditions are not a solid waste and would not be regulated. Delaware continues to regulate those used CRTs even if they meet the Federal exclusion requirements. As a result, Delaware's regulation of these excluded CRTs goes beyond the scope of the Federal program and is not a part of the Federally enforceable program.

(b) The Delaware regulations promulgated at DRGHW 263 Subpart E outline provisions for hazardous waste transporter permits. Because there is no counterpart in the Federal regulations that addresses hazardous waste transporter permits, this entire section (DRGHW 263 Subpart E) is broader in scope. Delaware has made changes to subparagraphs 263.102(b)(3) and (4) of DRGHW 263 Subpart E. These subparagraphs set forth conditions that could lead to the modification, denial, termination, or revocation of a hazardous waste transporter permit. There are no provisions in the Federal regulations that address the modification, denial, termination, or revocation of a hazardous waste transporter permit. As a result, these DRGHW provisions go beyond the scope of the Federal program.

*2. Delaware Requirements That Are More Stringent Than the Federal Program*

Delaware's hazardous waste program contains several provisions that are more stringent than the RCRA program. The more stringent provisions are part of the Federally-authorized program and are, therefore, Federally-enforceable. The specific more stringent provisions are also noted in Table 1 and in Delaware's authorization application. They include, but are not limited to, the following:

(a) The Federal regulations at 40 CFR 261.5(j) state that if a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to the ''Standards for the Management of Used Oil.'' However, Delaware's regulations at DRGHW 261.5(j) state that if a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to several standards including: the Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Standards for the Management of Specific Types of Hazardous Waste; Land Disposal Restrictions; the Hazardous Waste Permit Program; and Procedures for Decision Making. Because Delaware imposes additional standards on waste and used oil mixtures, Delaware's regulations are more stringent than the Federal requirements.

(b) DRGHW 261.41 includes more stringent requirements, at DRGHW 261.41(a), which are not found in 40 CFR 261.41. Specifically, the Delaware provision imposes additional requirements on used, intact Cathode Ray Tubes (CRTs) exported for reuse. When applied to CRTs that are regulated by the Federal requirements, the provisions at DRGHW 261.41(a) are more stringent than the Federal requirements.

(c) The Delaware regulations at DRGHW 262.12(d) require that a generator submit a ''RCRA Subtitle C Site Identification Form'' (EPA Form 8700–12) whenever there is a change in name, mailing address, contact person, contact address, telephone number, ownership, type of regulated waste activity, description of regulated wastes managed, or if the generator permanently ceases the regulated waste activity. This notification must be submitted to the DNREC Secretary no less than 10 days prior to the implementation of the change(s). The Federal regulations at 40 CFR 262.12 do not require the submission of a ''RCRA Subtitle C Site Identification Form'' (EPA Form 8700–12) whenever there is a change in name, mailing address, contact person, contact address, telephone number, ownership, type of regulated waste activity, description of regulated wastes managed, or if the generator permanently ceases the regulated waste activity. Therefore, this provision of Delaware's regulations is more stringent than the Federal requirement.

(d) The Federal requirements in 40 CFR 262.20 detail the procedures generators must follow when preparing a manifest. The paragraph at 40 CFR 262.20(e) includes conditions whereby generators that generate more than 100 kilograms, but less than 1000 kilograms

in a calendar month would be exempt from the manifest requirements. Delaware's regulations at DRGHW 262.20 also include guidelines for the preparation of a manifest. However, paragraph 262.20(e) in the DRGHW is labeled as ''Reserved''. Therefore, the manifest exemption for generators that generate more than 100 kilograms, but less than 1000 kilograms of hazardous waste in a calendar month that is included in the CFR is excluded from Delaware's regulations. Thus, Delaware regulations are considered to be more stringent.

(e) The Federal regulations promulgated at 40 CFR 262.44 state that generators who generate more than 100 kilograms, but less than 1000 kilograms of hazardous waste in a calendar month are subject to reporting and recordkeeping requirements in 40 CFR 262.40(a), (c), and (d); 40 CFR 262.42(b); and 40 CFR 262.43. Delaware's regulations impose additional reporting and recordkeeping requirements on these generators. Specifically, Delaware's regulations at DRGHW 262.44 call for generators who generate more than 100 kilograms, but less than 1000 kilograms to follow the reporting and recordkeeping requirements in DRGHW 262.40(a), (b), (c), and (d); DRGHW 262.42(b); and DRGHW 262.43. Therefore, Delaware's regulations are more stringent than the Federal regulations.

(f) The Delaware regulations at DRGHW 265.176(b) require the owner(s) or operator(s) of waste treatment, storage, and disposal facilities to take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. Specifically, owner(s) or operator(s) must implement preventative measures including: Separating and protecting ignitable or reactive waste from sources of ignition or reaction, confining smoking and open flame to specially designated locations while ignitable or reactive waste is being handled, and conspicuously placing ''No smoking'' signs wherever there is a hazard from ignitable or reactive waste. The Federal regulation promulgated at 40 CFR 265.176 does not include provisions for owner(s) or operator(s) of waste treatment, storage, and disposal facilities to prevent accidental ignition or reaction of ignitable or reactive waste. Hence, Delaware's regulation is more stringent.

(g) The Federal regulations at 40 CFR 268.7 include testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities. The provision at 40 CFR 268.7(a)(1) states that a generator must determine whether its hazardous waste must be treated before it can be land disposed. It also says that generators can make this determination by either testing the waste or using knowledge of the waste. The provision also gives generators the option to send their waste to a RCRA-permitted hazardous waste facility, where the facility would have to test the hazardous waste. Delaware also has testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities, which can be found at DRGHW 268.7. Delaware's regulations at DRGHW 268.7(a)(1) require that generators determine whether their hazardous waste must be treated before it can be land disposed. Similar to the federal requirements, Delaware's regulations state that generators can either test the waste or use knowledge of the waste to make this determination. However, Delaware's regulations do not include a provision to allow generators to send their waste to a RCRA-permitted facility for testing. Therefore, Delaware's requirements are more stringent than Federal requirements.

(h) The Delaware regulations promulgated at DRGHW 279.10(i) state that marketers and burners of used oil who market used oil containing any quantifiable level of polychlorinated biphenyls (PCBs) are subject to both the ''Standards for the Management of Used Oil'' set forth in DRGHW Part 279 and the requirements found at 40 CFR 761.20(e). The Federal regulations at 40 CFR 279.10(i), however, list the criteria whereby used oil containing PCBs may become subject to both the ''Standards for the Management of Used Oil'' and the requirements of 40 CFR part 761. As a result, under the Federal regulations, marketers and burners or used oil who market used oil containing PCBs may be subject to either the requirements of 40 CFR part 279 or the requirements of 40 CFR part 761. Because Delaware always requires compliance with both parts of the regulations, Delaware's regulations are more stringent.

(i) The Delaware regulations at DRGHW 279.22(b)(3) state that containers and aboveground tanks utilized to store used oil at generator facilities must be closed during storage, except when it is necessary to add or remove oil. The Federal regulations at 40 CFR 279.22(b) do not require that containers and aboveground storage tanks remain closed during storage, thereby making Delaware's regulations more stringent.

### I. Who handles permits after the authorization takes effect?

After this authorization revision, Delaware will continue to issue permits covering all the provisions for which it is authorized and will administer all such permits. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that it issued prior to the effective date of this authorization until the timing and process for effective transfer to the State are mutually agreed upon. Until such time as EPA formally transfers responsibility for a permit to Delaware and EPA terminates its permit, EPA and Delaware agree to coordinate the administration of such permit in order to maintain consistency. EPA will not issue any more new permits or new portions of permits for the provisions listed in Section G after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Delaware is not yet authorized.

### J. How does this action affect Indian Country (18 U.S.C. 115) in Delaware?

Delaware is not seeking authority to operate the program on Indian lands, since there are no Federally-recognized Indian Lands in Delaware.

### K. What is codification and is epa codifying Delaware's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this action by referencing the authorized State rules in 40 CFR part 272. EPA reserves the amendment of 40 CFR part 272, subpart I, for this authorization of Delaware's program revisions until a later date.

### L. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore, this action is not subject to review by OMB. This action authorizes State requirements pursuant to RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). In any case, Executive Order 13175 does not apply to this rule since there are no Federally recognized tribes in Delaware.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999) because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant, and it does not concern environmental health or safety risks that may disproportionately affect children. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that satisfies the requirements of RCRA. Thus, the requirements of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 3701, *et seq.*) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Burden is defined at 5 CFR 1320.3(b). Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision 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. Because this rule authorizes pre-existing State rules which are at least equivalent to, and no less stringent than, existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

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 document 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 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). This action is effective October 10, 2017.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: July 27, 2017.

**Cecil Rodrigues,**

*Acting Regional Administrator, U.S. EPA Region III.*

[FR Doc. 2017–16903 Filed 8–9–17; 8:45 am]

**BILLING CODE 6560–50–P**

## LEGAL SERVICES CORPORATION

### 45 CFR Parts 1600, 1630, and 1631

### Definitions; Cost Standards and Procedures; Purchasing and Property Management

**AGENCY:** Legal Services Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the Legal Services Corporation (LSC or Corporation) regulation on Definitions and Cost Standards and Procedures and creates a new part from LSC's Property Acquisition and Management Manual (PAMM).

**DATES:** This final rule is effective on December 31, 2017.

**FOR FURTHER INFORMATION CONTACT:** Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007; (202) 295–1563 (phone), (202) 337–6519 (fax), or *sdavis@lsc.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The purpose of 45 CFR part 1630 is ''to provide uniform standards for allowability of costs and to provide a comprehensive, fair, timely, and flexible process for the resolution of questioned costs.'' 45 CFR 1630.1. LSC last revised part 1630 in 1997, when it published a final rule intended to ''bring the Corporation's cost standards and procedures into conformance with applicable provisions of the Inspector General Act, the Corporation's appropriations [acts], and relevant Office of Management and Budget (OMB) circulars.'' 62 FR 68219, Dec. 31, 1997. Although the OMB Circulars are not binding on LSC because LSC is not a federal agency, LSC adopted relevant provisions from the OMB Circulars pertaining to non-profit grants, audits, and cost principles into the final rule for part 1630. *Id.* at 68219–20 (citing OMB Circulars A–50, A–110, A–122, and A–133).

LSC published the PAMM in 2001 ''to provide recipients with a single complete and consolidated set of policies and procedures related to property acquisition, use and disposal.'' 66 FR 47688, Sept. 13, 2001. Prior to the PAMM's issuance, such policies and

procedures were ''incomplete, outdated and dispersed among several different LSC documents.'' *Id.* The PAMM contains policies and procedures that govern both real and non-expendable personal property, but, except for contract services for capital improvements, the PAMM does not apply to contracts for services. *Id.* at 47695. The PAMM's policies and procedures were developed with guidance from the Federal Acquisition Regulation at 48 CFR parts 1–52, federal property management regulations, and OMB Circular A–110. *Id.* at 47688. The PAMM also incorporates several references to provisions of part 1630 pertaining to costs that require LSC's prior approval and the proper allocation of derivative income. *Id.* at 47696–98 (containing references to 45 CFR 1630.5(b)(2)–(4), 1630.5(c), and 1630.12, respectively).

Part 1630 and the PAMM have not been revised since 1997 and 2001, respectively. Since then, procurement practices and cost allocation principles applicable to awards of federal funds have changed significantly. For instance, in 2013, OMB revised and consolidated several Circulars, including the Circulars LSC relied upon to develop part 1630, into a single Uniform Guidance. 78 FR 78589, Dec. 26, 2013; 2 CFR part 200. OMB consolidated and simplified its guidance to ''reduce administrative burden for non-Federal entities receiving Federal awards while reducing the risk of waste, fraud and abuse.'' 78 FR 78590.

LSC determined that it should undertake regulatory action at this time for three reasons. The first reason is to account for changes in Federal grants policy where appropriate for LSC. The second reason is to address the difficulties that LSC and its grantees experience in applying ambiguous provisions of part 1630 and the PAMM. Finally, LSC believes rulemaking is appropriate now to address the limitations that certain provisions of both documents place on LSC's ability to ensure clarity, efficiency, and accountability in its grant-making and grants oversight practices.

## II. Procedural History of This Rulemaking

In July 2014, the Operations and Regulations Committee (Committee) of LSC's Board of Directors (Board) approved Management's proposed 2014–2015 rulemaking agenda, which included revising part 1630 and the PAMM as a priority item. On July 7, 2015, Management presented the Committee with a Justification Memorandum recommending publication of an Advance Notice of Proposed Rulemaking (ANPRM) to seek public comment on possible revisions to part 1630 and the PAMM. Management stated that collecting input from the regulated community through an ANPRM would significantly aid LSC in determining the scope of this rulemaking and in developing a more accurate understanding of the potential costs and benefits that certain revisions may entail. On July 18, 2015, the Board authorized rulemaking and approved the preparation of an ANPRM to revise part 1630 and the PAMM.

In October 2015, LSC published in the **Federal Register** an ANPRM, seeking public comment on potential revisions to part 1630 and the Property Acquisition and Management Manual (PAMM). 80 FR 61142, Oct. 9, 2015. After receiving comments on the ANPRM, LSC conducted workshops to obtain additional input on the potential changes. LSC drafted proposed changes to part 1630 and the PAMM based on the feedback it received from the ANPRM and the workshops.

On October 28, 2016, LSC published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) regarding 45 CFR parts 1600, 1630, and new 1631. 81 FR 75006, Oct. 28, 2016. LSC sought public comment on LSC's revisions to its definitions and cost standards and procedures and the creation of a new part from the PAMM. In response to a request from the National Legal Aid and Defender Association (NLADA), LSC extended the original 60-day comment period for an additional 30 days. 81 FR 93653, Dec. 21, 2016. The new deadline for comments was January 26, 2017. On July 21, 2017, the Committee recommended publication of this final rule to the Board. On July 22, 2017, the Board voted to publish this final rule.

Materials regarding this rulemaking are available in the open rulemaking section of LSC's Web site at *http://www.lsc.gov/about-lsc/laws-regulations-guidance/rulemaking.* After the effective date of the rule, those materials will appear in the closed rulemaking section at *http://www.lsc.gov/about-lsc/laws-regulations-guidance/rulemaking/closed-rulemaking.*

## III. Discussion of Comments and Regulatory Provisions

During the public comment period, LSC received comments from six organizations: Indiana Legal Services (ILS), Colorado Legal Services (CLS), Michigan Advocacy Program (MAP), Northwest Justice Project (NJP), NLADA, and Legal Action of Wisconsin (Legal Action).

Commenters expressed support for several elements of the proposed regulations. NLADA supported the proposal to eliminate 45 CFR 1630.3(a)(8), which requires recipients to obtain written consent from federal agencies before they may use LSC funds to match the federal agencies' grants. NLADA, NJP, and MAP supported increasing the prior approval threshold in § 1630.6(b)(1) from $10,000 to $25,000. MAP supported the proposal to exclude employee benefit contracts from the prior approval requirements in § 1630.6(b)(1)(ii). MAP also supported adopting proposed § 1631.8, which requires recipients to have written procurement policies and procedures that meet particular standards because it involves LSC oversight at a policy level, and not individual transactional level. MAP supported the proposal to make the PAMM a regulation. NLADA and MAP supported proposed § 1631.13, which would permit programs to dispose of personal property that has little or no value as the program sees fit.

## IV. Section-by-Section Discussion

### *A. Part 1600—Definitions*

*Section 1600.1 Definitions.* LSC proposed including definitions of three new terms: *Corporation funds, LSC funds,* and *non-LSC funds.*

*Comment:* NJP supported adding these definitions. NJP, NLADA, and CLS, however, expressed concern that the proposed definition of *Corporation funds* or *LSC funds,* which reads ''any funds appropriated by Congress to carry out the purposes of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996 *et seq.,* as amended[,]'' could be interpreted to include funds appropriated by Congress to other departments or agencies that can be granted to LSC recipients for the purpose of providing legal assistance. Instead, NJP recommended adding ''to LSC'' to the definition, which would then read ''any funds appropriated by Congress *to LSC*. . . .''

*Response:* LSC will revise the final rule to add the phrase ''to LSC'' to the definition in § 1600.1.

### *B. Part 1630—Cost Standards and Procedures*

*Organizational note:* As described in the discussion for § 1630.10 (Recipient policies, procedures, and recordkeeping), the final rule will insert this section and renumber the sections that follow. This preamble reflects the updated numbering except where noted.

LSC proposed to reorganize part 1630 into four subparts addressing (1) generally applicable provisions; (2)

allocability and allowability of costs charged to LSC grants; (3) questioned cost proceedings; and (4) closeout proceedings.

Subpart A—General Provisions

*Section 1630.1 Purpose.* LSC proposed no changes to this section and received no comments.

*Section 1630.2 Definitions.* Proposed § 1630.2(d) defined *final written decision* as either (1) a decision issued by the Vice President for Grants Management, or (2) ''the notice of questioned costs if a recipient does not respond to the notice within 30 days of receipt.'' Additionally, proposed § 1630.3 (current § 1630.13(b)) recognized that LSC may, on a recipient's written request for good cause, grant an extension of time.

*Comment:* NJP expressed concern, with which CLS agreed, that the extension of time is not referenced in the § 1630.2(d) definition, nor is it identified in proposed § 1630.10(d)(2) (governing questioned cost proceedings). Proposed § 1630.10(d)(2) established that ''[i]f the recipient does not respond to LSC's written notice [of questioned costs] within 30 days, the written notice shall become LSC's final written decision.'' NJP expressed concern that, if a recipient does not respond to the written notice within 30 days, the recipient loses the right to further appeal because ''cutting off any right to appeal after 30 days does not take into account vagaries of notice or possible intervening events.''

*Response:* As NJP noted, the timeframes of part 1630 are subject to extensions for good cause. Accordingly, where a recipient receives a notice of questioned costs, it may request an extension based on the ''vagaries of notice or possible intervening events'' with which NJP is concerned. LSC believes proposed § 1630.3(b), which described permitted extensions, provided appropriate flexibility to respond to issues that may impede a recipient's ability to fully respond to the notice within 30 days.

Nevertheless, to clarify both that the extensions of time described in proposed § 1630.3 apply during questioned cost proceedings and that a final written decision is subject to the extension, LSC will amend proposed § 1630.10(d)(2), renumbered as § 1630.11(d)(2), to read, ''If the recipient does not respond to LSC's written notice within 30 days; the recipient does not request an extension of time pursuant to § 1630.3(b) within 30 days; or LSC does not grant an extension of time pursuant to § 1630.3(b) within 30 days the written notice shall become LSC's final written decision.''

*Section 1630.3 Time.*

*Section 1630.3(a).* Current § 1630.13(a) states that time limits in part 1630 are computed according to the Federal Rules of Civil Procedure, Rules 6(a) and (e). LSC proposed to relocate this language to § 1630.3(a) without change.

*Comment:* NJP noted that the current version of Rule 6 has no paragraph (e) and proposed that LSC eliminate the reference. NJP also noted that, rather than citing to the Federal Rules of Civil Procedure to explain the time limits, it may be less confusing for LSC to include in the rule a standard for calculating time. CLS supported this comment.

*Response:* In response to NJP's comment, LSC will replace paragraph (a) regarding time computation with language adopted from 24 CFR 26.31. The adopted language provides that the first day of the time period is the day after the event. In other words, if a recipient has 30 days to respond to a notice of questioned costs, the 30 days begins running the day after the recipient receives the notice. For time periods of seven days or less, the time period is seven business days; intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

*Section 1630.3(b).* Current § 1630.13(b) states that LSC may, ''on a recipient's written request for good cause, grant an extension of time and shall so notify the recipient in writing.'' LSC did not propose to change this provision in the NPRM.

*Comment:* NJP noted that proposed § 1630.3(b) did not state whether the request for extension of time must be received by LSC before the expiration of the deadline at issue. NJP asserted that if LSC intends that the request be received within the timeframe, the regulation should so state. NJP also requested that the regulation state that ''good cause'' shall be liberally construed. CLS stated it ''believes that the timeline for appealing questioned costs should be clarified, relaxed and allow for extensions of time and exceptions.''

Regarding extensions of time and proposed § 1630.10(d)(2) (review of questioned costs) specifically, NJP also requested that the regulation allow a recipient the opportunity to demonstrate good cause for failing to respond to the notice of proposed costs within 30 days after the allotted 30 days' response time has passed but before LSC pursues recovery of the disallowed cost. NJP noted that recipients face technology and mail delivery problems, staff illness, vacation or other extended leave, or other exigent circumstances, including ''excusable neglect,'' that cause recipients to fail to seek an extension within the 30 days allowed by proposed § 1630.10(d)(2).

*Response:* LSC emphasizes that proposed § 1630.10(d)(2), final rule § 1630.11(d)(2), authorizes a full 30 calendar days for a recipient to seek an extension of time. For effective and efficient management, LSC believes it is reasonable to expect some form of correspondence from a recipient—whether the actual response or a request for an extension—within the timeframe provided by the relevant section of the rule. The circumstances that NJP suggests would merit requests for extensions of time that are filed after the timeframe expired, *e.g.,* staff on vacation or excusable neglect, do not seem to be reasonable justification for a grantee to be unable to request an extension before a deadline expires. Therefore, LSC will adopt NJP's suggestion to clarify that § 1630.3(b) requires the request for an extension to be submitted within the allotted timeframe. In addition, LSC will add language requiring LSC to respond to a request for extension within seven calendar days of receipt of the request. LSC believes this regulation, as revised, provides an appropriate timeline for questioned costs proceedings, including appropriate extensions of time and exceptions.

*Section 1630.4 Burden of proof.* LSC proposed no changes to this section and received no comments.

Subpart B—Cost Standards and Prior Approval

*Section 1630.5 Standards governing allowability of costs under LSC grants or contracts.* In proposed § 1630.5(i), LSC referenced regulations and circulars of the Office of Management and Budget (OMB) as documents providing guidance for all allowable costs arising under part 1630 where relevant policies or criteria are not inconsistent with the provisions and regulations of LSC.

*Comment:* NJP suggested that using OMB guidance ''for all allowable cost questions arising under this part when relevant policies or criteria therein are not inconsistent'' with LSC laws and regulations ''put[s] into play'' OMB guidance where LSC does not have other published policies or guidance. NJP and Legal Action expressed concern that OMB guidance does not permit fundraising as an allowable cost, which conflicts with LSC's longstanding practice of allowing LSC funds to be used for fundraising efforts. *See* Advisory Opinion EX–1999–12,

*http://www.lsc.gov/sites/default/files/LSC/laws/pdfs/olaeo/EX-1999-12.pdf.* CLS supported this comment. NJP and NLADA also suggested removing the words ''and circulars'' from proposed § 1630.5(i) because relevant OMB circulars have been replaced by the Uniform Guidance published by the Office of Management and Budget, 2 CFR part 200. CLS supported these suggestions.

*Response:* LSC agrees with these comments and will make two changes to the final rule. LSC will add a new paragraph (i) to this section to reflect LSC's longstanding policy that recipients may use LSC funds to engage in fundraising for the purposes of expanding the resources available to carry out the LSC grant. LSC will also remove the words ''and circulars'' from proposed § 1630.5(i), final rule § 1630.5(j).

*Section 1630.6 Prior approval.* Under current § 1630.5(b)(2), LSC requires recipients to seek prior approval for any purchases and leases of equipment, furniture, or other personal, non-expendable property, if the purchase price of any individual item of property exceeds $10,000. 45 CFR 1630.5(b)(2). LSC also requires recipients to seek prior approval of purchases of real property, capital expenditures costing more than $10,000, and pre- and post-award costs. *Id.* § 1630.5(b)(1), (3), and (4).

In the NPRM, LSC proposed three changes to the prior approval requirement. First, LSC proposed to increase the prior approval threshold amount to $25,000 to account for inflation. Second, because LSC believes effective financial oversight requires recipients to seek prior approval for more transactions than only those listed in the current rule, the proposed regulation required prior approval for ''any . . . transaction'' of purchases or leases of personal property, contracts for services, purchases of real estate, and capital improvements when the cost of the transaction exceeds $25,000. In the preamble to the NPRM, LSC explained that recipients must seek prior approval for ''any single purchase whose costs exceed $25,000 in LSC funds, regardless of whether that purchase is of a single item of personal property, or a combination of personal property and services.'' 81 FR 75006, 75013, Oct. 28, 2016. Finally, LSC proposed to remove pre-award and post-award costs from the list of costs eligible for prior approval because prior approval is not the appropriate process for considering requests to use LSC funds to pay for pre- or post-award costs.

*General comments:* Every commenter opposed at least some part of the proposed prior approval requirement. In general, the commenters objected to LSC's review of purchases because the recipient knows the local market better than LSC. Commenters observed that seeking prior approval may unduly delay routine and necessary purchases and undermine negotiations for favorable deals with vendors. Commenters were particularly concerned with how the proposed regulation would affect their office supply purchases. NLADA noted that programs may make bulk purchases of expendable property as the most efficient and economical means of acquiring supplies. NLADA noted that the proposed change reverses prior policy which provided ''clear'' and ''objective'' standards to determine when prior approval would be necessary. Legal Action encouraged LSC not to require prior approval for personal property purchases because LSC would find itself reviewing routine purchases of office supplies. NJP opined that requiring prior approval for aggregate purchases would ''encourage recipients to parse out their purchases to avoid the need to obtain prior approval with the consequences of more paper work, staff time to process this paperwork and payments, and the potential of less favorable pricing.''

Commenters also described challenges anticipating costs for particular services. For example, Legal Action noted how difficult it is to project whether translation services costs and records storage costs would exceed $25,000 in a year. ILS noted that where anticipated costs are difficult to determine, even where it has no intention of exceeding $25,000 in a year, it may nevertheless ''play it safe'' by seeking approval at the outset for these arrangements to avoid later violations. Other commenters noted that recipients may have difficulty determining when to seek prior approval for services contracts because of the various types of contracts recipients have, *e.g.,* a consultancy contract in which a recipient pays a flat fee each month and, potentially, a fee-per-service or hourly fee for additional tasks as needed.

NJP suggested imposing the proposed prior approval requirement only where necessary to address past abuse, conflict of interest, fraud, or ''other malfeasance[.]'' MAP suggested adding a separate section in the grant application asking grantees to explain proposed purchases over $25,000 in LSC funds, which would allow recipients and LSC to engage in discussion about purchases without the bureaucracy of the proposed regulations.

*General Response:* LSC responds to specific concerns under section headers below. Generally, LSC intended this rule to capture single purchases (*i.e.,* purchases at one point in time through one order) of single items or services or aggregate items whose total cost exceeds the threshold, not multiple purchases of multiple items or services at different points in time. LSC is making several changes to the rule to clarify its intention.

*Section 1630.6(b).* Proposed § 1630.6(b)(1) required a recipient to ''obtain LSC's prior approval before charging costs attributable to any of the transactions below to its LSC grant when the cost of the transaction exceeds $25,000 of LSC funds[.]'' In the preamble to the NPRM, LSC explained that a recipient must seek prior approval for ''any single purchase whose cost exceeds $25,000 in LSC funds, regardless of whether that purchase is of a single item of personal property, several unrelated items of personal property, or a combination of personal property and services.''

*Comment:* Commenters expressed confusion regarding the circumstances under which prior approval is required. NJP observed that the term ''transactions'' is undefined in the regulation. All commenters expressed confusion about what types of purchases were aggregated or what constituted a single purchase. NJP and NLADA also expressed confusion about when purchases are ''aggregated'' for purposes of applying the prior approval threshold. MAP recommended that LSC clarify ''single purchase'' as ''a single order of goods or a single contract for services from a single vendor the cost of which exceeds $25,000 in LSC funds.''

*Response:* LSC used the term ''transactions'' as a global term to describe the various types of costs subject to the prior approval requirement. LSC did not intend to introduce a separate category of undefined transactions into the rule. To avoid continued confusion, LSC will change the language in § 1630.6(b)(1) to largely follow the current § 1630.5(b) language. The redrafted subparagraph will read, ''Without LSC's prior written approval, a recipient may not expend $25,000 or more of LSC funds on any of the following[.]''

Additionally, LSC will clarify that prior approval applies to a ''single purchase,'' ''single lease,'' or ''single contract'' and define these terms in the new rule. LSC will define the terms at § 1630.2(h): ''*Single purchase, single lease,* and *single contract* mean a single

order or lease of goods or a single contract for services from a single vendor.''

Accordingly, the prior approval requirement applies to—

(i) A single purchase or single lease of personal property;

(ii) A single contract for services;

(iii) A single purchase of real estate;

(iv) Capital improvements; and

(v) A single purchase or single lease of personal property combined with a single contract for services.

This clarification resolves the questions commenters raised. For example, ILS has a discount arrangement with an office supplier. Although ILS does not make $25,000 worth of purchases from this vendor at one time, over the course of a year ILS may purchase more than $25,000 in LSC funds worth of supplies from the vendor. Under LSC's proposed rule, this scenario does not trigger the prior approval requirement. The requirement is triggered only when a single order of one or multiple items from this vendor exceeds $25,000. As another example, Legal Action purchases supplies online from a small number of vendors. Over the course of a year, Legal Action explained, the aggregate purchases from an individual vendor, such as Amazon, may exceed $25,000. Again, a purchase requires prior approval when it is a single order from a single vendor of a good or multiple goods whose cost exceeds $25,000 in LSC funds.

Finally, MAP posed the example of buying office supplies for seven offices from a single vendor over the course of a year that could add up to $25,000. Again, the proposed rule does not aggregate purchases over time. If a single order of consumable supplies exceeds $25,000, there is no reason not to examine that purchase with the same diligence as the purchase of a non-consumable good that costs over $25,000. Moreover, LSC's proposed approach of increasing oversight over purchases, including supplies, aligns with the Uniform Guidance's inclusion of purchases of supplies as types of purchases subject to increasingly stringent levels of competition. *See* 2 CFR 200.320.

*Section 1630.6(b)(1)(ii).* Proposed § 1630.6(b)(1)(ii) extended the scope of both the PAMM and the prior approval requirements to contracts for services.

*Comment 1:* All commenters objected to LSC's proposed § 1630.6(b)(1)(ii). Commenters noted that recipients' various structures of contractual arrangements for services make determining when prior approval is required difficult. For example, Legal Action explained that it retains technology consultant services for a fixed monthly fee with discrete projects that arise billed on a fee-per-service or hourly basis. Similarly, CLS contracts quarterly for its IT services, with quarterly projected expenditures based on an estimated assessment of needed services. CLS noted, however, that its program may have unexpected IT needs late in the year that bring the total cost over $25,000, even though at the outset, no quarterly agreement met or was likely to meet the threshold. NJP maintains ''rate arrangements'' with hotels with no individual stay exceeding the threshold amount, but over a year, stays at a particular hotel may exceed $25,000.

Other recipients arrange to receive services for a period of time at a fixed rate, for example, paying $25 per hour for translation services as needed over two years. In these scenarios, commenters stated that calculating whether the recipient needs to seek prior approval may be difficult. NLADA asked if a recipient would need to obtain prior approval if services would not exceed $25,000 in one year, but would exceed $25,000 over two years. Legal Action also questioned whether payments to various temporary workers, none of whose payments exceeds $25,000, but when taken together exceed $25,000, require prior approval.

*Response:* LSC believes that the language of the proposed rule accommodates the concerns described by commenters. First, for all services contracts, because LSC prior approval extends for one year, LSC believes the appropriate period of time to calculate the accrual of costs is one year. Second, regarding situations where a contract does not have a fixed price at the outset, LSC believes the appropriate approach is to require prior approval once a recipient expects the contract will exceed $25,000 in LSC funds. This requires a business judgment decision by the recipient to determine when it appears the cost of a contract will exceed $25,000. Applying this approach, a contract based on a monthly rate with an additional fee-for-service cost that arises throughout a year would trigger the prior approval requirement either (1) at the beginning of the contract if the initial cost exceeds or is expected to exceed $25,000, or (2) once it appears the additional fee-for-service costs (or any other costs that arise) will cause the total cost of the contract to exceed $25,000. Where services are provided throughout a year based on separate arrangements made throughout the year, each arrangement is considered a separate contract and triggers the prior approval requirement only if one arrangement exceeds $25,000. LSC notes that LSC may question the costs associated with contracts if the timing and amounts of contracts with an individual vendor appear calculated to avoid the prior approval requirement, rather than being based on reasonable business judgment.

Finally, for temporary employees, as discussed below, contracts for temporary employees will be exempt from the prior approval process.

*Comment 2:* In response to the proposed prior approval requirement for services contracts, NLADA noted that obtaining prior approval may be problematic for programs seeking auditors for annual audits that are required to comply with standards established by LSC's Office of Inspector General (OIG). NLADA stated that at least ten programs spend over $25,000 on required annual audits, and some of these programs are in areas with few choices for appropriate and eligible auditors. These auditors are in demand, and time is of the essence in retaining an accounting firm to conduct the LSC-compliant audit. NLADA expressed concern that a delay to seek prior approval would impede a program's ability to retain competent auditors and potentially compromise the program's ability to meet deadlines.

*Response:* After reviewing NLADA's comment, LSC concluded that recipients' hiring of auditors to conduct audits that must comply with OIG standards and be submitted to OIG should not be subject to LSC prior approval process. Accordingly, LSC will revise § 1631.2(g), defining *services,* to exclude such audits from the requirement.

*Comment 3:* Regarding the proposed prior approval requirement for services contracts, Legal Action noted challenges allocating costs of services such as legal research through Westlaw and record storage services like Iron Mountain, each of which could exceed $25,000 in a year. For each service, Legal Action noted that, in the past, the overall cost has exceeded $25,000, but the cost apportioned to LSC funds may or may not exceed $25,000.

*Response:* For a services contract (or any other contract) funded by LSC and another source, the contract triggers LSC's prior approval requirement once the amount apportioned to LSC funds exceeds $25,000. LSC will revise the rule to clarify this apportionment calculation.

*Section 1630.6(b)(1)(iii).* Proposed § 1630.6(b)(1)(iii) required prior approval for ''purchases of real estate'' that exceed $25,000. Proposed § 1631.2(f) defined *real estate* as ''land,

buildings (including capital improvements), and property interests in land and buildings (*e.g.,* tenancies, life estates, remainders, reversions, easements), excluding movable personal property.''

*Comment:* Commenters noted that proposed § 1631.2(f) included tenancies in the definition of *real estate.* According to NJP, this would be a ''significant departure from prior practice.'' NLADA, NJP, MAP, ILS, and CLS requested clarification that leases of real property do not require prior approval.

*Response:* LSC did not intend to subject leases of real property to prior approval requirements. LSC will revise the definition of *real estate* in § 1631.2(f) to include land and buildings but not personal property. This definition reflects the definition provided in the PAMM. Because the term *real estate* is also used in part 1630, LSC will also revise the definition of *real estate* in § 1630.2(g) to mirror the updated definition found in § 1631.2(f).

*Section 1630.6(b)(1)(iv).* Proposed § 1630.6(b)(1)(iv) required a recipient to obtain prior approval for capital improvements costing $25,000 or more of LSC funds.

*Comment:* NJP, MAP, and NLADA expressed concern that requiring prior approval for capital improvements may impair a recipient's ability to negotiate capital improvements as part of lease negotiations. NJP expressed concern about leases that include provisions for pass-through building operating charges. NJP observed that reconciliation for pass-through costs occurs after the improvements are made, and a recipient may not be able to obtain prior approval or even control the landlord's selection of the vendor. MAP suggested that capital improvements that are part of a lease negotiation be explicitly exempt from the prior approval requirement.

*Response:* Existing section 1630.5(b)(4) and section 4(f) of the PAMM currently require recipients to seek prior approval of capital expenditures when the cost of the expenditures exceeds $10,000. This requirement is not new to the proposed rule. It does not currently apply to capital improvements negotiated as part of a recipient's lease arrangements. LSC considered the value of reviewing capital improvements in this context compared to the burden imposed. LSC concluded that the cost of the review outweighs benefits and therefore will not extend the prior approval requirement for capital improvements negotiated as part of a recipient's lease arrangement. Proposed § 1630.6(b)(1)(iv) applied only to those capital expenditures that a recipient seeks to make to leased property after it enters the lease.

*Sections 1630.7, 1630.8, and 1630.9 Membership fees or dues; Contributions; Tax-sheltered annuities, retirement accounts, and penalties.* LSC proposed to redesignate §§ 1630.14 (Membership fees or dues), 1630.15 (Contributions), and 1630.16 (Tax-sheltered annuities, retirement accounts, and penalties) as §§ 1630.7–1630.9, respectively, with no changes. LSC received no comments on these sections.

*Section 1630.10 Recipient policies, procedures, and recordkeeping.* Effective April 1, 2017, LSC relocated the sections of part 1627 governing the use of recipient funds to pay membership fees or dues, make contributions to other organizations, or contribute to tax-sheltered annuities, retirement accounts, and penalties to part 1630. LSC unintentionally failed to relocate § 1627.7 requiring recipient policies, procedures, and recordkeeping in part 1630 at the same time. Consequently, this section is a necessary carryover from part 1627 to ensure that recipients retain or develop written policies and procedures to ensure that their staff know about and comply with §§ 1630.7–1630.9, and the final rule will include these requirements. The final rule will also renumber the sections that follow.

Subpart C—Questioned Cost Proceedings

Subpart C governs LSC's decisions to question costs and the appeals procedure by which a recipient challenges questioned costs.

*Section 1630.11 Review of questioned costs.* In the proposed regulation, LSC eliminated the five-year lookback period to recover questioned costs from a recipient because, based on its oversight experience, limiting LSC's ability to recover misspent costs is inconsistent with its duty to responsibly administer appropriated funds. On several occasions, LSC has found that misuse of funds was not discovered during the five-year period, despite LSC's conscientious review of available reports and documentation.

*General Comments:* NLADA, NJP, CLS, and MAP opposed the removal of the five-year timeframe. They noted that LSC accounting and record retention guidance recommends retaining records for varying times ranging from two years to permanent retention and argued that eliminating the five-year timeframe conflicts with this LSC record retention guidance. NLADA recommended that LSC retain the five-year lookback period to provide programs certainty as to when they may close their books. NLADA also recommended that, if LSC nevertheless eliminates the lookback timeframe, it apply the change only prospectively to account for programs that have legitimately destroyed records pursuant to LSC's guidance. Alternatively, NLADA suggested LSC limit its ability to recover costs beyond the five-year limit only to egregious circumstances such as criminal behavior or intentional violations of LSC regulations. NLADA further questioned whether the cost of a recipient retaining documents—which may exceed $25,000 per year for a program—and the cost of LSC's investigation are worthwhile.

*General Response:* LSC believes its ability to disallow funds for later-discovered malfeasance should not be limited, notwithstanding an organization's records retention policy. LSC recognizes that proper destruction of records on schedule when there are no open questions is an appropriate defense to not being able to produce records, but time-limited records retention policies are not an appropriate reason to limit LSC's ability to recover misspent costs. Accordingly, LSC will retain the proposal to eliminate the five-year lookback period in the final rule.

*Section 1630.11(d)(2).* Under the current questioned costs procedure, a recipient has 30 days from the date it receives a notice of questioned costs from LSC to respond with evidence and an argument for why LSC should not disallow the costs. If the recipient does not respond within 30 days, LSC management must issue a second decision. LSC believes this second step is redundant because it places an unnecessary burden to confirm its own action in the absence of a recipient challenge. LSC proposed to replace this step with proposed § 1630.10(d)(2), which stated that if the recipient does not respond to the notice of questioned cost within 30 days, the notice automatically converts to LSC's final written decision.

*Comment 1:* NLADA commented that the timeframes are inequitable because, while LSC has ''an unlimited time period to investigate a questioned cost, prepare its written determination, and then another 60 days to respond to the recipient[,]'' a recipient has 30 days to respond to a questioned cost. NLADA asserted that ''[i]n fairness,'' respondents should have at least 60 days to prepare their response to LSC and recipients should have the opportunity to extend the time to respond for at least 30 days for good cause.

*Response:* The 30-day timeframe in the proposed rule was adopted without change from current § 1630.7(c). That paragraph provides that the recipient may respond to a written notice of questioned costs, and, if the recipient does not respond, LSC will make a decision based on the information available. The proposed rule effectively reflected the same procedure. LSC has determined that fixing a timeframe by which recipients must respond, either in substance or by seeking an extension pursuant to § 1630.3(b), ensures LSC can proceed with its questioned costs review in an expeditious manner.

As described above, a recipient may seek an extension for good cause, pursuant to proposed § 1630.3(b). LSC's assessment of whether the recipient has shown ''good cause'' inherently takes into consideration the length of extension a recipient would need. Therefore, LSC will retain language from the proposed rule.

*Comment 2:* As described in the § 1630.2 discussion, NJP and CLS expressed concern that the extension of time is not referenced in either the proposed § 1630.2(d) definition or proposed § 1630.10(d)(2) (final rule § 1630.11(d)(2)).

*Response 2:* For the reasons stated earlier in this preamble, LSC will amend proposed § 1630.10(d)(2), renumbered as § 1630.11(d)(2), to clarify that a recipient must respond, either with a substantive response or a request for extension, within 30 days of receiving the questioned costs notice.

*Section 1630.12 Appeals to the President.* LSC proposed to move existing § 1630.7(e)–(g) to § 1630.11 with one substantive change. LSC proposed to introduce a requirement that prohibits a recipient from appealing a written decision to the LSC President when the recipient did not seek review of the initial notice of questioned costs. LSC believes that a senior manager with direct oversight over the office that issues a notice of questioned costs should have the first opportunity to review the evidence relating to the decision to question costs because the review is better conducted at an earlier stage than during review by the President. Appeals to the President can address any relevant actions by LSC including substantive decisions such as the amount questioned and procedural decisions such as whether to extend a submission deadline.

*Comment:* NLADA commented that, where a recipient does not respond to LSC's written notice of questioned costs, the decision becomes final and, thus, an LSC denial of a request for extension of time may not be appealed to the president. NLADA noted that recipients ''should have a full and fair opportunity to respond to LSC, including the ability to appeal to the president if LSC management denies a recipient an extension of time to respond to a questioned cost finding.''

*Response:* A recipient may fully respond to LSC's notice at the management level. A ''full and fair opportunity to respond'' does not require providing recipients the ability to skip management-level review and appeal directly to the President. LSC will therefore retain the procedural change proposed in the NPRM, now renumbered as § 1630.12.

*Section 1630.13 Recovery of disallowed costs and other corrective action.* In the NPRM, LSC proposed to redesignate existing § 1630.8 to § 1630.12 with only minor technical changes to reflect the removal of the term *final action* from the rule. LSC received no comments on this section. The final rule renumbers this section as § 1630.13.

*Section 1630.14 Other remedies; effect on other parts.* LSC proposed to redesignate existing § 1630.9 as § 1630.13 with only minor technical edits. LSC received no comments on this section. The final rule renumbers this section as § 1630.14.

*Sections 1630.15; 1630.16; 1630.17 Applicability to subgrants; Applicability to non-LSC funds; Applicability to derivative income.* LSC proposed to redesignate existing §§ 1630.10 (Applicability to subgrants); 1630.11 (Applicability to non-LSC funds); and 1630.12 (Applicability to derivative income) as §§ 1630.14–1630.16, respectively, without change. LSC received no comments on these sections. The final rule renumbers these sections as §§ 1630.15–1630.17, respectively.

Subpart D—Closeout Procedures

*Section 1630.18 Applicability.* Proposed § 1630.17, regarding closeout procedures, applies when a recipient changes its current identity or status as a legal entity.

*Comment:* MAP suggested defining the term ''change in current identity or status as a legal entity'' to ensure that a relatively minor change (such as a corporate name change) or a structural change does not trigger this section. MAP proposed a limited definition such as ''a change in legal status under state corporate law with the effect that a different legal entity becomes the LSC recipient.''

*Response:* LSC intended to include those mergers where the recipient ceased to exist. LSC did not intend proposed § 1630.17 to apply to name or logo changes. LSC will revise proposed § 1630.17(a), renumbered as § 1630.18(a), to state that the rule applies to mergers or consolidations with one LSC recipient that result in another LSC recipient ceasing to exist as a legal entity. In those situations, only the LSC recipient that is surrendering its legal status must comply with the closeout procedures in Subpart D. Additionally, LSC will replace the proposed language of § 1630.17, renumbered as § 1630.18, with ''Ceases to exist as a legal entity[.]''

*Section 1630.19 Closeout plan; timing.* In the NPRM, LSC proposed to require recipients who stop receiving LSC funding to provide LSC with a plan for the orderly closeout of the grant. LSC received no comments on this section. LSC will renumber the proposed section as § 1630.19.

*Section 1630.20 Closeout costs.* In the NPRM, LSC proposed to formalize its policies for approving the use of LSC funds to complete closeout activities, including requiring recipients to submit a detailed budget and timeline and allowing LSC to withhold unreleased funds until the recipient has satisfactorily completed its closeout procedures. LSC received no comments on this section. The final rule will renumber proposed § 1630.19 as § 1630.20.

*Section 1630.21 Returning funds to LSC.* In proposed § 1630.20, LSC proposed to formalize procedures for recipients to return to LSC excess fund balances and derivative income received after the end of the LSC grant period. LSC received no comments on this section. LSC will renumber proposed § 1630.20 as § 1630.21.

*C. Part 1631—Purchasing and Property Management*

*Organizational note:* As described in the discussion for § 1631.4, the final rule will eliminate § 1631.4 and renumber sections that follow. This preamble reflects the updated numbering except where noted.

Subpart A—General Provisions

*Section 1631.1 Purpose.* In the NPRM, LSC proposed to describe the purpose of part 1631 as setting standards for policies governing certain purchases and establishing requirements governing the use and disposition of property purchased with LSC funds. LSC received no comments on this section.

*Section 1631.2 Definitions.* In the NPRM, LSC adopted several definitions from the PAMM into part 1631 and added new definitions.

*Section 1631.2(f).* LSC proposed to change the PAMM term *real property* to *real estate* and to simplify the rule's language. LSC also proposed to revise the term's definition for clarity. LSC does not intend the change from ''land, buildings, and appurtenances, including capital improvements thereto, but not including moveable personal property'' in the existing PAMM to limit, narrow, or expand the scope of property captured in the revised definition.

*Comment:* As discussed in the commentary regarding § 1630.6(b)(1)(iii), commenters noted that proposed § 1631.2(f) included tenancies in the definition of *real estate* and requested that leases of real estate not require prior approval.

*Response:* As previously explained, LSC did not intend to subject leases of real estate to prior approval requirements and will revise the definition.

*Section 1631.2(g).* In the NPRM, LSC proposed to define *services* as services rendered by members of a profession or people who have a special skill and are not employed by a recipient. The proposed definition explicitly included services such as accounting, banking, cleaning, consultation, training, expert services, equipment maintenance, and transportation. It excluded other categories such as services provided by recipients to employees in addition to regular salaries and wages, such as employee insurance, pensions, and unemployment benefit plans. The preamble to proposed part 1631 explained that employee benefits are not the type of services over which LSC intended to increase its oversight. Accordingly, the NPRM preamble explained that contracts for employee benefits are not subject to the definition of *services*.

*Comment 1:* NJP expressed concern that this definition was ''extremely broad'' and included many basic office services such as banking and cleaning. In addition, NJP expressed concern that the definition included expert services, transportation, and costs associated with litigation (such as expert witness fees and discovery fees). Finally, NJP and ILS noted the exception for ''employee insurance'' was potentially confusing. They asked, for example, whether the exclusion of ''employee insurance'' included malpractice insurance that programs must provide staff attorneys or other types of insurances such as employment practices liability, commercial liability, and Directors and Officers liability insurance.

*Response:* In response to this comment, LSC will explicitly exclude litigation costs (*e.g.,* expert witness and discovery fees), insurance services, and professional services intended to resolve sensitive personnel issues (*e.g.,* labor counsel or mediation services) from the final rule because LSC did not intend to include these services within the proposed rule.

*Comment 2:* As described previously in the discussion of § 1630.6, NLADA noted that obtaining prior approval may be problematic for programs seeking auditors to conduct required annual audits that comply with the standards established by OIG.

*Response:* LSC will revise § 1631.2(g) to exclude such audits from the requirement.

*Section 1631.3 Prior approval process.* Proposed § 1631.3 relocated the provisions governing the timetable and basis for granting prior approval from existing § 1630.6 to new § 1631.3.

*Section 1631.3(b).* The proposed rule stated that, for purchases or leases of personal property, contracts for services, and capital improvements, LSC will decide on the request within 30 days of receiving the request. For purchases of real estate, LSC will decide within 60 days. If LSC cannot decide within the allotted time, proposed § 1631.3(b)(3) stated that LSC will provide the requester a date by which it expects to decide.

*Comment:* NLADA and MAP expressed concern that § 1631.3(b)(3) gives LSC an unlimited amount of time in which to respond to a request if it cannot decide within the time allotted. MAP suggested adding that ''if LSC neither makes a decision on a request for prior approval nor informs the requester of a date to make a decision within 60 days of the date of the request, the request is deemed approved.'' MAP also suggested adding that ''if LSC elects to provide a requester with a date for a decision on a request for prior approval that is longer than 60 days, the date must be within 120 days of the date of the original request; if LSC fails to make a decision by the date it announces, the request is deemed approved.'' NLADA recommended that the approval time for making capital improvements not exceed 30 days because making capital improvements may be a complex process to coordinate and, after completing negotiations and calculating costs, prior approval delays may jeopardize the project. NLADA additionally questioned whether LSC has sufficient resources to timely process these approvals.

*Response:* As discussed at length during the rulemaking on 45 CFR part 1627, LSC believes sound grants management requires review and an affirmative decision on each request to use a significant amount of LSC funds. Consistent with the views expressed in that rulemaking, LSC rejects the ''deemed approved'' approach to authorizing prior approvals.

LSC also will not establish a rigid timeframe within which it must respond to a request for prior approval if it cannot decide within 60 days. In LSC's experience, recipients may not initially submit all documentation LSC needs to make its decision. LSC must have time to review the materials a recipient submits and request additional documentation as needed. Accordingly, LSC will revise § 1631.3(b) to state that (1) if the requester does not provide all required materials in its initial prior approval request, LSC will contact the requester within 20 days of the request with a preliminary assessment of materials LSC requires to make its decision, if necessary, and (2) LSC will approve or deny a request for prior approval within 30 days of receiving all required materials from the requester (60 days for purchases of real estate). This means that if a recipient submits all information that LSC deems sufficient with the initial request, LSC will approve or deny the request for prior approval within 30 days of the initial request (or 60 days for purchases of real estate). Additionally, because the prior approval process requires LSC to determine whether a recipient complied with its own procurement policy, LSC must have a copy of the recipient's procurement policy. LSC therefore will add a new paragraph (b)(2) to final rule § 1631.8 (requests for prior approval) requiring a request for prior approval to also include a copy of the recipient's procurement policy.

*Section 1631.3(d).* Proposed § 1631.3(d) stated that a recipient may use over $25,000 of LSC funds to purchase personal property or award a contract for services without prior approval in exigent circumstances. LSC described two exigent circumstances qualifying for the exception: when immediate action is necessary either to avoid imminent harm to the recipient's personnel, physical facilities, or systems; or to remediate or mitigate damage to the recipient's personnel, physical facilities, or systems.

*Comment:* Commenters remarked that exigent circumstances are limited and subject to discretionary interpretation. NLADA listed the need to retain counsel promptly, staff taking unexpected leave and needing to hire a replacement, and programs receiving non-LSC funds and needing to retain additional services to fulfill a grant requirement as additional situations to consider. Legal Action

suggested adding ''to avoid disruption to the recipient's client services delivery system'' to the list of exigent circumstances. NJP suggested additional scenarios that may constitute exigent circumstances, including natural disasters that require a recipient to contract for timely services, a lawsuit or dispute that requires immediate outside professional resources, a time-sensitive case that requires expertise, audit RFP, audit renewal engagement, and other additional audit work. NLADA and NJP suggested including a provision that provides for ''other exigent circumstances.''

Moreover, NLADA noted the proposed rule does not explain what happens if LSC determines a recipient's circumstances did not meet ''exigent circumstances'' requirements. NLADA asked whether LSC would treat the situation as a questioned cost proceeding: ''Would LSC seek to recover costs solely on the basis that the recipient did not seek prior approval, even if the purchase or contract met § 1630.5 reasonable and necessary criteria?''

*Response:* In addition to the exigent circumstances identified in the proposed rule, LSC agrees that a recipient should be able to act without prior approval if necessary to avoid disruption to the recipient's client services delivery system. Examples of such a disruption would be a power surge that causes a recipient's telecommunications system to stop working, or the occurrence of a natural disaster. LSC will include these two additional situations as exigent circumstances and provide specific examples of each.

Additionally, LSC does not believe that hiring of employees falls within the types of services that LSC intended to regulate in part 1631. Therefore, a recipient would not have to seek prior approval before hiring an attorney, temporary or permanent, to fill the position of an attorney who takes an unexpected prolonged leave. The same rule will apply if the recipient chooses instead to enter a contract with an attorney to fill in for the recipient's attorney on a temporary basis or with a placement firm to place an attorney with the recipient for that period.

Prudent grants management and the basic principle of federal appropriations law that appropriated funds must be spent only on the purposes for which they were awarded do not permit recipients needing to supplement services to fulfill a non-LSC grant requirement to use LSC funds. Accordingly, LSC rejects the proposal to allow use of LSC funds as an exigent circumstance in this situation.

Finally, based on our recommendation that the term *services* explicitly exclude litigation services and audits, these services do not need to be considered as subject to prior approval in any circumstances, including exigent circumstances.

*Section 1631.4 Effective Dates.* The proposed language for § 1631.4 made part 1631 effective 90 days after the effective date of the rule, and it made subparts A, C, and E effective 90 days after the effective date of the rule for personal and real property purchased with LSC funds prior to the effective date of this part. This language was adopted from the PAMM. To provide time for LSC to provide appropriate training and recipients to prepare required policies, LSC decided that the final rule will take effect on December 31, 2017. This effective date is well over the 90 days provided in proposed § 1631.4. Therefore, in the final rule, this section will be eliminated and subsequent sections will be renumbered.

*Sections 1631.4, and 1631.5 Use of funds; Recipient policies, procedures, and recordkeeping.* In these sections of the NPRM, LSC proposed to consolidate sections 6 and 7 of the PAMM with minor changes and require recipients to adopt written policies to implement part 1631. LSC received no comments on these sections. The final rule renumbers these sections.

Subpart B—Procurement Policies and Procedures

*Section 1631.6 Characteristics of procurements.* In the NPRM, LSC proposed to adopt a list of characteristics to help recipients determine whether an arrangement is a contract (and therefore subject to parts 1630 and 1631) or a subgrant (and therefore subject to part 1627). LSC received no comments on this section. The final rule renumbers this section.

*Section 1631.7 Procurement policies and procedures.* In the NPRM, LSC identified elements recipients must have in their procurement policies. LSC received one comment on this section from NLADA indicating support. The final rule renumbers this section.

*Section 1631.8 Requests for prior approval.* Proposed § 1631.9 required a recipient seeking prior approval for a purchase of personal property or services to state how the purchase will further the delivery of legal services to eligible clients. The preamble explained that, ''[r]egarding contracts for labor counsel, mediators, or other services needed to address sensitive personnel issues, . . . recipients do not need to disclose in the prior approval request the nature of the problems they are attempting to address.''

*Comment:* CLS expressed concern with how this provision affects prior approval requests seeking retention of labor counsel. CLS questioned how LSC would be able to determine whether an expense is appropriate or reasonable if a recipient did not disclose the nature of the problem it is trying to address. CLS also noted that prior approval requirements for labor counsel may inappropriately and unnecessarily insert LSC into a recipient's labor-management situations and that seeking prior approval may delay negotiations. CLS recommended that labor and employment services contracts never require prior approval. MAP noted that in services contracts where contracts ''directly impact private and confidential matters[,]'' local management should retain discretion.

MAP was also ''especially troubled'' by LSC's comments in the preamble stating that, in circumstances where the recipient does not disclose the nature of the problems it is attempting to address but rather only how the services will further their legal services delivery, ''a statement that the service is necessary to ensure the efficient functioning of the office *may satisfy* that requirement'' (emphasis added). MAP requested that if LSC intends to approve requests that do not disclose the nature of the problem, the regulation should explicitly so state.

*Response:* In response to these comments, LSC will exclude contracts for labor counsel and other services necessary to address internal personnel issues from the definition of *services* in the final rule version of § 1631.2. Additionally, to avoid verbosity, LSC will change final rule § 1631.8(b) to require a ''statement of need'' rather than a statement explaining how the purchase will further the delivery of legal services.

*Section 1631.9 Applicability of part 1630.* In this section, LSC proposed to restate the applicability of part 1630 to all leases, purchases, and contracts made using LSC funds. LSC received no comments on this section. The final rule renumbers the proposed section to § 1631.9.

Subpart C—Personal Property Management

*Section 1631.10 Use of property in compliance with LSC's statutes and regulations.* LSC proposed to adopt § 5(a), (d), and (e) of the PAMM in proposed § 1631.11 with only minor technical changes. LSC received no

comments on this section. The final rule renumbers this section.

*Section 1631.11 Intellectual property.* The proposed rule adopted § 5(g) of the PAMM without change. LSC received no comments on this section during the public comment period. During the May 23, 2017 meeting of the Operations and Regulations Committee, the Chair of the Committee expressed concern that LSC's proposal to adopt language that identified only copyright as a type of intellectual property protection available to recipients would have two effects. One was that the rule unnecessarily limited the kind of protection recipients could seek for products or works developed using LSC funds. The other was that the existing language could create an incentive for recipients to use other types of intellectual property protections, where available, to avoid falling within the scope of proposed § 1631.12. *See* Transcript, Telephonic Meeting of the Operations and Regulations Committee, Legal Services Corporation Board of Directors, May 23, 2017, at 20–21. The Chair recommended that LSC replace this language with the language in LSC's Technology Initiative Grants' (TIG) Grant Assurances, which have been revised more currently than the language in § 5 of the PAMM and speak more generally in terms of recipients' ownership rights in works they develop or improve using LSC funds. There were no public comments in opposition to the Chair's proposal at the meeting. Consequently, in the final rule, LSC will adopt the recommendation and revise proposed § 1631.12 to track the language of the TIG Grant Assurances. This section will be renumbered as § 1631.11.

*Section 1631.12 Disposing of personal property purchased with LSC funds.* Proposed § 1631.13(a) described how a recipient may dispose of personal property purchased with LSC funds. The proposed rule allowed recipients to sell or otherwise dispose of the personal property with no further obligation to LSC where the fair market value of the property is negligible. The proposed rule also permitted recipients to sell the property at a reasonable negotiated price, without advertising for quotes when the value of the property is $15,000 or less. The proposed rule adopted three options for disposing of personal property—selling the property after advertising and receiving quotes when the property's value exceeds $15,000; transferring the property to another LSC funding recipient; and transferring the personal property to another organization serving the poor in the same area—from § 6 of the PAMM.

*Comment:* NLADA noted that it appreciated the provision allowing recipients to dispose of personal property with little or no value. NLADA also noted that a recipient may advertise property worth over $15,000, yet receive no quotes. NLADA recommended adding language stating that ''if a program does not receive any quotes, the program may negotiate a reasonable price for disposal of the property.''

*Response:* LSC agrees with NLADA's comment. LSC will change paragraph (4) to this section in the final rule to allow a recipient to negotiate a reasonable price for disposal of the property if, after advertising the personal property for 14 consecutive days, the recipient receives no reasonable quotes. This section will be renumbered as § 1631.12 in the final rule.

*Section 1631.13 Use of derivative income from sale of personal property purchased with LSC funds.* LSC proposed to adopt § 6(e) of the PAMM without change and add a paragraph requiring recipients to account for income earned from the sale, rent, or lease of personal property purchased with LSC funds. LSC received no comments on this section.

Subpart D—Real Estate Acquisition and Capital Improvements

*Section 1631.14 Purchasing real property with LSC funds.* In the NPRM, LSC proposed to adopt in significant part the requirements of § 4 of the PAMM with several revisions, including two to allow recipients additional flexibility when purchasing real property.

*Comment:* NJP commented that, although it had no concerns regarding real estate purchase approval requirements generally, to the extent that LSC intended the term *real estate* to include tenancies, NJP objected to the prior approval requirement.

*Response:* As noted above in the § 1630.6(b)(1)(iii) discussion, LSC did not intend to include tenancies in the definition of *real estate.* LSC therefore will revise the definition of *real estate* in both § 1630.2(g) and § 1631.2(f). LSC believes these revisions will resolve NJP's objection.

*Comment:* In advance of the Committee's May 23, 2017 meeting, LSC received a comment from a Board member recommending that LSC revise proposed § 1631.15(b)(8) to reflect contemporary language regarding compliance with disability laws.

*Response:* LSC agrees and will revise proposed § 1631.15(b)(8) accordingly and renumber the section as § 1631.14(b)(8).

*Section 1631.15 Capital improvements.* LSC proposed to adopt § 4(f) of the PAMM in substantial part and to replace existing § 4(1)(ii) of the PAMM with a requirement that recipients provide documentation showing they complied with their own procurement process developed under (final rule) § 1631.8.

*Comment:* NJP again commented that, to the extent this section applies to leases and tenant improvements negotiated as part of the lease and rental price, NJP objects to imposing prior approval requirements.

*Response:* As noted above in the § 1630.6(b)(1)(iii) and § 1631.14 discussions, LSC did not intend to include tenancies or leases in the definition of *real estate* and will revise the definition in the final rule. LSC currently does not require prior approval for leases of real estate and, after considering the costs and benefits of requiring prior approval for such leases, opted to continue its current policy. LSC did not intend proposed § 1631.16 (final rule § 1631.15) to cover capital improvements negotiated as part of the lease and rental price for real estate leased by recipients.

Subpart E—Real Estate Management

*Section 1631.16 Using real estate purchased with LSC funds.* Section 5(a) of the PAMM currently states that recipients ''may use LSC funds to acquire and use personal and real property for the primary purpose of delivering legal services to eligible clients'' in accordance with applicable laws, regulations, and guidance. The preamble to the NPRM explained that LSC proposed to adopt this section of the PAMM as proposed § 1631.17 ''with only minor technical changes.'' Accordingly, the text of proposed § 1631.17 stated, ''A recipient *must* use real estate purchased or leased, in whole or in part with LSC funds primarily to deliver legal services to eligible clients consistent with the requirements of the LSC Act, applicable appropriations acts, and LSC regulations.'' 81 FR 75006, 75023, Oct. 28, 2017 (emphasis added).

*Comment:* NLADA and NJP commented that using the word *must* in the proposed regulation instead of *may* as in the PAMM is a major change because it appears to prevent a program from subleasing a building or space to a party that does not deliver legal services in accordance with LSC regulations. They noted that recipients may face financial difficulties if not allowed to sublet all or part of buildings purchased or leased using LSC funds. For example, NLADA observed that some programs have smaller regional

offices that programs have had to close due to funding cuts. NLADA commented that, under the proposed regulation, the program would need to leave the property vacant rather than sublease the property. NLADA suggested retaining the permissive *may* rather than changing the language to *must.* NJP suggested that the regulation allow for use of real estate to ''support the delivery of legal services.''

*Response:* NLADA and NJP are correct that LSC changed the wording of Section 5(a) of the PAMM in the proposed rule. LSC made this change to reflect its position that if recipients use LSC funds to purchase real estate, the real estate must be used primarily for purposes of carrying out the LSC grant. That said, LSC's intent is not to bar recipients from putting real estate originally purchased or leased to provide legal services to other uses where circumstances, such as funding, change. Precluding such alternative uses into perpetuity would cause closed offices and invested funds to sit idle, clearly not a prudent or productive use of real estate or invested funds.

Current practice under section 5 of the PAMM permits a recipient to lease or sublease vacant space that the recipient is unable to use to another organization or business. In changing the term ''may'' in the PAMM to ''must'' in the proposed rule, LSC did not intend to change this practice in the proposed rule. The final rule will clarify that a recipient must use real estate purchased with LSC funds for purposes consistent with applicable law and regulations. The rule will clarify that a recipient that does not need some or all the real estate to carry out its legal services activities may use the space for other activities described in paragraphs (b) and (c). The other activities cannot interfere with the recipient's performance of the LSC grant, and the recipient cannot provide the space to an organization that engages in restricted activities without charging the organization an amount of rent equivalent to the amount other non-profits charge to rent the same amount of space in similar circumstances.

*Section 1631.17 Maintenance.* LSC proposed to include a new section requiring recipients to maintain real estate purchased with LSC funds in efficient operating condition and in compliance with state and local standards and codes. LSC received no comments on this section. The final rule will renumber this section.

*Section 1631.18 Insurance.* LSC proposed to introduce minimum standards for the insurance of LSC-funded property. LSC received no comments on this section. The final rule will renumber this section.

*Section 1631.19 Accounting and reporting to LSC.* Proposed § 1631.20 required a recipient to maintain an accounting of the amount of LSC funds relating to the purchase or maintenance of real estate purchased with LSC funds and provide the accounting for each year to LSC. The final rule will renumber this section.

*Comment:* NLADA noted that, for some programs, the use of LSC funds to purchase or maintain real property occurred over ten years ago, in which case the recipient may have destroyed the records. As a result, a recipient would not be able to account for such purchases or maintenance. In these situations, NLADA suggested applying this provision prospectively.

*Response:* LSC does not, as a general rule, issue regulations with a retroactive effect. This means that the requirement would apply from the effective date of the proposed revisions to part 1631 forward. In the Accounting Guide for LSC Recipients, LSC recommends retention times for various categories of documents, including property documents. *Accounting Guide for LSC Recipients,* Appx. II, pp. 69–71 (2010 Ed.). According to the Accounting Guide, recipients should maintain annual financial statements, documentation related to land and buildings, depreciation schedules, general journals, and general ledgers permanently. *Id.* pp. 70–71. For other documentation related to the purchase and maintenance of real estate, such as the cash disbursements ledger, canceled checks, billings for services, and expense bills, LSC recommends a retention period of seven years or the period required by state law, whichever is longer. *Id.* To the extent that a recipient that owns real estate on the effective date of the revised rule has properly destroyed records related to the purchase or maintenance of such real estate according to its records retention schedule, LSC would not consider that recipient out of compliance with the revised rule. Recipients will need to maintain the accounting documents described in proposed § 1631.20, renumbered in the final rule as § 1631.19, from the effective date of the rule onward.

*Section 1631.20 Disposing of real estate purchased with LSC funds.* In the NPRM, LSC proposed to adopt § 7 of the PAMM in substantial part. In a change from the PAMM, LSC proposed to require that all anticipated dispositions of real estate purchased using LSC funds be subject to LSC's prior approval, consistent with the federal government's policy regarding grantee disposal of property purchased with federal funds. 2 CFR 200.311(c). LSC received no comments on this section.

*Section 1631.21 Retaining income from sale of real property purchased with LSC funds.* In the NPRM, LSC proposed to consolidate §§ 6(e) and 8(c) of the PAMM into proposed § 1631.22 and make technical edits. LSC received no comments on this section. The final rule will renumber this section.

**List of Subjects**

*45 CFR Part 1600*

Legal services.

*45 CFR Part 1630*

Accounting, Government contracts, Grant programs—law, Hearing and appeal procedures, Legal services, Questioned costs.

*45 CFR Part 1631*

Government contracts, Grant programs—law, Legal services, Real property acquisition.

For the reasons stated in the preamble, the Legal Services Corporation amends 45 CFR Chapter XVI as follows:

## PART 1600—DEFINITIONS

■ 1. The authority citation for part 1600 is revised to read as follows:

**Authority:** 42 U.S.C. 2996g(e).

■ 2. Amend § 1600.1 by adding in alphabetical order the definitions of ''Corporation funds'' and ''Non-LSC funds'' to read as follows:

### § 1600.1 Definitions.

* * * * *

*Corporation funds* or *LSC funds* means any funds appropriated to LSC by Congress to carry out the purposes of the Legal Services Corporation Act of 1974, 42 U.S.C. 2996 *et seq.,* as amended.

* * * * *

*Non-LSC funds* means any funds that are not Corporation funds or LSC funds.

* * * * *

■ 3. Revise part 1630 to read as follows:

## PART 1630—COST STANDARDS AND PROCEDURES

### Subpart A—General Provisions

Sec.



### Subpart B—Cost Standards and Prior Approval

**Authority:** 42 U.S.C. 2996g(e).

## Subpart A—General Provisions

### § 1630.1 Purpose.

This part is intended to provide uniform standards for allowability of costs and to provide a comprehensive, fair, timely, and flexible process for the resolution of questioned costs.

### § 1630.2 Definitions.

As used in this part:

(a) *Corrective action* means action taken by a recipient that:

(1) Corrects identified deficiencies;

(2) Produces recommended improvements; or

(3) Demonstrates that audit or other findings are either invalid or do not warrant recipient action.

(b) *Derivative income* means income earned by a recipient from LSC-supported activities during the term of an LSC grant or contract, and includes, but is not limited to, income from fees for services (including attorney fee awards and reimbursed costs), sales and rentals of real or personal property, and interest earned on LSC grant or contract advances.

(c) *Disallowed cost* means those charges to an LSC award that LSC determines to be unallowable, in accordance with the applicable statutes, regulations, or terms and conditions of the grant award.

(d) *Final written decision* means either:

(1) The decision issued by the Vice President for Grants Management after reviewing all information provided by a recipient in response to a notice of questioned costs; or

(2) The notice of questioned costs if a recipient does not respond to the notice within 30 days of receipt.

(e) *Membership fees or dues* means payments to an organization on behalf of a program or individual to be a member thereof, or to acquire voting or participatory rights therein. *Membership fees or dues* include, but are not limited to, fees or dues paid to a state supreme court or to a bar organization acting as an administrative arm of the court or in some other governmental capacity if such fees or dues are required for an attorney to practice law in that jurisdiction.

(f) *Questioned cost* means a cost that LSC has questioned because of an audit or other finding that:

(1) There may have been a violation of a provision of a law, regulation, contract, grant, or other agreement or document governing the use of LSC funds;

(2) The cost is not supported by adequate documentation; or

(3) The cost incurred appears unnecessary or unreasonable and does not reflect the actions a prudent person would take in the circumstances.

(g) *Real estate* means land and buildings (including capital improvements), excluding moveable personal property.

(h) *Single purchase, single lease,* and *single contract* mean a single order or lease of goods or a single contract for services from a single vendor.

### § 1630.3 Time.

(a) *Computation.* In computing any period of time under this part, the time period begins the day following the event and includes the last day of the period, unless the last day is a Saturday, Sunday, or legal holiday observed by the Federal government. In those cases, the time period includes the next business day. When the prescribed time period is seven days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

(b) *Extensions.* A recipient may, within the applicable timeframe for a particular response under this part, submit a written request for an extension of time for good cause to LSC. LSC will respond to the request for extension within seven calendar days from the date of receiving the request. LSC may grant the request for extension and shall notify the recipient of its decision in writing.

### § 1630.4 Burden of proof.

The recipient shall have the burden of proof under this part.

## Subpart B—Cost Standards and Prior Approval

### § 1630.5 Standards governing allowability of costs under LSC grants or contracts.

(a) *General criteria.* Expenditures are allowable under an LSC grant or contract only if the recipient can demonstrate that the cost was:

(1) Actually incurred in the performance of the grant or contract and the recipient was liable for payment;

(2) Reasonable and necessary for the performance of the grant or contract as approved by LSC;

(3) Allocable to the grant or contract;

(4) In compliance with the Act, applicable appropriations law, LSC rules, regulations, guidelines, and instructions, the Accounting Guide for LSC Recipients, the terms and conditions of the grant or contract, and other applicable law;

(5) Consistent with accounting policies and procedures that apply uniformly to both LSC-funded and non-LSC-funded activities;

(6) Accorded consistent treatment over time;

(7) Determined in accordance with generally accepted accounting principles; and

(8) Adequately and contemporaneously documented in business records accessible during normal business hours to LSC management, the Office of Inspector General, the General Accounting Office, and independent auditors or other audit organizations authorized to conduct audits of recipients.

(b) *Reasonable costs.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the same or similar circumstances prevailing at the time the decision was made to incur the cost. In determining the reasonableness of a given cost, consideration shall be given to:

(1) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the recipient or the performance of the grant or contract;

(2) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms-length bargaining, Federal and State laws and regulations, and the terms and conditions of the grant or contract;

(3) Whether the recipient acted with prudence under the circumstances, considering its responsibilities to its clients and employees, the public at large, the Corporation, and the Federal government; and

(4) Significant deviations from the recipient's established practices, which

may unjustifiably increase the grant or contract costs.

(c) *Allocable costs.* (1) A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. Costs may be allocated to LSC funds either as direct or indirect costs according to the provisions of this section.

(2) A cost is allocable to an LSC grant or contract if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(i) Is incurred specifically for the grant or contract;

(ii) Benefits both the grant or contract and other work and can be distributed in reasonable proportion to the benefits received; or

(iii) Is necessary to the recipient's overall operation, although a direct relationship to any particular cost objective cannot be shown.

(3) Recipients must maintain accounting systems sufficient to demonstrate the proper allocation of costs to each of their funding sources.

(d) *Direct costs.* Direct costs are those that can be identified specifically with a particular grant award, project, service, or other direct activity of an organization. Costs identified specifically with grant awards are direct costs of the awards and are to be assigned directly thereto. Direct costs include, but are not limited to, the salaries and wages of recipient staff who are working on cases or matters that are identified with specific grants or contracts. Salary and wages charged directly to LSC grants and contracts must be supported by personnel activity reports.

(e) *Indirect costs.* Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. A recipient may treat any direct cost of a minor amount as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives. Indirect costs include, but are not limited to, the costs of operating and maintaining facilities, and the costs of general program administration, such as the salaries and wages of program staff whose time is not directly attributable to a particular grant or contract. Such staff may include, but are not limited to, executive officers and personnel, accounting, secretarial and clerical staff.

(f) *Allocation of indirect costs.* Where a recipient has only one major function, *i.e.,* the delivery of legal services to low-income clients, allocation of indirect costs may be by a simplified allocation method, whereby total allowable indirect costs (net of applicable credits) are divided by an equitable distribution base and distributed to individual grant awards accordingly. The distribution base may be total direct costs, direct salaries and wages, attorney hours, numbers of cases, numbers of employees, or another base which results in an equitable distribution of indirect costs among funding sources.

(g) *Exception for certain indirect costs.* Some funding sources may refuse to allow the allocation of certain indirect costs to an award. In such instances, a recipient may allocate a proportional share of another funding source's share of an indirect cost to LSC funds, provided that the activity associated with the indirect cost is permissible under the LSC Act, LSC appropriations statutes, and regulations.

(h) *Applicable credits.* Applicable credits are those receipts or reductions of expenditures which operate to offset or reduce expense items that are allocable to grant awards as direct or indirect costs. Applicable credits include, but are not limited to, purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits relate to allowable costs, they shall be credited as a cost reduction or cash refund in the same fund to which the related costs are charged.

(i) *Fundraising.* Costs associated with fundraising for the purpose of increasing recipient funds available to carry out the purposes of the LSC grant are allowable and allocable to the LSC grant if they meet the requirements of this section.

(j) *Guidance.* The regulations of the Office of Management and Budget shall provide guidance for all allowable cost questions arising under this part when relevant policies or criteria therein are not inconsistent with the provisions of the Act, applicable appropriations law, this part, the Accounting Guide for LSC Recipients, LSC rules, regulations, guidelines, instructions, and other applicable law.

### § 1630.6 Prior approval.

(a) *Advance understandings.* Under any given grant award, the reasonableness and allocability of certain cost items may be difficult to determine. To avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, a recipient may seek a written understanding from LSC in advance of incurring special or unusual costs. If a recipient elects not to seek an advance understanding from LSC, the absence of an advance understanding on any element of a cost will not affect the reasonableness or allocability of the cost.

(b) *Costs requiring prior approval.* (1) Without LSC's prior written approval, a recipient may not expend $25,000 or more of LSC funds on any of the following:

(i) A single purchase or single lease of personal property;

(ii) A single contract for services;

(iii) A single combined purchase or lease of personal property and contract for services;

(iv) A single purchase of real estate; and

(v) Capital improvements.

(2) For costs apportioned between LSC funds and one or more other funding sources, this requirement applies when the cost allocable to LSC funds is $25,000 or greater.

(3) The process and substantive requirements for requests for prior approval are in 45 CFR part 1631—Purchasing and Property Management.

(c) *Duration.* LSC's advance understanding or approval shall be valid for one year, or for a greater period of time which LSC may specify in its approval or advance understanding.

### § 1630.7 Membership fees or dues.

(a) LSC funds may not be used to pay membership fees or dues to any private or nonprofit organization, whether on behalf of the recipient or an individual.

(b) Paragraph (a) of this section does not apply to the payment of membership fees or dues mandated by a governmental organization to engage in a profession, or to the payment of membership fees or dues from non-LSC funds.

### § 1630.8 Contributions.

Any contributions or gifts of LSC funds to another organization or to an individual are prohibited.

### § 1630.9 Tax-sheltered annuities, retirement accounts, and penalties.

No provision contained in this part shall be construed to affect any payment by a recipient on behalf of its employees for the purpose of contributing to or funding a tax-sheltered annuity, retirement account, or pension fund.

### § 1630.10 Recipient policies, procedures, and recordkeeping.

Each recipient must adopt written policies and procedures to guide its staff in complying with this subpart and must maintain records sufficient to document the recipient's compliance with this subpart.

## Subpart C—Questioned Cost Proceedings

### § 1630.11 Review of questioned costs.

(a) LSC may identify questioned costs:

(1) When the Office of Inspector General, the General Accounting Office, or an independent auditor or other audit organization authorized to conduct an audit of a recipient has identified and referred a questioned cost to LSC;

(2) In the course of its oversight of recipients; or

(3) As a result of complaints filed with LSC.

(b) If LSC determines that there is a basis for disallowing a questioned cost, LSC must provide the recipient with written notice of its intent to disallow the cost. The notice of questioned costs must state the amount of the cost and the factual and legal basis for disallowing it.

(c) If a questioned cost is disallowed solely because it is excessive, only the amount that is larger than reasonable shall be disallowed.

(d)(1) Within 30 days of receiving the notice of questioned costs, the recipient may respond with written evidence and argument to show that the cost was allowable, or that LSC, for equitable, practical, or other reasons, should not recover all or part of the amount, or that the recovery should be made in installments.

(2) The written notice shall become LSC's final written decision unless:

(i) The recipient responds to LSC's written notice within 30 days;

(ii) The recipient requests an extension of time pursuant to § 1630.3(b) within 30 days; or

(iii) LSC grants an extension of time pursuant to § 1630.3(b) within 30 days.

(e) Within 60 days of receiving the recipient's written response to the notice of questioned costs, LSC management must issue a final written decision stating whether the cost has been disallowed and the reasons for the decision.

(f) If LSC has determined that the questioned cost should be disallowed, the final written decision must:

(1) State that the recipient may appeal the decision as provided in § 1630.12 and describe the process for seeking an appeal;

(2) Describe how it expects the recipient to repay the cost, including the method and schedule for collection of the amount of the cost;

(3) State whether LSC is requiring the recipient to make financial adjustments or take other corrective action to prevent a recurrence of the circumstances giving rise to the disallowed cost.

### § 1630.12 Appeals to the president.

(a)(1) If the amount of a disallowed cost exceeds $2,500, the recipient may appeal in writing to LSC's President within 30 days of receiving LSC's final written decision to disallow the cost. The recipient should state in detail the reasons why LSC should not disallow part or all of the questioned cost.

(2) If the recipient did not respond to LSC's notice of questioned costs and the notice became LSC's final written decision pursuant to § 1630.11(d)(2), the recipient may not appeal the final written decision.

(b) If the President has had prior involvement in the consideration of the disallowed cost, the President shall designate another senior LSC employee who has not had prior involvement to review the recipient's appeal. In circumstances where the President has not had prior involvement in the disallowed cost proceeding, the President has discretion to designate another senior LSC employee who also has not had prior involvement in the proceeding to review the appeal.

(c) Within 30 days of receiving the recipient's written appeal, the President or designee will adopt, modify, or reverse LSC's final written decision.

(d) The decision of the President or designee shall be final and shall be based on the written record, consisting of LSC's notice of questioned costs, the recipient's response, LSC's final written decision, the recipient's written appeal, any additional response or analysis provided to the President or designee by LSC staff, and the relevant findings, if any, of the Office of Inspector General, General Accounting Office, or other authorized auditor or audit organization. Upon request, LSC shall provide the recipient with a copy of the written record.

### § 1630.13 Recovery of disallowed costs and other corrective action.

(a) LSC will recover any disallowed costs from the recipient within the time limits and conditions set forth in either LSC's final written decision or the President's decision on an appeal. Recovery of the disallowed costs may be in the form of a reduction in the amount of future grant checks or in the form of direct payment from you to LSC.

(b) LSC shall ensure that a recipient who has incurred a disallowed cost takes any additional necessary corrective action within the time limits and conditions set forth in LSC's final written decision or the President's decision.

### § 1630.14 Other remedies; effect on other parts.

(a) In cases of serious financial mismanagement, fraud, or defalcation of funds, LSC shall refer the matter to the Office of Inspector General and may take appropriate action pursuant to parts 1606, 1623, and 1640 of this chapter.

(b) The recovery of a disallowed cost according to the procedures of this part does not constitute a permanent reduction in a recipient's annualized funding level, nor does it constitute a limited reduction of funding or termination of financial assistance under part 1606, or a suspension of funding under part 1623 of this chapter.

### § 1630.15 Applicability to subgrants.

When disallowed costs arise from expenditures incurred under a subgrant of LSC funds, the recipient and the subrecipient will be jointly and severally responsible for the actions of the subrecipient, as provided by 45 CFR part 1627, and will be subject to all remedies available under this part. Both the recipient and the subrecipient shall have access to the review and appeal procedures of this part.

### § 1630.16 Applicability to non-LSC funds.

(a) No costs attributable to a purpose prohibited by the LSC Act, as defined by 45 CFR 1610.2(a), may be charged to private funds, except for tribal funds used for the specific purposes for which they were provided.

(b) No cost attributable to an activity prohibited by or inconsistent with Pub. L. 103–134, title V, sec. 504, as defined by 45 CFR 1610.2(b), may be charged to non-LSC funds, except for tribal funds used for the specific purposes for which they were provided.

(c) LSC may recover from a recipient's LSC funds an amount not to exceed the amount improperly charged to non-LSC funds. A decision to recover under this paragraph is subject to the review and appeal procedures of §§ 1630.11 and 1630.12.

### § 1630.17 Applicability to derivative income.

(a) Derivative income resulting from an activity supported in whole or in part with LSC funds shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of LSC funds expended bears to the total amount expended by the recipient to support the activity.

(b) Derivative income allocated to the LSC fund in accordance with paragraph (a) of this section is subject to the requirements of this part.

## Subpart D—Closeout Procedures

### § 1630.18 Applicability.

This subpart applies when a recipient of LSC funds:

(a) Ceases to exist as a legal entity, including merging or consolidating functions with another LSC recipient when the other recipient becomes the LSC recipient for the service area; or

(b) Otherwise ceases to receive funds directly from LSC. This may include voluntary termination by the recipient or involuntary termination by LSC of the recipient's LSC grant, and may occur at the end of a grant term or during the grant term.

### § 1630.19 Closeout plan; timing.

(a) A recipient must provide LSC with a plan for the orderly conclusion of the recipient's role and responsibilities. LSC will maintain a list of the required elements for the closeout plan on its Web site. LSC will provide recipients with a link to the list in the grant award documents.

(b)(1) A recipient must notify LSC no less than 60 days prior to any of the above events, except for an involuntary termination of its LSC grant by LSC. The recipient must submit the closeout plan described in paragraph (a) of this section at the same time.

(2) If LSC terminates a recipient's grant, the recipient must submit the closeout plan described in paragraph (a) of this section within 15 days of being notified by LSC that it is terminating the recipient's grant.

### § 1630.20 Closeout costs.

(a) The recipient must submit to LSC a detailed budget and timeline for all closeout procedures described in the closeout plan. LSC must approve the budget, either as presented or after negotiations with the recipient, before the recipient may proceed with implementing the budget, timeline, and plan.

(b) LSC will withhold funds for all closeout expenditures, including costs for the closing audit, all staff and consultant services needed to perform closeout activities, and file storage and retention.

(c) LSC will release any funding installments that the recipient has not received as of the date it notified LSC of a merger, change in status, or voluntary termination or that LSC notified the recipient of an involuntary termination of funding only upon the recipient's satisfactory completion of all closeout obligations.

### § 1630.21 Returning funds to LSC.

(a) *Excess fund balance.* If the recipient has an LSC fund balance after the termination of funding and closeout, the recipient must return the full amount of the fund balance to LSC at the time it submits the closing audit to LSC.

(b) *Derivative income.* Any attorneys' fees claimed or collected and retained by the recipient after funding ceases that result from LSC-funded work performed during the grant term are derivative income attributable to the LSC grant. Such derivative income must be returned to LSC within 15 days of the date on which the recipient receives the income.

■ 4. Add part 1631 to read as follows:

# PART 1631—PURCHASING AND PROPERTY MANAGEMENT

## Subpart A—General Provisions



**Authority:** 42 U.S.C. 2996g(e).

## Subpart A—General Provisions

### § 1631.1 Purpose.

The purpose of this part is to set standards for purchasing, leasing, using, and disposing of LSC-funded personal property and real estate and using LSC funds to contract for services.

### § 1631.2 Definitions.

As used in this part:

(a) *Capital improvement* means spending more than $25,000 of LSC funds to improve real estate through construction or the addition of fixtures that become an integral part of real estate.

(b) *LSC property interest agreement* means a formal written agreement between the recipient and LSC establishing the terms of LSC's legal interest in real estate purchased with LSC funds.

(c) *Personal property* means property other than real estate.

(d) *Purchase* means buying personal property or real estate or contracting for services with LSC funds.

(e) *Quote* means a quotation or bid from a potential source interested in selling or leasing property or providing services to a recipient.

(f) *Real estate* means land and buildings (including capital improvements), excluding moveable personal property.

(g)(1) *Services* means professional and consultant services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of an LSC recipient. *Services* includes, but is not limited to intangible products such as accounting, banking, cleaning, consultants, training, expert services, maintenance of equipment, and transportation.

(2) *Services* does not include:

(i) Services provided by recipients to their employees as compensation in addition to regular salaries and wages, including but not limited to employee insurance, pensions, and unemployment benefit plans;

(ii) Insurance, including malpractice insurance provided to staff attorneys and organizational insurance (*e.g.,* directors and officers liability insurance, employment practices liability insurance, and commercial liability insurance);

(iii) Annual audits required by section 509(a) of Public Law 104–134;

(iv) Services necessary to conduct litigation on behalf of clients (*e.g.,* expert witnesses, discovery);

(v) Contracts for services necessary to address a recipient's internal personnel issues, such as labor counsel, investigators, and mediators; and

(vi) Contracts for employees, whether with the employee directly or with a placement agency.

(h) *Source* means a seller, supplier, vendor, or contractor who has agreed:

(1) To sell or lease property to the recipient through a purchase or lease agreement; or

(2) To provide services to the recipient through a contract.

**§ 1631.3 Prior approval process.**

(a) LSC shall grant prior approval of a cost listed in § 1630.6(b) of this chapter if the recipient has provided sufficient written information to demonstrate that the cost would be consistent with the standards and policies of this part. LSC may request additional information if necessary to make a decision on the recipient's request.

(b)(1) For purchases or leases of personal property, contracts for services, and capital improvements, LSC will make a decision to approve or deny a request for prior approval within 30 days of receiving materials LSC deems sufficient to decide. LSC will inform a recipient within 20 days of receiving the initial prior approval request whether LSC needs additional information to make a decision.

(2) For purchases of real estate, LSC will make a decision within 60 days of receiving materials LSC deems sufficient to decide. LSC will inform a recipient within 20 days of receiving the initial prior approval request whether LSC needs additional information to make a decision.

(3) If LSC cannot make a decision whether to approve the request within the allotted time, it will provide the requester with a date by which it expects to make a decision.

(c) If LSC denies a request for prior approval, LSC shall provide the recipient with a written explanation of the grounds for denying the request.

(d) *Exigent circumstances.* (1) A recipient may use more than $25,000 of LSC funds to purchase personal property or award a contract for services without seeking LSC's prior approval if the purchase or contract is necessary;

(i) To avoid imminent harm to the recipient's personnel, physical facilities, or systems;

(ii) To remediate or mitigate damage to the recipient's personnel, physical facilities or systems;

(iii) To avoid disruption to the recipient's client-service delivery system (*e.g.,* an event that causes a recipient's telecommunications system to cease functioning); or

(iv) To respond to a natural disaster (*e.g.,* a flood washes out roads leading to the recipient's offices such that the recipient must contract for services that will enable it to contact its clients).

(2) The recipient must provide LSC with a description of the exigent circumstances and the information described in paragraph (b) of this section within 30 days after the circumstances necessitating the purchase or contract have ended.

**§ 1631.4 Use of funds.**

When LSC receives funds from a disposition of property under this section, LSC will use those funds to make emergency and other special grants to recipients. LSC generally will make such grants to the same service area as the returned funds originally supported.

**§ 1631.5 Recipient policies, procedures, and recordkeeping.**

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

## Subpart B—Procurement Policies and Procedures

**§ 1631.6 Characteristics of procurements.**

(a) Characteristics indicative of a procurement relationship between a recipient and another entity are when the other entity:

(1) Provides the goods and services within its normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the LSC grant; and

(5) Is not subject to LSC's compliance requirements as a result of the agreement, though similar requirements may apply for other reasons.

(b) In determining whether an agreement between a recipient and another entity constitutes a contract under this part or a subgrant under part 1627 of this chapter, the substance of the relationship is more important than the form of the agreement. All the characteristics above may not be present in all cases, and a recipient must use judgment in classifying each agreement as a subgrant or a contract.

**§ 1631.7 Procurement policies and procedures.**

Recipients must have written procurement policies and procedures. These policies must:

(a) Identify competition thresholds that establish the basis (for example, price, risk level, or type of purchase) for the level of competition required at each threshold (for example, certification that a purchase reflects the best value to the recipient; a price comparison for alternatives that the recipient considered; or requests for information, quotes, or proposals);

(b) Establish the grounds for non-competitive purchases;

(c) Establish the level of documentation necessary to justify procurements. The level of documentation needed may be proportional to the nature of the purchase or tied to competition thresholds;

(d) Establish internal controls that, at a minimum, provide for segregation of duties in the procurement process, identify which employees, officers, or directors who have authority to make purchases for the recipient, and identify procedures for approving purchases;

(e) Establish procedures to ensure quality and cost control in purchasing, including procedures for selecting sources, fair and objective criteria for selecting sources; and

(f) Establish procedures for identifying and preventing conflicts of interest in the purchasing process.

**§ 1631.8 Requests for prior approval.**

(a) As required by 45 CFR 1630.6 and 1631.3, a recipient using more than $25,000 of LSC funds to purchase or lease personal property or contract for services must request and receive LSC's prior approval.

(b) A request for prior approval must include:

(1) A statement of need;

(2) A copy of the recipient's procurement policy; and

(3) Documentation showing that the recipient followed its procurement policies and procedures in soliciting, reviewing, and approving the purchase, lease, or contract for services.

**§ 1631.9 Applicability of part 1630 of this chapter.**

All purchases and leases of personal property and contracts for services made with LSC funds must comply with the provisions of 45 CFR part 1630 (Cost Standards and Procedures).

## Subpart C—Personal Property Management

**§ 1631.10 Use of property in compliance with LSC's statutes and regulations.**

(a) A recipient may use personal property purchased or leased, in whole or in part, with LSC funds primarily to deliver legal services to eligible clients under the requirements of the LSC Act, applicable appropriations acts, and LSC regulations.

(b) A recipient may use personal property purchased or leased, in whole or in part, with LSC funds for the performance of an LSC grant or contract

for other activities, if such other activities do not interfere with the performance of the LSC grant or contract.

(c) If a recipient uses personal property purchased or leased, in whole or in part, with LSC funds to provide services to an organization that engages in activity restricted by the LSC Act, LSC regulations, or other applicable law, the recipient must charge the organization a fee no less than that which private nonprofit organizations in the same area charge for the same services under similar conditions.

**§ 1631.11 Intellectual property.**

(a) A recipient owns all products, technologies, and software developed or improved using LSC funds, subject to any agreement the recipient may have with a third-party vendor. LSC retains a royalty-free, nonexclusive, and irrevocable license to use, reproduce, distribute, publish, and prepare derivative works of any LSC-funded products, technologies, and software, including making them available to other LSC grantees or the broader access to justice community and partners.

(b) A recipient must have a written contract with vendors who develop or improve LSC-funded products, technologies, and software. The contract must include a provision disclosing LSC's royalty-free, nonexclusive, and irrevocable license and prohibiting third-party vendors from denying its existence, challenging its legality, or interfering with LSC's full exercise of it.

**§ 1631.12 Disposing of personal property purchased with LSC funds.**

(a) *Disposal by LSC recipients.* During the term of an LSC grant or contract, a recipient may dispose of personal property purchased with LSC funds by:

(1) Trading in the personal property when it acquires replacement property;

(2) Selling or otherwise disposing of the personal property with no further obligation to LSC when the fair market value of the personal property is negligible;

(3) Where the current fair market value of the personal property is $15,000 or less, selling the property at a reasonable negotiated price, without advertising;

(4) Where the current fair market value of the personal property exceeds $15,000, advertising the property for 14 days and selling the property after receiving reasonable offers. If the recipient receives no reasonable offers after advertising the property for 14 days, it may sell the property at a reasonable negotiated price;

(5) Transferring the property to another recipient of LSC funds; or

(6) With the approval of LSC, transferring the personal property to another nonprofit organization serving the poor in the same service area.

(b) *Disposal when no longer a recipient.* When a recipient stops receiving LSC funds, it must obtain LSC's approval to dispose of personal property purchased with LSC funds in one of the following ways:

(1) Transferring the property to another recipient of LSC funds, in which case the former recipient will be entitled to compensation in the amount of the percentage of the property's current fair market value that is equal to the percentage of the property's purchase cost borne by non-LSC funds;

(2) Transferring the property to another nonprofit organization serving the poor in the same service area, in which case LSC will be entitled to compensation from the recipient for the percentage of the property's current fair market value that is equal to the percentage of the property's purchase cost borne by LSC funds;

(3) Selling the property and retaining the proceeds from the sale after compensating LSC for the percentage of the property's current fair market value that is equal to the percentage of the property's purchase cost borne by LSC funds; or

(4) Retaining the property, in which case LSC will be entitled to compensation from the recipient for the percentage of the property's current fair market value that is equal to that percentage of the property's purchase cost borne by LSC funds.

(c) *Disposal upon merger with or succession by another LSC recipient.* When a recipient stops receiving LSC funds because it merged with or is succeeded by another grantee, the recipient may transfer the property to the new recipient, if the two entities execute an LSC-approved successor in interest agreement that requires the new recipient to use the property primarily to provide legal services to eligible clients under the requirements of the LSC Act, applicable appropriations acts, and LSC regulations.

(d) *Prohibition.* A recipient may not dispose of personal property by sale, donation, or other transfer of the property to its board members or employees.

**§ 1631.13 Use of derivative income from sale of personal property purchased with LSC funds.**

(a) During the term of an LSC grant or contract, a recipient may retain and use income from any sale of personal property purchased with LSC funds according to 45 CFR 1630.17 (Cost Standards and Procedures: Applicability to derivative income) and 45 CFR 1628.3 (Recipient Fund Balances: Policy).

(b) The recipient must account for income earned from the sale, rent, or lease of personal property purchased with LSC funds according to the requirements of 45 CFR 1630.17.

## Subpart D—Real Estate Acquisition and Capital Improvements

**§ 1631.14 Purchasing real estate with LSC funds.**

(a) *Pre-purchase planning requirements.* (1) Before purchasing real estate with LSC funds, a recipient must conduct an informal market survey and evaluate at least three potential equivalent properties.

(2) When a recipient evaluates potential properties, it must consider:

(i) The average annual cost of the purchase, including the costs of a down payment, interest and principal payments on a mortgage financing the purchase; closing costs; renovation costs; and the costs of utilities, maintenance, and taxes, if any;

(ii) The estimated total costs of buying and using the property throughout the mortgage term compared to the estimated total costs of leasing and using a similar property over the same period of time;

(iii) The property's quality; and

(iv) Whether the property is conducive to delivering legal services (*e.g.* property is accessible to the client population (ADA compliant) and near public transportation, courts, and other government or social services agencies).

(3) If a recipient cannot evaluate three potential properties, it must be able to explain why such evaluation was not possible.

(b) *Prior approval.* Before a recipient may purchase real estate with LSC funds, LSC must approve the purchase as required by 45 CFR 1630.6 and 1631.3. The request for approval must be in writing and include:

(1) A statement of need, including:

(i) The information obtained and considered in paragraph (a) of this section;

(ii) Trends in funding and program staffing levels in relation to space needs;

(iii) Why the recipient needs to purchase real estate; and

(iv) Why purchasing real estate is reasonable and necessary to performing the LSC grant.

(2) A brief analysis comparing:

(i) The estimated average annual cost of the purchase including the costs of a down payment, interest and principal payments on a mortgage financing the

purchase; closing costs; renovation costs; and the costs of utilities, maintenance, and taxes, if any; and

(ii) The estimated average annual cost of leasing or purchasing similar property over the same period of time;

(3) Anticipated financing of the purchase, including:

(i) The estimated total acquisition costs, including capital improvements, taxes, recordation fees, maintenance costs, insurance costs, and closing costs;

(ii) The anticipated breakdown of LSC funds and non-LSC funds to be applied toward the total costs of the purchase;

(iii) The monthly amount of principal and interest payments on debt secured to finance the purchase, if any;

(4) A current, independent appraisal sufficient to secure a mortgage;

(5) A comparison of available loan terms considered by the recipient before selecting the chosen financing method;

(6) Board approval of the purchase in either a board resolution or board minutes, including Board approvals that are contingent on LSC's approval;

(7) Whether the property will replace or supplement existing program offices;

(8) A statement that the property

(i) Currently complies with the Americans with Disabilities Act (ADA) or applicable state law, whichever is stricter, and 45 CFR 1624.5; or

(ii) Will comply with the ADA, any applicable state law, and 45 CFR 1624.5 upon completion of any necessary capital improvements. Such improvements must be completed within 60 days of the date of purchase; and

(9) A copy of a purchase agreement, contract, or other document containing a description of the property and the terms of the purchase.

(c) *Property interest agreement.* Once LSC approves the purchase, the recipient must enter a written property interest agreement with LSC. The agreement must include:

(1) The recipient's agreement to use the property consistent with § 1631.15;

(2) The recipient's agreement to record, under appropriate state law, LSC's interest in the property;

(3) The recipient's agreement not to encumber the property without prior LSC approval; and

(4) The recipient's agreement not to dispose of the property without prior LSC approval.

#### § 1631.15 Capital improvements.

(a) As required by 45 CFR 1630.6 and 1631.3, a recipient must obtain LSC's prior written approval before using more than $25,000 LSC funds to make capital improvements to real estate.

(b) The written request must include:

(1) A statement of need;

(2) A brief description of the nature of the work to be done, the name of the sources performing the work, and the total expected cost of the improvement; and

(3) Documentation showing that the recipient followed its procurement policies and procedures in competing, selecting, and awarding contracts to perform the work.

(c) A recipient must maintain supporting documentation to accurately identify and account for any use of LSC funds to make capital improvements to real estate owned by the recipient.

### Subpart E—Real Estate Management

#### § 1631.16 Using real estate purchased with LSC funds.

(a) Recipients must use real estate purchased or leased in whole or in part with LSC funds to deliver legal assistance to eligible clients consistent with the requirements of the LSC Act, applicable appropriations acts, other applicable Federal law, and LSC's regulations. If a recipient does not need to use some or all such real estate to deliver legal assistance to eligible clients, it may use the space for other activities as described in paragraphs (b) and (c) of this section.

(b) A recipient may use real estate purchased or leased, in whole or part, with LSC funds for the performance of an LSC grant or contract for other activities, if they do not interfere with the performance of the LSC grant or contract.

(c) If a recipient uses real estate purchased or leased, in whole or part, with LSC funds to provide space to an organization that engages in activity restricted by the LSC Act, applicable appropriations acts, LSC regulations, or other applicable law, the recipient must charge the organization rent no less than that which private nonprofit organizations in the same area charge for the same amount of space under similar conditions.

#### § 1631.17 Maintenance.

A recipient must maintain real estate acquired with LSC funds:

(a) In an efficient operating condition; and

(b) In compliance with state and local government property standards and building codes.

#### § 1631.18 Insurance.

At the time of purchase, a recipient must obtain insurance coverage for real estate purchased with LSC funds which is not lower in value than coverage it has obtained for other real estate it owns and which provides at least the following coverage:

(a) Title insurance that:

(1) Insures the fee interest in the property for an amount not less than the full appraised value as approved by LSC, or the amount of the purchase price, whichever is greater; and

(2) Contains an endorsement identifying LSC as a loss payee to be reimbursed if the title fails.

(3) If no endorsement naming LSC as loss payee is made, the recipient must pay LSC the title insurance proceeds it receives in the event of a failure.

(b) A physical destruction insurance policy, including flood insurance where appropriate, which insures the full replacement value of the facility from risk of partial and total physical destructions. The recipient must maintain this policy for the period of time that the recipient owns the real estate.

#### § 1631.19 Accounting and reporting to LSC.

A recipient must maintain an accounting of the amount of LSC funds relating to the purchase or maintenance of real estate purchased with LSC funds. The accounting must include the amount of LSC funds used to pay for acquisition costs, financing, and capital improvements. The recipient must provide the accounting for each year to LSC no later than April 30 of the following year or in its annual audited financial statements submitted to LSC.

#### § 1631.20 Disposing of real estate purchased with LSC funds.

(a) *Disposal by LSC recipients.* During the term of an LSC grant or contract, a recipient must seek LSC's prior written approval to dispose of real estate purchased with LSC funds by:

(1) Selling the property after having advertised for and received offers; or

(2) Transferring the property to another recipient of LSC funds, in which case the recipient may be compensated by the recipient receiving the property for the percentage of the property's current fair market value that is equal to the percentage of the costs of the original acquisition and costs of any capital improvements borne by non-LSC funds.

(b) *Disposal after a recipient no longer receives LSC funding.* When a recipient who owns real estate purchased with LSC funds stops receiving LSC funds, it must seek LSC's prior written approval to dispose of the property in one of the following ways:

(1) Transfer the property title to another grantee of LSC funds, in which case the recipient may be compensated

the percentage of the property's current fair market value that is equal to the percentage of the costs of the original acquisition and costs of any capital improvements by non-LSC funds;

(2) Buyout LSC's interest in the property (*i.e.,* pay LSC the percentage of the property's current fair market value proportional to its percent interest in the property); or

(3) Sell the property to a third party and pay LSC a share of the sale proceeds proportional to its interest in the property, after deducting actual and reasonable closing costs, if any.

(4) When a recipient stops receiving LSC funds because it merged with or is succeeded by another recipient, it may transfer the property to the new recipient. The two entities must execute an LSC-approved successor in interest agreement that requires the transferee to use the property primarily to provide legal services to eligible clients under the requirements of the LSC Act, applicable appropriations acts, and LSC regulations.

(c) *Prior approval process.* No later than 60 days before a recipient or former recipient proposes to dispose of real estate purchased with LSC funds, the recipient or former recipients must submit a written request for prior approval to dispose of the property to LSC. The request must include:

(1) The proposed method of disposition and an explanation of why the proposed method is in the best interests of LSC and the recipient;

(2) Documentation showing the fair market value of the property at the time of transfer or sale, including, but not limited to, an independent appraisal of the property and competing bona fide offers to purchase the property;

(3) A description of the recipient's process for advertising the property for sale and receiving offers;

(4) An accounting of all LSC funds used in the acquisition and any capital improvements of the property. The accounting must include the amount of LSC funds used to pay for acquisition costs, financing, and capital improvements; and

(5) Information on the proposed transferee or buyer of the property and a document evidencing the terms of transfer or sale.

**§ 1631.21 Retaining income from sale of real estate purchased with LSC funds.**

(a) During the term of an LSC grant or contract, a recipient may retain and use income from any sale of real estate purchased with LSC funds according to 45 CFR 1630.17 (Cost Standards and Procedures: Applicability to derivative income.) and 45 CFR 1628.3 (Recipient Fund Balances: Policy.).

(b) The recipient must account for income earned from the sale, rent, or lease of real or personal property purchased with LSC funds according to the requirements of 45 CFR 1630.17.

Dated: August 3, 2017.

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 79

**[MB Docket No. 11–43; FCC 17–88]**

## Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts rules pursuant to Section 202 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) to expand the availability of video described programming on top-rated broadcast and nonbroadcast networks. Specifically, the document adopts the proposal to increase the amount of described programming on each ''included network'' carried by a covered broadcast station or multichannel video programming distributor (MVPD), from 50 hours per calendar quarter to 87.5 hours per quarter. Covered broadcast stations and MVPDs must start providing the additional hours of video described programming on ''included networks'' in the calendar quarter beginning on July 1, 2018. The document also provides more flexibility than exists under the Commission's current rules regarding when the additional hours of described programming may be aired. This update to the Commission's video description rules will help ensure that Americans who are blind or visually impaired can be connected, informed, and entertained by television.

**DATES:** Effective September 11, 2017.

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**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Orde*r, FCC 17–88, adopted on July 11, 2017, and released on July 12, 2017. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) Web site at *http://fjallfoss.fcc.gov/edocs_public/* or via the FCC's Electronic Comment Filing System (ECFS) Web site at *http://fjallfoss.fcc.gov/ecfs2/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

### I. Introduction

1. In this *Report and Order,* we expand the availability of video described programming on top-rated broadcast and nonbroadcast networks. Specifically, we adopt the proposal to increase the amount of described programming on each ''included network'' [1] carried by a covered broadcast station or multichannel video programming distributor (MVPD), from 50 hours per calendar quarter to 87.5 hours per quarter. Covered broadcast stations and MVPDs must start providing the additional hours of video described programming on ''included networks'' in the calendar quarter beginning on July 1, 2018. We also provide more flexibility than exists under our current rules regarding when the additional hours of described programming may be aired. This update to our rules will help ensure that Americans who are blind or visually impaired can be connected, informed, and entertained by television.

[1] An ''included network'' is a network carried on a programming stream or channel on which a broadcaster or MVPD is required to provide video description. *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Notice of Proposed Rulemaking, 81 FR 33642, May 27, 2016, 31 FCC Rcd 2463, 2464, n.4 (2016) (*NPRM*).

## II. Background

1. In 2011, the Commission reinstated the video description regulations that previously were adopted in 2000, requiring certain television broadcast stations and MVPDs to provide video description on top-rated networks.[2] Video description makes video programming accessible to individuals who are blind or visually impaired through ''[t]he insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.'' [3] These rules play a key role in affording better access to television programs for individuals who are blind or visually impaired, ''enabling millions more Americans to enjoy the benefits of television service and participate more fully in the cultural and civic life of the nation.''

2. Currently, the Commission's video description rules require commercial broadcast television stations that are affiliated with ABC, CBS, Fox, or NBC and are located in the top 60 television markets to provide 50 hours per calendar quarter of video described prime time or children's programming.[4] In addition, MVPD systems that serve 50,000 or more subscribers must provide 50 hours of video description per calendar quarter during prime time or children's programming on each of the top five national nonbroadcast networks that they carry on those systems.[5] The nonbroadcast networks currently subject to these video description requirements are USA, TNT, TBS, History, and Disney Channel.[6] Any programming initially aired with video description must include video description if it is re-aired on the same station or MVPD channel, unless the station or MVPD is using the technology for another program-related purpose.[7]

3. In the Notice of Proposed Rulemaking in this proceeding (*NPRM*) (81 FR 33642, May 27, 2016), we proposed revisions to our rules that would expand the availability of, and support consumer access to, video described programming.[8] Among other proposals, we proposed to increase the amount of described programming on each included network carried by a covered broadcast station or MVPD, from 50 hours per calendar quarter to 87.5, and we sought comment on whether to provide more flexibility to covered entities by allowing some amount of non-prime time, non-children's described programming to count toward the increased hours. We also sought comment on our tentative conclusion that the benefits of the proposed rules outweigh the costs, and on other issues such as appropriate timelines for the proposals. We take no action on our other *NPRM* proposals at this time.[9]

## III. Authority

4. We conclude that we have the authority under the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) to increase the number of hours of described programming on each included network by 75 percent, from 50 hours per calendar quarter to 87.5 hours per quarter. This conclusion is consistent with Section 713(f)(4) of the Communications Act of 1934, as amended (''Continuing Commission Authority''),[10] Section 713(f)(4) states that the Commission may not issue additional video description rules unless their benefits outweigh their costs, and ''may not increase, in total, the hour requirement for additional described programming by more than 75 percent of the requirement in the regulations reinstated under'' Section 713(f)(1).

5. In the *NPRM,* we explained that our continuing authority is limited by the express requirement in Section 713(f)(4)(A) that the need for and benefits of any new or expanded regulations outweigh their costs, as well as by the express limitations set out in subsection (f)(4)(B) with respect to total described hours and subsection (f)(4)(C) regarding the expansion of video description requirements to additional designated market areas (DMAs).[11] As noted in the *NPRM,* the statute provides that any new requirements must be limited to programming transmitted for display on television (that is, by broadcasters and MVPDs).[12] In this Order, we conclude that the new requirements we adopt herein are consistent with the limitations in the statute. We note that, as required in subsection (f)(4)(A), more than two years have passed since the completion of the CVAA-mandated report to Congress on video description ''in television programming'' and ''in video programming distributed on the Internet.'' [13] Further, the additional regulations adopted today apply only to ''programming . . . transmitted for display on television.'' [14] As discussed below, we also find that ''the need for and benefits of'' the regulations ''are greater than the[ir] technical and economic costs'' for the rules we adopt herein. Finally, consistent with subsection (f)(4)(B), the additional regulations do not increase the hour requirement ''by more than 75 percent

[2] 47 CFR 79.3. *See generally Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Report and Order, 26 FCC Rcd 11847 (2011) (*Reinstatement Order*). *See also Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Notice of Proposed Rulemaking, 26 FCC Rcd 2975 (2011). Video description rules were initially adopted in 2000, but were struck down due to lack of authority. *Implementation of Video Description of Video Programming,* MM Docket No. 99–339, Report and Order, 15 FCC Rcd 15230 (2000), recon. granted in part and denied in part, *Implementation of Video Description of Video Programming,* MM Docket No. 99–339, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 1251 (2001), *vacated sub nom, Motion Picture Ass'n of Am., Inc.* v. *FCC,* 309 F.3d 796 (D.C. Cir. 2002). The history of the Commission's video description rules and their reinstatement under the CVAA, as well as the current requirements under those rules, are discussed in depth in both the 2014 Report to Congress and the Notice of Proposed Rulemaking in this proceeding. Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751 (2010) (CVAA); H.R. Rep. No. 111–563, 111th Cong., 2d Sess. at 19 (2010); S. Rep. No. 111–386, 111th Cong., 2d Sess. at 1 (2010); *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Report to Congress, 29 FCC Rcd 8011 (2014) (*2014 Report*); 47 U.S.C. 613(f)(3); *NPRM,* paras. 3–7.

[3] 47 CFR 79.3(a)(3).

[4] *Id.* § 79.3(b)(1)–(2).

[5] *Id.* § 79.3(b)(4).

[6] *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010,* Order and Public Notice, 30 FCC Rcd 2071, 2071, para. 1 (2015). The list of the top five networks is updated every three years in response to any changes in ratings. 47 CFR 79.3(b)(4). The next update will be in effect on July 1, 2018 based on the ratings for the time period from October 2016 to September 2017.

[7] 47 CFR 79.3(c)(3), 79.3(c)(4)(i)–(ii).

[8] *See generally NPRM.*

[9] We also sought comment in the *NPRM* on proposals to increase the number of included networks carried by covered distributors, from four broadcast and five nonbroadcast networks to five broadcast and ten nonbroadcast networks; adopt a no-backsliding rule; remove the threshold requirement that nonbroadcast networks reach 50 percent of pay-TV (or MVPD) households in order to be subject to inclusion; require that covered distributors provide dedicated customer service contacts who can answer questions about video description; and require that petitions for exemptions from the video description requirements, together with comments on or objections to such petitions, be filed with the Commission electronically.

[10] Section 713 of the Act was amended by Section 202(a) of the CVAA and is codified at 47 U.S.C. 613.

[11] *NPRM,* paras. 8, 13–15. The CVAA prohibits the Commission, until October 8, 2020, from phasing in additional DMAs outside the top 60. 47 U.S.C. 613(f)(4)(C)(iii)–(iv).

[12] *NPRM,* para. 16; 47 U.S.C. 613(f)(4)(A).

[13] 47 U.S.C. 613(f)(4)(A). In particular, on June 30, 2014, the Commission submitted a report to Congress presenting its findings on the technical and creative issues, benefits, and financial costs of video description in television programming, as well as on the technical and operational issues, benefits, and costs of providing video description for IP-delivered video programming. *See generally 2014 Report. See also NPRM,* para. 7.

[14] 47 U.S.C. 613(f)(4)(A).

of the requirement in the regulations reinstated.'' [15]

## IV. Increased Availability of Video Described Programming

### *A. Additional Hours*

6. The CVAA provides that the Commission may increase ''in total'' the hour requirement by no more than 75 percent, up to a total of 87.5 hours per quarter, and we proposed to adopt such an increase in the *NPRM.*[16] Based on our analysis of the benefits and costs of the proposal as required under Section 713(f)(4)(A) of the Communications Act, we adopt our proposed increase in this Order.[17] Thus, we will require each covered broadcast station and MVPD, on each stream or channel on which it carries an ''included network,'' to provide 87.5 hours of described programming, per quarter.[18] Our decision to increase the number of required hours of video description per included network is supported by the record. Almost every commenter who addressed this issue supports the proposed increase to 87.5 hours per quarter,[19] and only one commenter opposes it.[20] Although this is the maximum increase permissible under the CVAA, the total number of hours required per included network will be limited, averaging less than one hour per day.[21] We find that implementing the maximum increase at this time, rather than a partial increase, will provide the most benefit to consumers without resulting in excessive costs. As discussed below, we also provide more flexibility than exists under our current rules regarding when the additional hours of described programming may be aired.

7. On any given day, the average American can choose to watch any program on any one of approximately 264 channels.[22] That adds up to roughly 6,000 hours of linear television options, from which that average American chooses about five hours of programming to watch over the course of the day.[23] Ideally, viewers who are blind or visually impaired would have the same range of options, including the same freedom to select and independently view and follow any of the programming for which they pay.[24] Instead, many find that ''the current amount of available audio-described content [is] significantly below demand'' and indicate that they have difficulty finding programs with video description.[25] Television programming is a shared piece of American culture [26] that the blind and visually impaired community is unable to fully experience without video description.[27] For people with blindness and visual impairments, video description has been shown not only to increase comprehension of television programming, but also to increase opportunities to discuss television programs with sighted people.[28] As a result of increased video description requirements, persons who are blind or visually impaired will be able to engage more fully in television viewing, increasing their social inclusion within community life. Nonetheless, as we noted in the *NPRM,* we must ''seek to ensure that consumers are able to realize the benefits of video description'' while ''keeping in mind our Congressional directive to proceed judiciously with any expansion of the requirements.''

8. As required by the statute, we find that the benefits of increasing the required number of hours of described programming by 37.5 hours per quarter are greater than the costs. The costs are minimal and represent a very small percentage of total programming expenses and network revenues.[29] Although the price for adding description to television programming can vary, based on filings in the docket we estimate that the maximum cost per hour is $4,202.50.[30] Because a given hour of described programming can be counted twice toward the requirements of the rules (once when initially aired, and once when rerun), any given included network would need a total of 175 hours of first-run described programming on that network per year to comply with the expanded video description requirement adopted today.[31] For the nine networks required

[15] The requirement in the reinstated regulations is 50 hours of video description on each programming stream or channel per calendar quarter. 47 CFR 79.3(b)(1)–(2), (4). 75 percent of those 50 hours is 37.5 hours. Accordingly, 87.5 hours per quarter represents a 75 percent increase in the number of hours of video description (50 + 37.5 = 87.5). We have not expanded the number of DMAs, which we conclude we may not do until 2020 at the earliest. 47 U.S.C. 613(f)(4)(C)(iii)–(iv).

[16] *NPRM,* para. 18. *See also* 47 U.S.C. 613(f)(4)(B).

[17] Absent Congressional action, the Commission does not have authority to further increase the number of hours of video described programming required per quarter on any specific network beyond the 87.5 hours adopted today. *NPRM,* para. 13. However, we encourage all networks to continue to expand their video described offerings.

[18] We also delete what was formerly § 79.3(b)(1) of the rules, which specified the video description requirements that were in effect prior to July 1, 2015, and were superseded on that date. This rule is obsolete and has no current effect, and its substance is now covered by the new paragraph (b)(1) (what was formerly paragraph (b)(2)).

[19] *See, e.g.,* MPAA Comments at 1; ACB Comments at 3; AFB Comments at 1; MCB Reply at 1; ABVI Reply at 1; Barlow Comments at 1; Grossman Comments at 1; Merriweather Comments at 1; Pinto Comments at 1; Zodrow Comments at 1; Swartz Reply at 1.

[20] *See* NAB Reply at 3–9.

[21] Thirteen weeks per calendar quarter, seven days per week, means an average of 91 days per quarter. Given that the updated requirement calls for only 87.5 hours of described programming per quarter, this averages out to less than one hour per day of described programming on any given included network.

[22] *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992; Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment,* MM Docket No. 92–266, Report on Cable Industry Prices, 31 FCC Rcd 11498, 11508–09, Tbls. 4, 5 (2016) (showing an increased average of 264.4 total available channels on the most subscribed tiers of service). Close to 90 percent of American television households subscribe to MVPD service. *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* MB Docket No. 15–158, Seventeenth Report, 31 FCC Rcd 4472, 4514, para. 102 (2016).

[23] John Koblin, *How Much Do We Love TV? Let Us Count the Ways,* N.Y. Times, June 30, 2016, *available at http://www.nytimes.com/2016/07/01/business/media/nielsen-survey-media-viewing.html.*

[24] Although over-the-air viewers have access to a smaller range of options, that is true regardless of whether they are blind or visually impaired. The virtue of equivalent access remains the same.

[25] ACB October 26, 2016 *Ex Parte, ACB Survey Finds Need for Increased Audio Description,* at 1 (*ACB Survey*) (reporting that over 75% of survey respondents ''strongly agree that a greater amount of audio-described programming is needed,'' and that 45% of survey respondents ''have difficulty in finding programs with audio description'').

[26] *See* David Carr, *Barely Keeping Up in TV's New Golden Age,* N.Y. Times, Mar. 9, 2014, *available at http://www.nytimes.com/2014/03/10/business/media/fenced-in-by-televisions-excess-of-excellence.html.*

[27] *See 2014 Report,* para. 2. *See also ACB Survey* at 1 (reporting that over 75% of survey respondents ''strongly agree that a greater amount of audio-described programming is needed'').

[28] Emilie Schmeidler and Corinne Kirchner, Ph.D., *Adding Audio Description: Does it Make a Difference?,* 95 Journal of Visual Impairment & Blindness 197 (2001).

[29] Moreover, such costs might be partially offset by increases in advertising revenue due to additional audience reach.

[30] NAB, in a 2013 submission, estimated that the cost of one hour of video description lies between $2,500 and $4,100. NAB Sept. 4, 2013 Comments at 4. Because producing video described programming is a labor intensive task, we adjust the reported costs to reflect the change in wages in the media industry. *See* The Described and Captioned Media Program, *DCMP's Description Tip Sheet* (rev. Jan. 2012), *available at https://dcmp.org/ai/227/* (visited Oct. 17, 2016). We adjust this cost estimate by 2.5 percent because the mean wage in media occupations increased by 2.5 percent between 2013 and 2015. Adjusting the NAB estimates yields a range of $2,562.50 to $4,202.50, and we use this upper bound in our calculations throughout this item. *See* United States Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics (2013, 2015), *available at http://www.bls.gov/oes/tables.htm.* On the other hand, one commenter noted that production costs have fallen in the past five years and are expected to continue to fall due to entry by firms into the video description industry because of increased demand for video description services, and therefore the estimates given above may be high. *See* Dicapta Comments at 1.

[31] 87.5 hours per quarter × times; 4 quarters = 350 hours, divided in half (175) because each described hour can be counted twice.

to provide 50 hours of video description per quarter, we estimate the cost of increasing the number of hours of described programming to 87.5 hours per quarter is approximately $315,000 per year.[32]

9. The benefits of additional description, while less easy to quantify than the relatively low costs of providing it, are nonetheless substantial. Longstanding evidence indicates that persons who are blind or visually impaired have television viewing habits that are comparable to those who are not.[33] Studies have also shown that persons who are blind or visually impaired subscribe to MVPD services in roughly the same proportion as other Americans.[34] Nothing in the current record suggests otherwise and, indeed, there is no reason to believe that those who are blind or visually impaired would not seek to access a medium of communications as central to American life and culture as television in the same way, and at the same rates, as other Americans. Estimates of the number of Americans who are blind or visually impaired range from seven million to over 23 million.[35] Thus, the number of Americans who could benefit from video description is substantial.

10. Commenters who are blind or visually impaired emphasize the need for greater amounts of video described programming,[36] as well as the substantial benefits of this service.[37] There is considerable evidence that video description of television programming significantly enhances the value of television programming to individuals who are blind or visually impaired. Many television programs contain visual elements that are crucial to understanding what is happening, and are missed by those who are blind or visually impaired.[38] The Commission's *2014 Report* found that video description greatly enhances the experience of viewing video programming because viewers who are blind or visually impaired no longer miss critical visual elements of television programming and, therefore, can fully understand and enjoy the program without having to rely on their sighted family members and friends to narrate these visual elements.[39] Commenters express that this ability to watch video programming independently is an incredibly important benefit of video description.[40]

[32] 37.5 additional hours per quarter × 4 quarters = 150, divided in half (75) because each described hour can be counted twice. 75 hours × $4,202.50 per hour = $315,187.5. For the currently included broadcast networks, the cost of the additional 37.5 hours of described programming per quarter would approximate one hundredth of one percent of their programming costs and net revenues. For the currently included nonbroadcast networks, the cost of the additional 37.5 hours of described programming per quarter would range from 0.02 to 0.08 percent of their programming costs, and from 0.01 to 0.04 percent of their net revenues. Programming expenses and net operating revenue come from SNL Kagan, *TV Network Profile and Economics* (2017). Programming expenses are defined by SNL Kagan as the direct cost of creating, acquiring, and distributing content and services. Programming expenses and net operating revenue are available for each of the four broadcast networks (ABC, NBC, CBS, and Fox) and the five nonbroadcast networks (USA, TNT, TBS, Disney Channel, and History) required to provide video description under the current rules. Programming expenses range from $2.5 billion to $3.9 billion for the broadcast networks and from $394 million to $1.6 billion for the nonbroadcast networks. Net operating revenue ranges from $3.4 billion to $5.2 billion for the broadcast networks and from $870 million to $3.4 billion for the nonbroadcast networks. Based on this data, we conclude that the costs of increasing the required number of hours of described programming by 37.5 hours will not impose an undue burden on regulatees.

[33] Jaclyn Packer, Ph.D. & Corinne Kirchner, Ph.D., *Who's Watching? A Profile of the Blind and Visually Impaired Audience for Television and Video* (1997), *available at http://www.afb.org/info/programs-and-services/public-policy-center/technology-and-information-accessibility/whos-watching-a-profile-of-the-blind-and-visually-impaired-audience-for-television-and-video/1235* (*Who's Watching? Report*).

[34] *Id.* (''Blind and visually impaired people . . . subscribe to cable television, to the same extent as other households.'').

[35] The Census Bureau estimates the total blind or visually impaired population is 7,333,805. United States Census Bureau, American Community Survey, Table B18103 (2015), *available at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_15_1YR_B18103&prodType=table.* According to the Centers for Disease Control and Prevention (CDC), 23.7 million Americans age 18 and older reported experiencing vision loss. American Foundation for the Blind, Blindness Statistics, Facts and Figures on Adults with Vision Loss (updated Jan. 2017), *available at www.afb.org/info/blindness-statistics/adults/facts-and-figures/235* (citing CDC, National Center for Health Statistics, 2015 National Health Interview Survey). Of these 23.7 million, 14.4 million women and 9.3 million men report experiencing significant vision loss. *Id.* The National Eye Institute (NEI) estimates the blind or visually impaired population over 40 years old is 12,440,000. Varma *et al., Visual Impairment and Blindness in Adults in the United States: Demographic and Geographic Variations from 2015 to 2050,* 134 (7) JAMA Ophthalmology 802–809 (2016).

[36] *See* AFB Comments at 2 (''[D]emand for, and interest in, described TV is overwhelming and can only be expected to grow.''); ACB Comments at 1 (noting that, as the ''incidence of blindness'' continues to significantly increase, this will ''continue[] to create an increase in demand for accessible video programming''); ACB Reply at 4 (explaining that, while a wide breadth of programming is closed captioned for individuals who are deaf or hard of hearing, ''the blindness community is relegated[sic] to a handful of hours each week during prime-time, or at odd intervals''). *See also, e.g.,* Brack Reply at 1 (offering support for expanding the amount of video description because only ''[a] relatively small portion of shows has description''); Correia Reply at 1 (stating that ''many of my most favorite shows are still not available with audio description'' and that the proposed increase ''will mean that I will be able to enjoy many more of my favorite programs''); Crawford Reply at 1 (''There is no question that the amount of programming I watch would increase if I had a larger selection of choices [that are video described].''); Crumley Reply at 1 (stating that video description ''should be expanded as much as possible''); Huffman Reply at 1 (''The number of audio-described programs remains low.''); Hunsinger Reply at 1 (urging the FCC to make more video description available); Getz Reply at 1 (''I very much enjoy the television programming [that] is currently being described, however, the shows I am able to fully enjoy is[sic] much too limited at this time.''); ABVI Reply at 1 (''Currently, only a small fraction of all television programming is required to be audio described.''); Lieberg Reply at 1 (''[W]e who rely on description have very few hours per week and very few programs from which to choose.''); Pimley Reply at 1 (noting that there are ''only very, very, few hours of video description''); Swartz Reply at 1 (imploring the FCC ''[i]n the strongest possible terms'' to increase the number of programs with video description); Zaken Reply at 1 (requesting that the FCC make more video description available on television so ''that I will be able to listen to more programs'').

[37] *See, e.g.,* Brack Reply at 1 (explaining that ''[t]he added value of description to television shows . . . for a person who is blind is immeasurable'' and ''it offers a night-and-day difference in both understanding and enjoying programming''); Doane Reply at 1 (''[V]ideo description gives blind and visually impaired people knowledge that we can share with others in conversation and allows us to make informed opinions on the programming.''); Edwards Reply at 1 (noting that ''[t]here is clearly a huge benefit to be gained'' by increasing the number of hours of video description by 75 percent); Grenevitch Reply at 1 (''It is hard for me to put into words what audio description adds to programming for a visually impaired individual. You do not realize how many important details you have been missing until you hear a program described.''); Hasley Reply at 1 (''Increasing availability of such description will allow greater access to the entertainment, education, and information provided by television programming, for a large population of viewers.''); Strzalkowski Reply at 1 (''Audio description makes it possible to understand what is happening and to feel a part of the cultural experience that is television.''); Tobin Reply at 1 (stating that the ''importance of audio description in my life cannot be overstated'' and ''the impact . . . is profound, as the narrative elements of the description make television . . . come alive for me'').

[38] *Who's Watching? Report* (''People who have experienced video description feel that it affords important benefits, which fall into the categories of enhanced viewing, learning, and social experiences.''; ''The vast majority of blind and visually impaired people who have experienced description say that it is important to their enjoyment of programming.'').

[39] *2014 Report,* paras. 14–15. *See also NPRM,* paras. 9–10.

[40] *2014 Report,* para. 15. *See, e.g.,* Smith Comments at 1 (explaining that video description benefits individuals who are blind because it gives them greater independence and the ability to understand television programs); Zodrow Comments at 1 (''Having video description now is very beneficial for me as a totally blind person because now I don't have to rely on someone else that's sighted [to] explain to me what is happening on the screen. . . . I can now understand what's going on during a TV program and know what the characters are doing.''); ABVI Reply at 1 (''It means enjoying a program or movie with your spouse or family as an equal rather than someone who needs an explanation of what is happening.''); Sorenson Reply at 1 (''Watching tv with audio description

The Described and Captioned Media Program (DCMP) and the American Council of the Blind (ACB) also note the benefits of video description to children and individuals on the autism spectrum, because it can help with the development of vocabulary.[41]

11. Through its enactment of the CVAA, Congress acknowledged the value of video description. Indeed, the importance of accessibility of video programming to persons who are blind or visually impaired underlies several provisions of the CVAA. Congress mandated not only that the Commission require video description, but also that emergency information contained in video programming, as well as the user interfaces on navigation devices and other digital apparatus that allow users to navigate video programming, be made accessible to those who are blind or visually impaired.[42] Furthermore, in addition to its considerable benefits to the millions of individuals who are blind or visually impaired today, television programming that is produced with video description now will continue to benefit the growing population of people with blindness or a visual impairment when it is shown again in the future, thus increasing its value. The National Eye Institute estimates that the blind or visually impaired population will double by 2050.[43]

12. Although we do not assign a specific monetary value to the benefits these additional hours of described programming will provide to the millions of persons who are blind or visually impaired,[44] we find that the benefits exceed the relatively low costs.[45]

*B. Increased Flexibility*

13. In addition to increasing the required hours of video described programming, we also provide more flexibility than exists under our current rules regarding when the additional hours of described programming may be aired. Several industry commenters argue without opposition that ''[t]he Commission should incorporate flexibility into any rules increasing the number of hours.'' [46] MPAA argues that we should consider ''whether to allow additional types of programming to count toward the hourly video description requirement if the requirement is moved from 50 hours to 87.5 hours per quarter.'' [47] Time Warner ''agrees with other commenters that additional flexibility is essential'' if the Commission adopts such an increase.[48] While commenters generally did not respond to the Commission's inquiry about changing the rule to allow some or all described programming to air between 6 a.m. and midnight, industry commenters agreed that ''the Commission should [ ] consider allowing additional types of programming to count towards the rule.'' [49]

14. We will provide flexibility regarding when the additional required hours may be aired, but retain our current rule with respect to the existing hour requirement. Specifically, although we will continue to require included networks to provide 50 hours per quarter of video described programming during prime time or children's programming,[50] we will permit the additional 37.5 hours per quarter to be provided at any time between 6 a.m. and midnight.[51] We noted in the *NPRM* that, while ''we have no evidence of compliance difficulties for covered distributors or the currently-included networks'' operating under the current rules, we recognize that some parties may not have sufficient eligible prime time and children's programming to meet our increased hour requirement.[52] Commenters provide some examples of situations in which, they claim, certain programmers would be unable to comply with the expanded hour obligation by describing prime time or children's programming, even if they described all such non-exempt programming.[53] The added flexibility provided under our new rules should alleviate this concern.[54]

15. Commenters suggest a number of additional ways to provide included networks with more flexibility to satisfy the increased hour requirement. We find that these suggested measures are unnecessary in light of the timing flexibility we are providing, as well as ill-advised. NCTA suggests permitting distributors to average their compliance

gives me more understanding about the action on the screen.'').

[41] DCMP and ACB, *Listening Is Learning, How Does Description Benefit Students Without Visual Impairments?, http://listeningislearning.org/background_description-no-bvi.html* (last visited Oct. 12, 2016).

[42] Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, secs. 202, 204–205 (2010).

[43] Varma et al.

[44] It is difficult to quantify in monetary terms the intrinsic benefits of video description for people who are blind or visually impaired, and there are no quantitative estimates of the value of an additional hour of video described television programming for a blind or visually impaired individual. *See, e.g.,* Brack Reply at 1 (''The added value of description to television shows . . . for a person who is blind is immeasurable.''). Even very low estimates of the value indicate that it would take only a small number of viewers who are blind or visually impaired to get more benefit from described programming than the cost of describing it. NCTA promotes on its Web site an estimate of the ''viewing value by the hour'' of cable programming. This estimate—$0.26 per hour—reflects the price for enjoying each hour of cable video service, which presumably is an estimate of its value. *See* NCTA, Industry Data, *https://www.ncta.com/industry-data.* Viewers who are blind or visually impaired get some value from television programming even without video description. Assuming conservatively that, without the benefit of video description, such viewers get 75 percent of the enjoyment of a sighted viewer (or $0.195 per hour), adding video description might add $0.065 of value per hour, per viewer (to equal $0.26, NCTA's estimate of the total value of an hour of programming). As discussed above, we estimate the highest potential cost for describing an hour of programming to be $4,202.50. At $0.065 per person, 64,654 viewers equal $4,202.51. Various governmental estimates place the number of persons who are blind or visually impaired at between 7,333,805 and 23,700,000. Thus, even accepting NCTA's low estimate of the value of an hour of programming for the sake of argument, benefits that reached only a fraction of citizens who are blind or visually impaired −0.3 to 0.9 percent depending on the estimate—would nonetheless outweigh costs. And this calculation does not even take into account the benefits to the friends and family of persons who are blind or visually impaired, or the benefits to networks and distributors of increases in viewership.

[45] NAB argues that the preliminary cost-benefit analysis in the *NPRM* forms an insufficient basis for the adoption of any new rules. NAB Reply at 3–9. As always, however, we do not adopt any rules based on the analysis in the *NPRM.* As discussed throughout this Order, our finding that ''the need for and benefits of'' the new rules ''are greater than the technical and economic costs'' is based on a comprehensive analysis of the available facts in the record. NAB has submitted no sound basis to reach a different conclusion here. As stated above, the total number of described hours required under our revised rules is modest (requiring an average of less than one hour of described programming per day) and accordingly will not impose a significant burden on included networks. We have designed our rules to further minimize the burden on included networks by providing flexibility on when the additional hours of described programming may be aired and allowing a given hour of described programming to be counted twice, once when initially aired and once when rerun. We thus reject NAB's argument that the new rules are not sufficiently supported by a cost-benefit analysis.

[46] NCTA Comments at 14–15.

[47] MPAA Comments at 12.

[48] Time Warner Reply at 4. *See also* NAB Reply at 18.

[49] NAB Reply at 19.

[50] 50 hours/quarter in prime time or children's programming is the amount required under the current rules. 47 CFR 79.3(b).

[51] To avoid ambiguity, the rule refers to 11:59 p.m. rather than midnight. *See* National Institute of Standards and Technology, *Times of Day FAQs, available at https://www.nist.gov/pml/time-and-frequency-division/times-day-faqs.*

[52] *NPRM,* paras. 18–19.

[53] *See, e.g.,* Time Warner Reply at 4 (a significant amount of programming was aired with description, but had been previously aired with description and counted toward the requirements more than once); NAB Reply at 18–19 (a broadcast network carries ''relatively fewer hours of children's programming''); NCTA September 19, 2016 *Ex Parte* (all programming was described reruns).

[54] To the extent that any individual network has problems satisfying the new hour requirement even with this flexibility, it may file a waiver request with the Media Bureau. 47 CFR 1.3, 0.283.

across multiple quarters.[55] Although unlikely, this could mean, in practice, that a network could air a year's worth of described programming in one quarter, and none at all the rest of the year. We find that the ability to vary compliance with the hour requirement in this manner would have the potential to upset consumer expectations and significantly undermine the value of video description to those who rely upon it. It would not serve the needs of individuals who are blind or visually impaired to have no video described programming on a channel for an entire quarter. NAB suggests increasing the number of times a program and its reruns can be counted toward the hour requirement, from twice to ''three or four or more'' times.[56] This would ultimately reduce the overall amount of described programming available to consumers, because some networks might rerun the same described programming over and over. At the same time, the majority of top networks that air primarily first-run programming in prime time would continue to need to produce the same amount of new described programming, meaning this change would not give them additional flexibility. Time Warner proposes that we permit networks to count described hours provided on affiliated networks to satisfy the hour requirement for the primary network.[57] This, too, would undermine the purpose of the rules, which are designed to ensure that programming on the most popular networks is described.[58] While we appreciate the desire for flexibility reflected in these proposals, we decline to adopt them for the reasons explained above.

16. We recognize, however, that some networks may have a difficult time meeting the new hour requirement in specific calendar quarters, even with the additional flexibility we are providing. For example, Time Warner argues that TNT, an included network, carried a significant amount of live programming in prime time in the second quarter of 2016, and as a result just barely met the existing 50 hour quarterly requirement.[59] In addition to the increased flexibility we provide to programmers to meet our hour requirement, distributors and included networks continue to be permitted to petition for waivers if needed. Some commenters argue that ''potentially frequent waiver requests'' under an ''ad hoc waiver process'' are insufficient to resolve certain problems that need to be considered ''at the outset'' to avoid impacting program scheduling.[60] Parties made the same arguments prior to the reinstatement of the video description rules.[61] As we observed in the *NPRM,* however, not a single waiver request has been filed in the more than five years since the rules became effective, and under the rules we adopt today, included networks will not need to provide any more description during prime time or children's programming than they do under the reinstated rules. Therefore, we do not foresee that the new rules will create any problems with program scheduling or that regulatees will have difficulty complying with our revised rules. Nonetheless, we continue to emphasize that waiver requests may be filed if our requirements are infeasible or prove to be unduly burdensome under particular circumstances.

17. Although the record does not suggest that either broadcast stations or MVPDs will typically have difficulty complying with our revised rules, it does suggest that compliance problems could arise in two atypical circumstances.[62] First, a network may be carrying an unusually large amount of live or near-live programming due to special events during a single calendar quarter (the Olympics, March Madness, etc.).[63] Second, a network may be airing an unusually large number of video-described reruns during a particular quarter. Bearing these concerns in mind, we will look favorably upon waiver requests demonstrating that:

- All pre-recorded programming between 6 a.m. and midnight in the relevant calendar quarter is being described, even if not all of it can be counted toward the rules[64]; and
- The petitioner commits to provide additional hours of video description in calendar quarters other than the one for which it is seeking the waiver,[65] or commits to provide the additional hours of video description in the same calendar quarter but on an affiliated network.[66]

If both of these conditions are met, we believe that it is more likely than not that consumer needs will still be met at the level contemplated by these rules without unduly burdening the industry.

### *C. Timing*

18. The revised rule will be effective 30 days after publication in the **Federal Register**, and covered broadcast stations and MVPDs must start providing the additional hours of video described programming on ''included networks'' in the calendar quarter beginning on July 1, 2018. We sought comment in the *NPRM* on an appropriate compliance deadline for the rule. In particular, we

[55] NCTA Comments at 15. *See also* Time Warner Reply at 5.

[56] NAB Reply at 18.

[57] Time Warner Reply at 5.

[58] Other proposals are less problematic but are rendered unnecessary given the approach we have adopted. For instance, NCTA proposes to create a categorical exemption if all eligible programming in a quarter is described. NCTA Comments at 15. This does not seem likely to occur now that 18 hours a day of programming are eligible to count toward the description requirement, but, as discussed below, if it does occur we will consider that circumstance when deciding whether to grant a waiver.

[59] Time Warner Reply at 4.

[60] *See, e.g.,* NCTA Comments at 14; Time Warner Reply at 6. *See also* NCTA July 5, 2017 *Ex Parte* at 1 (proposing ''that the Commission provide additional flexibility in its rules—either through providing a safe harbor or an appropriately-framed exemption'').

[61] *Reinstatement Order,* para. 46.

[62] *See, e.g.,* Time Warner Reply at 4–5; NCTA Comments at 14; NCTA September 19, 2016 *Ex Parte.*

[63] *See* Time Warner Reply at 4. However, we note that some live programming has been provided with video description. *See, e.g., NPRM,* n.47 (citing articles about NBC's video-described production of '*The Wiz Live!*').

[64] Although we received no comments on this issue, we recognize that broadcast networks do not program a broadcast station's full day. Broadcast stations also program part of the broadcast day independently of their network, airing locally originated programming and syndicated programming. Therefore, in the case of waiver requests from broadcasters or broadcast networks, we will also look favorably on waiver requests demonstrating that all non-''live or near-live'' programs provided in hours programmed by the broadcast network are described. Also, for all covered networks filing waiver requests, to the extent they have not provided video description on *all* pre-recorded programming they are, of course, free to make a showing that reasonable circumstances prevent their having done so.

[65] If a waiver were granted, the petitioners would shift some hours of video described programming to a different quarter than the one in which they would otherwise be counted. As a result, there should be no additional burden on covered parties. Although description is most beneficial when it is consistently available, additional description always provides value to consumers, both in the quarter when it airs and whenever the programming is rerun with description. 47 CFR 79.3(c)(3), (4). Finally, this potential waiver condition is distinguishable from the NCTA proposal to permit distributors to average their compliance across multiple quarters, both because it will be of limited duration and because it depends on Commission review and approval rather than the discretion of regulatees, and will consequently be easier to monitor and enforce. It also is distinguishable from the NCTA proposal because it is unlikely to lead to a scenario where a network airs no or very little video described programming during a quarter, which could happen under NCTA's proposal. That proposal would place no limits on the circumstances in which a network could move video described programming to a different calendar quarter, and would not require that any video described programming at all be aired in a particular quarter.

[66] The Commission will evaluate whether the affiliated network receives MVPD coverage and viewership sufficient to make it an adequate substitute for the network on which video description is required to be provided.

noted that when we reinstated the video description rules in 2011, the time from their release to the full compliance date was approximately ten months, and we asked whether we should allow a similar amount of time for distributors to come into compliance.[67] We also noted that July 1, 2018 is the date on which the updated list of included nonbroadcast networks will go into effect, based on the ratings period from October 2016 to September 2017, and we inquired whether the compliance deadline for the rules should coincide with this date.[68] Some commenters argue for compliance to be required as soon as possible,[69] while others either support a longer period to come into compliance or were silent on the issue.[70] To provide sufficient time for distributors to ensure that included networks provide an additional 37.5 hours of described programming per quarter, we will give covered entities until July 1, 2018, the date of the next three-year network list update, to come into compliance.[71] Given that currently covered networks already have processes in place for creating and complying with the video description requirements, we believe that giving them a one-year period to provide an additional 37.5 hours of video described programming per quarter is reasonable.[72] We therefore will require that the additional hours of described programming be provided by the four broadcast and five nonbroadcast networks covered by the rules in the calendar quarter beginning July 1, 2018.

## V. Procedural Matters

### *A. Final Regulatory Flexibility Analysis*

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)[73] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* in this proceeding. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[74]

#### 1. Need for, and Objectives of, the Report and Order

2. This *Report and Order,* adopts the proposal to increase the amount of video described programming on each ''included network'' carried by a covered broadcast station or multichannel video programming distributor (MVPD), from 50 hours per calendar quarter to 87.5 hours per quarter. Covered broadcast stations and MVPDs must start providing the additional hours of described programming on ''included networks'' in the calendar quarter beginning on July 1, 2018. The *Report and Order* also provides more flexibility than exists under the current rules regarding when the additional hours of described programming may be aired. In particular, the additional 37.5 hours per quarter of described programming can be provided at any time between 6 a.m. and midnight. This update to our rules will help ensure that Americans who are blind or visually impaired can be connected, informed, and entertained by television.

3. *Legal Basis.* The authority for the action taken in this rulemaking is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and Section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613.

#### 2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. No comments were filed in response to the IRFA.

5. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

#### 3. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

6. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted in the *Report and Order.*[75] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' small organization,'' and ''small government jurisdiction.''[76] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[77] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any

[67] *NPRM,* para. 30.

[68] *Id. See* AT&T Comments at 1 (stating that July 1, 2018 should be the ''effective date for the modified video description network and hours requirements'' to coincide with the start of the next three-year cycle for covered non-broadcast networks).

[69] *See, e.g.,* Zodrow Comments at 2; Grossman Comments at 1.

[70] *See, e.g.,* NAB Reply at 16–17 (suggesting a compliance period of two years from the effective date of the rules); NCTA Comments at 19 (requesting an 18-month compliance period). *See also* MPAA Comments at 14 (stating that ''any significant changes in the video description rules will require additional time to implement''). Of note, the compliance timeframes cited in the aforementioned comments are based on the assumption that the Commission would adopt all of the proposals set forth in the *NPRM,* including the proposed expansion to new networks. Because the Commission has chosen to take an incremental approach, and this Order adopts only one of those proposals—an increased hours requirement for currently covered broadcast stations and MVPDs—we do not agree that an extended compliance period of 18 months to two years is necessary.

[71] Some commenters suggest a shorter compliance deadline of less than one year. *See, e.g.,* Dicapta Comments at 5 (arguing for the hours increase to go into effect within one month for currently included networks). In addition, as we noted in the *NPRM,* the reinstated rules gave newly covered networks less than one year (approximately ten months) to begin the process of providing video description and to fully comply with the Commission's new requirements. *See NPRM,* para. 30. However, we believe that it is better for the compliance deadline to coincide with the next three-year update of the list of covered nonbroadcast networks than to have a shorter time frame. In particular, any of the currently covered nonbroadcast networks may fall out of the top-five based on network ratings and, if so, will no longer be subject to the requirement to provide video description as of July 1, 2018. Under such circumstances, a covered nonbroadcast network would have to take steps to increase its video described hours, only to find itself a few months later not to be subject to the video description requirement at all. This may also create an expectation in consumers that they can rely on that network for increased video described programming, only to have such requirement last for a few short months. For these reasons, we believe that it is reasonable to align the compliance deadline with the network update so that only those networks responsible for compliance as of July 1, 2018 are required to provide the additional hours of video description, though we encourage any network that falls off the list to continue to provide video description.

[72] Because a given hour of described programming can be counted twice toward the requirements of the rules (once when initially aired, and once when rerun), the total number of new hours of described programming per year needed to comply with the expanded video description requirement is actually 75.

[73] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA).

[74] *See* 5 U.S.C. 604.

[75] *Id.* sec. 603(a)(3).

[76] *Id.* sec. 601(6).

[77] *Id.* sec. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

additional criteria established by the SBA.

7. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of $25,000,000 or less, 25 had annual receipts between $25,000,000 and $49,999,999, and 70 had annual receipts of $50,000,000 or more. Based on this data we therefore estimate that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

8. The Commission has estimated the number of licensed commercial television stations to be 1,384. Of this total, 1,264 stations (or about 91 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on February 24, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 394. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

9. We note, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive.

10. There are also 1,965 LPTV stations, 417 Class A stations, and 3,778 TV translator stations. Given the nature of these services, we will presume that all of these entities qualify as small entities under the above SBA small business size standard.

11. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

12. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.,* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees. The 2012 Economic Census indicates that 367 firms were operational for that entire year. Of this total, 357 operated with less than 1,000 employees. Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

13. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but eleven cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

14. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

15. *Direct Broadcast Satellite (DBS) Service.* DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic dish antenna at the subscriber's location. DBS is now included in SBA's economic census category ''Wired Telecommunications Carriers.'' The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA determines that a wireline business is small if it has fewer than 1500 employees. Census data for 2012 indicate that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on that data, we conclude that the majority of wireline firms are small under the applicable standard. However, currently only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, we must conclude that internally developed FCC data are persuasive that in general DBS service is provided only by large firms.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

16. In this section, we describe the reporting, recordkeeping, and other compliance requirements adopted in the *Report and Order* and consider whether small entities are affected disproportionately by these requirements.

17. *Reporting Requirements.* The *Report and Order* does not adopt reporting requirements.

18. *Recordkeeping Requirements.* The *Report and Order* does not adopt recordkeeping requirements.

19. *Other Compliance Requirements.* The *Report and Order* does adopt other compliance requirements. Specifically, the new rules require each covered broadcast station and MVPD, on each stream or channel on which it carries an ''included network,'' to provide 87.5 hours of described programming, per quarter. Covered broadcast stations and MVPDs must start providing the additional hours of described programming on ''included networks'' in the calendar quarter beginning on July 1, 2018. Currently, the Commission's video description rules require commercial television broadcast stations that are affiliated with ABC, CBS, Fox, or NBC and are located in the top 60 television markets to provide 50 hours per calendar quarter of video described prime time or children's programming. In addition, MVPD systems that serve 50,000 or more subscribers must provide 50 hours of video description per calendar quarter during prime time or children's programming on each of the top five national nonbroadcast networks that they carry on those systems. We do not believe that this compliance requirement will disproportionately affect small entities, but we have described ways in which the Commission's rules will minimize the impact on such entities (see discussion below).

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

20. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[78]

21. The obligation to provide 87.5 hours of video described programming per quarter applies to commercial television broadcast stations that are affiliated with ABC, CBS, Fox, or NBC and are located in the top 60 television markets, as well as MVPD systems that serve 50,000 or more subscribers. Thus, the rules adopted in this *Report and Order* may have an economic impact on small entities. In formulating the final rules, however, the Commission has considered methods to minimize the economic impact on small entities. In particular, the *Report and Order* provides more flexibility than exists under the current rules regarding when the additional hours of described programming may be aired to reduce any potential burden that covered entities may encounter in scheduling video described programming. The new rule allows covered broadcast stations and MVPDs to provide the additional 37.5 hours per quarter of described programming at any time between 6 a.m. and midnight. The *Report and Order* also emphasizes that waiver requests may be filed if our requirements are infeasible or prove to be unduly burdensome under particular circumstances. This process will allow the Commission to address the impact of the rules on individual entities, including smaller entities, on a case-by-case basis and to modify the application of the rules to accommodate individual circumstances, which can reduce the costs of compliance for these entities.

22. Overall, we believe we have appropriately considered both the interests of individuals with disabilities and the interests of the entities who will be subject to the rules, including those that are smaller entities, consistent with Congress' goal to ''update the communications laws to help ensure that individuals with disabilities are able to fully utilize communications services and equipment and better access video programming.'' [79]

6. Report to Congress

23. The Commission will send a copy of the *Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[80] In addition, the Commission will send a copy of the *Report and Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. The *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.[81]

*B. Final Paperwork Reduction Act of 1995 Analysis*

24. This Report and Order does not contain information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4),

[78] 5 U.S.C. 603(c)(1)–(c)(4).

[79] H.R. Rep. No. 111–563, 111th Cong., 2d Sess. at 19 (2010); S. Rep. No. 111–386, 111th Cong., 2d Sess. at 1 (2010).

[80] *See* 5 U.S.C. 801(a)(1)(A).

[81] *See id.* sec. 604(b).

the Commission previously sought specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

**VI. Ordering Clauses**

1. *It is ordered* that, pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and the authority contained in Section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613, this *Report and Order* is *hereby adopted.*

2. *It is further ordered* that part 79 of the Commission's rules, 47 CFR part 79, is *amended* as set forth herein, and such rule amendments shall be effective September 11, 2017.

3. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

4. *It is further ordered* that the Commission *shall send* a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR Part 79**

Cable television operators, Multichannel video programming distributors (MVPDs), Satellite television service providers.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 79 as follows:

## PART 79—ACCESSIBILITY OF VIDEO PROGRAMMING

■ 1. The authority citation for part 79 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

■ 2. Amend § 79.3 by revising paragraph (b)(1), removing and reserving paragraph (b)(2), and revising paragraphs (b)(4), (c)(2), and (c)(4) introductory text.

The revisions read as follows:

**§ 79.3 Video description of video programming.**

* * * * *

(b) * * *

(1) Beginning July 1, 2015, commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC), and that are licensed to a community located in the top 60 DMAs, as determined by The Nielsen Company as of January 1, 2015, must provide 50 hours of video description per calendar quarter, either during prime time or on children's programming, and, beginning July 1, 2018, 37.5 additional hours of video description per calendar quarter between 6 a.m. and 11:59 p.m. local time, on each programming stream on which they carry one of the top four commercial television broadcast networks. If a station in one of these markets becomes affiliated with one of these networks after July 1, 2015, it must begin compliance with these requirements no later than three months after the affiliation agreement is finalized;

* * * * *

(4) Multichannel video programming distributor (MVPD) systems that serve 50,000 or more subscribers must provide 50 hours of video description per calendar quarter during prime time or children's programming, and, beginning July 1, 2018, 37.5 additional hours of video description per calendar quarter between 6 a.m. and 11:59 p.m. local time, on each channel on which they carry one of the top five national nonbroadcast networks, as defined by an average of the national audience share during prime time of nonbroadcast networks that reach 50 percent or more of MVPD households and have at least 50 hours per quarter of prime time programming that is not live or near-live or otherwise exempt under these rules. Initially, the top five networks are those determined by The Nielsen Company, for the time period October 2009–September 2010, and will update at three year intervals. The first update will be July 1, 2015, based on the ratings for the time period October 2013–September 2014; the second will be July 1, 2018, based on the ratings for the time period October 2016–September 2017; and so on; and

* * * * *

(c) * * *

(2) In order to meet its quarterly requirement, a broadcaster or MVPD may count each program it airs with video description no more than a total of two times on each channel on which it airs the program. A broadcaster or MVPD may count the second airing in the same or any one subsequent quarter. A broadcaster may only count programs aired on its primary broadcasting stream towards its quarterly requirement. A broadcaster carrying one of the top four commercial television broadcast networks on a secondary stream may count programs aired on that stream toward its quarterly requirement for that network only.

* * * * *

(4) Once an MVPD as defined under paragraph (b)(4) of this section:

* * * * *

[FR Doc. 2017–15526 Filed 8–9–17; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSIONS

### 47 CFR Parts 73 and 74

**[MB Docket Nos. 03–185, 15–137; GN Docket No. 12–268; FCC 17–29]**

### Channel Sharing Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collections associated with the Commission's decision, in Report and Order, Channel Sharing by Full Power and Class A Stations Outside of the Broadcast Television Spectrum Incentive Auction Context. Specifically, OMB has approved the Commission's rules that require that sharing stations: file applications for construction permit and license to implement their channel sharing arrangement (CSA); that they include a copy of their CSA with their construction permit application; and that they provide notice of their CSA to multichannel video programming distributors (MVPDs). OMB also approved changes to the Commission's Form 2100 Schedules A, B, C, D, E and F to implement these changes. 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 final rules regarding 47 CFR 73.3800, 73.6028, 74.799 and FCC Form 2100, Schedules A, B, C, D, E and F published at 82 FR 18240 on April 18, 2017, are effective August 10, 2017.

**FOR FURTHER INFORMATION CONTACT:** For additional information contact Cathy

Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918.

**SUPPLEMENTARY INFORMATION:** This document announces that OMB approved the information collection requirements contained in the Commission's Report and Order, FCC 17–29, published at 82 FR 18240, April 18, 2017. The OMB Control Numbers are 3060–0016, 3060–0017, 3060–0027, 3060–0837, 3060–0928, 3060–0932, 3060–1176, and 3060–1177. 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, 3060–0016, 3060–0017, 3060–0027, 3060–0837, 3060–0928, 3060–0932, 3060–1176, and 3060–1177 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 Commission is notifying the public that it received OMB approval for the modified collection requirements contained in the Commission's rules at 47 CFR 73.3800, 73.6028, and 74.799 and in OMB Control Numbers 3060–0016, 3060–0017, 3060–0027, 3060–0837, 3060–0928, 3060–0932, 3060–1176, and 3060–1177. Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Numbers are 3060–0016, 3060–0017, 3060–0027, 3060–0837, 3060–0928, 3060–0932, 3060–1176, and 3060–1177.

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 No.:* 3060–0016.

*OMB Approval Date:* July 25, 2017.

*OMB Expiration Date:* July 31, 2020.

*Title:* FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule C (Former FCC Form 346); Sections 74.793(d) and 74.787, Low Power Television (LPTV) Out-of-Core Digital Displacement Application; Section 73.3700(g)(1)–(3), Post-Incentive Auction Licensing and Operations; Section 74.799, Low Power Television and TV Translator Channel Sharing.

*Form No.:* FCC Form 2100, Schedule C.

*Respondents:* Business or other for-profit entities; Not for profit institutions; State, local or Tribal government.

*Number of Respondents and Responses:* 4,460 respondents and 4,460 responses.

*Estimated Time per Response:* 2.5–7 hours (total of 9.5 hours).

*Frequency of Response:* One-time reporting requirement; on occasion reporting requirement; third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i), 303, 307, 308 and 309 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 42,370 hours.

*Annual Cost Burden:* $24,744,080.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* FCC Form 2100, Schedule C is used by licensees/permittees/applicants when applying for authority to construct or make changes in a Low Power Television, TV Translator or TV Booster broadcast station.

The Commission submitted this information collection to OMB for approval which resulted from the rule provisions adopted in the FCC 17–29. On March 23, 2017, the Commission adopted a Report and Order, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, GN Docket No. 12–268, MB Docket No. 03–185, MB Docket No. 15–137, FCC 17–29 (''Report and Order''). This document approved channel sharing outside of the incentive auction context between full power, Class A, Low Power Television (LPTV) and TV translator stations.

Although there are no changes to the FCC Form 2100, Schedule C itself, there are changes to the substance, burden hours, and costs as described herein.

The information collection requirements contained in 47 section 74.799 (previously 74.800) permits LPTV and TV translator stations to seek approval to share a single television channel with other LPTV and TV translator stations and with full power and Class A stations. Stations interested in terminating operations and sharing another station's channel must submit FCC Form 2100 Schedule C in order to have the channel sharing arrangement approved. If the sharing station is proposing to make changes to its facility to accommodate the channel sharing, it must also file FCC Form 2100 Schedule C.

*OMB Control Number:* 3060–0017.

*OMB Approval Date:* July 26, 2017.

*OMB Expiration Date:* July 31, 2020.

*Title:* Application for Media Bureau Audio and Video Service Authorization, FCC 2100, Schedule D.

*Form Number:* FCC Form 2100, Schedule D.

*Respondents:* Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

*Number of Respondents/Responses:* 570 respondents; 570 responses.

*Estimated Hours per Response:* 1.5 hours per response.

*Frequency of Response:* One time reporting requirement; On occasion reporting requirement.

*Total Annual Burden:* 855 hours.

*Total Annual Cost:* $68,400.

*Obligation to Respond:* Required to obtain benefits. The statutory authority for this information collection is contained in sections 154(i), 301, 303, 307, 308 and 309 of the Communications Act of 1934, as amended.

*Nature and Extend of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Act Assessment:* No impact(s).

*Needs and Uses:* Applicants/licensees/permittees are required to file FCC Form 2100, Schedule D when applying for a Low Power Television, TV Translator or TV Booster Station License.

The Commission submitted this information collection to OMB for approval which resulted from the rule provisions adopted in the FCC 17–29. On March 23, 2017, the Commission adopted the Report and Order, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, GN Docket No. 12–268, MB Docket No. 03–185, MB Docket No. 15–137, FCC 17–29 (''Report and Order''). This document approved channel

sharing outside of the incentive auction context between full power, Class A, Low Power Television (LPTV) and TV translator stations.

Although there are no changes to the FCC Form 2100, Schedule D itself, there are changes to the substance, burden hours, and costs as described herein.

The information collection requirements contained in 47 section 74.799 (previously 74.800) permits LPTV and TV translator stations to seek approval to share a single television channel with other LPTV and TV translator stations and with full power and Class A stations. Stations interested in terminating operations and sharing another station's channel must submit FCC Form 2100 Schedule D in order to complete the licensing of their channel sharing arrangement.

*OMB Control No.:* 3060–0027.

*OMB Approval Date:* July 26, 2017.

*OMB Expiration Date:* July 31, 2020.

*Title:* Application for Construction Permit for Commercial Broadcast Station, FCC Form 301; FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule A; 47 CFR 73.3700(b)(1) and (2) and 73.3800, Post Auction Licensing.

*Form No.:* FCC Form 2100, Schedule A.

*Respondents:* Business or other for-profit entities; Not for profit institutions; State, local or Tribal Government.

*Number of Respondents and Responses:* 3,090 respondents and 6,526 responses.

*Estimated Time per Response:* 1–6.25 hours.

*Frequency of Response:* One-time reporting requirement; On occasion reporting requirement; Third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 15,317 hours.

*Annual Cost Burden:* $62,444,288.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* The Commission submitted this information collection to OMB for approval which resulted from the rule provisions adopted in the FCC 17–29. On March 23, 2017, the Commission adopted the Report and Order, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, GN Docket No. 12–268, MB Docket No. 03–185, MB Docket No. 15–137, FCC 17–29 (''Report and Order''). This document approved channel sharing outside of the incentive auction context between full power, Class A, Low Power Television (LPTV) and TV translator stations.

Although there are no changes to the FCC Form 2100, Schedule A itself, there are changes to the substance, burden hours, and costs as described herein.

The information collection requirements contained in 47 CFR 73.3800 allows full power television stations to channel share with other full power stations, Class A, LPTV and TV translator stations outside of the incentive auction context. Full power stations file FCC Form 2100, Schedule A in order to obtain Commission approval to operate on a shared channel.

*OMB Control No.:* 3060–0837.

*OMB Approval Date:* July 26, 2017.

*OMB Expiration Date:* July 31, 2020.

*Title:* FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule B (Former FCC Form 302–DTV), Section 73.3700(b)(3) and Section 73.3700(h)(2).

*Form No.:* FCC Form 2100, Schedule B.

*Respondents:* Business or other for-profit entities; Not for profit institutions.

*Number of Respondents and Responses:* 975 respondents and 975 responses.

*Estimated Time per Response:* 2 hours.

*Frequency of Response:* One-time reporting requirement and on occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i), 307, 308, 309, and 319 of the Communications Act of 1934, as amended; the Community Broadcasters Protection Act of 1999, Public Law 106–113, 113 Stat. Appendix I at pp. 1501A–594–1501A–598 (1999) (codified at 47 U.S.C. 336(f)); and the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act).

*Total Annual Burden:* 1,950 hours.

*Annual Cost Burden:* $585,945.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* FCC Form 2100, Schedule B (formerly FCC Form 302–DTV) is used by licensees and permittees of full power broadcast stations to obtain a new or modified station license and/or to notify the Commission of certain changes in the licensed facilities of those stations. It may be used: (1) To cover an authorized construction permit (or auxiliary antenna), provided that the facilities have been constructed in compliance with the provisions and conditions specified on the construction permit; or (2) To implement modifications to existing licenses as permitted by 47 CFR 73.1675(c) or 73.1690(c).

The Commission submitted this information collection to OMB for approval which resulted from the rule provisions adopted in the FCC 17–29. On March 23, 2017, the Commission adopted the Report and Order, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, GN Docket No. 12–268, MB Docket No. 03–185, MB Docket No. 15–137, FCC 17–29 (''Report and Order''). This document approved channel sharing outside of the incentive auction context between full power, Class A, (Low Power Television) LPTV and TV translator stations.

Although there are no changes to the FCC Form 2100, Schedule B itself, there are changes to the substance, burden hours, and costs as described herein.

The information collection requirements contained in 47 CFR 73.3800 allows full power television stations to channel share with other full power stations, Class A, LPTV and TV translator stations outside of the incentive auction context. Full power stations file FCC Form 2100, Schedule B in order to complete the licensing of their shared channel.

*OMB Control No.:* 3060–0928.

*OMB Approval Date:* July 27, 2017.

*OMB Expiration Date:* July 31, 2020.

*Title:* FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule F (Formerly FCC 302–CA); 47 CFR 73.6028.

*Form No.:* FCC Form 2100, Schedule F.

*Respondents:* Business or other for-profit entities; Not for profit institutions; State, local or Tribal Government.

*Number of Respondents and Responses:* 975 respondents and 975 responses.

*Estimated Time per Response:* 2 hours.

*Frequency of Response:* One-time reporting requirement and on occasion reporting requirement.

*Total Annual Burden:* 1,950 hours.

*Annual Cost Burden:* $307,125.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* The FCC Form 2100, Schedule F is used by Low Power TV (LPTV) stations that seek to convert to Class A status; existing Class A stations seeking a license to cover their authorized construction permit facilities; and Class A stations entering into a channel sharing agreement. The FCC Form 2100, Schedule F requires a series of certifications by the Class A applicant as prescribed by the Community Broadcasters Protection Act of 1999 (CBPA). Licensees will be required to provide weekly announcements to their listeners: (1) Informing them that the applicant has applied for a Class A license and (2) announcing the public's opportunity to comment on the application prior to Commission action.

The Commission submitted this information collection to OMB for approval which resulted from the provisions adopted in the FCC 17–29. On March 23, 2017, the Commission adopted the Report and Order, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, GN Docket No. 12–268, MB Docket No. 03–185, MB Docket No. 15–137, FCC 17–29 (''Report and Order''). This document approved channel sharing outside of the incentive auction context between full power, Class A, LPTV and TV translator stations.

Although there are no changes to the FCC Form 2100, Schedule F itself, there are changes to the substance, burden hours, and costs as described herein.

The information collection requirements contained in 47 CFR 73.6028 permits Class A stations to seek approval to share a single television channel with LPTV, TV translator, full power and Class A television stations. Class A stations interested in terminating operations and sharing another station's channel must submit FCC Form 2100 Schedule F in order to complete the licensing of their channel sharing arrangement.

*OMB Control No.:* 3060–0932.

*OMB Approval Date:* July 27, 2017.

*OMB Expiration Date:* July 31, 2020.

*Title:* FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule E (Former FCC Form 301–CA); 47 CFR 73.3700(b)(1)(i)–(v) and (vii), (b)(2)(i) and (ii); 47 CFR Section 74.793(d).

*Form No.:* FCC Form 2100, Schedule E (Application for Media Bureau Audio and Video Service Authorization) (Former FCC Form 301–CA).

*Respondents:* Business or other for-profit entities; Not for profit institutions; State, Local or Tribal Government.

*Number of Respondents and Responses:* 745 respondents and 745 responses.

*Estimated Time per Response:* 2.25 hours–6 hours (for a total of 8.25 hours).

*Frequency of Response:* One-time reporting requirement; On occasion reporting requirement; 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. 151, 154(i), 157 and 309(j) as amended; Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 Stat. 156 (2012) (Spectrum Act) and the Community Broadcasters Protection Act of 1999.

*Total Annual Burden:* 6,146 hours.

*Annual Cost Burden:* $4,035,550.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* FCC Form 2100, Schedule E (formerly FCC Form 301–CA) is to be used in all cases by a Class A television station licensees seeking to make changes in the authorized facilities of such station. FCC Form 2100, Schedule E requires applicants to certify compliance with certain statutory and regulatory requirements. Detailed instructions on the FCC Form 2100, Schedule E provide additional information regarding Commission rules and policies. FCC Form 2100, Schedule E is presented primarily in a ''Yes/No'' certification format. However, it contains appropriate places for submitting explanations and exhibits where necessary or appropriate. Each certification constitutes a material representation. Applicants may only mark the ''Yes'' certification when they are certain that the response is correct. A ''No'' response is required if the applicant is requesting a waiver of a pertinent rule and/or policy, or where the applicant is uncertain that the application fully satisfies the pertinent rule and/or policy. FCC Form 2100, Schedule E filings made to implement post-auction channel changes will be considered minor change applications.

Class A applications for a major change are subject to third party disclosure requirement of Section 73.3580 which requires local public notice in a newspaper of general circulation of the filing of all applications for major changes in facilities. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application.

47 CFR 74.793(d) requires that digital low power and TV translator stations shall be required to submit information as to vertical radiation patterns as part of their applications (FCC Forms 346 and 301–CA) for new or modified construction permits.

The Commission submitted this information collection to OMB for approval which resulted from the rule provisions adopted in the FCC 17–29. On March 23, 2017, the Commission adopted the Report and Order, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, GN Docket No. 12–268, MB Docket No. 03–185, MB Docket No. 15–137, FCC 17–29 (''Report and Order''). This document approved channel sharing outside of the incentive auction context between full power, Class A, LPTV and TV translator stations.

Although there are no changes to the FCC Form 2100, Schedule E itself, there are changes to the substance, burden hours, and costs as described herein.

The information collection requirements contained in 47 CFR 73.6028 permits Class A stations to seek approval to share a single television channel with Low Power Television (LPTV), TV translator, full power and Class A television stations. Class A stations interested in terminating operations and sharing another station's channel must submit FCC Form 2100 Schedule E in order to obtain Commission approval for their channel sharing arrangement.

*OMB Control Number:* 3060–1176.

*OMB Approval Date:* July 31, 2017.

*OMB Expiration Date:* July 31, 2020.

*Title:* MVPD Notice, Section 73.3700.

*Form Number:* Not applicable.

*Respondents:* Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

*Number of Respondents and Responses:* 735 respondents; 735 responses.

*Estimated Hours per Response:* 1–2 hours.

*Frequency of Response:* One time reporting requirement; Third party disclosure requirement.

*Total Annual Burden:* 1,397 hours.

*Total Annual Cost:* $43,800.

*Obligation to Respond:* Required to obtain benefits. The statutory authority for this information collection is contained in sections 1, 4(i) and (j), 7, 154(i), 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of

the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Act Assessment:* No impact(s).

which adopted rules for holding an Incentive Auction. Full power and Class A stations will be reassigned to a new channel via the repacking following the auction. Other stations will submit winning bids to relinquish their channels, enter into channel sharing agreements (and move to the channel of the station they are sharing with); or to move from high-VHF to low-VHF channels or from UHF to high-VHF or low-VHF. Each of these stations are required to notify multichannel video programming providers (''MVPD'') that carry the station of the fact that the station will be changing channels or terminating operations.

The information collection requirements contained in 47 CFR 73.3700 requires that full power and Class A television stations assigned a new channel in the incentive auction repacking, relinquishing their channel or moving to a new channel as a result of a winning bid in the auction, notify MVPDs of their termination of operations or change in channel.

On March 23, 2017, the Commission adopted the Report and Order, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, GN Docket No. 12–268, MB Docket No. 03–185, MB Docket No. 15–137, FCC 17–29 (''Report and Order''). This document approved channel sharing outside of the incentive auction context between full power, Class A, Low Power Television (LPTV) and TV translator stations. Channel sharing stations also must notify MVPDs of the fact that stations will be terminating operations on one channel to share another station's channel.

The information collection requirements contained in 47 CFR 73.3800, Full Power Television Channel Sharing Outside the Incentive Auction, Section 73.6028 Class A Television Channel Sharing Outside the Incentive Auction and Section 74.799 Low Power Television and TV Translator Channel Sharing require that stations seeking to channel share outside of the incentive auction provide notification to MVPDs of the fact that the station will be terminating operations on one channel to share another station's channel.

*OMB Control No.:* 3060–1177.

*OMB Approval Date:* July 31, 2017.

*OMB Expiration Date:* July 31, 2020.

*Title:* 47 CFR 74.800 (redesignated 47 CFR 74.799), Channel Sharing Agreement (CSA).

*Form Number:* Not applicable.

*Respondents:* Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

*Number of Respondents and Responses:* 160 respondents; 160 responses.

*Estimated Hours per Response:* 1 hr.

*Frequency of Response:* One time reporting requirement.

*Total Annual Burden:* 160 hours.

*Total Annual Cost:* $86,400.

*Obligation to Respond:* Required to obtain benefits. The statutory authority for this information collection is contained in sections 1, 4(i) and (j), 7, 154(i), 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Act Assessment:* No impact(s).

*Needs and Uses:* Full power and Class A television stations that agree to share a single television channel in conjunction with the incentive auction and low power television (LPTV) and TV translator stations that channel share outside of the auction context are required to reduce their agreement (CSA) to writing and submit a copy to the Commission for review. There is no specified format for the CSA but it must contain provisions covering: a. Access to facilities, including whether each licensee will have unrestrained access to the shared transmission facilities; b. Allocation of bandwidth within the shared channel; c. Operation, maintenance, repair, and modification of facilities, including a list of all relevant equipment, a description of each party's financial obligations, and any relevant notice provisions; d. Transfer/assignment of a shared license, including the ability of a new licensee to assume the existing CSA; e. Termination of the license of a party to the CSA, including reversion of spectrum usage rights to the remaining parties to the CSA and f. A provision affirming compliance with the channel sharing requirements in the rules including a provision requiring that each channel sharing licensee shall retain spectrum usage rights adequate to ensure a sufficient amount of the shared channel capacity to allow it to provide at least one Standard Definition (SD) program stream at all times.

The Commission submitted this information collection to OMB for approval which resulted from the rule provisions adopted in the FCC 14–50 and FCC 17–29.

On June 2, 2014 the Commission released a rulemaking titled ''Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,'' GN Docket 12–268, Report and Order, FCC 14–50, 29 FCC Rcd 6567 (2014) which adopted rules for holding an Incentive Auction. Full power and Class A stations are permitted to propose to relinquish their channels in the auction and to share the channel of another station.

The information collection requirements contain in 47 CFR 73.3700 requires that full power and Class A television stations seeking approval to channel share in the incentive auction provide the Commission with a copy of their CSA for review.

On March 23, 2017, the Commission adopted the Report and Order, Channel Sharing by Full Power and Class A Stations Outside the Broadcast Television Spectrum Incentive Auction Context, GN Docket No. 12–268, MB Docket No. 03–185, MB Docket No. 15–137, FCC 17–29 (''Report and Order''). This document approved channel sharing outside of the incentive auction context between full power, Class A, Low Power Television (LPTV) and TV translator stations.

The information collection requirements contained in 47 CFR 73.3800, Full Power Television Channel Sharing Outside the Incentive Auction, Section 73.6028, Class A Television Channel Sharing Outside the Incentive Auction and Section 73.799, Low Power Television and TV Translator Channel Sharing require that stations seeking to channel share outside of the incentive auction provide a copy of their ''CSA'' to the Commission for review.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary. Office of the Secretary.*

[FR Doc. 2017–16848 Filed 8–9–17; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 120109034–2171–01]**

**RIN 0648–XF471**

## Fisheries of the Northeastern United States; Small-Mesh Multispecies Fishery; Adjustment to the Northern Red Hake Inseason Possession Limit

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason adjustment.

**SUMMARY:** We announce the reduction of the commercial per-trip possession limit for northern red hake for the remainder of the 2017 fishing year. This action is required to prevent the northern red hake total allowable landing limit from being exceeded. This announcement informs the public that the northern red hake possession limit is reduced from 3,000 lb (1,361 kg) to 400 lb (181 kg).

**DATES:** Effective August 7, 2017, through April 30, 2018.

**FOR FURTHER INFORMATION CONTACT:** Reid Lichwell, Fishery Management Specialist, 978–675–9112.

**SUPPLEMENTARY INFORMATION:**

### Background

Regulations governing the red hake fishery are found at 50 CFR part 648. The small-mesh multispecies fishery is managed primarily through a series of exemptions from the Northeast Multispecies Fisheries Management Plan. The regulations describing the process to adjust inseason commercial possession limits of northern red hake are described in § 648.86(d)(4) and (5). These regulations require the NMFS Regional Administrator, Greater Atlantic Region, to reduce the northern red hake possession limit from 3,000 lb (1,361 kg) to 400 lb (181 kg) when landings have been projected to reach or exceed 37.9 percent of the total allowable landings (TAL), unless such a reduction would be expected to prevent the TAL from being reached. The final rule implementing the small-mesh multispecies specifications for 2016–2017 (81 FR 41866; June 28, 2015) set the northern red hake inseason adjustment thresholds. Those thresholds were revised in the final rule implementing the 2017 northern red hake accountability measures (82 FR 21477; May 9, 2017), which reduce the inseason possession limit reduction threshold from 62.5 percent to 37.9 percent of the TAL and removed an additional threshold at 45 percent. This trip limit adjustment threshold is an accountability measure implemented because the annual catch limits (ACL) for northern red hake were exceeded in fishing year 2015.

### Inseason Action

Using commercial landings data reported through August 3, 2017, the northern red hake fishery is projected to reach 37.9 percent of the TAL on August 7, 2017. Based on this projection, we are required to reduce the commercial northern red hake possession limit from 3,000 lb (1,361 kg) to 400 lb (181 kg) to prevent the TAL from being exceeded. On the effective date of this action, no person may possess on board or land more than 400 lb (181 kg) of northern red hake per trip for the remainder of the fishing year (*i.e.,* through April 30, 2018).

### Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 4, 2017.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–16850 Filed 8–7–17; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 82, No. 153
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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–2017–0713; Directorate Identifier 2016–NM–199–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2012–12–12, for all Airbus Model A330–200, A330–200 Freighter, A330–300, A340–200, and A340–300 series airplanes; and AD 2013–16–26 for all Airbus Model A330–200 Freighter, A330–200 and –300, and A340–200 and –300 series airplanes. AD 2012–12–12 requires repetitive inspections of the outer skin rivets of the cargo doors; repair if necessary; and other repetitive inspections. AD 2013–16–26 requires repetitive inspections of certain cargo doors, and repair if necessary. Since we issued AD 2012–12–12 and AD 2013–16–26, we have determined that a new inspection procedure is necessary to address the unsafe condition. This proposed AD would continue to require repetitive inspections and repair if necessary. This proposed AD would add a one-time inspection and adjustment of certain hook gaps; reinforcement of the door frame structure; related investigative and corrective actions if necessary; and a modification, which would allow deferring reinforcement of the cargo door structure. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by September 25, 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 SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com*; Internet: *http://www.airbus.com.* 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–2017–0713; 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:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0713; Directorate Identifier 2016–NM–199–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

On June 7, 2012, we issued AD 2012–12–12, Amendment 39–17092 (77 FR 37797, June 25, 2012) (''AD 2012–12–12''), for all Airbus Model A330–200 series airplanes, Model A330–200 Freighter series airplanes, Model A330–300 series airplanes, Model A340–200 series airplanes, and Model A340–300 series airplanes. AD 2012–12–12 was prompted by reports of sheared fasteners located on the outside skin of the forward cargo door and cracks on the frame fork ends, as well as cracks of the aft cargo door frame 64A. AD 2012–12–12 requires a detailed inspection of the outer skin rivets at the frame fork ends of the forward and aft cargo doors for sheared, loose, and missing rivets; repair of the outer skin rivets if necessary; and other repetitive inspections. We issued AD 2012–12–12 to detect and correct sheared, loose, or missing fasteners on the forward and aft cargo door frame, which could result in the loss of structural integrity of the forward and aft cargo door.

On August 9, 2013, we issued AD 2013–16–26, Amendment 39–17564 (78 FR 53640, August 30, 2013) (''2013–16–26''), for all Airbus Model A330–200 Freighter series airplanes, Model A330–200 and –300 series airplanes, and Model A340–200 and –300 series airplanes. AD 2013–16–26 was prompted by reports of cracked adjacent frame forks of a forward cargo door. AD 2013–16–26 requires repetitive detailed inspections for cracks and sheared, loose, or missing rivets of the forward cargo door and, for certain airplanes, of the aft cargo door, and repair if necessary. We issued AD 2013–16–26 to detect and correct cracked or ruptured cargo door frames, which could result in

reduced structural integrity of the forward or aft cargo door.

Since we issued AD 2012–12–12 and AD 2013–16–26, we have determined that a new inspection procedure is necessary to address the unsafe condition. In addition, the manufacturer has released some terminating action modifications for the cargo door structure, and provided procedures that allow postponing the structural reinforcement modification, which terminate the repetitive inspections.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2016–0188, dated September 21, 2016; corrected September 22, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''); to correct an unsafe condition for certain Airbus Model A330–200 and –300 series airplanes; Model A330–200 Freighter series airplanes; and Model A340–200, –300, –500, and –600 series airplanes. The MCAI states:

Several cases of cracked forward (FWD) and aft (AFT) cargo door frames, as well as loose, lost, or sheared rivets, have been reported by operators. Investigation showed that these findings are due to the low margins with respect to fatigue requirements for the AFT/FWD cargo door internal structure. Further analysis determined that the cargo door hook adjustment is a contributing factor to this issue. In case of a cracked or ruptured (FWD or AFT) cargo door frame, the loads will be transferred to the remaining structural elements. However, the secondary load path is able to sustain those loads only for a limited number of flight cycles (FC).

This condition, if not detected and corrected, could lead to rupture of adjacent vertical frames and consequent reduced structural integrity of the FWD or AFT cargo door, possibly resulting in a cargo door failure, decompression of the aeroplane and injury to occupants.

To initially address this potential unsafe condition, Airbus issued Service Bulletin (SB) A330–52–3043 and SB A340–52–4053 and, consequently, DGAC [Direction Générale de l'Aviation Civile] France issued AD 2001–124(B) and AD 2001–126(B), requiring a special detailed inspection of A330 and A340 AFT cargo doors. Since those [DGAC] ADs were issued, prompted by new occurrences, Airbus issued Alert Operators Transmission (AOT) A330–52A3085, AOT A340–52A4092, AOT A330–52A3084, AOT A340–52A4091, AOT A330–A52L003–12, AOT 340–A52L004–12, AOT A330–A52L001–12 and AOT A340–A52L002–12, providing instructions to inspect the affected areas of both FWD and AFT cargo doors.

Consequently, EASA issued AD 2011–0007 (later revised) [which corresponds to FAA AD 2012–12–12], and AD 2012–0274 [which corresponds to FAA AD 2013–16–26], to require repetitive detailed visual inspections of AFT and FWD cargo doors at specific frames and outer skin at all frame fork ends. Since these EASA ADs were issued, Airbus published SB A330–52–3087, SB A330–52–3095, SB A340–52–4095, SB A340–52–4101, SB A340–52–5020 and SB A340–52–5023, which took over the instructions of the above mentioned AOTs, and introduced revised thresholds and intervals. In addition, the inspection program was expanded to A340–500/–600 aeroplanes. Taking into account experience from inspections accomplished in accordance with the applicable Airbus SBs at original issue (listed above), Airbus issued Revision 01 of these SBs.

Consequently, EASA issued AD 2015–0192, which superseded EASA AD 2011–0007R1 and EASA AD 2012–0274, to require for each FWD and AFT cargo door, a one-time inspection/adjustment of the hook gaps ''U'' and ''V'', repetitive detailed inspections (DET) of all frame fork areas, frame head areas and outer skin areas to detect cracks or loose/sheared/missing fasteners, and, depending on findings, accomplishment of applicable corrective action(s). In addition, EASA AD 2015–0192 expanded the Applicability to Airbus A340–500/–600 aeroplanes.

Since EASA AD 2015–0192 was issued, Airbus published Revision 02 of the inspection SBs, introducing high-frequency eddy-current inspection method for the frame forks structure. Airbus also determined that the interval for these repetitive inspections could be increased. In addition, Airbus released some modifications (mod) introducing reinforcements to the cargo door structure improving the fatigue characteristics. These modifications and associated SBs constitute terminating action for the required repetitive inspections. Furthermore, Airbus also published other SBs, introducing cold working after oversizing of the fastener holes as a means for structural reinforcement. Accomplishment of these SBs allows postponement of the required Point of Embodiment (Structural Modification Point) for the structural reinforcement modification SBs which terminate the repetitive inspection requirement.

For the reasons described above, this [EASA] AD partially retains the requirements of EASA AD 2015–0192, which is superseded, and requires for each FWD and AFT cargo door initial and repetitive special detailed inspections (SDI) of all frame fork areas and detailed inspections (DET) of frame head areas and outer skin areas, and a one-time inspection/adjustment of the hook gaps ''U'' and ''V'' and, depending on findings, the accomplishment of applicable corrective action(s). Additionally, this [EASA] AD requires reinforcement of the cargo door frame structure, while accomplishment of a cold working modification allows to defer the reinforcement of the cargo door structure.

It should be noted that additional inspections exist for the cargo doors, as specified in Airbus A330 ALS [Airworthiness Limitation Section] Part 2 task 523211–02–01 and task 523211–02–02, and in Airbus A340 ALS Part 2 Task 523211–02–01.

This [EASA] AD is re-published to correct typographical errors when referencing Airbus SB A340–52–4118.

Related investigative actions include detailed inspections and high frequency non-destructive test inspections. Corrective actions include reaming holes, bushing holes, replacing affected parts, and repairing cracks. Additional work includes a one-time inspection of the ''U'' and ''V'' hook gaps, and if necessary, an adjustment of the hook gaps.

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–2017–0713.

**Related Service Information Under 1 CFR Part 51**

Airbus has issued the following service information.

The following service information describes procedures for inspecting and repairing the frame fork area at beam 4 and frame head area at beam 1 from frame 20B to frame 25 of the forward cargo door, and adjusting the hook gaps ''U'' and ''V.'' This service information is distinct since it applies to different airplane models.

- Service Bulletin A330–52–3087, Revision 02, including Appendix 01, dated February 18, 2016.
- Service Bulletin A340–52–4095, Revision 02, including Appendix 01, dated November 29, 2015.
- Service Bulletin A340–52–5020, Revision 02, including Appendices 01 and 02, dated November 27, 2015.

The following service information describes procedures for modifying the frame fork area at beam 4 and frame head area at beam 1 from frame 20B to frame 25 of the forward cargo door frame. This service information is distinct since it applies to different airplane models and configurations.

- Service Bulletin A330–52–3105, dated February 24, 2016.
- Service Bulletin A330–52–3110, dated February 15, 2016.
- Service Bulletin A330–52–3111, dated February 15, 2016.
- Service Bulletin A340–52–4108, dated February 15, 2016.
- Service Bulletin A340–52–4113, dated February 15, 2016.
- Service Bulletin A340–52–4114, dated February 15, 2016.

The following service information describes procedures for modifying the fastener holes in the forward cargo door frame structure by cold working and changing the fastener type and size. This service information is distinct since it applies to different airplane models and configurations.

- Service Bulletin A330–52–3116, dated April 20, 2016.
- Service Bulletin A330–52–3117, dated April 20, 2016.

- Service Bulletin A330–52–3118, dated April 20, 2016.
- Service Bulletin A340–52–4119, dated April 20, 2016.
- Service Bulletin A340–52–4120, dated April 20, 2016.
- Service Bulletin A340–52–4121, dated April 20, 2016.

The following service information describes procedures for inspecting the frame fork area at beam 4 and frame head area at beam 1 of the aft cargo door from frame 60 to frame 64A, adjusting the hook gaps ''U'' and ''V,'' and doing corrective actions. This service information is distinct since it applies to different airplane models and configurations.

- Service Bulletin A330–52–3095, Revision 02, including Appendices 01 and 02, dated February 19, 2016.
- Service Bulletin A340–52–4101, Revision 02, including Appendices 01 and 02, dated November 27, 2015.
- Service Bulletin A340–52–5023, Revision 02, including Appendices 01 and 02, dated November 27, 2015.

The following service information describes procedures for modifying the frame fork and head of the aft cargo door frame from frame 59A to frame 65. This service information is distinct since it applies to different airplane models and configurations.

- Service Bulletin A330–52–3106, dated February 24, 2016.
- Service Bulletin A330–52–3112, dated February 24, 2016.
- Service Bulletin A330–52–3113, dated February 15, 2016.
- Service Bulletin A330–52–3114, dated February 15, 2016.
- Service Bulletin A340–52–4109, dated February 25, 2016.
- Service Bulletin A340–52–4115, dated February 19, 2016.

The following service information describes procedures for modifying the fastener holes in the aft cargo door frame structure by cold working and changing the fastener type and size. This service information is distinct since it applies to different airplane models.

- Service Bulletin A330–52–3115, dated April 20, 2016.
- Service Bulletin A340–52–4118, dated April 20, 2016.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

### FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type designs.

### Costs of Compliance

We estimate that this proposed AD affects 73 airplanes of U.S. registry.

We estimate that it would take up to 888 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost up to $126,420 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be up to $14,738,700, or up to $201,900 per product.

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

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2012–12–12, Amendment 39–17092 (77 FR 37797, June 25, 2012); and AD 2013–16–26, Amendment 39–17564 (78 FR 53640, August 30, 2013); and

■ b. Adding the following new AD:

**AIRBUS:** Docket No. FAA–2017–0713; Directorate Identifier 2016–NM–199–AD.

**(a) Comments Due Date**

We must receive comments by September 25, 2017.

**(b) Affected ADs**

This AD replaces AD 2012–12–12, Amendment 39–17092 (77 FR 37797, June 25, 2012) (''AD 2012–12–12''); and AD 2013–16–26, Amendment 39–17564 (78 FR 53640, August 30, 2013) (''AD 2013–16–26'').

**(c) Applicability**

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certified in any category, all manufacturer serial numbers, except those on which Airbus Modification 202702 and Modification 202790 have been embodied in production; and the Airbus airplanes identified in paragraphs (c)(3) through (c)(5) of this AD, certified in any category, all manufacturer serial numbers.

(1) Model A330–201, –202, –203, –223, –223F, –243, and –243F airplanes.

(2) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(3) Model A340–211, –212, and –213 airplanes.

(4) Model A340–311, –312, and –313 airplanes.

(5) Model A340–541 and –642 airplanes.

**(d) Subject**

Air Transport Association (ATA) of America Code 52, Doors.

**(e) Reason**

This AD was prompted by reports of cracked forward and aft cargo door frames, and loose, missing, or sheared rivets. We are issuing this AD to detect and correct cracked or ruptured cargo door frames, which could result in reduced structural integrity of the forward or aft cargo door.

**(f) Compliance**

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

**(g) Affected Cargo Doors**

For the purpose of this AD, the affected cargo doors are pre-modification 202702 (forward cargo door) and pre-modification 202790 (aft cargo door), and are listed by part number (P/N) in the applicable service information identified in paragraph (h)(1) of this AD. For post-modification doors, which are not affected by this AD, the P/Ns are identified as F52370900XXX (forward cargo door) and F52372315XXX (aft cargo door), where ''XXX'' can be a combination of any three numerical digits.

**(h) Forward Cargo Door Repetitive Inspections**

(1) Before exceeding 5,300 total flight cycles since first installation of the forward cargo door on an airplane, or within the applicable compliance time specified in table 1 to paragraph (h)(1) of this AD, whichever occurs later, except as specified in paragraph (q) of this AD: Do all applicable detailed and high frequency eddy current (HFEC) inspections of all frame fork areas, frame head areas, and outer skin areas of each affected forward cargo door, as applicable; in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (h)(1)(i), (h)(1)(ii), or (h)(1)(iii) of this AD. Do all applicable related investigative actions and corrective actions before further flight in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (h)(1)(i), (h)(1)(ii), or (h)(1)(iii) of this AD, except as required by paragraph (p) of this AD. Repeat the applicable inspections of the frame fork areas, frame head areas, and outer skin areas of each affected forward cargo door thereafter at intervals not to exceed 1,400 flight cycles.

TABLE 1 TO PARAGRAPH (h)(1) OF THIS AD—FORWARD CARGO DOOR INSPECTION COMPLIANCE TIME

| Airplane condition (on the effective date of this AD) | Compliance time |
|---|---|
| Inspected only as specified in Airbus Alert Operator Transmission (AOT) A330–52A3085 or AOT A340–52A4092, as applicable. | Within 1,100 flight cycles after the last inspection, but without exceeding 10,600 flight cycles since first installation of the forward cargo door on an airplane. |
| Inspected as specified in Airbus AOT A330–52A3085 and as specified in AOT A330–A52L003–12, and the last inspection was accomplished as specified in AOT A330–A52L003–12. | Within 1,100 flight cycles after the last inspection as specified in AOT A330–52A3085. |
| Inspected as specified in Airbus AOT A330–52A3085 and as specified in AOT A330–A52L003–12, and the last inspection was accomplished as specified in AOT A330–52A3085. | Within 1,100 flight cycles after the last inspection as specified in AOT A330–A52L003–12. |
| Inspected as specified in Airbus AOT A340–52A4092 and as specified in AOT A340–A52L004–12, and the last inspection was accomplished as specified in AOT A340–A52L004–12. | Within 1,100 flight cycles after the last inspection as specified in AOT A340–52A4092. |
| Inspected as specified in Airbus AOT A340–52A4092 and as specified in AOT A340–A52L004–12, and the last inspection was accomplished as specified in AOT A340–52A4092. | Within 1,100 flight cycles after the last inspection as specified in AOT A340–A52L004–12. |
| Inspected as specified in the original issue of Airbus Service Bulletin (SB) A330–52–3087, or SB A340–52–4095, or SB A340–52–5020, as applicable. | There is no compliance time for the initial inspection in paragraph (h)(1) of this AD for these airplanes, provided these airplanes comply with the actions specified paragraph (r)(1) of this AD. |
| Inspected as specified in Revision 01 of Airbus SB A330–52–3087, or SB A340–52–4095, or SB A340–52–5020, as applicable. | There is no compliance time for the initial inspection in paragraph (h)(1) of this AD for these airplanes, provided these airplanes comply with the actions specified in paragraph (r)(2) of this AD. |
| Inspected as specified in Revision 02 of Airbus SB A330–52–3087, or SB A340–52–4095, or SB A340–52–5020, as applicable. | Within 1,400 flight cycles after the last inspection, but without exceeding 5,300 total flight cycles since first installation of the forward cargo door on an airplane. |
| Never inspected | Within 1,100 flight cycles after the effective date of this AD, but without exceeding 6,400 flight cycles since first installation of the forward cargo door on an airplane. |

(i) Airbus Service Bulletin A330–52–3087, Revision 02, dated February 18, 2016 (''A330–52–3087, R2'').

(ii) Airbus Service Bulletin A340–52–4095, Revision 02, dated November 29, 2015 (''A340–52–4095, R2'').

(iii) Airbus Service Bulletin A340–52–5020, Revision 02, dated November 27, 2015 (''A340–52–5020, R2'').

(2) Concurrently with the first inspection required by paragraph (h)(1) of this AD: Do a one-time detailed inspection of the hook gaps ''U'' and ''V'' of each affected forward cargo door for proper adjustment, and, depending on findings, adjust the hook(s), in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (h)(2)(i), (h)(2)(ii), or (h)(2)(iii) of this AD. Do all required hook gap adjustments before further flight.

(i) A330–52–3087, R2.

(ii) A340–52–4095, R2.

(iii) A340–52–5020, R2.

**(i) Forward Cargo Door Modification**

(1) Except as specified in paragraph (i)(2) of this AD, before exceeding 18,500 total flight cycles since first installation of the forward cargo door on an airplane, or within 12 months after the effective date of this AD, whichever occurs later: Do reinforcement modifications on the frame structure of each affected forward cargo door, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (i)(1)(i) through (i)(1)(vi) of this AD, except as required by paragraph (p) of this AD.

(i) Airbus Service Bulletin A330–52–3105, dated February 24, 2016 (for certain Model A330–202, –223, and –243 airplanes; and Model A330–301, –321, –322, –341, and –342 airplanes).

(ii) Airbus Service Bulletin A330–52–3110, dated February 15, 2016 (for certain Model A330–202, –203, –223, and –243 airplanes; and Model A330–303, –323, and –343 airplanes).

(iii) Airbus Service Bulletin A330–52–3111, dated February 15, 2016 (for certain Model A330–202, –203, –223, –223F, –243, and –243F airplanes; and Model A330–302, –303, –323, –342, and –343 airplanes).

(iv) Airbus Service Bulletin A340–52–4108, dated February 15, 2016 (for certain

Model A340–211, –212, and –213 airplanes; and Model A340–311, –312, and –313 airplanes).

(v) Airbus Service Bulletin A340–52–4113, dated February 15, 2016 (for certain Model A340–312 and –313 airplanes).

(vi) Airbus Service Bulletin A340–52–4114, dated February 15, 2016 (for certain Model A340–313 airplanes).

(2) Accomplishment of the reinforcement modifications required by paragraph (i)(1) of this AD may be deferred, provided that, before exceeding 18,500 total flight cycles since first installation of the forward cargo door on an airplane, or within 12 months after the effective date of this AD, whichever occurs later, but not earlier than 14,500 total flight cycles for Model A330 airplanes, or 12,500 total flight cycles for Model A340 airplanes, cold working is accomplished on the frame structure of each affected forward cargo door, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (i)(2)(i) through (i)(2)(vi) of this AD, except as required by paragraph (p) of this AD. Modification of an airplane by accomplishment of the cold working specified in this paragraph does not constitute terminating action for the repetitive inspections required by paragraph (h)(1) of this AD.

(i) Airbus Service Bulletin A330–52–3116, dated April 20, 2016 (for certain Model A330–202, –223, and –243 airplanes; and Model A330–301, –321, –322, –341, and –342 airplanes).

(ii) Airbus Service Bulletin A330–52–3117, dated April 20, 2016 (for certain Model A330–202, –203, –223, and –243 airplanes; and Model A330–303, –323, and –343 airplanes).

(iii) Airbus Service Bulletin A330–52–3118, dated April 20, 2016 (for certain Model A330–202, –203, –223, –223F, –243, and –243F airplanes; and Model A330–302, –303, –323, –342, and –343 airplanes).

(iv) Airbus Service Bulletin A340–52–4119, dated April 20, 2016 (for certain Model A340–211, –212, and –213 airplanes; and Model A340–311, –312, and –313 airplanes).

(v) Airbus Service Bulletin A340–52–4120, dated April 20, 2016 (for certain Model A340–312 and –313 airplanes).

(vi) Airbus Service Bulletin A340–52–4121, dated April 20, 2016 (for certain Model A340–313 airplanes).

(3) Within 18,500 flight cycles after cold working is accomplished on the frame structure of each affected forward cargo door as specified in paragraph (i)(2) of this AD: Do the reinforcement modifications on the frame structure of each affected forward cargo door, 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).

**(j) Forward Cargo Door Terminating Action**

Modification of an airplane by reinforcement of the cargo door frame structure required by paragraph (i)(1) or (i)(3) of this AD constitutes terminating action for the repetitive inspections required by paragraph (h)(1) of this AD for that airplane.

**(k) Definitions of Pre-Modified and Post-Modified Airplanes**

(1) For the purpose of this AD, pre-modified Model A330–200 series airplanes, Model A330–200 Freighter series airplanes, Model A330–300 series airplanes, Model A340–200 series airplanes, and Model A340–300 series airplanes are defined as those not having Airbus Modification 44852, or Modification 44854 applied in production, or being in pre-Airbus Service Bulletin A330–52–3044 or pre-Airbus Service Bulletin A340–52–4054 configuration, as applicable.

(2) For the purpose of this AD, post-modification Model A330–200 series airplanes, Model A330–200 Freighter series airplanes, Model A330–300 series airplanes, Model A340–200 series airplanes, and Model A340–300 series airplanes are defined as those having Airbus Modification 44852 or Modification 44854 applied in production, or modified in service as specified in Airbus Service Bulletin A330–52–3044 or Airbus Service Bulletin A340–52–4054, as applicable.

**(l) Aft Cargo Door Repetitive Inspections**

(1) Before exceeding 4,000 total flight cycles for pre-modified airplanes, or 12,000 total flight cycles for post-modified airplanes, since first installation of the aft cargo door on an airplane, as applicable, or within the compliance time specified in table 2 to paragraph (l)(1) of this AD or table 3 to paragraph (l)(1) of this AD, as applicable, whichever occurs later, except as specified in paragraph (q) of this AD: Do all applicable inspections of all frame fork areas, frame head areas, and outer skin area of each affected aft cargo door, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (l)(1)(i), (l)(1)(ii), or (l)(1)(iii) of this AD. Do all applicable related investigative actions and corrective actions before further flight in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (l)(1)(i), (l)(1)(ii), or (l)(1)(iii) of this AD, except as required by paragraph (p) of this AD. Repeat the applicable inspections thereafter at intervals not to exceed 1,400 flight cycles.

TABLE 2 TO PARAGRAPH (l)(1) OF THIS AD—AFT CARGO DOOR INSPECTION COMPLIANCE TIMES FOR PRE-MODIFIED AIRPLANES

| Airplane condition (on the effective date of this AD) | Compliance time |
|---|---|
| Inspected only as specified in Airbus AOT A330–52A3084, or AOT A340–52A4091, as applicable. | Within 550 flight cycles after the last inspection, but without exceeding 15,800 flight cycles since first installation of the aft cargo door on an airplane. |
| Inspected as specified in Airbus AOT A330–52A3084 and as specified in AOT A330–A52L001–12, and the last inspection was accomplished as specified in AOT A330–A52L001–12. | Within 550 flight cycles after the last inspection as specified in AOT A330–52A3084. |
| Inspected as specified in Airbus AOT A330–52A3084 and as specified in AOT A330–A52L001–12, and the last inspection was accomplished as specified in AOT A330–52A3084. | Within 550 flight cycles after the last inspection as specified in AOT A330–A52L001–12. |
| Inspected as specified in Airbus AOT A340–52A4091 and as specified in AOT A340–A52L002–12, and the last inspection was accomplished as specified in AOT A340–A52L002–12. | Within 550 flight cycles after the last inspection as specified in AOT A340–52A4091. |
| Inspected as specified in Airbus AOT A340–52A4091 and as specified in AOT A340–A52L002–12, and the last inspection was accomplished as specified in AOT A340–52A4091. | Within 550 flight cycles after the last inspection as specified in AOT A340–A52L002–12. |
| Inspected as specified in the original issue of Airbus SB A330–52–3095, or SB A340–52–4101, as applicable. | There is no compliance time for the initial inspection in paragraph (l)(1) of this AD for these airplanes, provided these airplanes comply with the actions specified in paragraph (r)(3) of this AD. |
| Inspected as specified in Revision 01 of Airbus SB A330–52–3095, or SB A340–52–4101, as applicable. | There is no compliance time for the initial inspection in paragraph (l)(1) of this AD for these airplanes, provided these airplanes comply with the actions specified in paragraph (r)(4) of this AD. |
| Inspected as specified in Revision 02 of Airbus SB A330–52–3095, or SB A340–52–4101, as applicable. | Within 1,400 flight cycles after the last inspection as specified in Revision 02 of Airbus SB A330–52–3095, or SB A340–52–4101, as applicable but without exceeding 4,000 flight cycles since first installation of the aft cargo door on an airplane, as applicable. |

TABLE 2 TO PARAGRAPH (l)(1) OF THIS AD—AFT CARGO DOOR INSPECTION COMPLIANCE TIMES FOR PRE-MODIFIED AIRPLANES—Continued

| Airplane condition (on the effective date of this AD) | Compliance time |
|---|---|
| Never inspected | Within 550 flight cycles after the effective date of this AD, but without exceeding 4,550 flight cycles since first installation of the aft cargo door on an airplane. |

TABLE 3 TO PARAGRAPH (l)(1) OF THIS AD—AFT CARGO DOOR INSPECTION COMPLIANCE TIMES FOR POST-MODIFIED AIRPLANES AND MODEL A340–500 AND –600 AIRPLANES

| Airplane condition (on the effective date of this AD) | Compliance time |
|---|---|
| Never inspected | Within 550 flight cycles after the effective date of this AD, but without exceeding 12,550 flight cycles since first installation of the aft cargo door on an airplane. |
| Inspected as specified in the original issue of Airbus SB A330–52–3095 or SB A340–52–4101, or SB A340–5023, as applicable. | There is no compliance time for paragraph (l)(1) of this AD for these airplanes, provided these airplanes comply with the actions specified in paragraph (r)(3) of this AD. |
| Inspected as specified in Revision 01 of Airbus SB A330–52–3095, or SB A340–52–4101, or SB A340–5023, as applicable. | There is no compliance time for paragraph (l)(1) of this AD for these airplanes, provided these airplanes comply with the actions specified in paragraph (r)(4) of this AD. |
| Inspected as specified in Revision 02 of Airbus SB A330–52–3095, or SB A340–52–4101, or SB A340–5023, as applicable. | Within 1,400 flight cycles after the last inspection as specified in Revision 02 of Airbus SB A330–52–3095, or SB A340–52–4101, or SB A340–5023, as applicable, but without exceeding 12,000 flight cycles since first installation of the aft cargo door on an airplane. |

(i) Airbus Service Bulletin A330–52–3095, Revision 02, dated February 19, 2016 (''A330–52–3095, R2'').

(ii) Airbus Service Bulletin A340–52–4101, Revision 02, dated November 27, 2015 (''A340–52–4101, R2'').

(iii) Airbus Service Bulletin A340–52–5023, Revision 02, dated November 27, 2015 (''A340–52–5023, R2'').

(2) Concurrently with the first inspection required by paragraph (l)(1) of this AD: Do a one-time detailed inspection of the hook gaps ''U'' and ''V'' of each affected aft cargo door for proper adjustment and, depending on findings, adjust the hook(s) in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (l)(2)(i), (l)(2)(ii), or (l)(2)(iii) of this AD. Do all required hook gap adjustments before further flight.

(i) A330–52–3095, R2.

(ii) A340–52–4101, R2.

(iii) A340–52–5023, R2.

**(m) Modification for Pre-Modified Airplanes**

(1) For pre-modified airplanes, except as specified in paragraph (m)(2) of this AD: Before exceeding 18,500 total flight cycles since first installation of the aft cargo door on an airplane, or within 12 months after the effective date of this AD, whichever occurs later, do reinforcement modifications, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (m)(1)(i) through (m)(1)(vi) of this AD, except as required by paragraph (p) of this AD.

(i) Airbus Service Bulletin A330–52–3106, dated February 24, 2016 (for certain Model A330–301, –321, –322, –341, and –342 airplanes).

(ii) Airbus Service Bulletin A330–52–3112, dated February 24, 2016 (for certain Model A330–202 and –223 airplanes; and Model A330–301, –322, –341, and –342 airplanes).

(iii) Airbus Service Bulletin A330–52–3113, dated February 15, 2016 (for certain Model A330–223 and –243 airplanes; and Model A330–322 and –342 airplanes).

(iv) Airbus Service Bulletin A330–52–3114, dated February 15, 2016 (for certain Model A330–202, –203, –223, –223F, –243, and –243F airplanes; and Model A330–302, –303, –323, –342, and –343 airplanes).

(v) Airbus Service Bulletin A340–52–4109, dated February 25, 2016 (for certain Model A340–211, –212, and –213 airplanes; and Model A340–311, –312, and –313 airplanes).

(vi) Airbus Service Bulletin A340–52–4115, dated February 19, 2016 (for certain Model A340–212, –213, and –313 airplanes).

(2) Accomplishment of the reinforcement modifications required by paragraph (m)(1) of this AD may be deferred provided that before exceeding 18,500 total flight cycles since first installation of the aft cargo door on an airplane, or within 12 months after the effective date of this AD, whichever occurs later, but not earlier than 14,500 total flight cycles, cold working is accomplished on the frame structure of each affected aft cargo door, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–52–3115, dated April 20, 2016; or Airbus Service Bulletin A340–52–4118, dated April 20, 2016; as applicable. Modification of an airplane by accomplishment of the cold working specified in this paragraph does not constitute terminating action for the repetitive inspections required by paragraph (l)(1) of this AD.

(3) For an airplane on which the cold working on the cargo door frame structure is accomplished, as specified in paragraph (m)(2) of this AD: Within 18,500 flight cycles after the application of cold working, do reinforcement modifications, in accordance with the Accomplishment Instructions of the service information specified in paragraphs (m)(1)(i) through (m)(1)(vi) of this AD, as applicable, or using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

**(n) Aft Cargo Door Terminating Action**

Modification of an airplane by reinforcement of the cargo door frame structure required by paragraph (m)(1) or (m)(3) of this AD constitutes terminating action for the repetitive inspections required by paragraph (l)(1) of this AD for that airplane.

**(o) Optional Terminating Action Modification for Post-Modified Airplanes**

For post-modified airplanes, modification of an airplane by reinforcement of the cargo door frame structure, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (m)(1)(i) through (m)(1)(vi) of this AD, or using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA, constitutes terminating action for the repetitive inspections required by paragraph (l)(1) of this AD.

**(p) Exception to Service Information**

Where the service information specified in paragraphs (h)(1), (i)(1), (i)(2), (l)(1), and (m) of this AD specifies to contact Airbus for instructions or repair, before further flight, accomplish corrective actions in accordance with the procedures specified in paragraph (s)(2) of this AD.

**(q) Exception to Initial Inspection Compliance Time**

For the purposes of table 1 to paragraph (h)(1) of this AD, table 2 to paragraph (l)(1) of this AD, and table 3 to paragraph (l)(1) of this AD: As soon as a cargo door is inspected using any applicable service information specified in this AD, the previous inspections accomplished in accordance with any alert operator transmission can be disregarded for the determination of the compliance time for the initial inspection required by this AD.

**(r) Credit for Previous Actions**

(1) This paragraph provides credit for the initial inspection required by paragraph (h) of this AD, if that inspection was performed before the effective date of this AD using Airbus Service Bulletin A330–52–3087, dated August 29, 2013; Airbus Service Bulletin A340–52–4095, dated August 29, 2013; or Airbus Service Bulletin A340–52–5020, dated August 29, 2013; as applicable; provided that the actions identified as ''additional work'' in the Accomplishment Instructions of Airbus Service Bulletin A330–52–3087, Revision 01, dated July 9, 2014; Airbus Service Bulletin A340–52–4095, Revision 01, dated July 28, 2014; or Airbus Service Bulletin A340–52–5020, Revision 01, dated July 9, 2014; as applicable; are accomplished within 1,100 flight cycles after that inspection; and provided the next inspection of all frame fork areas, frame head areas, and outer skin area of each affected forward cargo door is accomplished within 1,100 flight cycles after that inspection, in accordance with the Accomplishment Instructions of A330–52–3087, R2; A330–52–3095, R2; or A340–52–5020, R2, as applicable.

(2) This paragraph provides credit for the initial inspection required by paragraph (h) of this AD, if that inspection was performed before the effective date of this AD using Airbus Service Bulletin A330–52–3087, Revision 01, dated July 9, 2014; Airbus Service Bulletin A340–52–4095, Revision 01, dated July 28, 2014; or Airbus Service Bulletin A340–52–5020, Revision 01, dated July 9, 2014; as applicable; provided that the next inspection of all frame fork areas, frame head areas, and outer skin area of each affected forward cargo door, is accomplished within 1,100 flight cycles after that inspection in accordance with the Accomplishment Instructions of A330–52–3087, R2; A330–52–3095, R2; or A340–52–5020, R2, as applicable.

(3) This paragraph provides credit for the initial inspection required by paragraph (l) of this AD, if that inspection was performed before the effective date of this AD using Airbus Service Bulletin A330–52–3095, dated August 29, 2013; Airbus Service Bulletin A340–52–4101, dated August 29, 2013; or Airbus Service Bulletin A340–52–5023, dated August 29, 2013; provided that the actions identified as ''additional work'' in the Accomplishment Instructions of Airbus Service Bulletin A330–52–3095, Revision 01, dated July 28, 2014; Airbus Service Bulletin A340–52–4101, Revision 01, dated July 28, 2014; or Airbus Service Bulletin A340–52–5023, Revision 01, dated July 28, 2014; as applicable; are accomplished within 550 flight cycles after that inspection, and provided the next inspection of all frame fork areas, frame head areas, and outer skin area of each affected aft cargo door is accomplished within 550 flight cycles after that inspection in accordance with the Accomplishment Instructions of A330–52–3095, R2; A340–52–4101, R2; or A340–52–5023, R2, as applicable.

(4) This paragraph provides credit for the initial inspection required by paragraph (l) of this AD, if that inspection was performed before the effective date of this AD using Airbus Service Bulletin A330–52–3095, Revision 01, dated July 28, 2014; Airbus Service Bulletin A340–52–4101, Revision 01, dated July 28, 2014; or Airbus Service Bulletin A340–52–5023, Revision 01, dated July 28, 2014; as applicable; provided that the next inspection of all frame fork areas, frame head areas, and outer skin area of each affected aft cargo door is accomplished within 550 flight cycles after that inspection in accordance with the Accomplishment Instructions of A330–52–3095, R2; A340–52–4101, R2; or A340–52–5023, R2, as applicable.

**(s) 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 manager of the International Branch, send it to the attention of the person identified in paragraph (t)(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 EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (p) 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.

**(t) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2016–0188, dated September 21, 2016; corrected September 22, 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–2017–0713.

(2) For more information about this AD, contact, Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1138; fax: 425–227–1149.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* Internet: *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 19, 2017.

**Michael Kaszycki,**

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

[FR Doc. 2017–16051 Filed 8–9–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2017–0715; Product Identifier 2017–NM–073–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–200, –200C, –300, –400, and –500 series airplanes. This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the fuselage crown skin panels are subject to widespread fatigue damage (WFD). This proposed AD would require repetitive inspections, replacement, and applicable on-condition actions for certain fuselage crown skin panels. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by September 25, 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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 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–2017–0715.

**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–2017–0715; 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 NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tsakoumakis, Aerospace Engineer, Airframe Section, FAA, Los Angeles Aircraft Certification Office (ACO) Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5264; fax: 562–627–5210; email: *Jennifer.tsakoumakis@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0715; Product Identifier 2017–NM–073–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of 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**

Fatigue damage can occur locally, in small areas or structural design details, or globally, in widespread areas. Multiple-site damage is widespread damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Widespread damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site damage and multiple-element damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane. This condition is known as WFD. It is associated with general degradation of large areas of structure with similar structural details and stress levels. As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that DAHs establish a limit of validity (LOV) of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

We have received a report indicating that an operator of a Model 737–300 series airplane reported multiple cracks of the chem-milled steps in adjacent bays of the fuselage crown skin. These cracks were discovered by visual inspection 855 flight cycles after the most recent detailed inspection. The initial visual inspection revealed three cracks varying in length from 1.8 inches to 8.5 inches. Further inspection using ultrasonic phased array revealed nine additional subsurface cracks. The airplane had 55,232 total flight cycles. Multiple adjacent cracks in the fuselage crown skin panels, if not detected and corrected, could link up and lead to decompression or loss of structural integrity of the airplane.

**Related Service Information Under 1 CFR Part 51**

We reviewed Boeing Alert Service Bulletin 737–53A1358, dated April 27, 2017. The service information describes procedures for repetitive inspections, replacement, and applicable on-condition actions for certain fuselage crown skin panels. 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**

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

**Proposed AD Requirements**

This proposed AD would require accomplishment of the actions identified as ''RC'' (required for compliance) in the Accomplishment Instructions of Boeing Alert Service

Bulletin 737–53A1358, dated April 27, 2017, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0715.

**Explanation of Compliance Time**

The compliance time for the replacement specified in this proposed AD for addressing WFD was established to ensure that discrepant structure is replaced before WFD develops in airplanes. Standard inspection techniques cannot be relied on to detect WFD before it becomes a hazard to flight. We will not grant any extensions of the compliance time to complete any AD-mandated service bulletin related to WFD without extensive new data that would substantiate and clearly warrant such an extension.

**Costs of Compliance**

We estimate that this proposed AD affects 200 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 | Up to 507 work-hours × $85 per hour = $43,095 per inspection cycle. | $0 | Up to $43,095 per inspection cycle | Up to $8,619,000 per inspection cycle. |
| Replacement | 304 work-hours × $85 per hour = $25,840 per skin panel. | 95,000 | $120,840 per skin panel | Up to $24,168,000. |

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

**Authority for This Rulemaking**

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

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

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

**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):

**The Boeing Company:** Docket No. FAA–2017–0715; Product Identifier 2017–NM–073–AD.

**(a) Comments Due Date**

We must receive comments by September 25, 2017.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 737–200, –200C, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1358, dated April 27, 2017.

**(d) Subject**

Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Unsafe Condition**

This AD was prompted by an evaluation by the design approval holder indicating that the fuselage crown skin panels are subject to widespread fatigue damage. We are issuing this AD to detect and correct cracking in the fuselage crown skin panels. Multiple adjacent cracks in the fuselage crown skin could link up and lead to decompression or loss of structural integrity of the airplane.

**(f) Compliance**

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

**(g) Required Actions**

Except as required by paragraph (h) of this AD: At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1358, dated April 27, 2017, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1358, dated April 27, 2017.

**(h) Exceptions to Service Information Specifications**

(1) For purposes of determining compliance with the requirements of this AD, the phrase ''the effective date of this AD'' may be substituted for ''the original issue date of this service bulletin,'' as specified in Boeing Alert Service Bulletin 737–53A1358, dated April 27, 2017.

(2) Where Boeing Alert Service Bulletin 737–53A1358, dated April 27, 2017, specifies contacting Boeing, and specifies that action as RC: This AD requires using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(3) Part 7 of Boeing Alert Service Bulletin 737–53A1358, dated April 27, 2017, specifies post-modification airworthiness limitation inspections in compliance with 14 CFR 25.571(a)(3) at the modified locations to support compliance with 14 CFR 121.1109(c)(2) or 129.109(b)(2). Although Part 7 is identified as RC, this AD does not require accomplishment of Part 7. As airworthiness limitations, these inspections are required by maintenance and operational rules. It is therefore unnecessary to mandate them in this AD. Deviations from these inspections require FAA approval, but do not require approval of an alternative method of compliance.

**(i) Terminating Action for Repetitive Inspections**

(1) Replacement of a skin panel, in accordance with Part 8 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1358, dated April 27, 2017, except as required by paragraph (h)(2) of this AD, terminates the actions specified in Parts 1, 4, and 6 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1358, dated April 27, 2017, as required by paragraph (g) of this AD, for that replaced skin panel only. To be acceptable as terminating action, the replacement may not be done prior to the applicable time specified in Table 4 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1358, dated April 27, 2017.

(2) Completion of a structural repair manual repair to repair cracking, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1358, dated April 27, 2017, except as required by paragraph (h)(2) of this AD, terminates the repetitive inspections specified in Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1358, dated April 27, 2017, as required by paragraph (g) of this AD, for that repair location only.

(3) Completion of a ''Category C repair'' to repair cracking, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1358, dated April 27, 2017, except as required by paragraph (h)(2) of this AD, terminates the repetitive inspections specified in Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1358, dated April 27, 2017, as required by paragraph (g) of this AD, for that repair location only.

(4) Completion of a ''Change Category C Repair to SB Repair,'' in accordance with Part 6 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1358, dated April 27, 2017, except as required by paragraph (h)(2) of this AD, terminates the inspections specified in Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1358, dated April 27, 2017, as required by paragraph (g) of this AD, for that repair location only.

**(j) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Los Angeles ACO Branch, 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 certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

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

(4) Except as required by paragraphs (h)(2) and (h)(3) of this AD: For service information that contains steps that are labeled as RC, the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or 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.

**(k) Related Information**

(1) For more information about this AD, contact Jennifer Tsakoumakis, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5264; fax: 562–627–5210; email: *Jennifer.tsakoumakis@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 26, 2017.

**Jeffrey E. Duven,**

*Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2017–16355 Filed 8–9–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2016–9546; Airspace Docket No. 16–AGL–32]**

## Proposed Establishment of Class E Airspace; Onida, SD

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish Class E airspace at Onida, SD. Controlled airspace is necessary to accommodate new special instrument approach procedures developed at Onida Municipal Airport, for the safety and management of instrument flight rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before September 25, 2017.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2016–9546; Airspace Docket No. 16–AGL–32, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence

Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

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

**FOR FURTHER INFORMATION CONTACT:** Rebecca Shelby, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5857.

**SUPPLEMENTARY INFORMATION:**

**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace extending up to and including 700 feet above the surface at Onida Municipal Airport, Onida, SD, in support of new instrument approach procedures at the airport.

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2016–9546; Airspace Docket No. 16–AGL–32.'' The postcard will be date/time stamped and returned to the commenter.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability and Summary of Documents Proposed for Incorporation by Reference**

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Onida Municipal Airport, Onida, SD, to accommodate new special instrument approach procedures. Controlled airspace is needed for the safety and management of IFR operations at the airport.

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

**Regulatory Notices and Analyses**

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

**Environmental Review**

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11A, Airspace Designations and Reporting

Points, dated August 3, 2016, and effective September 15, 2016, is amended as follows:

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

* * * * *

**AGL SD E5 Onida, SD [New]**

Onida Municipal Airport, SD
(Lat. 44°42′02″ N., long. 100°06′05″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Onida Municipal Airport.

Issued in Fort Worth, TX, on August 1, 2017.

**Walter Tweedy,**

*Manager (A), Operations Support Group, ATO Central Service Center.*

[FR Doc. 2017–16802 Filed 8–9–17; 8:45 am]

**BILLING CODE 4910–13–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2017–0321; FRL–9966–00–Region 4]**

## Air Plan Approval; North Carolina; Interstate Transport

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve North Carolina's December 9, 2015 State Implementation Plan (SIP) submission pertaining to the Clean Air Act's (CAA or Act) ''good neighbor'' provision of the Clean Air Act (CAA or Act) for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). The good neighbor provision requires each state's SIP to address the interstate transport of air pollution in amounts that contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in any other state. In this action, EPA is proposing to determine that North Carolina's SIP contains adequate provisions to prohibit emissions within the state from contributing significantly to nonattainment or interfering with maintenance of the 2008 8-hour ozone NAAQS in any other state.

**DATES:** Comments must be received on or before September 11, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2017–0321 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:** Ashten Bailey, 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. Bailey can also be reached via telephone at (404) 562–9164 and via electronic mail at *bailey.ashten@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On March 27, 2008, EPA promulgated an ozone NAAQS that revised the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm. *See* 73 FR 16436. Pursuant to CAA section 110(a)(1), within three years after promulgation of a new or revised NAAQS (or shorter, if EPA prescribes), states must submit SIPs that meet the applicable requirements of section 110(a)(2). EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. One of the structural requirements of section 110(a)(2) is section 110(a)(2)(D)(i) which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on neighboring states due to interstate transport of air pollution. There are four sub-elements, or ''prongs,'' within section 110(a)(2)(D)(i) of the CAA. CAA section 110(a)(2)(D)(i)(I), also known as the ''good neighbor'' provision, requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two provisions of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance). Section 110(a)(2)(D)(i)(II) requires 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). This proposed action addresses only prongs 1 and 2 of section 110(a)(2)(D)(i). All other infrastructure SIP elements for North Carolina for the 2008 8-hour ozone NAAQS were addressed in separate rulemakings.[1]

#### *A. State Submittal*

On December 9, 2015, the North Carolina Department of Environmental Quality (NCDEQ) submitted a SIP submittal containing a certification [2] that North Carolina is meeting the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS because, based on available emissions and air quality modeling data, emissions activities within North Carolina will not significantly contribute to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in any other state.[3] NCDEQ reviewed preliminary air quality modeling and data files that EPA disseminated in an August 4, 2015 Notice of Data Availability to assess interstate transport of ozone for the 2008 ozone NAAQS.[4] *See* Notice of

[1] *See* 80 FR 68453 (November 5, 2015), 81 FR 35634 (June 3, 2016), and 81 FR 63107 (September 14, 2016).

[2] This submittal revises a November 2, 2012 submittal addressing other infrastructure SIP elements for North Carolina for the 2008 ozone NAAQS. *See, e.g.,* 80 FR 68453. North Carolina previously withdrew the portions of the November 2, 2012 submittal related to prongs 1 and 2.

[3] On July 13, 2015, EPA published a final rulemaking that finalized findings of failure to submit for 24 states, including North Carolina. *See* 80 FR 39961. The findings of failure to submit established a 2-year deadline for EPA to promulgate a federal implementation plan to address the interstate transport SIP requirements pertaining to significant contribution to nonattainment and interference with maintenance unless, prior to EPA promulgating a FIP, the state submits, and EPA approves, a SIP that meets these requirements. Additional background on the findings of failure to submit—including North Carolina's finding—can be found in the preamble to the final rule making the finding.

[4] NCDEQ refers to this NODA as having been released on July 23, 2015, which was the signature

Continued

Availability of the Environmental Protection Agency's Updated Ozone Transport Modeling Data for the 2008 8-hour Ozone NAAQS, 80 FR 46271 (2015 NODA). NCDEQ disagrees with the 2015 NODA's preliminary projection that North Carolina emissions may impact a projected maintenance receptor in Baltimore County, Maryland. Specifically, NCDEQ asserts that the 2015 NODA modeling analysis ''is associated with inaccurate emissions inventories and deficiencies in the performance of the air quality modeling.'' In its SIP submittal, NCDEQ asserts that the modeled contribution from North Carolina to the maintenance receptor in Baltimore County, Maryland, should accordingly be reduced, and the State should thus not be considered ''linked'' to any downwind state in EPA's preliminary modeling. NCDEQ notes that the State is on track to comply and meet the Cross-State Air Pollution Rule (CSAPR) Phase 1 and 2 annual electric generation unit (EGU) state-wide allowance trading program requirements that reduce annual emissions of $NO_X$ and $SO_2$.[5] In addition, NCDEQ cites information related to emissions trends—such as reductions in ozone precursor emissions and back trajectories, monitored ozone values in North Carolina, SEMAP modeling, and controls on North Carolina coal plants—as further evidence that emissions from the State will not contribute significantly to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in any other state.

*B. EPA's Analysis Related to 110(a)(2)(D)(i)(I) for the 2008 8-Hour Ozone NAAQS*

EPA developed technical information and related analyses to assist states with meeting section 110(a)(2)(D)(i)(I) requirements for the 2008 8-hour ozone NAAQS through SIPs and, as appropriate, to provide backstop federal implementation plans in the event that states failed to submit approvable SIPs. On October 26, 2016, EPA took steps to effectuate this backstop role with respect to emissions in 22 eastern states[6] (not including North Carolina), by finalizing an update to the CSAPR ozone season program that addresses good neighbor obligations for the 2008 ozone NAAQS (''CSAPR Update''). *See* 81 FR 74504. This CSAPR Update establishes statewide $NO_X$ budgets for certain affected EGUs in the May–September ozone season to reduce the interstate transport of ozone pollution in the eastern United States, and thereby help downwind states and communities meet and maintain the 2008 ozone NAAQS. The CSAPR Update includes technical information and related analysis to assist states with meeting the good neighbor requirements of the CAA for the 2008 ozone NAAQS.

The CSAPR Update uses the same framework EPA used when developing the original CSAPR, EPA's transport rule addressing the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter ($PM_{2.5}$) NAAQS. The CSAPR framework establishes the following four-step process to address the requirements of the good neighbor provision: (1) Identify downwind receptors that are expected to have problems attaining or maintaining the NAAQS; (2) determine which upwind states contribute to these identified problems in amounts sufficient to ''link'' them to the downwind air quality problems; (3) identify and quantify, for states linked to downwind air quality problems, upwind emissions that significantly contribute to nonattainment or interfere with maintenance of a NAAQS; and (4) reduce the identified upwind emissions for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind by adopting permanent and enforceable measures in a FIP or SIP. In the CSAPR Update, EPA used this four-step framework to determine each linked upwind state's significant contribution to nonattainment or interference with maintenance of downwind air quality. As explained below, the CSAPR Update's four-step analysis supports the conclusions of NCDEQ's analysis regarding prongs 1 and 2 for the 2008 ozone NAAQS.

In the technical analysis supporting the CSAPR Update, EPA used detailed air quality analyses to determine where projected nonattainment or maintenance areas would be and whether emissions from an eastern state contribute to downwind air quality problems at those projected nonattainment or maintenance receptors. Specifically, EPA determined whether each state's contributing emissions were at or above a specific threshold (*i.e.,* one percent of the ozone NAAQS). If a state's contribution did not exceed the one-percent threshold, the state was not considered ''linked'' to identified downwind nonattainment and maintenance receptors and was therefore not considered to contribute significantly to nonattainment or interfere with maintenance of the standard in those downwind areas. If a state's contribution was equal to or exceeded the one-percent threshold, that state was considered ''linked'' to the downwind nonattainment or maintenance receptor(s) and the state's emissions were further evaluated, taking into account both air quality and cost considerations, to determine whether any emissions reductions might be necessary to address the state's obligation pursuant to CAA section 110(a)(2)(D)(i)(I).

As discussed in the final CSAPR Update, the air quality modeling contained in EPA's technical analysis: (1) Identified locations in the U.S. where EPA anticipates nonattainment or maintenance issues in 2017 for the 2008 8-hour ozone NAAQS (these are identified as nonattainment or maintenance receptors, respectively), and (2) quantified the projected contributions from emissions from upwind states to downwind ozone concentrations at the receptors in 2017. *See* 81 FR 74526. This modeling used the Comprehensive Air Quality Model with Extensions (CAMx version 6.11) to model the 2011 base year, and the 2017 future base case emissions scenarios to identify projected nonattainment and maintenance sites with respect to the 2008 8-hour Ozone NAAQS in 2017. EPA used nationwide state-level ozone source apportionment modeling (the CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis technique) to quantify the contribution of 2017 base case $NO_X$ and VOC emissions from all sources in each state to the 2017 projected receptors. The air quality model runs were performed for a modeling domain that covers the 48 contiguous United States, the District of Columbia, and adjacent portions of Canada and Mexico. 81 FR 74526–527. The updated modeling data released to support the final CSAPR Update are the most up-to-date information EPA has developed to inform the Agency's analysis of upwind state linkages to

date of the NODA's accompanying memo. In addition, the comments received on the NODA were used to inform the CSAPR Update. 81 FR at 74505.

[5] As amended (including the 2016 CSAPR Update), CSAPR requires 27 Eastern states to limit their statewide emissions of $SO_2$ and/or $NO_X$ in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four NAAQS: The 1997 Annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, the 1997 8-hour ozone NAAQS, and the 2008 8-hour ozone NAAQS. CSAPR achieves these reductions through emissions trading programs in two phases: Phase 1 began in January 2015 for the annual programs and May 2015 for the ozone season program; and Phase 2 began in January 2017 for the annual programs and May 2017 for the ozone season program.

[6] For purposes of the CSAPR Update, ''eastern'' states refer to all contiguous states fully east of the Rocky Mountains (thus not including the mountain states of Montana, Wyoming, Colorado, or New Mexico).

downwind air quality problems for the 2008 8-hour ozone NAAQS.[7]

Consistent with the framework established in the original CSAPR rulemaking, EPA's technical analysis in support of the CSAPR Update applied an air quality screening threshold of 0.75 ppb (one percent of the 2008 8-hour ozone NAAQS of 75 ppb) to identify linkages between upwind states and the downwind nonattainment and maintenance receptors. *See* CSAPR Update at 81 FR 74518–519. EPA considered an eastern state ''linked'' to a specific downwind receptor when the state's contributions to that receptor meet or exceed the threshold, in which case EPA analyzed the state's emissions further to determine whether emissions reductions might be required in order to address the downwind air quality problem. An eastern state with contributions to a specific receptor below the screening threshold is not considered linked to that receptor, and EPA thereby concludes that the state does not contribute significantly to nonattainment or interfere with maintenance of the NAAQS at that downwind receptor. EPA determined that one percent was an appropriate threshold to use in this analysis because there were important, even if relatively small, contributions to identified nonattainment and maintenance receptors from multiple upwind states at that threshold. In response to commenters who advocated for thresholds higher or lower than one percent, EPA compiled the contribution modeling results for the CSAPR Update to analyze the impact of different possible thresholds for the eastern United States. EPA's analysis showed that the one-percent threshold captures a high percentage of the total pollution transport affecting downwind states. EPA's analysis further showed that the application of a lower threshold would result in relatively modest increases in the overall percentage of ozone transport pollution captured, while the use of higher thresholds would result in a relatively large reduction in the overall percentage of ozone pollution transport captured relative to the levels captured at one percent at the majority of the receptors. *Id.; see also* Air Quality Modeling Final Rule Technical Support Document for the Final CSAPR Update, Appendix F, Analysis of Contribution Thresholds. This approach is consistent with the use of a one-percent threshold to identify those states ''linked'' to air quality problems with respect to the 1997 8-hour Ozone NAAQS in the original CSAPR rulemaking, wherein EPA noted that there are adverse health impacts associated with ambient ozone even at low levels. *See* 76 FR 48208, 48236–237 (August 8, 2011).

EPA's air quality modeling for the final CSAPR Update projects that North Carolina's emissions are projected to contribute below one percent of the 2008 ozone NAAQS to all receptors. The modeling indicates that North Carolina's largest contribution to any projected downwind nonattainment site in 2017 is 0.51 ppb and North Carolina's largest contribution to any projected downwind maintenance-only site in 2017 is 0.50 ppb.[8] These values are below the one-percent screening threshold of 0.75 ppb, and therefore there are no identified linkages between North Carolina and 2017 downwind projected nonattainment and maintenance sites. As a result of the modeling, EPA did not finalize a federal implementation plan that required $NO_X$ emission reductions from North Carolina in the CSAPR Update because EPA's analysis performed to support the final rule does not indicate that the state is linked to any identified downwind nonattainment or maintenance receptors with respect to the 2008 8-hour ozone NAAQS. Rather, in the CSAPR Update, EPA took final action to determine that emissions from North Carolina will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other states. 81 FR 74506, 74555. Additionally, the CSAPR Update addressed a United States Court of Appeals for the District of Columbia Circuit remand in *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015) with respect to the interstate transport responsibility of North Carolina under the 1997 8-hour ozone NAAQS. EPA removed North Carolina from the CSAPR ozone season trading program beginning in 2017, prior to implementation of the Phase 2 ozone season emission budgets.[9]

## II. What is EPA's analysis of the North Carolina submittal?

As discussed above, North Carolina's submittal certifies that emission activities from the State will not contribute significantly to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in any other state.[10] EPA's updated modeling for the final CSAPR Update is consistent with the State's determination. In the modeling conducted to support the proposed CSAPR Update, North Carolina was linked to one maintenance receptor in Baltimore County, Maryland (site 240053001). *See* 81 FR 74537–538. However, in developing the final CSAPR Update—after considering comments from North Carolina and other stakeholders in developing a revised modeling analysis—EPA no longer projects that site 240053001 in Baltimore County, Maryland, will be a maintenance receptor because the site's 2017 average and maximum design values are projected to be below the NAAQS. *Id.* In addition, North Carolina is not linked to any other nonattainment or maintenance receptor, based on the final rule modeling. *Id.* Because North Carolina is not linked to any downwind nonattainment or maintenance receptors, EPA is proposing to approve North Carolina's SIP as meeting the requirements of prongs 1 and 2 for the 2008 8-hour ozone NAAQS.

## III. Proposed Action

EPA is proposing to approve North Carolina's December 9, 2015 SIP submission demonstrating that North Carolina's SIP is sufficient to address the CAA requirements of prongs 1 and 2 under section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS. In the CSAPR Update, EPA has already taken a final action to determine that emissions from North Carolina will not significantly contribute to nonattainment or interfere with maintenance of the 2008 8-hour ozone NAAQS in downwind states. Accordingly, EPA proposes to find that North Carolina's SIP is consistent with this final determination. EPA requests comment on this proposed approval of North Carolina's SIP.[11]

## IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission

[7] *See* ''Air Quality Modeling Final Rule Technical Support Document for the Final CSAPR Update'' (CSAPR Update Modeling TSD), available at *https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0500-0575.*

[8] CSAPR Update Modeling TSD at Table 4–2.

[9] 81 FR 74523–524.

[10] EPA notes that North Carolina submitted similar comments during the CSAPR Update rulemaking, including attaching the December 9, 2015 Submittal. *See* Comments by the North Carolina Division of Air Quality, available at *https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0500-0273.* EPA accepted some of the comments provided by North Carolina, including those related to emissions projections. *See* Cross State Air Pollution Update Rule—Response to Comment, available at *https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0500-0572.*

[11] EPA is not reopening for comment final determinations made in the context of the CSAPR Update based on the modeling conducted to support that rulemaking.

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 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).

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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 28, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017–16826 Filed 8–9–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R03–OAR–2017–0204; FRL–9965–74-Region 3]**

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to Allegheny County Regulations for Open Burning

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve the state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision pertains to Allegheny County's portion of the Pennsylvania SIP for the purpose of updating the regulation restricting open burning with revised definitions and new restrictions and with recodified provisions. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. If no adverse comments are received in response to this action, 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. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by September 11, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–OAR–2017–0204 at *http://www.regulations.gov,* or via email to *stahl.cynthia@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Gregory A. Becoat, (215) 814–2036, or by email at *becoat.gregory@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. A detailed description of the Commonwealth's SIP submittal for the revision of Allegheny County's open burning regulations and EPA's evaluation of that SIP is included in a technical support document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document and is also available electronically within the Docket for this rulemaking action at *www.regulations.gov.*

Dated: July 24, 2017.

**Cecil Rodrigues,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2017–16807 Filed 8–9–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2017–0356; FRL–9966–01–Region 4]**

## Air Plan Approval; KY; Miscellaneous Source Specific Revisions for Jefferson County

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), on March 21, 2011, October 29, 2013, October 28, 2016, and March 24, 2017. The proposed revisions were submitted by KDAQ on behalf of the Louisville Metro Air Pollution Control District (District), which has jurisdiction over Jefferson County, Kentucky. The revisions include changes to Jefferson County Regulations regarding Reasonably Available Control Technology (RACT) for two major sources of nitrogen oxides ($NO_X$) and the removal of a volatile organic compounds (VOC) bubble rule.

**DATES:** Comments must be received on or before September 11, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2017–0356 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:** Joel Huey, 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 or Andres Febres, 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. Huey can be reached by telephone at (404) 562–9104 or via electronic mail at *huey.joel@epa.gov.* Mr. Febres can be reached by telephone at (404) 562–8966 or via electronic mail at *febres-martinez.andres@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. What action is EPA proposing?

EPA is proposing to approve changes to the Jefferson County portion of the Kentucky SIP that were received by EPA on March 21, 2011. Approval of Kentucky's March 21, 2011, submission would: (1) Make several changes to Regulation 6.29, *Standard of Performance for Graphic Arts Facilities Using Rotogravure or Flexographic Printing;* (2) remove Regulation 7.57, *Standard of Performance for New Graphic Arts Facilities Using Rotogravure or Flexographic Printing;* (3) incorporate Amendment 4 to the Louisville Medical Steam Plant $NO_X$ RACT Board Order into the Jefferson County portion of the Kentucky SIP; (4) incorporate Amendment 3 to the Texas Gas Transmission $NO_X$ RACT Board Order into the Jefferson County portion of the Kentucky SIP; and (5) remove a VOC bubble rule for the General Electric plant in Louisville, Kentucky. This action also proposes to approve three SIP revisions received by EPA on October 29, 2013, October 28, 2016, and March 24, 2017, which modify the March 21, 2011, submittal as discussed below.

### II. What is the background and EPA's analysis for the proposed actions?

On March 21, 2011, the Louisville Metro Air Pollution Control District,[1] through KDAQ, submitted a SIP revision with five separate parts. The following paragraphs discuss the background and EPA's assessment of each part of that submittal as well as the three subsequent submittals that revised the third and fourth parts (the $NO_X$ RACT Board Orders for the Louisville Medical Steam Plant and the Texas Gas Transmission facility, respectively).

*(1) Regulation 6.29, Standard of Performance for Graphic Arts Facilities Using Rotogravure or Flexographic Printing*

Jefferson County Air Quality Regulation 6.29 applies to each printing line for packaging rotogravure, publication rotogravure, specialty rotogravure, and/or flexographic printing that commenced operation before February 4, 1981. Kentucky's March 21, 2011, revision adds a new Section 3.2, which specifies that compliance with the VOC limits shall be based upon materials used during a calendar-day averaging period, but that the ''District may specifically authorize compliance to be based upon a longer averaging period that shall not exceed one calendar month.'' Although the existing SIP-approved rule does not specify the averaging time for compliance determination, EPA understands it to be 24 hours (based upon the daily recordkeeping requirement of Section 7.1). EPA believes that the proposed averaging times for compliance determination for up to one month would not result in any change in pollutant emissions because such allowances would be authorized only for facilities that generally use materials having little variation in VOC content. In addition, EPA notes that the approach of compliance determination based on averaging periods of up to one month is consistent with EPA's federal rules regulating this industry, including the New Source Performance Standards (NSPS) for the Graphic Arts Industry (Publication Rotogravure Printing) at 40 CFR part 60, subpart QQ, and the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for the Printing and Publishing Industry at 40 CFR part 63, subpart KK. *See, e.g.,* 40 CFR 60.434(a)(1) and 40 CFR 63.825(b)(2).

The March 21, 2011, revision also amends Regulation 6.29 to allow material usage recordkeeping requirements to reflect the approved averaging period rather than the daily recordkeeping requirement of the existing SIP-approved rule. The inks and coatings used during a longer time period would be prorated to the appropriate compliance period based upon a measured parameter, such as linear feet of substrate printed. In addition, while the current SIP-

[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, we refer throughout this notice to regulations contained in the Jefferson County portion of the Kentucky SIP as the ''Jefferson County'' regulations.

approved rule requires the owner or operator to keep records of materials used for the most recent two-year period, the revised rule would require that records be maintained for the most recent five-year period (*revised* Section 6.1).

Regulation 6.29 has also been revised such that it applies to all rotogravure and flexographic printing lines operating within the District. Section 1 (*Applicability*) of the current SIP-approved rule provides that the regulation applies to each affected facility that commenced operation before February 4, 1981. ''Affected facility'' is defined in the current SIP-approved rule as ''a printing line for packaging rotogravure, publication rotogravure, specialty rotogravure, or flexographic printing.'' Under the revised rule, the *Applicability* section is moved to Section 2 and provides that the rule applies to each printing line for packaging rotogravure, publication rotogravure, specialty rotogravure, or flexographic printing (regardless of commencement date [2]) and that new or modified affected facilities shall comply with all standards of the rule upon commencing operation.

Another change to Regulation 6.29 is that Section 5, ''*Exemption,*'' has been deleted, and the ink and coating VOC content specifications of that section have been relocated to Section 3, *Standard for Volatile Organic Compounds,* such that they are recognized as material usage limits rather than exemptions to compliance requirements. Finally, several non-substantive language changes have been made to Regulation 6.29 for consistency with other current Jefferson County regulations. EPA has evaluated these requested changes believes they will not interfere with the Louisville Area's ability to attain and maintain the national ambient air quality standards (NAAQS). Therefore, EPA proposes to approve these changes to Regulation 6.29.

*(2) Regulation 7.57, Standard of Performance for New Graphic Arts Facilities Using Rotogravure or Flexographic Printing*

Regulation 7.57 applies to the same type of printing lines as Regulation 6.29, but it applies to ''new'' units, defined as those that commenced operation on or after February 4, 1981. Kentucky's March 21, 2011, submittal proposes to remove Regulation 7.57 from the SIP. As noted above, Regulation 6.29 has been revised such that it applies to all rotogravure and flexographic printing lines, regardless of their date of operational commencement. EPA has reviewed the revised Regulation 6.29 and has preliminarily determined that it regulates the sources with the same stringency as Regulation 7.57. Therefore, because Regulation 6.29 as revised will apply to all subject printing lines within the District's jurisdiction, Regulation 7.57 would be duplicative and unnecessary. EPA proposes to approve the removal of Regulation 7.57 from the SIP.

*(3) Louisville Medical Center Steam Plant—$NO_X$ RACT Board Order*

Jefferson County Air Quality Regulation 6.42 (Reasonably Available Control Technology Requirements for Major Volatile Organic Compound- and Nitrogen Oxides-Emitting Facilities) requires the establishment and implementation of RACT for certain affected facilities that are located at a major stationary source for $NO_X$. Section 4.4 of Regulation 6.42 requires that each determination of RACT approved by the District be submitted to EPA as a site-specific revision of the Kentucky SIP. The Louisville Medical Center Steam Plant (Medical Center) operates six boilers that provide heat to buildings associated with the downtown hospital medical complex and is subject to a title V operating permit issued by the District. The initial Medical Center $NO_X$ RACT Board Order was approved by the Air Pollution Control Board of Jefferson County (APC Board-JC) on November 8, 1999, and submitted to EPA by KDAQ on November 12, 1999, as a site-specific revision of the Kentucky SIP. Amendment 1 to the Medical Center Board Order, issued on February 21, 2001, was submitted to EPA and approved into the SIP on October 23, 2001. *See* 66 FR 53685.

The March 21, 2011, submittal includes the District's second amendment to the Medical Center Board Order and requests withdrawal of Amendment 1. However, on October 29, 2013, the District submitted a third amendment to the Medical Center Board Order and requested withdrawal of the second one, and on April 4, 2017, the District submitted a fourth amendment to the Medical Center Board Order and requested withdrawal of the third one. No federal approval action has been taken on the second or third amendments to the Medical Center Board Order.

On March 19, 2008, the APC–JC Board adopted Amendment 2 to the Medical Center Board Order. Amendment 2 changed the fuel for Boiler #1 from coal to natural gas, removed the 10 percent ''seasonal capacity factor'' and added a 0.10 pound per million British thermal unit (lb/MMBtu) heat input limit for that boiler. On August 21, 2013, the Louisville Metro Air Pollution Control Board (LMAPC Board; formerly, the APC–JC Board) adopted Amendment 3 to the Medical Center Board Order. Amendment 3 removed the 10 percent seasonal capacity factor for Boiler #3 (since the coal stoker was removed and replaced with a low $NO_X$ burner) and added a 0.20 lb/MMBtu heat input limit for that boiler.

On January 18, 2017, the LMAPC Board adopted Amendment 4 to the Medical Center Board Order. Amendment 4 replaces the emission rate limits for Boiler #1 and Boiler #3 (0.10 and 0.20 lb/MMBtu, respectively) with new limits on total $NO_X$ emissions (a 32.8 tons annual $NO_X$ limit and a 4.0 tons ozone season $NO_X$ limit for both boilers). As shown in the District's supporting documentation included in the submittal, the new ozone season $NO_X$ limit of 4.0 tons is more conservative than the potential to emit of 4.04 tons during ozone season (based on the previous 10 percent seasonal capacity factor), and the new annual $NO_X$ limit of 32.8 tons is the same as the potential to emit of 32.8 tons per year (based on the previous 10 percent seasonal capacity factor). Thus, the Medical Center Board Order changes between Amendment 1 (the version currently approved in the SIP) and Amendment 4 for Boilers #1 and #3 result in a potential emissions reduction of 0.04 tons of $NO_X$ per boiler during the ozone season. Other changes included in Amendment 4 are clarification of the averaging period for the $NO_X$ emission limits as a 30-day rolling average; the addition of annual performance testing and record of non-routine boiler maintenance activities for Boilers #1 and #3; elimination of an obsolete requirement for the Medical Center to submit a report of daily activities and procedures by April 1, 2001; and elimination of obsolete requirements related to compliance and recordkeeping on seasonal capacity factors, which originally applied only to Boilers #1 and #3 but no longer apply.

EPA preliminarily agrees with the District that the Amendment 4 to Medical Center Board Order achieves at least the same level of $NO_X$ emission reductions as the previously approved Amendment 1. Therefore, EPA proposes to approve the April 4, 2017, revision as Amendment 4 to the Medical Center Board Order.

[2] New printing lines of these types are currently regulated pursuant to Regulation 7.57, the proposed removal of which is discussed in Section II.(2) below.

*(4) Texas Gas Transmission—$NO_X$ RACT Board Order*

As discussed above, Jefferson County Air Quality Regulation 6.42 requires the establishment and implementation of RACT for certain affected facilities that are located at a major stationary source for $NO_X$. The initial Texas Gas Transmission (Texas Gas) $NO_X$ RACT Board Order was approved by the APC–JC Board on November 8, 1999, and submitted to EPA by KDAQ on November 12, 1999, as a site-specific revision of the Kentucky SIP. Amendment 1 to the Texas Gas Board Order, issued on December 20, 2000, was submitted to EPA and approved into the SIP on October 23, 2001. *See* 66 FR 53685.

The March 21, 2011, submittal includes the District's second amendment to the Texas Gas Board Order and requests withdrawal of Amendment 1. However, on October 28, 2016, the District submitted a third amendment to the Texas Gas Board Order and requested withdrawal of second one. No federal approval action has been taken on the second amendment to the Texas Gas Board Order.

On June 17, 2009, the APC–JC Board adopted Amendment 2 to the Texas Gas Board Order. Amendment 2 removed the compressor turbine T–1 emission requirements due to the removal of the unit from the facility in 2005, added emission requirements for new compressor turbine E–22, and added a requirement that combustion performance modifications performed on the nine reciprocating internal combustion engine compressors remain in place to ensure $NO_X$ emission limits are achieved.

On May 18, 2016, the LMAPC Board adopted Amendment 3 to the Texas Gas Board Order. Amendment 3 introduces the emission limits and work practice standards for engine E28 to bring it up to date with EPA's NESHAP for Stationary Reciprocating Internal Combustion Engines (40 CFR 63, subpart ZZZZ) as revised in 2013 (*see* 78 FR 6674); modifies the emission testing schedule for Compressor Engines El–E9 and Turbine E22; and more clearly specifies the emission limits and testing, recordkeeping, and reporting requirements for each of the covered sources.

Regarding the performance testing schedule for Compressor Engines El–E6, Amendment 3 requires the same 6-year testing period for each engine as the approved Amendment 1. For Compressor Engines E7–E9, Amendment 3 also requires a 6-year testing period for each engine, although these engines are required to be tested every three years under the approved Amendment 1. EPA believes the reduced testing frequency for Compressor Engines E7–E9 is appropriate because these units are of the same type as Compressor Engines E1–E6, which have a six-year testing requirement, and the revised schedule requires performance testing of all nine of the facility's compressor engines within each 6-year period. For Turbine E22, the performance testing schedule is reduced from every two years to every six years. EPA believes this reduced testing frequency is appropriate because new condition 7 of Amendment 3 requires the owner or operator to continuously monitor and record appropriate parameters to demonstrate that the unit is operating in low-$NO_X$ mode, as required under 40 CFR 60.334(f)(2), thus minimizing $NO_X$ emissions. Further, if any of these units, E1–E9 and E22, fails to demonstrate compliance with standards at any time, a new provision under condition 15 of Amendment 3 requires that the unit be taken out of service until maintenance has been performed and the unit has been re-tested and has demonstrated compliance. In addition, the LMAPC Board notes that units E1–E9 and E22 have shown historical emission levels are significantly less than the regulatory limits.

EPA preliminarily agrees with the District that Amendment 3 to the Texas Gas Board Order achieves the same level of $NO_X$ emission reductions as the previously approved Amendment 1. Therefore, EPA proposes to approve the October 28, 2016, revision as Amendment 3 to the Texas Gas Board Order.

*(5) General Electric—Remove the Bubble Action Approved on January 12, 1982*

In 1982, EPA approved a revision to the Kentucky SIP that allowed an alternative emission reduction plan in the form of a ''bubble rule'' for the General Electric plant in Louisville, Kentucky. *See* 47 FR 1291 (January 12, 1982). The sources affected by that SIP revision were the Koch Plastisol Prime System and the Koch Wire Rack Prime System. The revision allowed the plant to achieve compliance with Kentucky and Jefferson County VOC regulations for existing large appliance surface coating operations. Kentucky's March 21, 2011, submittal requests removal of this bubble rule for the General Electric plant because the subject equipment has been disabled and the associated permits have been voided for the facility. EPA proposes to approve the removal of the ''Bubble action at General Electric in Louisville'' from the Kentucky SIP.

## III. Incorporation by Reference

In this rule, EPA is proposing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing the incorporation by reference of Jefferson County's Regulation 6.29, *Standard of Performance for Graphic Arts Facilities Using Rotogravure or Flexographic Printing, effective August 21, 2013;* ''Board Order Texas Gas Transmission'' $NO_X$ RACT Plan, effective May 18, 2016; and ''Board Order Louisville Medical Center Steam Plant'' $NO_X$ RACT Plan, effective January 18, 2017. 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 Actions

EPA is proposing to approve changes to the Jefferson County Air Quality Regulations portion of the Kentucky SIP. The requested revisions were provided by KDAQ to EPA on March 21, 2011, October 29, 2013, October 28, 2016, and March 24, 2017. The changes proposed for approval would: (1) Modify Regulation 6.29, (2) remove Regulation 7.57, (3) incorporate Amendment 4 to the $NO_X$ RACT Board Order for the Louisville Medical Center Steam Plant into the Jefferson County portion of the Kentucky SIP, (4) incorporate Amendment 3 to $NO_X$ RACT Board Order for the Texas Gas Transmission facility into the Kentucky SIP, and (5) remove the VOC bubble rule for the General Electric plant in Louisville, Kentucky. EPA believes these changes are consistent with the requirements of the CAA.

## 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 (Public Law 104–4);

• does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

**List of Subjects in 40 CFR Part 52**

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

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

Dated: July 28, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017–16818 Filed 8–9–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2014–0507; FRL–9965–82-Region 4]**

### Air Plan Approval; Florida: Infrastructure Requirements for the 2010 $NO_2$ NAAQS

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a portion of the State Implementation Plan (SIP) submission, submitted by the State of Florida, through the Florida Department of Environmental Protection, on January 22, 2013, addressing the Clean Air Act (CAA or Act) infrastructure requirements for the 2010 1-hour nitrogen dioxide ($NO_2$) 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 submission.'' Specifically, EPA is approving the portion of Florida's January 22, 2013, SIP submission addressing element B of the infrastructure requirements, which relates to monitoring requirements. EPA is proposing that Florida's infrastructure SIP submission, provided to EPA on January 22, 2013, satisfies the infrastructure requirements related to monitoring for the 2010 1-hour $NO_2$ NAAQS.

**DATES:** Written comments must be received on or before September 11, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2017–0507 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:** Andres Febres of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Febres can be reached via telephone at (404) 562–8966 or via electronic mail at *febres-martinez.andres@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this issue of the **Federal Register**, EPA is approving this portion of Florida's January 22, 2013, SIP revision addressing the section 110(a)(2)(B) SIP requirements for the 2010 1-hour $NO_2$ NAAQS. 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 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. 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: July 26, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017–16808 Filed 8–9–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2016–0547; FRL–9965–84–Region 4]**

### Air Plan Approval; SC: Revisions to New Source Review Rules

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve changes to the South Carolina State Implementation Plan (SIP) to update new source review regulations. EPA is proposing to approve portions of SIP revisions submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control on the following dates: July 18, 2011, April 10, 2014, August 12, 2015, and January 20, 2016. These actions are being proposed pursuant to the Clean Air Act.

**DATES:** Written comments must be received on or before September 11, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2016–0547 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 State's implementation plan 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: July 26, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017–16811 Filed 8–9–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2017–0105; FRL–9965–98–Region 4]**

## Air Plan Approval; Florida; Permitting Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of five State Implementation Plan (SIP) revisions submitted by the State of Florida, Department of Environmental Protection (FDEP), through the Florida Division of Air Resource Management, on June 23, 1999, July 1, 2011, December 12, 2011, February 27, 2013, and February 1, 2017. Florida's SIP revisions recodify, clarify, and reorganize the State's non-title V air permitting and compliance assurance program regulations consistent with flexibility provided under the Clean Air Act (CAA or Act) and EPA's rules which address new source preconstruction permitting. EPA is proposing to approve Florida's SIP revisions on the basis that they are consistent with the CAA and EPA's requirements for permitting air emission sources.

**DATES:** Comments must be received on or before September 11, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2017–0105 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:** Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached by phone at (404) 562–9031 and via electronic mail at *notarianni.michele@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

FDEP submitted to EPA for adoption into the Florida SIP five revisions, three of which were submitted on June 23, 1999, July 1, 2011, and February 27, 2013, as part of the State's efforts to clarify and streamline Florida's non-title V air permitting and compliance assurance program and to address EPA's minor source preconstruction requirements under 40 CFR 51.160–51.164.[1] In addition, on December 12, 2011, FDEP submitted a SIP revision to add a definition of ''North American Industry Classification System,'' or ''NAICS,'' to the Florida SIP.[2] On February 1, 2017, FDEP submitted a SIP revision to address requirements for emissions monitoring at stationary sources. The 1999 SIP submission includes amendments to 16 rule sections in the Florida Administrative Code (F.A.C.) that were adopted by the State between 1997 and 1999 to clarify and streamline FDEP's permitting

[1] The June 23, 1999, July 1, 2011, February 27, 2013, and February 1, 2017, Florida SIP submissions are also referred to as the ''1999 SIP submission,'' ''2011 SIP submission,'' ''2013 SIP submission,'' and the ''2017 SIP submission,'' respectively, in this action.

[2] The December 12, 2011, Florida SIP submission is also referred to as the ''NAICS SIP submission'' in this action.

process. The 2011 SIP submission includes clarifying and corrective amendments to 11 F.A.C. rule sections affecting FDEP's permitting regulations that were adopted by the State between 1997 and 2010. In its 2013 SIP submission, FDEP updates the 1999 and 2011 SIP submissions by either resubmitting or withdrawing 12 of the 16 F.A.C. rule sections originally included in those submittals, and providing updated versions of the remaining four rule sections for incorporation into the Florida SIP. In this action, EPA is proposing to act on the relevant regulations from these five SIP submissions as summarized in section III.

## II. Overview of Florida's Rule Revisions

### *A. June 23, 1999, SIP Revision*

In Florida's June 23, 1999, SIP revision, FDEP submitted multiple amendments to four F.A.C. rule chapters—Chapters 62–210, 62–212, 62–296, and 62–297—as part of the State's work to clarify and streamline Florida's non-title V air permitting and compliance assurance program. The amendments to these four F.A.C. rule chapters affecting 16 rule sections were adopted by Florida between 1997 and 1999. FDEP requested adoption of the following 16 F.A.C. rule sections: 62–210.200, 62–210.220,[3] 62–210.300, 62–210.350,[4] 62–210.360, 62–212.400, 62–296.401,[5] 62–296.405, 62–296.406, 62–296.414, 62–296.570, 62–297.310, 62–297.401, 62–297.440, 62–297.450, 62–297.520.[6]

### *B. July 1, 2011, SIP Revision*

In Florida's July 1, 2011, SIP revision, the State submitted amendments to 11 F.A.C. rule sections. Specifically, the State proposed to clarify, update, and revise certain requests from its June 23, 1999, SIP revision. The State also provided corrective and clarifying amendments to FDEP's new source review (NSR) permitting and stationary source control strategy programs, as well as to other miscellaneous provisions. Specifically, FDEP requested adoption of amendments to F.A.C. rule sections: 62–210.200,[7] 62–210.220, 62–212.400,[8] 62–212.720,[9] 62–296.100, 62–296.401,[10] 62–296.412, 62–296.414, 62–296.418, 62–296.500, and 62–296.508. Of these 11 rule sections, FDEP resubmitted four F.A.C. rule sections (62–210.200, 62–210.220, 62–296.401, and 62–296.414) from its June 23, 1999, submission, and requested amendments for three of the four rule sections[11] into the Florida SIP.

Also in this revision, FDEP withdrew its request for EPA to approve amendments to six F.A.C. rule sections submitted in its June 23, 1999, SIP revision: 62–210.360, 62–212.400, 62–296.570, 62–297.401, 62–297.440, and 62–297.520. Additionally, FDEP reiterated its original June 23, 1999, request to approve four F.A.C. rule sections, all with state effective dates of March 2, 1999, from its 1999 SIP submission: 62–296.405, 62–296.406, 62–297.310, and 62–297.450.

### *C. December 12, 2011, SIP Revision*

In Florida's December 12, 2011, SIP revision, the State submitted amendments to two of its rules—62–210.200 and 62–212.400, F.A.C.—which included the addition of one new definition, ''North American Industry Classification System,'' or ''NAICS,'' to rule 62–210.200, F.A.C.[12]

### *D. February 27, 2013, SIP Revision*

In Florida's February 27, 2013, SIP revision, the State submitted amendments to four F.A.C. rule sections: 62–210.200, 62–210.300,[13] 62–210.310, and 62–210.350.[14] Also in its 2013 SIP revision, the State withdrew its request for approval of earlier versions of two rules, 62–210.300 and 62–210.350, F.A.C., submitted as part of its June 23, 1999, SIP revision. Additionally, FDEP requested removal of 62–210.920, F.A.C., from the Florida SIP and affirmed its request in the State's 2011 SIP submission to withdraw submitted amendments to the following five F.A.C. rule sections: 62–210.360, 62–296.570, 62–297.401, 62–297.440, and 62–297.520.

### *E. February 1, 2017, SIP Revision*

In Florida's February 1, 2017, SIP revision, the State submitted amendments to three of its rules to address requirements for emissions monitoring at stationary sources—62–297.310, 62–297.440, and 62–297.450, F.A.C.—and proposed to remove 62–297.401, F.A.C. In the submitted amendments, FDEP made several clarifications to rule 62–297.310, F.A.C.[15]

A description of these collective changes to each rule section from Florida's 1999, 2011, 2013, and 2017 SIP submissions and the State's NAICS SIP submission summarized above and EPA's analysis of the proposed changes follows.

## III. What is EPA's analysis of Florida's rule revisions?

### *A. List of Rule Amendments Proposed for Incorporation Into the Florida SIP*

Described below are the Florida rules and/or subsections of those rules which EPA is proposing to incorporate into the Florida SIP.

1. Rule 62–210.200, F.A.C., ''Definitions''

In its July 1, 2011, SIP submission, FDEP requested approval of changes to 15 definitions in Rule 62–210.200, F.A.C., with a state effective date of March 11, 2010. EPA will act on the July 1, 2011, SIP submission rule section changes—which were resubmitted in the State's 2013 submission—in a separate rulemaking. Thus, EPA is not proposing action on these 15 definitions contained in the 2011 SIP submission and also resubmitted in the 2013 SIP submission today.

In its December 12, 2011, SIP submission, Florida added a new definition of ''North American Industry Classification System,'' or ''NAICS.''

[3] EPA is considering action separately on the 62–210.220, F.A.C., ''Small Business Assistance Program,'' provision.

[4] In its February 27, 2013, submission, Florida withdrew the proposed changes to 62–210.300, F.A.C. and 62–210.350, F.A.C. included in the June 23, 1999, submission.

[5] In a supplemental letter dated June 28, 2017, Florida withdrew Rule 62–296.401, F.A.C., state effective November 13, 1997, and January 10, 2007, for proposed adoption into the Florida SIP, including its resubmissions of Florida's July 1, 2011, and February 27, 2013, submissions.

[6] FDEP included two additional rules in its 1999 SIP submittal, 62–296.417 and 62–210.920, F.A.C., for state adoption only.

[7] In a supplemental letter dated June 28, 2017, Florida withdrew five definitions from Rule 62–210.200, F.A.C., for proposed adoption into the Florida SIP.

[8] EPA approved revisions to Rule 62–212.400, ''Prevention of Significant Deterioration,'' contained in the July 1, 2011, submission into Florida's SIP on June 15, 2012 (77 FR 35862) and thus, EPA is not acting on this regulation in this action.

[9] EPA is acting on revisions to Rule 62–212.720, ''Actuals Plantwide Applicability Limits (PALs),'' in a separate action.

[10] In a supplemental letter dated June 28, 2017, Florida withdrew its request for EPA to approve into the State's SIP Rule 62–296.401, F.A.C., as provided in its July 1, 2011, submission.

[11] Rules 62–210.200, 62–296.401, and 62–296.414, F.A.C., were the three Florida rule sections resubmitted with subsequent amendments.

[12] With the exception of the definition, ''North American Industry Classification System,'' or ''NAICS,'' in rule 62–210.200, F.A.C., EPA is taking no action today on the remaining rule changes in Florida's December 12, 2011, SIP submission.

[13] EPA is taking no action today on 62–210.300, F.A.C. ''Permits Required.''

[14] In a supplemental letter dated June 28, 2017, Florida withdrew its request for EPA to approve the addition of 62–210.350(1)(c), F.A.C. (effective February 11, 1999) into the Florida SIP. Additionally, EPA is taking no action today on 62–210.350(4)(a)2 and 62–210.350(4)(b), F.A.C. in Florida's February 27, 2013, SIP submission.

[15] With the exception of the revisions pertaining to 62–297.310, F.A.C., EPA is taking no action today on the remaining rule changes in Florida's February 1, 2017, SIP submission.

EPA proposes to adopt this definition (state effective on December 4, 2011) into the Florida SIP as renumbered effective March 28, 2012, on the basis that the new definition added is for administrative purposes to explain terms included in other Florida rules that have previously been approved into the SIP.

In its 2013 submission, Florida requested approval of changes to Rule 62–210.200, F.A.C., as amended up to state effective date March 28, 2012, to include four sets of amendments adopted by the State between 2005 and 2012.[16] These rule changes include: Renumbering definitions, adding 21 new definitions, revising three existing definitions, and repealing two definitions.[17] The purpose of adopting the revised definitions is to improve clarity, and to support language in other F.A.C. rule sections. All definitions originally submitted for approval in its 1999 SIP submission have been resubmitted in the 2011 and 2013 SIP submissions. EPA proposes to approve these revisions into the Florida SIP because they are administrative and/or provide non-substantive clarification of other provisions already approved into the State's SIP.

2. Rule 62–210.310, F.A.C., ''Air General Permits''

In its 2013 submission, Florida requested approval into the SIP changes to Rule 62–210.310, F.A.C., ''Air General Permits'' as amended up to state effective date June 29, 2011, which include three sets of amendments adopted by the State between 2007 and 2011. This rule section, as amended, provides 17 air general permits, or ''permits-by-rule,'' by which owners or operators of air emission sources can construct and operate their facilities without going through the individual permitting process, so long as certain requirements are satisfied.[18] Six of the air general permits (at subsection 62–210.310(4), F.A.C.) impose operating restrictions that allow facilities to avoid major source permitting. Eleven of the air general permits (at subsection 62–210.310(5), F.A.C.) allow certain facilities to avoid the permitting process for minor source air construction and non-title V air operation permits because these sources utilize pre-manufactured equipment and thus, do not need the preconstruction engineering review incorporated into FDEP's individual source permit process.

EPA proposes to approve the changes provided in Florida's 2013 SIP submission to Rule 62–210.310, F.A.C., with state effective dates of January 10, 2007, October 12, 2008, and June 29, 2011, into Florida's SIP on the basis that these changes are intended to further clarify, organize, and streamline Florida's permit regulations. Moreover, these changes are not inconsistent with federal law, and will not interfere with any applicable requirement concerning attainment of the NAAQS, reasonable further progress, or any other requirement of the CAA.

3. Rule 62–210.350, F.A.C., ''Public Notice and Comment''

In its 2013 submission, FDEP requested approval into the SIP of revisions to Rule 62–210.350, F.A.C., ''Public Notice and Comment'' as amended up to state effective date October 12, 2008, to incorporate three sets of amendments adopted by the State between 1997 and 2008. In the submission, Florida withdrew its request to adopt an earlier version of Rule 62–210.350, F.A.C., which was included in its 1999 submission.[19] Rule 62–210.350, F.A.C., establishes public notice requirements for both major and minor source air construction permits, State air operation permits, federally enforceable state operation permits, and title V air operation permits. FDEP amended this rule section to update references to FDEP's administrative procedures rule at 62–110.106, F.A.C., to allow sources to combine public notice for construction and operation permits, and clarify that if these public notices are combined, sources must comply with the requirements for both notices, and to make other non-substantive clarifying changes.

EPA proposes to approve portions of the revisions provided in Florida's 2013 SIP submission to Rule 62–210.350, F.A.C. (with state effective dates of November 13, 1997, February 11, 1999, October 12, 2008) with the exception of three F.A.C. rule subsections: 62–210.350(4)(a)2, 62–210.350(4)(b), and the withdrawn revision at 62–210.350(1)(c). These changes are intended to clarify, organize, and streamline Florida's permit regulations. Moreover, these changes are not inconsistent with federal law, and will not interfere with any applicable requirement concerning attainment of the NAAQS, reasonable further progress, or any other requirement of the CAA.

4. Rule 62–296.100, F.A.C., ''Purpose and Scope''

In its July 1, 2011 submission, FDEP submitted an amendment to Rule 62–296.100, F.A.C., which was state-effective October 6, 2008. The amendment separated the rule language into four subsections for improved readability. The amendment also added language to clarify that a facility or emissions unit subject to any new source performance standard or national emission standard for hazardous air pollutants adopted by reference at Rule 62–204.800, F.A.C., must also comply with any emission limitations that may apply in Chapter 62–296, F.A.C. EPA proposes to approve these non-substantive changes to Rule 62–296.100, F.A.C., provided in Florida's 2011 SIP submission.

5. Rule 62–296.405, F.A.C., ''Fossil Fuel Steam Generators With More Than 250 Million Btu Per Hour Heat Input''

In its 1999 SIP submission, FDEP submitted changes to Rule 62–296.405, F.A.C., with a state effective date of March 2, 1999, which clarified the test method procedure for visible emissions that must be used in lieu of FDEP's Method 9 testing incorporated in Chapter 62–297, F.A.C. In addition, the submission clarifies which sources may use fuel sampling and analysis as an alternative test method for sulfur dioxide emissions instead of EPA Methods 6, 6A, 6B or 6C. The revisions also provide the procedures to obtain approval from the State for this alternative test method. The amendments also clarify other wording in a few parts of this rule section. EPA proposes to approve the changes provided in Florida's 1999 SIP submission to Rule 62–296.405, F.A.C. on the basis that these changes are intended to further clarify, organize, and streamline Florida's permit regulations. Moreover, these changes are not inconsistent with federal law, and will not interfere with any applicable requirement concerning attainment of the NAAQS, reasonable further progress, or any other requirement of the CAA.

[16] In addition, Florida withdrew its request to adopt an earlier version of Rule 62–210.200, F.A.C., submitted for approval in its 1999 submission.

[17] See Florida's 2013 submission, pp.7–10, for a list of the 26 definitions and FDEP's explanation for the changes.

[18] See Florida's 2013 submission, pp.20–24, for a list of all air general permits in subsections 62–210.310(4), F.A.C. and 62–210.310(5), F.A.C. adopted by Florida as of June 29, 2011.

[19] In a supplemental letter dated June 28, 2017, Florida also withdrew from the 1999 and 2013 SIP submissions the addition of 62–210.350(1)(c) state effective February 11, 1999. Florida's June 28, 2017, letter is included in the docket for this action.

6. Rule 62–296.406, F.A.C., ''Fossil Fuel Steam Generators with Less Than 250 Million Btu per Hour Heat Input, New and Existing Emissions Units''

In its 1999 SIP submission, FDEP submitted revisions to Rule 62–296.406, F.A.C., with a state effective date of March 2, 1999, to add language to clarify that all emissions standards for new and existing small fossil fuel steam generators do not apply to units that are determined to be insignificant under Florida's title V regulations at 62–213.300(2)(a)1., F.A.C., and 62–213.430(6)(b), F.A.C.[20] As relevant here, a generator is considered insignificant if two requirements are satisfied: First, the emissions unit will neither emit nor have the potential to emit five tons per year or more of particulate matter or sulfur dioxide; and second, the emissions unit will not cause the facility as a whole to emit nor have the potential to emit 100 tons per year or more of either of those pollutants. EPA proposes to approve the revisions provided in Florida's 1999 SIP submission to Rule 62–296.406, F.A.C. on the basis that these changes are intended to further clarify, organize, and streamline Florida's permit regulations, are not inconsistent with federal law, and will not interfere with any applicable requirement concerning attainment of the NAAQS, reasonable further progress, or any other requirement of the CAA.

7. Rule 62–296.412, F.A.C., ''Dry Cleaning Facilities''

In its 2011 submission, FDEP submitted amendments to Rule 62–296.412, F.A.C., ''Dry Cleaning Facilities,'' which became state effective March 11, 2010. The amendments delete a reference to ozone nonattainment areas because Florida currently has no ozone nonattainment areas. Moreover, without this change, the rule would immediately apply in newly designated ozone nonattainment areas, giving facilities no lead time to achieve compliance. If an area in Florida is designated nonattainment for the ozone national ambient air quality standards (NAAQS) in the future, Florida would be required to submit an implementation plan to attain this NAAQS, and thus would need to address sources in the nonattainment area at that time. Also, the changes replace an incorrect reference to Chapter 62–275, F.A.C., with the correct rule reference to 62–204.340, F.A.C. EPA proposes to approve the changes provided in Florida's 2011 SIP submission to Rule 62–296.412, F.A.C., on the basis that these changes are intended to correct a reference in this rule, to further clarify, organize, and streamline Florida's permit regulations. Moreover, these changes are not inconsistent with federal law, and will not interfere with any applicable requirement concerning attainment of the NAAQS, reasonable further progress, or any other requirement of the CAA.

8. Rule 62–296.414, F.A.C., ''Concrete Batching Plants''

In its 2011 SIP submission, FDEP submitted two sets of amendments to Rule 62–296.414, F.A.C., ''Concrete Batching Plants,'' with state effective dates of November 13, 1997, and January 10, 2007.[21] These amendments clarify portions of this rule section related to rule applicability and test method references; specify the precautions that must be taken to control unconfined emissions from concrete batching facilities; identify conditions under which visible emissions testing must be conducted; and, clarify the visible emissions testing schedule for concrete batching plants based on whether the unit is operating under the authority of an air general permit or a standard air construction or air operation permit. EPA proposes to approve the changes provided in Florida's 2011 SIP submission to Rule 62–296.414, F.A.C. on the basis that these changes are intended to further clarify, organize, and streamline Florida's permit regulations. Moreover, these changes are not inconsistent with federal law, and will not interfere with any applicable requirement concerning attainment of the NAAQS, reasonable further progress, or any other requirement of the CAA.

9. Rule 62–296.418, F.A.C., ''Bulk Gasoline Plants''

In its 2011 SIP submission, FDEP submitted amendments to Rule 62–296.418, F.A.C., ''Bulk Gasoline Plants,'' which became state effective March 11, 2010. The change deletes a reference to ozone nonattainment areas because Florida currently has no ozone nonattainment areas. Moreover, without this change, the rule would immediately apply in newly designated ozone nonattainment areas, giving facilities no lead time to achieve compliance. If an area in Florida is designated nonattainment for the ozone NAAQS in the future, Florida would be required to submit a plan to attain this NAAQS, and thus would need to address sources in the nonattainment area at that time. EPA proposes to approve the revisions provided in Florida's 2011 SIP submission to Rule 62–296.418, F.A.C. on the basis that these changes are intended to further clarify, organize, and streamline Florida's permit regulations. Moreover, these changes are not inconsistent with federal law, and will not interfere with any applicable requirement concerning attainment of the NAAQS, reasonable further progress, or any other requirement of the CAA.

10. Rule 62–296.500, F.A.C., ''Reasonably Available Control Technology (RACT)—Volatile Organic Compounds (VOC) and Nitrogen Oxides ($NO_X$) Emitting Facilities''

In its 2011 SIP submission, FDEP submitted one amendment to Rule 62–296.500, F.A.C., ''Reasonably Available Control Technology (RACT)—Volatile Organic Compounds (VOC) and Nitrogen Oxides ($NO_X$) Emitting Facilities,'' which became state effective March 11, 2010. The change deletes reference to ozone nonattainment areas because Florida currently has no ozone nonattainment areas. Moreover, without this change, the rule would immediately apply in newly designated ozone nonattainment areas, giving facilities no lead time to achieve compliance. If an area in Florida is designated nonattainment for the ozone NAAQS in the future, Florida would be required to submit a plan to attain this NAAQS and thus would need to address sources in the nonattainment area at that time. Also, the amendment clarifies that references to air quality maintenance areas mean those areas defined at Rule 62–204.340, F.A.C. EPA proposes to approve the revisions provided in Florida's 2011 SIP submission to Rule 62–296.500, F.A.C.

11. Rule 62–296.508, F.A.C., ''Petroleum Liquid Storage''

In its 2011 submission, FDEP submitted one amendment to Rule 62–296.508, F.A.C., ''Petroleum Liquid Storage,'' which became state effective October 6, 2008. The change removes an erroneous reference to EPA Method 21. EPA proposes to approve the change provided in Florida's 2011 SIP submission to Rule 62–296.508, F.A.C.

12. Rule 62–297.310, F.A.C., ''General Emissions Test Requirements''

In its 1999 SIP submission, FDEP submitted revisions to Rule 62–297.310, F.A.C., ''General Compliance Test

[20] EPA approved Florida's title V permit program on October 1, 2001. *See* 66 FR 49837.

[21] Florida withdrew its request to act on amendments to this rule originally submitted in its 1999 submission because the State re-submitted this rule in its 2011 submission.

Requirements,'' which became state effective March 2, 1999. These changes include minor clarifications to wording in the rule and identify for which types of emissions units an annual compliance test for visible emissions is not required. In its 2017 SIP submission, FDEP made further revisions to Rule 62–297.310, F.A.C., (which became state effective March 9, 2015) and changed the title to ''General Emissions Test Requirements.'' The changes in the 2017 submission include: Modification of the emissions test procedures; clarification of the requirements for emissions tests and terminology used in the regulation; reduction in the number of annual emissions tests required for emissions units that operate infrequently or are temporarily shut down; and elimination of obsolete and duplicative language. The revision also creates an exemption from annual compliance test requirements for any unit determined to be insignificant under Florida's title V regulations at 62–213.300(2)(a)1., F.A.C., and 62–213.430(6)(b), F.A.C.[22] EPA proposes to approve the revisions provided in Florida's June 23, 1999, and February 1, 2017, SIP submissions to Rule 62–297.310, F.A.C.

13. Rule 62–297.450, F.A.C., ''EPA VOC Capture Efficiency Test Procedures''

In its 1999 SIP submission, FDEP submitted revisions to Rule 62–297.450, F.A.C., ''EPA VOC Capture Efficiency Test Procedures,'' which became state effective March 2, 1999. These changes incorporate EPA Method 204 and EPA's capture efficiency test procedures. EPA proposes to approve the changes provided in Florida's 1999 SIP submission to Rule 62–297.450, F.A.C. on the basis that these changes are consistent with EPA's VOC capture efficiency test procedure guidelines.[23]

*B. Rule Proposed for Removal From the Florida SIP*

1. Rule 62–210.920, F.A.C., ''Air General Permit Forms''

In its 2013 submission, FDEP requested that Rule 62–210.920, F.A.C., ''Air General Permit Forms,'' be removed from the SIP. This rule section contained Florida's air general permit registration forms, which the State has replaced with an online registration system. The State repealed this rule section with a state effective date of June 29, 2011. EPA proposes to approve removal of Rule 62–210.920, F.A.C., ''Air General Permit Forms'' from the Florida SIP because this rule section imposes no requirements beyond those requirements already found in Rule 62–210.310, F.A.C.

## IV. Incorporation by Reference

In this rule, 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 changes to: Rule 62–210.200, F.A.C., ''Definitions,'' effective March 28, 2012; Rule 62–210.310, F.A.C., ''Air General Permits,'' effective June 29, 2011; Rule 62–210.350, F.A.C., ''Public Notice and Comment,'' effective October 12, 2008; Rule 62–296.100, F.A.C., ''Purpose and Scope,'' effective October 6, 2008; Rule 62–296.405, F.A.C., ''Fossil Fuel Steam Generators with More Than 250 Million Btu Per Hour Heat Input,'' effective March 2, 1999; Rule 62–296.406, F.A.C., ''Fossil Fuel Steam Generators with Less Than 250 Million Btu per Hour Heat Input, New and Existing Emissions Units,'' effective March 2, 1999; Rule 62–296.412, F.A.C., ''Dry Cleaning Facilities,'' effective March 11, 2010; Rule 62–296.414, F.A.C., ''Concrete Batching Plants,'' effective January 10, 2007; Rule 62–296.418, F.A.C., ''Bulk Gasoline Plants,'' effective March 11, 2010; Rule 62–296.500, F.A.C., ''Reasonably Available Control Technology (RACT)—Volatile Organic Compounds (VOC) and Nitrogen Oxides ($NO_X$) Emitting Facilities,'' effective March 11, 2010; Rule 62–296.508, F.A.C., ''Petroleum Liquid Storage,'' effective October 6, 2008; Rule 62–297.310, F.A.C., ''General Emissions Test Requirements,'' effective March 9, 2015; and Rule 62–297.450, F.A.C., ''EPA VOC Capture Efficiency Test Procedures,'' effective March 2, 1999. 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).

## V. What action is EPA proposing to take?

EPA is proposing to approve portions of Florida's five SIP revisions submitted by the State on June 23, 1999, July 1, 2011, December 12, 2011, February 27, 2013, and February 1, 2017, as meeting the applicable requirements of the CAA and EPA's requirements for permitting air emission sources.

## VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. 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 mandates 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 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).

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,

[22] EPA approved Florida's title V permit program on October 1, 2001. *See* 66 FR 49837.

[23] EPA document GD–035, ''Guidelines for Determining Capture Efficiency,'' dated January 9, 1995, is available at: *https://www3.epa.gov/ttn/emc/guidlnd/gd-035.pdf.*

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 oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: July 28, 2017.

**V. Anne Heard**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017–16815 Filed 8–9–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2017–0079; FRL–9965–81–Region 4]**

## Air Plan Approval; Florida; Interstate Transport (Prongs 1 and 2) for the 2010 1-Hour $NO_2$ Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Florida State Implementation Plan (SIP), submitted by the Florida Department of Environmental Protection (FDEP), on February 3, 2017, addressing the Clean Air Act (CAA or Act) interstate transport (prongs 1 and 2) infrastructure SIP requirements for the 2010 1-hour Nitrogen Dioxide ($NO_2$) 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, commonly referred to as an ''infrastructure SIP.'' Specifically, EPA is proposing to approve Florida's February 3, 2017, SIP submission addressing prongs 1 and 2, to ensure that air emissions in the State do not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour $NO_2$ NAAQS in any other state.

**DATES:** Comments must be received on or before September 11, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No EPA–R04–OAR–2017–0079 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:** Andres Febres of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Febres can be reached by telephone at (404) 562–8966 or via electronic mail at *febres-martinez.andres@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Sections 110(a)(1) and (2) require 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 newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state's implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes 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 from 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) and from interfering with measures to protect visibility in another state (prong 4). 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.

Through this proposed action, EPA is proposing to approve Florida's February 3, 2017, SIP submission addressing prong 1 and prong 2 requirements for the 2010 1-hour $NO_2$ NAAQS. The other applicable infrastructure SIP requirements for Florida for the 2010 1-hour $NO_2$ NAAQS have been addressed in a separate rulemaking or will be addressed separately. On March 18, 2015, EPA approved the portions of Florida's infrastructure SIP regarding the prevention of significant deterioration (PSD) permitting requirements of sections 110(a)(2)(C), prong 3 of D(i), and (J) for the 2010 1-hour $NO_2$ NAAQS. *See* 80 FR 14019. On November 23, 2016, EPA approved the portions of Florida's infrastructure SIP regarding sections 110(a)(2)(A), prong 4 of section 110(a)(2)(D)(i), section 110(a)(2)(D)(ii), sections 110(a)(2)(E)–(H), and sections 110(a)(2)(K)–(M). *See* 81 FR 84479. The portion of Florida's infrastructure SIP related to the ambient air quality monitoring and data system requirements of section 110(a)(2)(B) will be acted on in a separate action. A brief background regarding the 2010 1-hour $NO_2$ NAAQS is provided later in this preamble.

On January 22, 2010, EPA established a new 1-hour primary NAAQS for $NO_2$

at a level of 100 parts per billion, based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474 (February 9, 2010). This NAAQS is designed to protect against exposure to the entire group of nitrogen oxides ($NO_X$). $NO_2$ is the component of greatest concern and is used as the indicator for the larger group of $NO_X$. Emissions that lead to the formation of $NO_2$ generally also lead to the formation of other $NO_X$. Therefore, control measures that reduce $NO_2$ can generally be expected to reduce population exposures to all gaseous $NO_X$ which may have the co-benefit of reducing the formation of ozone and fine particles both of which pose significant public health threats.

States were required to submit infrastructure SIP submissions for the 2010 1-hour $NO_2$ NAAQS to EPA no later than January 22, 2013. For comprehensive information on 2010 1-hour $NO_2$ NAAQS, please refer to the **Federal Register** at 75 FR 6474, February 9, 2010.

## II. What is EPA's approach to the review of infrastructure SIP submissions?

The requirement for states to make a SIP submission of this type arises out of 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 ''each such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of section 110(a)(1) and (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 section 169A of the CAA, 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.[1] 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 CAA, which specifically address nonattainment SIP requirements.[2] 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.[3] 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 section 110(a)(1) and (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 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.[4] 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.[5]

[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.

[2] *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)).

[3] 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.

[4] *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).

[5] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA

Continued

Ambiguities within section 110(a)(1) and (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.[6]

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 attainment plan SIP submissions required by part D to meet the ''applicable requirements'' of section 110(a)(2); thus, 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 Prevention of Significant Deterioration (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.[7] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[8] 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.[9] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). EPA interprets section 110(a)(1) and (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 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 section 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. 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 fine

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.

[6] 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.

[7] 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.

[8] ''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.

[9] 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 U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d 7 (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.

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 SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* 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 (SSM) that may be contrary to the CAA and EPA's policies addressing such excess emissions; [10] (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 that 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.[11] 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 section 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 section 110(a)(1) and (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 SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[12] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[13] 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 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.[14]

[10] Subsequent to issuing the 2013 Guidance, EPA's interpretation of the CAA with respect to the approvability of affirmative defense provisions in SIPs has changed. See ''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,'' 80 FR 33839 (June 12, 2015). As a result, EPA's 2013 Guidance (p. 21 & n.30) no longer represents the EPA's view concerning the validity of affirmative defense provisions, in light of the requirements of section 113 and section 304.

[11] 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 or affirmative defense 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.

[12] 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).

[13] 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 section 110(k)(6) of the CAA 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).

[14] *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 (January 26, 2011) (final disapproval of such provisions).

## III. What are the Prong 1 and Prong 2 requirements?

For each new NAAQS, section 110(a)(2)(D)(i)(I) of the CAA requires each state to submit a SIP revision that contains adequate provisions prohibiting emissions activity in the state from contributing significantly to nonattainment, or interfering with maintenance, of the NAAQS in any downwind state. EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or conjointly as the ''good neighbor'' provision of the CAA.

## IV. What is EPA's analysis of how Florida addressed Prongs 1 and 2?

In Florida's February 3, 2017, SIP revision, the State concluded that its SIP adequately addresses Prongs 1 and 2 with respect to the 2010 1-hour $NO_2$ NAAQS. Florida provides the following reasons for its determination: (1) The SIP contains state regulations that directly or indirectly control $NO_X$ emissions; (2) all areas in the United States are designated as unclassifiable/attainment for the 2010 1-hour $NO_2$ NAAQS; (3) maximum 1-hour $NO_2$ concentrations in states near Florida (Alabama, Georgia, Louisiana, Mississippi, and South Carolina) are below the 2010 standard; (4) monitored design values for $NO_2$ in the State are well below the 2010 1-hour $NO_2$ NAAQS and are trending downward; and (5) total $NO_X$ emissions in the State are also trending downward. EPA preliminarily agrees with the State's conclusion based on the rationale discussed later in this preamble.

First, Florida notes that SIP-approved portions of the following state rules directly or indirectly control $NO_X$ emissions: Chapter 62–204, F.A.C. (*Air Pollution Control—General Provisions*); Chapter 62–210, F.A.C. (*Stationary Sources—General Requirements*); Chapter 62–212, F.A.C. (*Stationary Sources—Preconstruction Review*); Chapter 62–296, F.A.C. (*Stationary Sources—Emission Standards*); and Chapter 62–297, F.A.C. (*Stationary Sources—Emissions Monitoring*). The SIP-approved portions of Chapters 62–204, 62–210, and 62–212, F.A.C. require any new major source or major modification to go through PSD or NNSR permitting in order to demonstrate that emissions will not cause or contribute to a violation of any NAAQS or PSD increment in Florida or any other state and provide an analysis of additional impacts of the source or modification. All new or modified major sources of $NO_X$ emissions in attainment or unclassifiable areas will apply Best Available Control Technology (BACT) to control $NO_X$ emissions. Chapter 62–296 sets emission limiting standards and compliance requirements for stationary sources, including Reasonably Available Control Technology (RACT) requirements.

Second, there are no designated nonattainment areas for the 2010 1-hour $NO_2$ NAAQS. On February 17, 2012 (77 FR 9532), EPA designated the entire country as ''unclassifiable/attainment'' for the 2010 1-hour $NO_2$ NAAQS, stating that ''available information does not indicate that the air quality in these areas exceeds the 2010 1-hour $NO_2$ NAAQS.''

Third, maximum 1-hour $NO_2$ concentrations in surrounding states (Alabama, Georgia, Louisiana, Mississippi, and South Carolina) are approximately one half of the 2010 standard.[15]

Fourth, according to the 1-hour $NO_2$ monitoring data from 2000–2015 provided in the submittal,[16] the monitored design values for $NO_2$ in the State were all well below the 2010 1-hour $NO_2$ NAAQS of 100 ppb during this time period and have declined by approximately 43 percent since 2000. The design values have been below 40 ppb since 2008.

Fifth, $NO_X$ emissions data provided in the submittal (including data from Industrial, Nonpoint, On-Road, and Non-Road Sources[17]) from 2000–2014 shows a 52 percent decrease in total $NO_X$ emissions from these combined sources (from approximately 1.2 million tons in 2000 to less than 600,000 tons in 2014).

For all the reasons discussed previously, EPA has preliminarily determined that Florida does not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour $NO_2$ NAAQS in any other state and that Florida's SIP includes adequate provisions to prevent emissions sources within the State from significantly contributing to nonattainment or interfering with maintenance of this standard in any other state.

[15] EPA verified the design values for the surrounding states for the 2013–2015 time period. This information is available at *https://www.epa.gov/air-trends/air-quality-design-values.* Design values are computed and published annually by EPA's Office of Air Quality Planning and Standards and reviewed in conjunction with the EPA Regional Offices.

[16] This information was obtained from Florida's ambient air quality monitoring network. On July 24, 2017, EPA approved the $NO_2$ portion of Florida's latest monitoring network plan revision.

[17] Industrial source emission data are from the Florida facility Annual Operating Report submissions; Mobile on-road source emissions are estimated from Motor Vehicle Emission Simulator (MOVES2014a) model; and Nonpoint and non-road emissions data are from the EPA's National Emissions Inventory (NEI).

## V. Proposed Action

As described earlier, EPA is proposing to approve Florida's February 3, 2017, SIP revision addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i) for the 2010 1-hour $NO_2$ NAAQS.

## 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 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 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, Ozone, Reporting and recordkeeping requirements.

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

Dated: July 26, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017–16819 Filed 8–9–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R04–OAR–2017–0364; FRL–9965–99–Region 4]**

## Air Plan Approval; South Carolina; Cross-State Air Pollution Rule

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of a draft revision to the South Carolina State Implementation Plan (SIP) concerning the Cross-State Air Pollution Rule (CSAPR) that was submitted by South Carolina for parallel processing on May 26, 2017. Under CSAPR, large electricity generating units (EGUs) in South Carolina are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR's federal trading program for annual emissions of nitrogen oxides ($NO_X$) and one of CSAPR's two federal trading programs for annual emissions of sulfur dioxide ($SO_2$). This action would approve the State's regulations requiring large South Carolina EGUs to participate in new CSAPR state trading programs for annual $NO_X$ and $SO_2$ emissions integrated with the CSAPR federal trading programs, replacing the corresponding FIP requirements. These CSAPR state trading programs are substantively identical to the CSAPR federal trading programs, with the State retaining EPA's default allowance allocation methodology and EPA remaining the implementing authority for administration of the trading program. EPA is proposing to approve the portions of the draft SIP revision concerning these CSAPR state trading programs because these portions of the draft SIP revision meet the requirements of the Clean Air Act (CAA or Act) and EPA's regulations for approval of a CSAPR full SIP revision replacing the requirements of a CSAPR FIP. Under the CSAPR regulations, approval of these portions of the draft SIP revision would automatically eliminate South Carolina units' obligations to participate in CSAPR's federal trading programs for annual $NO_X$ and $SO_2$ emissions under the corresponding CSAPR FIPs addressing interstate transport requirements for the 1997 Annual Fine Particulate Matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). Approval of these portions of the SIP revision would satisfy South Carolina's good neighbor obligation for the 1997 Annual $PM_{2.5}$ NAAQS.

**DATES:** Comments must be received on or before September 11, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2017–0364 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:** Ashten Bailey, Air Regulatory Management Section, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Bailey can be reached by telephone at (404) 562–9164 or via electronic mail at *bailey.ashten@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Summary

EPA is proposing to approve the portions of the May 26, 2017, draft revision to the South Carolina SIP concerning CSAPR [1] trading programs for annual emissions of NOx and $SO_2$. Large EGUs in South Carolina are subject to CSAPR FIPs that require the units to participate in the federal CSAPR NOx Annual Trading Program and the federal CSAPR $SO_2$ Group 2 Trading Program. CSAPR also provides a process for the submission and approval of SIP revisions to replace the requirements of CSAPR FIPs with SIP requirements under which a state's units participate in CSAPR state trading programs that are integrated with and, with certain permissible exceptions, substantively identical to the CSAPR federal trading programs.

The portions of the draft SIP revision proposed for approval would incorporate into South Carolina's SIP state trading program regulations for annual $NO_X$ and $SO_2$ emissions that would replace EPA's federal trading program regulations for those emissions for South Carolina units for control periods in 2017 and later years.[2] EPA is proposing to approve these portions of the draft SIP revision because they meet the requirements of the CAA and EPA's regulations for approval of a CSAPR full SIP revision replacing a federal trading program with a state trading program that is integrated with and substantively identical to the federal trading program. Under the CSAPR regulations, approval of these portions of the draft SIP revision would automatically eliminate the obligations of large EGUs in South Carolina (but not any units in Indian country within South Carolina's borders) to participate in CSAPR's federal trading programs for annual $NO_X$ and $SO_2$ emissions under the corresponding CSAPR FIPs. EPA proposes to find that approval of these portions of the draft SIP revision would satisfy South Carolina's obligation

[1] Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011) (codified as amended at 40 CFR 52.38 and 52.39 and subparts AAAAA through EEEEE of 40 CFR part 97).

[2] Under South Carolina's draft regulations, the State will retain EPA's default allowance allocation methodology and EPA will remain the implementing authority for administration of the trading program. *See* sections IV and V.B.2, below.

pursuant to CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 Annual $PM_{2.5}$ NAAQS in any other state.

The Phase 2 $SO_2$ budget established for South Carolina in the CSAPR rulemaking has been remanded to EPA for reconsideration.[3] If EPA finalizes approval of the portions of the draft SIP revision as proposed, South Carolina will have fulfilled its obligations to provide a SIP that address the interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual $PM_{2.5}$ NAAQS. Thus, EPA would no longer be under an obligation to (nor would EPA have the authority to) address those interstate transport requirements through implementation of a FIP, and approval of these portions of the draft SIP revision would eliminate South Carolina units' obligations to participate in the federal CSAPR $NO_X$ Annual Trading Program and the federal CSAPR $SO_2$ Group 2 Trading Program. Elimination of South Carolina units' obligations to participate in the federal trading programs would include elimination of the federally-established Phase 2 budgets capping allocations of CSAPR $NO_X$ Annual allowances and CSAPR $SO_2$ Group 2 allowances to South Carolina units under those federal trading programs. As approval of these portions of the draft SIP revision would eliminate South Carolina's remanded federally-established Phase 2 $SO_2$ budget and eliminate EPA's authority to subject units in South Carolina to a FIP, it is EPA's opinion that finalization of approval of this SIP action would address the judicial remand of South Carolina's federally-established Phase 2 $SO_2$ budget.[4]

EPA is proposing to approve the draft SIP revision through parallel processing. Should South Carolina not submit a final SIP revision to EPA and/or should EPA not be able to finalize a full approval action addressing interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual $PM_{2.5}$ NAAQS, EPA will undertake further reconsideration of the FIP pursuant to the judicial remand.

[3] *EME Homer City Generation, L.P.* v. *EPA (EME Homer City II),* 795 F.3d 118, 138 (D.C. Cir. 2015).

[4] Although the court in *EME Homer City II* remanded South Carolina's Phase 2 $SO_2$ budget because it determined that the budget may be too stringent, nothing in the court's decision affects South Carolina's authority to seek incorporation into its SIP of a state-established budget as stringent as the remanded federally-established budget or limits EPA's authority to approve such a SIP revision. *See* 42 U.S.C. 7416, 7410(k)(3).

Section II of this document describes the requirements and steps for parallel processing. Section III summarizes the relevant aspects of the CSAPR federal trading programs and FIPs as well as the range of opportunities states have to submit SIP revisions to modify or replace the FIP requirements while continuing to rely on CSAPR's trading programs to address the states' obligations to mitigate interstate air pollution. Section IV describes the specific conditions for approval of such SIP revisions. Section V contains EPA's analysis of South Carolina's SIP draft submittal, and Section VI sets forth EPA's proposed action on the draft submittal. Section VII addresses required statutory and Executive Order reviews.

## II. What is ''parallel processing?''

Parallel processing refers to a concurrent state and federal proposed rulemaking action. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action, and prepares a notice of proposed rulemaking. EPA's notice of proposed rulemaking is published in the **Federal Register** during the same timeframe that the state is holding its public hearing. The state and EPA then provide for concurrent public comment periods on both the state action and federal action. If the state's formal SIP revision is changed from the draft SIP revision, EPA will evaluate those changes and may publish another notice of proposed rulemaking. A final rulemaking action by EPA will occur only after the SIP revision has been adopted by South Carolina and submitted formally to EPA for incorporation into the SIP.

On May 26, 2017, the State of South Carolina, through South Carolina Department of Health and Environmental Control (SCDHEC), submitted a request for parallel processing for a draft SIP revision related to the interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual $PM_{2.5}$ NAAQS. This revision was noticed for public comment by the State on May 26, 2017, and is not yet state-effective. Through this proposed rulemaking, EPA is proposing parallel approval of this draft SIP revision.

Once the May 26, 2017, draft revision is state-effective, South Carolina will need to provide EPA with a formal SIP revision. After South Carolina submits the formal SIP revision (including a response to any public comments raised during the State's public participation process), EPA will evaluate the revision. If the formal SIP revision is changed from the draft SIP revision, EPA will evaluate those changes for significance. If any such changes are found by EPA to be significant, then the Agency intends to re-propose the action based upon the revised submission.

While EPA may not be able to have a concurrent public comment process with the State, the SCDHEC-requested parallel processing allows EPA to begin to take action on the State's draft SIP revision in advance of the submission of the formal SIP revision. As stated above, the final rulemaking action by EPA will occur only after the SIP revision has been: (1) Adopted by South Carolina, (2) submitted formally to EPA for incorporation into the SIP, and (3) evaluated for changes.

## III. Background on CSAPR and CSAPR-Related SIP Revisions

EPA issued CSAPR in July 2011 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution. As amended (including the 2016 CSAPR Update[5]), CSAPR requires 27 Eastern states to limit their statewide emissions of $SO_2$ and/or $NO_X$ in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four NAAQS: The 1997 Annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, the 1997 8-hour ozone NAAQS, and the 2008 8-hour ozone NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide ''budgets'' for emissions of annual $SO_2$, annual $NO_X$, and/or ozone season $NO_X$ by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets applying to emissions in 2015 and 2016 and the Phase 2 (and CSAPR Update) budgets applying to emissions in 2017 and later years. As a mechanism for achieving compliance with the emissions limitations, CSAPR establishes five federal emissions trading programs: A program for annual $NO_X$ emissions, two geographically

[5] 81 FR 74504 (October 26, 2016). The CSAPR Update was promulgated to address interstate pollution with respect to the 2008 ozone NAAQS and to address a judicial remand of certain original CSAPR ozone season $NO_X$ budgets promulgated with respect to the 1997 ozone NAAQS. 81 FR at 74505. The CSAPR Update established new emission reduction requirements addressing the more recent NAAQS and coordinated them with the remaining emission reduction requirements addressing the older NAAQS, so that starting in 2017, CSAPR includes two geographically separate trading programs for ozone season $NO_X$ emissions covering EGUs in a total of 23 states. *See* 40 CFR 52.38(b)(1)–(2).

separate programs for annual $SO_2$ emissions, and two geographically separate programs for ozone-season $NO_X$ emissions. CSAPR also establishes FIP requirements applicable to the large EGUs in each covered state. Currently, the CSAPR FIP provisions require each state's units to participate in up to three of the five CSAPR trading programs.

CSAPR includes provisions under which states may submit and EPA will approve SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's federal emissions trading programs or state emissions trading programs integrated with the federal programs.[6] Through such a SIP revision, a state may replace EPA's default provisions for allocating emission allowances among the state's units, employing any state-selected methodology to allocate or auction the allowances, subject to timing conditions and limits on overall allowance quantities. In the case of CSAPR's federal trading programs for ozone season $NO_X$ emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller electricity generating units.[7] If a state wants to replace CSAPR FIP requirements with SIP requirements under which the state's units participate in a state trading program that is integrated with and identical to the federal trading program even as to the allocation and applicability provisions, the state may submit a SIP revision for that purpose as well. However, no emissions budget increases or other substantive changes to the trading program provisions are allowed. A state whose units are subject to multiple CSAPR FIPs and federal trading programs may submit SIP revisions to modify or replace either some or all of those FIP requirements.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years.[8] Specific conditions for approval of each form of SIP revision are set forth in the CSAPR regulations, as described in section IV below. Under the first alternative—an ''abbreviated'' SIP revision—a state may submit a SIP revision that upon approval replaces the default allowance allocation and/or applicability provisions of a CSAPR federal trading program for the state.[9] Approval of an abbreviated SIP revision leaves the corresponding CSAPR FIP and all other provisions of the relevant federal trading program in place for the state's units.

Under the second alternative—a ''full'' SIP revision—a state may submit a SIP revision that upon approval replaces a CSAPR federal trading program for the state with a state trading program integrated with the federal trading program, so long as the state trading program is substantively identical to the federal trading program or does not substantively differ from the federal trading program except as discussed above with regard to the allowance allocation and/or applicability provisions.[10] For purposes of a full SIP revision, a state may either adopt state rules with complete trading program language, incorporate the federal trading program language into its state rules by reference (with appropriate conforming changes), or employ a combination of these approaches.

The CSAPR regulations identify several important consequences and limitations associated with approval of a full SIP revision. First, upon EPA's approval of a full SIP revision as correcting the deficiency in the state's implementation plan that was the basis for a particular set of CSAPR FIP requirements, the obligation to participate in the corresponding CSAPR federal trading program is automatically eliminated for units subject to the state's jurisdiction without the need for a separate EPA withdrawal action, so long as EPA's approval of the SIP is full and unconditional.[11] Second, approval of a full SIP revision does not terminate the obligation to participate in the corresponding CSAPR federal trading program for any units located in any Indian country within the borders of the state, and if and when a unit is located in Indian country within a state's borders, EPA may modify the SIP approval to exclude from the SIP, and include in the surviving CSAPR FIP instead, certain trading program provisions that apply jointly to units in the state and to units in Indian country within the state's borders.[12] Finally, if at the time a full SIP revision is approved EPA has already started recording allocations of allowances for a given control period to a state's units, the federal trading program provisions authorizing EPA to complete the process of allocating and recording allowances for that control period to those units will continue to apply, unless EPA's approval of the SIP revision provides otherwise.[13]

On July 28, 2015, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued a decision on a number of petitions related to CSAPR, which found that EPA required more emissions reductions than may have been necessary to address the downwind air quality problems to which some states contribute. The court remanded several CSAPR emission budgets to EPA for reconsideration, including the Phase 2 $SO_2$ trading budget for South Carolina.[14] However, South Carolina has proposed to voluntarily adopt into their SIP a CSAPR state trading program that is integrated with the federal trading program and includes a state-established $SO_2$ budget equal to the state's remanded Phase 2 $SO_2$ emission budget.[15] EPA notes that nothing in the court's decision affects South Carolina's authority to seek incorporation into its SIP of a state-established budget as stringent as the remanded federally-established budget or limits EPA's authority to approve such a SIP revision. The CSAPR regulations provide each covered state with the option to meet its transport obligations through SIP revisions replacing the federal trading programs and requiring the state's EGUs to participate in integrated CSAPR state trading

[6] *See* 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR federal trading programs or integrated state trading programs.

[7] States covered by both the CSAPR Update and the $NO_X$ SIP Call have the additional option to expand applicability under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program to include non-electric generating units that would have participated in the former $NO_X$ Budget Trading Program.

[8] CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 and is not relevant here. *See* 40 CFR 52.38(a)(3), (b)(3), (b)(7); 52.39(d), (g).

[9] 40 CFR 52.38(a)(4), (b)(4), (b)(8); 52.39(e), (h).

[10] 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).

[11] 40 CFR 52.38(a)(6), (b)(10)(i); 52.39(j).

[12] 40 CFR 52.38(a)(5)(iv)–(v), (a)(6), (b)(5)(v)–(vi), (b)(9)(vi)–(vii), (b)(10)(i); 52.39(f)(4)–(5), (i)(4)–(5), (j).

[13] 40 CFR 52.38(a)(7), (b)(11)(i); 52.39(k).

[14] *EME Homer City II,* 795 F.3d 118; *See also EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012), *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). The D.C. Circuit also remanded $SO_2$ budgets for Alabama, Georgia, and Texas. The court also remanded Phase 2 ozone-season $NO_X$ budgets for eleven states, including South Carolina.

[15] *See* memo entitled ''The U.S. Environmental Protection Agency's Plan for Responding to the Remand of the Cross-State Air Pollution Rule Phase 2 $SO_2$ Budgets for Alabama, Georgia, South Carolina and Texas'' from Janet G. McCabe, EPA Acting Assistant Administrator for Air and Radiation, to EPA Regional Air Division Directors (June 27, 2016), available at *https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0598-0003.* The memo directs the Regional Air Division Directors to share the memo with state officials. EPA also communicated orally with officials in Alabama, Georgia, South Carolina, and Texas in advance of the memo.

programs that apply emissions budgets of the same or greater stringency. Under the CSAPR regulations, when such a SIP revision is approved, the corresponding FIP provisions are automatically withdrawn.

## IV. Conditions for Approval of CSAPR-Related SIP Revisions

Each CSAPR-related abbreviated or full SIP revision must meet the following general submittal conditions:

• *Timeliness and completeness of SIP submittal.* The SIP submittal completeness criteria in section 2.1 of appendix V to 40 CFR part 51 apply. In addition, if a state wants to replace the default allowance allocation or applicability provisions of a CSAPR federal trading program, the complete SIP revision must be submitted to EPA by December 1 of the year before the deadlines described below for submitting allocation or auction amounts to EPA for the first control period for which the state wants to replace the default allocation and/or applicability provisions.[16] This SIP submission deadline is inoperative in the case of a SIP revision that seeks only to replace a CSAPR FIP and federal trading program with a SIP and a substantively identical state trading program integrated with the federal trading program.

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP seeking to address the allocation or auction of emission allowances must meet the following further conditions:

• *Methodology covering all allowances potentially requiring allocation.* For each federal trading program addressed by a SIP revision, the SIP revision's allowance allocation or auction methodology must replace both the federal program's default allocations to existing units[17] at 40 CFR 97.411(a), 97.511(a), 97.611(a), 97.711(a), or 97.811(a) as applicable, and the federal trading program's provisions for allocating allowances from the new unit set-aside (NUSA) for the state at 40 CFR 97.411(b)(1) and 97.412(a), 97.511(b)(1) and 97.512(a), 97.611(b)(1) and 97.612(a), 97.711(b)(1) and 97.712(a), or 97.811(b)(1) and 97.812(a), as applicable.[18] In the case of a state with Indian country within its borders, while the SIP revision may neither alter nor assume the federal program's provisions for administering the Indian country NUSA for the state, the SIP revision must include procedures addressing the disposition of any otherwise unallocated allowances from an Indian country NUSA that may be made available for allocation by the state after EPA has carried out the Indian country NUSA allocation procedures.[19]

• *Assurance that total allocations will not exceed the state budget.* For each federal trading program addressed by a SIP revision, the total amount of allowances auctioned or allocated for each control period under the SIP revision (prior to the addition by EPA of any unallocated allowances from any Indian country NUSA for the state) generally may not exceed the state's emissions budget for the control period less the sum of the amount of any Indian country NUSA for the state for the control period and any allowances already allocated to the state's units for the control period and recorded by EPA.[20] Under its SIP revision, a state is free to not allocate allowances to some or all potentially affected units, to allocate or auction allowances to entities other than potentially affected units, or to allocate or auction fewer than the maximum permissible quantity of allowances and retire the remainder. Under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program only, additional allowances may be allocated if the state elects to expand applicability to non-electric generating units that would have been subject to the $NO_X$ Budget Trading Program established for compliance with the $NO_X$ SIP Call.[21]

• *Timely submission of state-determined allocations to EPA.* The SIP revision must require the state to submit to EPA the amounts of any allowances allocated or auctioned to each unit for each control period (other than allowances initially set aside in the state's allocation or auction process and later allocated or auctioned to such units from the set-aside amount) by the following deadlines.[22] Note that the submission deadlines differ for amounts allocated or auctioned to units considered existing units for CSAPR purposes and amounts allocated or auctioned to other units.

| Units | Year of the control period | Deadline for submission to EPA of allocations or auction results |
|---|---|---|
| **CSAPR $NO_X$ Annual, CSAPR NOOzone Season Group 1, CSAPR $SO_2$ Group 1, and CSAPR $SO_2$ Group 2 Trading Programs** | | |
| Existing | 2017 and 2018 | June 1, 2016. |
| | 2019 and 2020 | June 1, 2017. |
| | 2021 and 2022 | June 1, 2018. |
| | 2023 and later years | June 1 of the fourth year before the year of the control period. |
| Other | All years | July 1 of the year of the control period. |
| **CSAPR $NO_X$ Ozone Season Group 2 Trading Program** | | |
| Existing | 2019 and 2020 | June 1, 2018. |
| | 2021 and 2022 | June 1, 2019. |
| | 2023 and 2024 | June 1, 2020. |
| | 2025 and later years | June 1 of the fourth year before the year of the control period. |
| Other | All years | July 1 of the year of the control period. |

[16] 40 CFR 52.38(a)(4)(ii), (a)(5)(vi), (b)(4)(iii), (b)(5)(vii), (b)(8)(iv), (b)(9)(viii); 52.39(e)(2), (f)(6), (h)(2), (i)(6).

[17] In the context of the approval conditions for CSAPR-related SIP revisions, an ''existing unit'' is a unit for which EPA has determined default allowance allocations (which could be allocations of zero allowances) in the rulemakings establishing and amending CSAPR. A document describing EPA's default allocations to existing units is available at *https://www.epa.gov/sites/production/files/2017-05/documents/csapr_allowance_allocations_final_rule_tsd.pdf.*

[18] 40 CFR 52.38(a)(4)(i), (a)(5)(i), (b)(4)(ii), (b)(5)(ii), (b)(8)(iii), (b)(9)(iii); 52.39(e)(1), (f)(1), (h)(1), (i)(1).

[19] *See* 40 CFR 97.412(b)(10)(ii), 97.512(b)(10)(ii), 97.612(b)(10)(ii), 97.712(b)(10)(ii), 97.812(b)(10)(ii).

[20] 40 CFR 52.38(a)(4)(i)(A), (a)(5)(i)(A), (b)(4)(ii)(A), (b)(5)(ii)(A), (b)(8)(iii)(A), (b)(9)(iii)(A); 52.39(e)(1)(i), (f)(1)(i), (h)(1)(i), (i)(1)(i).

[21] 40 CFR 52.38(b)(8)(iii)(A), (b)(9)(iii)(A).

[22] 40 CFR 52.38(a)(4)(i)(B)–(C), (a)(5)(i)(B)–(C), (b)(4)(ii)(B)–(C), (b)(5)(ii)(B)–(C), (b)(8)(iii)(B)–(C), (b)(9)(iii)(B)–(C); 52.39(e)(1)(ii)–(iii), (f)(1)(ii)–(iii), (h)(1)(ii)–(iii), (i)(1)(ii)–(iii).

• *No changes to allocations already submitted to EPA or recorded.* The SIP revision must not provide for any change to the amounts of allowances allocated or auctioned to any unit after those amounts are submitted to EPA or any change to any allowance allocation determined and recorded by EPA under the federal trading program regulations.[23]

• *No other substantive changes to federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also expands program applicability as described below.[24] Any new definitions adopted in the SIP revision (in addition to the federal trading program's definitions) may apply only for purposes of the SIP revision's allocation or auction provisions.[25]

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP revision seeking to expand applicability under the CSAPR $NO_X$ Ozone Season Group 1 or CSAPR $NO_X$ Ozone Season Group 2 Trading Programs (or an integrated state trading program) must meet the following further conditions:

• *Only electricity generating units with nameplate capacity of at least 15 MWe.* The SIP revision may expand applicability only to additional fossil fuel-fired boilers or combustion turbines serving generators producing electricity for sale, and only by lowering the generator nameplate capacity threshold used to determine whether a particular boiler or combustion turbine serving a particular generator is a potentially affected unit. The nameplate capacity threshold adopted in the SIP revision may not be less than 15 MWe.[26] In addition or alternatively, applicability under the CSAPR $NO_X$ Ozone Season Group 2 Trading Program may be expanded to non-electric generating units that would have been subject to the $NO_X$ Budget Trading Program established for compliance with the $NO_X$ SIP Call.[27]

• *No other substantive changes to federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also addresses the allocation or auction of emission allowances as described above.[28]

In addition to the general submittal conditions and the other applicable conditions described above, a CSAPR-related full SIP revision must meet the following further conditions:

• *Complete, substantively identical trading program provisions.* The SIP revision must adopt complete state trading program regulations substantively identical to the complete federal trading program regulations at 40 CFR 97.402 through 97.435, 97.502 through 97.535, 97.602 through 97.635, 97.702 through 97.735, or 97.802 through 97.835, as applicable, except as described above in the case of a SIP revision that seeks to replace the default allowance allocation and/or applicability provisions.[29]

• *Only non-substantive substitutions for the term ''State.''* The SIP revision may substitute the name of the state for the term ''State'' as used in the federal trading program regulations, but only to the extent that EPA determines that the substitutions do not substantively change the trading program regulations.[30]

• *Exclusion of provisions addressing units in Indian country.* The SIP revision may not impose requirements on any unit in any Indian country within the state's borders and must not include the federal trading program provisions governing allocation of allowances from any Indian country NUSA for the state.[31]

## V. South Carolina's SIP Draft Submittal and EPA's Analysis

### A. South Carolina's Draft SIP Submittal

In the CSAPR rulemaking, EPA determined that air pollution transported from EGUs in South Carolina would unlawfully affect other states' ability to attain or maintain the 1997 8-hour ozone NAAQS and the 1997 Annual $PM_{2.5}$ NAAQS, and included South Carolina in the CSAPR ozone season $NO_X$ trading program and the annual $SO_2$ and $NO_X$ trading programs.[32] In the CSAPR Update rulemaking, EPA determined that South Carolina was no longer linked to any identified downwind nonattainment or maintenance receptors for the 1997 8-hour ozone NAAQS or 2008 8-hour ozone NAAQS, and removed South Carolina from the CSAPR ozone season $NO_X$ trading program beginning in 2017.[33] South Carolina's units meeting the CSAPR applicability criteria are consequently currently subject to CSAPR FIPs that require participation in the CSAPR $NO_X$ Annual Trading Program and the CSAPR $SO_2$ Group 2 Trading Program.[34] South Carolina's May 26, 2017, draft SIP revision incorporates into the SIP CSAPR state trading program regulations that would replace the CSAPR federal trading program regulations with regard to South Carolina units' $SO_2$ and annual $NO_X$ emissions. The draft SIP submittal includes the addition of South Carolina Regulation 61–62.97, Cross-State Air Pollution Rule (CSAPR) Trading Program. This rule will contain two subparts: 61–62.97, Subpart A—South Carolina CSAPR $NO_X$ Annual Trading Program, and 61–62.97 Subpart B—South Carolina CSAPR $SO_2$ Group 2 Trading Program. In general, each subpart in South Carolina's draft CSAPR state trading program rule is designed to replace the corresponding federal trading program regulations. For example, South Carolina draft Regulation 61–62.97, Subpart A—South Carolina CSAPR $NO_X$ Annual Trading program is designed to replace subpart AAAAA of 40 CFR part 97 (*i.e.,* 40 CFR 97.401 through 97.435).

With regard to form, some of the individual draft rules for each South Carolina CSAPR state trading program are set forth as full regulatory text—notably the rules identifying the trading budgets, NUSAs, and Indian country NUSA—but most of the draft rules incorporate the corresponding federal trading program section or sections by reference.

With regard to substance, the draft rules for each South Carolina CSAPR state trading program differ from the corresponding CSAPR federal trading program regulations in two main ways. First, the applicability provisions in the South Carolina draft rules require participation in South Carolina CSAPR state trading programs only for units in South Carolina, not for units in any other state or in Indian country within the borders of South Carolina or any other state. Second, the South Carolina draft rules omit some federal trading program provisions not applicable to

[23] 40 CFR 52.38(a)(4)(i)(D), (a)(5)(i)(D), (b)(4)(ii)(D), (b)(5)(ii)(D), (b)(8)(iii)(D), (b)(9)(iii)(D); 52.39(e)(1)(iv), (f)(1)(iv), (h)(1)(iv), (i)(1)(iv).

[24] 40 CFR 52.38(a)(4), (a)(5), (b)(4), (b)(5), (b)(8), (b)(9); 52.39(e), (f), (h), (i).

[25] 40 CFR 52.38(a)(4)(i), (a)(5)(ii), (b)(4)(ii), (b)(5)(iii), (b)(8)(iii), (b)(9)(iv); 52.39(e)(1), (f)(2), (h)(1), (i)(2).

[26] 40 CFR 52.38(b)(4)(i), (b)(5)(i), (b)(8)(i), (b)(9)(i).

[27] 40 CFR 52.38(b)(8)(ii), (b)(9)(ii).

[28] 40 CFR 52.38(b)(4), (b)(5), (b)(8), (b)(9).

[29] 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).

[30] 40 CFR 52.38(a)(5)(iii), (b)(5)(iv), (b)(9)(v); 52.39(f)(3), (i)(3).

[31] 40 CFR 52.38(a)(5)(iv), (b)(5)(v), (b)(9)(vi); 52.39(f)(4), (i)(4).

[32] 76 FR 48208, 48213 (August 8, 2011).

[33] 81 FR 74504, 74524 (October 26, 2016). Removal of South Carolina from the CSAPR ozone season trading program beginning in 2017 addressed the portion of the D.C. Circuit's remand in *EME Homer City II* related to South Carolina's ozone season $NO_X$ budget for the 1997 8-hour ozone NAAQS. *Id.*

[34] 40 CFR 52.38(a)(2), (b)(2); 52.39(c); 52.2140(a), (b); 52.2141.

South Carolina's state trading programs, including provisions setting forth the amounts of emissions budgets, NUSAs, Indian country NUSAs, and variability limits for other states and provisions relating to EPA's administration of Indian country NUSAs.

The South Carolina draft rules adopt the Phase 2 annual $NO_X$ and $SO_2$ budgets found at 40 CFR 97.410(a)(18)(iv) and 97.710(a)(6)(iv), respectively. Accordingly, EPA will evaluate the approvability of the South Carolina draft SIP submission consistent with these budgets.

At this time, EPA is proposing to take action on the portions of South Carolina's draft SIP submission designed to replace the federal CSAPR $NO_X$ Annual Trading Program and the federal CSAPR $SO_2$ Group 2 Trading Program with regard to South Carolina units.

*B. EPA's Analysis of South Carolina's Draft Submittal*

As described in section V.A above, at this time EPA is proposing to take action on the portions of South Carolina's draft SIP submittal designed to replace the federal CSAPR $NO_X$ Annual Trading Program and the federal CSAPR $SO_2$ Group 2 Trading Program for South Carolina units.[35] The analysis discussed in this section addresses only the portions of South Carolina's draft SIP submittal on which EPA is taking action at this time. For simplicity, throughout this section EPA refers to the portions of the draft submittal on which EPA is proposing to take action as ''the draft submittal'' or ''the draft SIP revision'' without repeating the qualification that at this time EPA is analyzing and proposing to act on only portions of the draft SIP submittal.

1. Timeliness and Completeness of SIP Submittal

South Carolina submitted its draft SIP revision to EPA on May 26, 2017, and EPA has determined that the submittal complies with the applicable minimum completeness criteria for parallel processing in section 2.3 of appendix V to 40 CFR part 51.[36] The SIP submission deadline specified in 40 CFR 52.38(a)(5)(vi) and 52.39(i)(6) is defined with reference to certain separate CSAPR deadlines for submission of state-determined allowance allocations to EPA and is therefore inoperative in the case of a SIP revision that does not seek to replace the EPA-administered allowance allocation methodology and process set forth in the federal trading program rules. Because South Carolina is seeking to replace the federal trading program rules with substantively identical state trading program rules and is not seeking to replace the EPA-administered allowance allocation methodology and process, the SIP submission deadline does not apply.[37]

2. Complete, Substantively Identical Trading Program Provisions

As discussed above, the South Carolina draft SIP revision adopts state budgets identical to the Phase 2 budgets for South Carolina under the federal trading programs and adopts almost all of the provisions of the federal CSAPR $NO_X$ Annual Trading Program and CSAPR $SO_2$ Group 2 Trading Program, including the default allocation provisions. Under the State's draft rules, EPA would administer the programs and would retain the authority to allocate and record allowances.

With the following exceptions, the South Carolina draft rules comprising South Carolina's CSAPR state trading program for annual $NO_X$ emissions either incorporate by reference or adopt full-text replacements for all of the provisions of 40 CFR 97.402 through 97.435, and the South Carolina draft rules comprising South Carolina's CSAPR state trading program for $SO_2$ emissions either incorporate by reference or adopt full-text replacements for all of the provisions of 40 CFR 97.702 through 97.735.

The first exception is that, as discussed below in section V.B.3, paragraphs 61–62.97.A.3 and B.3 of the South Carolina draft rules limit applicability of the rules to units located in South Carolina, excluding units located in Indian country within South Carolina's borders. This modification of the applicability provisions in the federal trading program rules is appropriate for state trading program rules which necessarily must be designed to apply only to sources subject to the State's jurisdiction.

The second exception is that South Carolina draft rule 61–62.97 omits the provisions of 40 CFR 97.410(a) and (b) and 97.710(a) and (b) setting forth the forth amounts of the Phase 1 emissions budgets, NUSAs, Indian country NUSAs, and variability limits for South Carolina and the amounts of the Phase 1 and Phase 2 emissions budgets, NUSAs, Indian country NUSAs, and variability limits for other states. Omission of the South Carolina Phase 1 emissions budget, NUSA, Indian country NUSA, and variability limit amounts is appropriate because South Carolina's state trading programs do not apply to emissions occurring in Phase 1 of CSAPR. Omission of the Phase 1 and Phase 2 budget, NUSA, Indian country NUSA, and variability limit amounts for other states from state trading programs in which only South Carolina units participate does not undermine the completeness of the state trading programs. South Carolina's draft rules include full-text replacement provisions for the remaining provisions of 40 CFR 97.410 and 97.710 that are relevant to trading programs applicable only to South Carolina units during Phase 2 of CSAPR.

The third exception is that South Carolina draft rule 61–62.97 omits 40 CFR 97.411(b)(2), 97.411(c)(5)(iii), 97.412(b), 97.421(h), 97.421(j), 97.711(b)(2), 97.711(c)(5)(iii), 97.712(b), 97.721(h), and 97.721(j), concerning EPA's administration of Indian country NUSAs. Omission of these provisions from South Carolina's state trading program rules is required, as discussed in section V.B.4 below.

None of the omissions undermine the completeness of the South Carolina's state trading programs and EPA has determined that South Carolina's draft SIP revision makes no substantive changes to the provisions of the federal trading program regulations. Thus, South Carolina's draft SIP revision meets the condition under 40 CFR 52.38(a)(5) and 52.39(i) that the SIP revision must adopt complete state trading program regulations substantively identical to the complete federal trading program regulations at 40 CFR 97.402 through 97.435 and 97.702 through 97.735, respectively, except to the extent permitted in the case of a SIP revision that seeks to replace the default allowance allocation and/or applicability provisions.

3. Only Non-Substantive Substitutions for the Term ''State''

Paragraphs 61–62.97.A.3 and B.3 of the South Carolina draft rules substitute the phrase ''The following units in South Carolina (but not in Indian country within South Carolina's borders),'' for the phrase ''The following units in a State (and Indian country within the borders of such State)'' in the corresponding federal trading program regulations at 40 CFR 97.410(a)(1) and 97.710(a)(1) and at 97.410(b) and 97.710(b), respectively. These provisions of the South Carolina draft rules define the units that are required to participate in South Carolina's CSAPR state trading programs. The substitutions appropriately exclude

[35] The other portions of the draft state submittal will be addressed in separate actions.

[36] The requirements of paragraph 2.1 must be met prior to publication of EPA's final determination of plan approvability. 40 CFR 51, App. V, 2.3.2.

[37] *See* 40 CFR 52.38(a)(5)(vi) and 52.39(i)(6).

units located in other states and units located in Indian country within the borders of South Carolina or any other state, thereby limiting the applicability of South Carolina's state trading programs to units that are subject to South Carolina's jurisdiction. These substitutions do not substantively change the provisions of CSAPR's federal trading program regulations. The remaining South Carolina rules do not substitute for the term ''State'' as used in the federal trading program regulations. EPA proposes to find that South Carolina's draft SIP revision therefore meets the condition under 40 CFR 52.38(a)(5)(iii) and 52.39(i)(3) that the SIP revision may substitute the name of the state for the term ''State'' as used in the federal trading program regulations, but only to the extent that EPA determines that the substitutions do not substantively change the provisions of the federal trading program regulations.

4. Exclusion of Provisions Addressing Units in Indian Country

As discussed above in section V.B.3, paragraphs 61–62.97.A.3 and B.3 of the South Carolina draft rules explicitly exclude units in Indian country within South Carolina's borders from the applicable requirements of the state rule. In addition, as required under 40 CFR 52.38(a)(5)(iv) and 52.39(i)(4), South Carolina's draft SIP revision excludes federal trading program provisions related to EPA's process for allocating and recording allowances from Indian country NUSAs (*i.e.,* 40 CFR 97.411(b)(2), 97.411(c)(5)(iii), 97.412(b), 97.421(h), 97.421(j), 97.711(b)(2), 97.711(c)(5)(iii), 97.712(b), and 97.721(h) and 97.721(j)). South Carolina's draft SIP revision therefore meets the conditions under 52.38(a)(5)(iv) and 52.39(i)(4) that a SIP submittal must not impose any requirement on any unit in Indian country within the borders of the State and must exclude certain provisions related to administration of Indian country NUSAs.[38]

## VI. EPA's Proposed Action on South Carolina's Draft Submittal

EPA is proposing to approve the portions of South Carolina's May 26, 2017, draft SIP submittal concerning the establishment for South Carolina units of CSAPR state trading programs for annual $NO_X$ and $SO_2$ emissions. The proposed draft revision would adopt into the SIP state trading program rules to be codified in SC Code of Annotated Regulations at 61–62.97, ''Cross-State Air Pollution Rule (CSAPR) Trading Program.'' These South Carolina CSAPR state trading programs would be integrated with the federal CSAPR $NO_X$ Annual Trading Program and the federal CSAPR $SO_2$ Group 2 Trading Program, respectively, and would be substantively identical to the federal trading programs.[39] If EPA approves these portions of the proposed draft SIP revision, South Carolina units therefore would generally be required to meet requirements under South Carolina's CSAPR state trading programs equivalent to the requirements the units otherwise would have been required to meet under the corresponding CSAPR federal trading programs. EPA is proposing to approve these portions of the draft SIP revision because they meet the requirements of the CAA and EPA's regulations for approval of a CSAPR full SIP revision replacing a federal trading program with a state trading program that is integrated with and substantively identical to the federal trading program except for permissible differences, as discussed in section V above.

EPA promulgated FIPs requiring South Carolina units to participate in the federal CSAPR $NO_X$ Annual Trading Program and the federal CSAPR $SO_2$ Group 2 Trading Program in order to address South Carolina's obligations under CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual $PM_{2.5}$ NAAQS in the absence of SIP provisions addressing those requirements. Approval of the portions of South Carolina's draft SIP submittal adopting CSAPR state trading program rules for annual $NO_X$ and $SO_2$ substantively identical to the corresponding CSAPR federal trading program regulations (or differing only with respect to the allowance allocation methodology) would satisfy South Carolina's obligation pursuant to CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 Annual $PM_{2.5}$ NAAQS in any other state and therefore would correct the same deficiency in the SIP that otherwise would be corrected by those CSAPR FIPs. Under the CSAPR regulations, upon EPA's full and unconditional approval of a SIP revision as correcting the SIP's deficiency that is the basis for a particular CSAPR FIP, the obligation to participate in the corresponding CSAPR federal trading program is automatically eliminated for units subject to the state's jurisdiction (but not for any units located in any Indian country within the state's borders).[40] Approval of the portions of South Carolina's draft SIP submittal establishing CSAPR state trading program rules for annual $NO_X$ and $SO_2$ emissions therefore would result in automatic termination of the obligations of South Carolina units to participate in the federal CSAPR $NO_X$ Annual Trading Program and the federal CSAPR $SO_2$ Group 2 Trading Program.

As noted in section III above, the Phase 2 $SO_2$ budget established for South Carolina in the CSAPR rulemaking has been remanded to EPA for reconsideration. If EPA finalizes approval of these portions of the SIP revision as proposed, South Carolina will have fulfilled its obligations to provide a SIP that address the interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual $PM_{2.5}$ NAAQS. Thus, EPA would no longer be under an obligation to (nor would EPA have the authority to) address those transport requirements through implementation of a FIP, and approval of these portions of the SIP revision would eliminate South Carolina units' obligations to participate in the federal CSAPR $NO_X$ Annual Trading Program and the federal CSAPR $SO_2$ Group 2 Trading Program. Elimination of South Carolina units' obligations to participate in the federal trading programs would include elimination of the federally-established Phase 2 budgets capping allocations of CSAPR $NO_X$ Annual allowances and CSAPR $SO_2$ Group 2 allowances to South Carolina units under those federal trading programs. As approval of these portions of the SIP revision would eliminate South Carolina's remanded federally-established Phase 2 $SO_2$ budget and eliminate EPA's authority to subject units in South Carolina to a FIP, it is EPA's opinion that finalization of approval of this SIP action would address the judicial remand of South Carolina's federally-established Phase 2 $SO_2$ budget.

EPA's proposed approval is contingent on South Carolina's submission of a final SIP revision to address interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual $PM_{2.5}$ NAAQS. Should South Carolina not submit a final SIP revision to EPA addressing interstate transport provisions of CAA section

[38] A FIP will remain in place for any units that are in Indian country within South Carolina's borders.

[39] As previously discussed in sections IV and V.B.2, under South Carolina's draft regulations, the State will retain EPA's default allowance allocation methodology and EPA will remain the implementing authority for administration of the trading program.

[40] 40 CFR 52.38(a)(6); 52.39(j); see also 52.2140(a)(1); 52.2141(a).

110(a)(2)(D)(i)(I) with respect to the 1997 Annual $PM_{2.5}$ NAAQS and/or should EPA not be able to finalize a full approval action, EPA will undertake further reconsideration of the FIP pursuant to the judicial remand. The Agency has made the preliminary determination that these proposed actions are consistent with the CAA and EPA's regulations for approval of a CSAPR full SIP revision replacing the requirements of a CSAPR FIP.

**VII. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submittal 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 submittals, 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
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule for South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the state of South Carolina. 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.'' However, the draft rules proposed for approval exclude units in Indian country from the applicable requirements of the draft rules and exclude federal trading provisions related to EPA's process for allocating and recording allowances from Indian country NUSAs. EPA notes this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: July 28, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017–16902 Filed 8–9–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

**[EPA–R03–RCRA–2014–0407; FRL–9965–86-Region 3]**

## Delaware: Final Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Delaware has applied to the United States Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Delaware. In the Rules and Regulations section of this issue of the **Federal Register**, EPA is authorizing the revisions by a direct final rule. We have explained the reasons for this authorization in the preamble to the direct final rule. Unless EPA receives written comments that oppose this authorization during the comment period, the direct final rule will become effective on the date it establishes, and EPA will not take further action on this proposal.

**DATES:** Send your written comments by September 11, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R03–RCRA–2014–0407, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Evelyn Sorto, U.S. EPA Region III, RCRA Waste Branch, Mailcode 3LC32, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone Number: (215) 814–2123; Email: *sorto.evelyn@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the ''Rules and Regulations'' section of this issue of the **Federal Register**, EPA is authorizing the revisions by a direct final rule. EPA did not make a proposal prior to the direct final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble of the direct final rule. Unless EPA receives adverse written comments that oppose this authorization during the comment period, the direct final

rule will become effective on the date it establishes, and EPA will not take further action on this proposal. If EPA receives comments that oppose this action, we will withdraw the Direct Final Rule, and it will not take effect. EPA will then respond to public comments in a later final rule based on this proposal and after consideration of all comments. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time. For additional information, please see the direct final rule published in the ''Rules and Regulations'' section of this issue of the **Federal Register**.

Dated: July 27, 2017.

**Cecil Rodrigues,**

*Acting Regional Administrator, U.S. EPA Region III.*

[FR Doc. 2017–16905 Filed 8–9–17; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[Docket No. FWS–R2–ES–2016–0077; 4500030113]**

**RIN 1018–BB34**

## Endangered and Threatened Wildlife and Plants; 6-Month Extension of Final Determination on the Proposed Endangered Status for Texas Hornshell (Popenaias popeii)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of the comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 6-month extension of the final determination of whether to add the Texas hornshell (*Popenaias popeii*), a freshwater mussel species from New Mexico, Texas, and Mexico, to the List of Endangered and Threatened Wildlife. We are also reopening the comment period on the proposed rule to list the species, for an additional 30 days. We are taking this action to extend the final determination based on substantial disagreement regarding the status of Texas hornshell in Mexico. We will submit a final listing determination to the **Federal Register** on or before February 10, 2018.

**DATES:** The comment period on the proposed rule that published August 10, 2016 (81 FR 52796), is reopened. We will accept comments received or postmarked on or before September 11, 2017. If you comment using the Federal eRulemaking Portal (see **ADDRESSES**), you must submit your comments by 11:59 p.m. Eastern Time on the closing date.

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R2–ES–2016–0077. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2016–0077; U.S. Fish and Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

**FOR FURTHER INFORMATION CONTACT:** Chuck Ardizzone, U.S. Fish and Wildlife Service, Texas Coastal Ecological Services Field Office, 17629 El Camino Real #211, Houston, TX 77058; on the Internet at *https://www.fws.gov/southwest/es/TexasCoastal/;* by telephone 281–286–8282; or by facsimile 281–488–5882. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 10, 2016, we published a proposed rule (81 FR 52796) to list the Texas hornshell as an endangered species under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). The List of Endangered and Threatened Wildlife under the Act is located in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h). The publication of this proposed rule complied with a deadline established in a court-approved settlement agreement (Endangered Species Act Section 4 Deadline Litigation, No. 10–377 (EGS), MDL Docket No. 2165 (D.D.C. May 10, 2011)). That proposal had a 60-day comment period, ending October 11, 2016. We reopened the comment period for 30 days on May 30, 2017 (82 FR 24654), in order to hold two public hearings on the proposed rule. For a description of previous Federal actions concerning the Texas hornshell, please refer to the August 10, 2016, proposed listing rule (81 FR 52796).

We also solicited and received independent scientific review of the information contained in the proposed rule from peer reviewers with expertise in Texas hornshell or similar species ecology and identified threats to the species, in accordance with our July 1, 1994, peer review policy (59 FR 34270).

Section 4(b)(6) of the Act and its implementing regulations at 50 CFR 424.17(a) require that we take one of three actions within 1 year of a proposed listing: (1) Finalize the proposed rule; (2) withdraw the proposed rule; or (3) extend the final determination by not more than 6 months, if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination.

Since the publication of the proposed rule, there has been substantial disagreement regarding the interpretation of the limited surveys that exist for Texas hornshell in Mexico. This situation has led to a significant disagreement regarding the current conservation status of the species in Mexico. Therefore, in consideration of the disagreements surrounding the Texas hornshell's status, we are extending the final determination for 6 months in order to solicit information that will help to clarify these issues. With this 6-month extension, we will make a final determination on the proposed rule no later than February 10, 2018.

### Information Requested

We will accept written comments and information during this reopened comment period on our proposed listing rule for Texas hornshell that was published in the **Federal Register** on August 10, 2016 (81 FR 52796). We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposal be as accurate as possible and based on the best available scientific and commercial data.

Due to the scientific disagreements described above, we are particularly interested in new information and comments regarding the status of and threats to any Texas hornshell population in Mexico.

If you previously submitted comments or information on the August 10, 2016, proposed rule (81 FR 52796), please do not resubmit them. We have incorporated previously submitted comments into the public record, and we will fully consider them in the preparation of our final determination. Our final determination concerning the proposed listing will take into consideration all written comments and any additional information we receive.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Texas Coastal Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2016–0077, or by mail from the U.S. Fish and Wildlife Service, Texas Coastal Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 4, 2017.

**Stephen Guertin,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2017–16887 Filed 8–9–17; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 32

**[Docket No. FWS–HQ–NWRS–2017–0005; FXRS12650900000–178–FF09R26000]**

**RIN 1018–BB75**

## 2017–2018 Refuge-Specific Hunting and Sport Fishing Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, propose to increase the hunting activities available at nine National Wildlife Refuges (NWR), open one NWR to sport fishing for the first time, and add pertinent refuge-specific regulations for other NWRs that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2017–2018 season.

**DATES:** We will accept comments received or postmarked on or before September 11, 2017.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, type in FWS–HQ–NWRS–2017–0005, which is the docket number for this rulemaking. Then click on the Search button. On the resulting screen, find the correct document and submit a comment by clicking on ''Comment Now!''
- *By hard copy:* Submit by U.S. mail or hand delivery: Public Comments Processing, Attn: FWS–HQ–NWRS–2017–0005; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: BPHC; Falls Church, VA 22041–3803.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Request for Comments, below, for more information). For information on specific refuges' public use programs and the conditions that apply to them or for copies of compatibility determinations for any refuge(s), contact individual programs at the addresses/phone numbers given in Available Information for Specific Refuges under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Katherine Harrigan, (703) 358–2440.

**SUPPLEMENTARY INFORMATION:** The National Wildlife Refuge System Administration Act of 1966 closes NWRs in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that the use is compatible with the purposes of the refuge and National Wildlife Refuge System mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We annually review refuge hunting and sport fishing programs to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to refuge-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of refuge purposes or the Refuge System's mission.

Provisions governing hunting and sport fishing on refuges are in title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32). We regulate hunting and sport fishing on refuges to:

- Ensure compatibility with refuge purpose(s);
- Properly manage fish and wildlife resource(s);
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for quality fish- and wildlife-dependent recreation.

On many refuges where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the Statutory Authority section, below. We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations may list the wildlife species that you may hunt or fish, seasons, bag or creel (container for carrying fish) limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and sport fishing in 50 CFR part 32. In this rulemaking, we are also proposing to standardize and clarify the language of existing regulations.

### Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge System Improvement Act of 1997 [Improvement Act]) (Administration Act), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) (Recreation Act) govern the administration and public use of refuges.

Amendments enacted by the Improvement Act built upon the

Administration Act in a manner that provides an ''organic act'' for the Refuge System, similar to organic acts that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible with the purpose for which the refuge was established and the mission of the Refuge System. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Improvement Act established six wildlife-dependent recreational uses as the priority general public uses of the Refuge System. These uses are: hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge and the Refuge System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR part 32. We ensure continued compliance by the development of comprehensive conservation plans and step-down management plans, and by annual review of hunting and sport fishing programs and regulations.

**Amendments to Existing Regulations**

This document proposes to codify in the Code of Federal Regulations all of the Service's hunting and/or sport fishing regulations that we would update since the last time we published a rule amending these regulations (81 FR 68874; October 4, 2016) and that are applicable at Refuge System units previously opened to hunting and/or sport fishing. We propose this to better inform the general public of the regulations at each refuge, to increase understanding and compliance with these regulations, and to make enforcement of these regulations more efficient. In addition to now finding these regulations in 50 CFR part 32, visitors to our refuges may find them reiterated in literature distributed by each refuge or posted on signs.

TABLE 1—CHANGES FOR 2017–2018 HUNTING/FISHING SEASON

| Refuge/Region (*) | State | Migratory bird hunting | Upland game hunting | Big game hunting | Sport fishing |
|---|---|---|---|---|---|
| Baskett Slough (1) | Oregon | C | Closed | Closed | Closed. |
| Des Lacs (6) | North Dakota | Closed | Already Open | C/D | Closed. |
| Fox River (3) | Wisconsin | Closed | Closed | C | Closed. |
| Horicon (3) | Wisconsin | D | C/D | C | Already Open. |
| Minnesota Valley (3) | Minnesota | C | C | C | Already Open. |
| Patoka River (3) | Indiana | C | C | C | C. |
| Savannah River (4) | Georgia and South Carolina | C/D | C/D | C/D | Already Open. |
| Sequoyah (2) | Oklahoma | Already Open | C | C | Already Open. |
| Siletz Bay (1) | Oregon | Already Open | Closed | Closed | B. |
| Upper Souris (6) | North Dakota | Closed | C/D | C/D | Already Open. |

* number in () refers to the Region as defined in the preamble to this proposed rule under Available Information for Specific Refuges.
Key:
A = New refuge opened
B = New activity on a refuge previously open to other activities
C = Refuge already open to activity, but added new lands/waters or modified areas open to hunting or fishing
D = Refuge already open to activity but added new species to hunt

The changes for the 2017–18 hunting/fishing season noted in the chart above are each based on a complete administrative record which, among other detailed documentation, also includes a hunt plan, a compatibility determination, and the appropriate National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) analysis, all of which were the subject of a public review and comment process. These documents are available upon request.

**Fish Advisory**

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish-consumption advisories on the Internet at: *http://www.epa.gov/fish-tech.*

**Plain Language Mandate**

In this proposed rule, we propose some of the revisions to the individual refuge units to comply with a Presidential mandate to use plain language in regulations; these particular revisions do not modify the substance of the previous regulations. These types of changes include using ''you'' to refer to the reader and ''we'' to refer to the Refuge System, using the word ''allow'' instead of ''permit'' when we do not require the use of a permit for an activity, and using active voice (*e.g.,* ''We restrict entry into the refuge'' vs. ''Entry into the refuge is restricted'').

**Request for Comments**

You may submit comments and materials on this proposed rule by any one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**.

We will post your entire comment on *http://www.regulations.gov*. Before including personal identifying information in your comment, you should be aware that we may make your entire comment—including your personal identifying information—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. We will post all hardcopy comments on *http://www.regulations.gov.*

**Public Comment**

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. We open refuges through a series of stages, with the fundamental work being performed on the ground at the refuge and in the community where the program is administered. In these stages, we give the public other opportunities to comment, for example, on comprehensive conservation plans and compatibility determinations. The second stage is this document, when we publish the proposed rule in the **Federal Register** for additional comment, usually for a 30-day comment period.

There is nothing contained in this proposed rule outside the scope of the annual review process where we determine whether individual refuges need modifications, deletions, or additions made to them. We make every attempt to collect all of the proposals from the refuges nationwide and process them expeditiously to maximize the time available for public review. A 30-day comment period, through the broader publication following the earlier public involvement, gives the public sufficient time to comment and allows us to establish hunting and fishing programs in time for the upcoming seasons. Many of these rules would also relieve restrictions and allow the public to participate in recreational activities on a number of refuges. In addition, in order to continue to provide for previously authorized hunting opportunities while at the same time providing for adequate resource protection, we must be timely in providing modifications to certain hunting programs on some refuges.

We considered providing a 60-day, rather than a 30-day, comment period. However, we determined that an additional 30-day delay in processing these refuge-specific hunting and sport fishing regulations would hinder the effective planning and administration of our hunting and sport fishing programs. Such a delay would jeopardize enacting amendments to hunting and sport fishing programs in time for implementation this year and/or early next year, or shorten the duration of these programs.

Even after issuance of a final rule, we accept comments, suggestions, and concerns for consideration for any appropriate subsequent rulemaking.

When finalized, we will incorporate these regulations into 50 CFR part 32. Part 32 contains general provisions and refuge-specific regulations for hunting and sport fishing on refuges.

**Clarity of This Proposed Rule**

Executive Orders 12866 and 12988 and the Presidential Memorandum of June 1, 1998, require us to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs**

This action is not subject to Executive Order (E.O.) 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to routine hunting and fishing activities.

**Regulatory Planning and Review (Executive Orders 12866 and 13563)**

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rulemaking is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

**Regulatory Flexibility Act**

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule adds one NWR to the list of refuges open to sport fishing and increases hunting or fishing activities on nine additional national wildlife refuges. As a result, visitor use for wildlife-dependent recreation on these NWRs will change. If the refuges establishing new programs were a pure addition to the current supply of those activities, it would mean an estimated increase of 914 user days (one person per day participating in a recreational opportunity, Table 2). Because the

participation trend is flat in these activities since 1991, this increase in supply will most likely be offset by other sites losing participants. Therefore, this is likely to be a substitute site for the activity and not necessarily an increase in participation rates for the activity.

TABLE 2—ESTIMATED CHANGE IN RECREATION OPPORTUNITIES IN 2017/2018

[Dollars in thousands]

| Refuge | Additional days | Additional expenditures |
|---|---|---|
| Baskett Slough | 2 | $0.1 |
| Des Lacs | 50 | 2.0 |
| Fox River | 5 | 0.2 |
| Horicon | 187 | 7.4 |
| Minnesota Valley | 0 | 0.0 |
| Patoka River | 0 | 0.0 |
| Savannah River | 315 | 12.4 |
| Sequoyah | 5 | 0.2 |
| Siletz Bay | 150 | 6.3 |
| Upper Souris | 200 | 7.9 |
| Total | 914 | 36.4 |

To the extent visitors spend time and money in the area of the refuge that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses. Due to the unavailability of site-specific expenditure data, we use the national estimates from the 2011 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the maximum expected additional participation of the Refuge System yields approximately $36,400 in recreation-related expenditures (Table 2). By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of these recreational activities. Using a national impact multiplier for hunting activities (2.27) derived from the report ''Hunting in America: An Economic Force for Conservation'' and for fishing activities (2.40) derived from the report ''Sportfishing in America'' yields a total economic impact of approximately $83,500 (2016 dollars) (Southwick Associates, Inc., 2012). Using a local impact multiplier would yield more accurate and smaller results. However, we employed the national impact multiplier due to the difficulty in developing local multipliers for each specific region.

Since we know that most of the fishing and hunting occurs within 100 miles of a participant's residence, then it is unlikely that most of this spending would be ''new'' money coming into a local economy; therefore, this spending would be offset with a decrease in some other sector of the local economy. The net gain to the local economies would be no more than $83,500, and most likely considerably less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and fishing activities, their spending patterns would not add new money into the local economy and, therefore, the real impact would be on the order of about $16,700 annually.

Small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait-and-tackle shops, and similar businesses) may be affected by some increased or decreased refuge visitation. A large percentage of these retail trade establishments in the local communities around NWRs qualify as small businesses (Table 3). We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule will have a significant economic effect on a substantial number of small entities in any region or nationally. As noted previously, we expect approximately $36,400 to be spent in total in the refuges' local economies. The maximum increase at most would be less than one-hundredth of 1 percent for local retail trade spending (Table 3).

TABLE 3—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2017/2018

[Thousands, 2016 dollars]

| Refuge/county(ies) | Retail trade in 2012 | Estimated maximum addition from new activities | Addition as % of total | Establish-ments in 2012 | Establ. with <10 emp in 2012 |
|---|---|---|---|---|---|
| Baskett Slough | | | | | |
| Polk, OR | $377,029 | $0.1 | <0.01 | 125 | 89 |
| Des Lacs | | | | | |
| Burke, ND | 1,988,596 | 1.0 | <0.01 | 293 | 169 |
| Ward, ND | 40,290 | 1.0 | <0.01 | 10 | 6 |
| Fox River | | | | | |
| Marquette, WI | 74,141 | 0.2 | <0.01 | 35 | 27 |
| Horicon | | | | | |
| Dodge, WI | 870,743 | 3.7 | <0.01 | 234 | 159 |
| Fond du Lac, WI | 1,465,969 | 3.7 | <0.01 | 354 | 225 |
| Minnesota Valley | | | | | |
| Carver, MN | 948,923 | | | 209 | 132 |

TABLE 3—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2017/2018—Continued

[Thousands, 2016 dollars]

| Refuge/county(ies) | Retail trade in 2012 | Estimated maximum addition from new activities | Addition as % of total | Establish-ments in 2012 | Establ. with <10 emp in 2012 |
|---|---|---|---|---|---|
| Dakota, MN | 6,779,786 | ..... | ..... | 1,132 | 689 |
| Hennepin, MN | 25,012,109 | ..... | ..... | 4,209 | 2,657 |
| Le Sueur, MN | 220,214 | ..... | ..... | 84 | 58 |
| Scott, MN | 1,397,711 | ..... | ..... | 323 | 215 |
| Sibley, MN | 79,291 | ..... | ..... | 54 | 39 |
| Patoka River | | | | | |
| Gibson, IN | 582,859 | ..... | ..... | 120 | 84 |
| Pike, IN | 75,823 | ..... | ..... | 31 | 23 |
| Savannah River | | | | | |
| Chatham, GA | 4,449,471 | 6.2 | <0.01 | 1,198 | 851 |
| Effingham, GA | 374,811 | 6.2 | <0.01 | 108 | 79 |
| Jasper, SC | 600,879 | 6.2 | <0.01 | 104 | 80 |
| Sequoyah | | | | | |
| Haskell, OK | 149,403 | 0.1 | <0.01 | 33 | 22 |
| Muskogee, OK | 970,020 | 0.1 | <0.01 | 258 | 178 |
| Sequoyah, OK | 405,258 | 0.1 | <0.01 | 116 | 86 |
| Siletz Bay | | | | | |
| Lincoln, OR | 607,106 | 6.3 | <0.01 | 241 | 310 |
| Upper Souris | | | | | |
| Renville, ND | 84,795 | 3.9 | <0.01 | 12 | 10 |
| Ward, ND | 1,988,596 | 3.9 | <0.01 | 293 | 169 |

With the small change in overall spending anticipated from this proposed rule, it is unlikely that a substantial number of small entities will have more than a small impact from the spending change near the affected refuges. Therefore, we certify that, if adopted as proposed, this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

**Small Business Regulatory Enforcement Fairness Act**

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Would not have an annual effect on the economy of $100 million or more. The minimal impact would be scattered across the country and would most likely not be significant in any local area.

b. Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This proposed rule would have only a slight effect on the costs of hunting opportunities for Americans. If the substitute sites are farther from the participants' residences, then an increase in travel costs would occur. The Service does not have information to quantify this change in travel cost but assumes that, since most people travel less than 100 miles to hunt, the increased travel cost would be small. We do not expect this proposed rule to affect the supply or demand for hunting opportunities in the United States, and, therefore, it should not affect prices for hunting equipment and supplies, or the retailers that sell equipment.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rule represents only a small proportion of recreational spending at NWRs. Therefore, if adopted, this rule would have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide.

**Unfunded Mandates Reform Act**

Since this proposed rule would apply to public use of federally owned and managed refuges, it would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

**Takings (E.O. 12630)**

In accordance with E.O. 12630, this proposed rule would not have significant takings implications. This rule would affect only visitors at NWRs and describe what they can do while they are on a refuge.

**Federalism (E.O. 13132)**

As discussed in Regulatory Planning and Review and Unfunded Mandates Reform Act, above, this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement under E.O. 13132. In preparing this proposed rule, we worked with State governments.

**Civil Justice Reform (E.O. 12988)**

In accordance with E.O. 12988, the Department of the Interior has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The rule would clarify established regulations and result in better understanding of the regulations by refuge visitors.

**Energy Supply, Distribution or Use (E.O. 13211)**

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply,

distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposed rule would add one NWR to the list of refuges open to sport fishing and increase hunting or fishing activities on nine other NWRs, it is not a significant regulatory action under E.O. 12866, and we do not expect it to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

**Consultation and Coordination With Indian Tribal Governments (E.O. 13175)**

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on NWRs with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations.

**Paperwork Reduction Act (PRA)**

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget under the PRA of 1995 (44 U.S.C. 3501 *et seq.*). OMB has approved the information collection requirements associated with regulations implementing refuge-specific hunting and sport fishing regulations and has assigned OMB control numbers 1018–0102 (expires June 30, 2017; in accordance with 5 CFR 1320.10, the agency may continue to conduct or sponsor this collection of information while the submission is pending at OMB), 1018–0140 (expires May 31, 2018), and 1018–0153 (expires December 31, 2018). 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.

**Endangered Species Act Section 7 Consultation**

We comply with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), when developing comprehensive conservation plans and step-down management plans—which would include hunting and/or fishing plans—for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We have completed section 7 consultation on each of the affected refuges.

**National Environmental Policy Act**

We analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), 43 CFR part 46, and 516 Departmental Manual (DM) 8.

A categorical exclusion from NEPA documentation applies to publication of proposed amendments to refuge-specific hunting and fishing regulations because they are technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (43 CFR 46.210 and 516 DM 8). Concerning the actions that are the subject of this proposed rulemaking, we have complied with NEPA at the project level when developing each proposal. This is consistent with the Department of the Interior instructions for compliance with NEPA where actions are covered sufficiently by an earlier environmental document (43 CFR 46.120).

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in the refuge comprehensive conservation plan and/or other step-down management plans, pursuant to our refuge planning guidance in 602 Fish and Wildlife Service Manual (FW) 1, 3, and 4. We prepare these comprehensive conservation plans and step-down plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500 through 1508. We invite the affected public to participate in the review, development, and implementation of these plans. Copies of all plans and NEPA compliance are available from the refuges at the addresses provided below.

**Available Information for Specific Refuges**

Individual refuge headquarters have information about public use programs and conditions that apply to their specific programs and maps of their respective areas. To find out how to contact a specific refuge, contact the appropriate Regional office listed below:

Region 1—Hawaii, Idaho, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 NE. 11th Avenue, Portland, OR 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue SW., Albuquerque, NM 87103; Telephone (505) 248–6937.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458; Telephone (612) 713–5360.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345; Telephone (404) 679–7166.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589; Telephone (413) 253–8307.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, CO 80228; Telephone (303) 236–8145.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, AK 99503; Telephone (907) 786–3545.

Region 8—California and Nevada. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825; Telephone (916) 414–6464.

**Primary Author**

Katherine Harrigan, Division of Natural Resources and Conservation Planning, National Wildlife Refuge System, is the primary author of this rulemaking document.

**List of Subjects in 50 CFR Part 32**

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

**Proposed Regulation Promulgation**

For the reasons set forth in the preamble, we propose to amend title 50, chapter I, subchapter C of the Code of Federal Regulations as follows:

## PART 32—HUNTING AND FISHING

■ 1. The authority citation for part 32 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

### § 32.7 [Amended]

■ 2. Amend § 32.7 by adding, in alphabetical order, an entry for ''Loess Bluffs National Wildlife Refuge'' in the State of Missouri; and removing the entry for ''Squaw Creek National Wildlife Refuge.''

■ 3. Amend § 32.23, the entry for Dale Bumpers White River National Wildlife Refuge, by:

■ a. Removing the second, duplicate appearance of paragraph A.16;

■ b. Adding a new paragraph A.17;

■ c. Revising paragraphs A.18 through A.20, C.2 through C.5, C.8, and C.18;

■ d. Adding paragraphs C.20 and C.21; and

■ e. Revising paragraph D.1.

The revisions and additions read as follows:

### § 32.23 Arkansas.

* * * * *

**Dale Bumpers White River National Wildlife Refuge**

*A.* * * *

* * * * *

17. We prohibit the use of decoys that contain moving parts or electrical components, except that you may use manually operated 'jerk strings' to simulate decoy movement.

18. You may not utilize a guide, guide service, outfitter, club, organization, or any other person who provides equipment, services, or assistance on the refuge for compensation.

19. We prohibit commercial guiding for the take of wildlife or fish.

20. We allow camping only in designated sites and areas identified in the refuge user brochure/permit (signed brochure), and we restrict camping to individuals involved in wildlife-dependent activities. We limit camping on the refuge to no more than 14 days during any 30 consecutive-day period. Campers must occupy camps daily. We prohibit all disturbances, including use of generators, after 10 p.m.

* * * * *

*C.* * * *

* * * * *

2. Archery deer seasons on the North Unit are from the beginning of October until the end of January except during quota muzzleloader and quota gun deer hunts, when the archery season is closed. We provide annual season dates and bag limits in the refuge user brochure/permit (signed brochure).

3. Archery deer seasons on the South Unit are from the beginning of October until the end of December except during quota muzzleloader and quota gun deer hunts, when the archery season is closed. We provide annual season dates and bag limits in the refuge user brochure/permit (signed brochure).

4. Muzzleloader season for deer will begin in October and will continue for a period of up to 3 days of quota hunting and 4 days of non-quota hunting in the North Unit. We provide annual season dates and bag limits in the refuge user brochure/permit (signed brochure).

5. The gun deer hunt will begin in November and will continue for a period of 3 days of quota hunting in the North and South Units, and 4 days of non-quota hunting in the North Unit. We provide annual season dates, bag limits, and areas in the refuge user brochure/permit.

* * * * *

8. If you harvest deer or turkey on the refuge, you must immediately record the zone number (Zone 145 for the South Unit or Zone 146 for the North Unit) on your hunting license and later check deer and/or turkey through the State checking system. Outlying tracts use the same zone number as the surrounding State zone.

* * * * *

18. We close the Kansas Lake Area to all entry on December 1 and reopen it on March 1.

* * * * *

20. We prohibit the possession and/or use of toxic shot by hunters using shotguns (see § 32.2(k) of this chapter) when hunting.

21. Feral hog regulations are found in the refuge brochure/permit (signed brochure).

*D.* * * *

1. Conditions A1, A9, A10, A11, A15, and A21 through A25 apply.

* * * * *

■ 4. Amend § 32.24 by:

■ a. Revising paragraph A.3 under the entry Colusa National Wildlife Refuge;

■ b. Revising paragraph A.3 under the entry Delevan National Wildlife Refuge;

■ c. Revising paragraph A.3 under the entry Sacramento National Wildlife Refuge; and

■ d. Revising paragraph C.3 under the entry Sacramento River National Wildlife Refuge.

The revisions read as follows:

### § 32.24 California.

* * * * *

**Colusa National Wildlife Refuge**

*A.* * * *

3. Junior hunters age 15 or younger must be accompanied by, and remain within sight and normal voice contact of, an adult (age 18 or older) at all times while hunting.

* * * * *

**Delevan National Wildlife Refuge**

*A.* * * *

3. Junior hunters age 15 or younger must be accompanied by, and remain within sight and normal voice contact of, an adult (age 18 or older) at all times while hunting.

* * * * *

**Sacramento National Wildlife Refuge**

*A.* * * *

3. Junior hunters age 15 or younger must be accompanied by, and remain within sight and normal voice contact of, an adult (age 18 or older) at all times while hunting.

* * * * *

**Sacramento River National Wildlife Refuge**

* * * * *

*C.* * * *

3. We prohibit using dogs while hunting feral hogs and black-tailed deer.

* * * * *

■ 5. Amend § 32.27 by revising the entry for Prime Hook National Wildlife Refuge to read as follows:

### § 32.27 Delaware.

* * * * *

**Prime Hook National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow the hunting of waterfowl, coot, mourning dove, snipe, and woodcock on designated areas of the refuge during designated seasons in accordance with State regulations and subject to the following conditions:

1. General Hunting Regulations.

i. Anyone age 16 or older, regardless of license status, must obtain a migratory bird hunting permit (Migratory Bird Hunt Application, FWS Form 3–2357) to hunt or enter hunt areas, except non-hunting assistants assisting disabled hunters in the disabled area. You must print and validate your permit (name/address/phone) with your signature, in ink, and retain it on your person while hunting or scouting.

ii. You must abide by the terms and conditions outlined in the refuge hunt brochure (see § 32.2(e) of this chapter). Brochures contain information on seasons, bag limits, methods of hunting, maps depicting areas open to hunting, hunt unit reservation procedures, and the terms and conditions under which

we issue hunting permits. They are available at the visitor center, at the administration office, and on the refuge's Web site (see § 32.2(f) of this chapter).

iii. You, and those who accompany you who are age 16 or older, must possess and carry the following at all times while on refuge property: A valid Delaware hunting license or document exhibiting your License Exempt Number (LEN), all required State and Federal stamps, a valid form of government-issued photo identification, a signed refuge hunt brochure appropriate for the hunt in question, and a printed valid hunting permit. We will not accept photocopies or electronic copies of these documents.

iv. Youths age 15 or younger must be accompanied by a supervisor age 18 or older who possesses all documents required in A.1.iii, including non-hunting assistants. All supervisors may only be accompanied by one youth. Youths must possess and carry a signed refuge waterfowl hunt brochure and an LEN or license in accordance with State law. The youth must remain within sight and normal voice contact of the supervisor at all times while hunting on the refuge.

v. Other than using motor vehicles on designated roads, you may only access the refuge by foot, except as authorized by the refuge manager.

vi. You may use trained dogs to assist in retrieval of harvested game.

vii. You must notify and receive permission from a Service law enforcement officer, refuge manager, or designee if you need to retrieve game from a closed refuge area or a hunting area for which you do not possess a valid permit (see § 26.21(a) of this chapter).

viii. You must park in designated areas. We prohibit parking in front of any gate. Parked vehicles may not impede any road traffic (see § 27.31(h) of this chapter).

ix. You may enter the refuge up to 2 hours before legal morning shooting time. You must stop hunting by 3 p.m. and leave the hunting area or unit by 4 p.m., except when snow goose hunting, in the designated snow goose area, during the snow goose conservation order season.

x. You must complete and return a Migratory Bird Hunt Report (FWS Form 3–2361), available at the refuge administration office or on the refuge's Web site, within 15 days of the close of the season.

xi. We prohibit the use of natural vegetation for camouflaging blind material (see § 27.51(a) of this chapter).

xii. We prohibit entry to designated safety zones as identified by polygons on the refuge map.

xiii. You may access the Lottery Waterfowl hunt area by boat. The maximum horsepower allowed for boat motors is 30 horsepower (HP). You must abide by the slow, no-wake zones on designated portions of refuge waterways as depicted in maps or within the brochure.

xiv. We allow the use of non-motorized boats within the Walk-in Hunt Area. Boats may be transported to refuge waters by hand or by the use of a cart.

2. General and Disabled Waterfowl Draw Hunt Areas.

i. You must obtain a Daily General or Disabled Waterfowl Draw Area Permit (signed brochure), which reserves your hunt unit/area/site in advance for a specific date using an online system. Only hunters age 16 or older may reserve a hunt unit.

ii. You must print and validate your Daily Waterfowl Draw Area Permit (signed brochure) with your signature in ink.

iii. You must hunt from your boat or, if applicable, provided blind. You must hunt within 75 feet (22.9 meters) of your designated site.

iv. We allow you to have up to two additional hunters accompany you on your reserved site.

v. Disabled Waterfowl Draw Area.

a. All disabled hunters must possess and carry a State of Delaware Certified Hunter with Disabilities Card while hunting in disabled areas. We will not accept photocopies or electronic copies of these forms.

b. Disabled hunters may have a non-hunting assistant who is age 18 or older. The assistant must remain within sight and normal voice contact; must not be engaged in hunting; and must possess a valid refuge hunt brochure signed in ink and a valid government-issued photo identification. Any assistant engaged in hunting must possess and carry all documents as specified in A.1.iii.

c. We do not allow assistants to enter a designated disabled hunting area unless they are accompanied by a certified disabled hunter.

d. We do not require assistants to maintain sight and normal voice contact while retrieving game.

*B. Upland Game Hunting.* We allow hunting of rabbit, quail, pheasant, and red fox on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. A.1.i. through A.1.viii. and A.1.xii. apply.

2. We prohibit shooting a projectile from a firearm, muzzleloader, bow, or crossbow from, down, or across any refuge road. A refuge road is any road that is traveled by vehicular traffic.

3. You must make a reasonable effort to retrieve all wounded or killed game and include it in your daily bag limit. We prohibit leaving entrails or other waste within 50 feet (15.2 meters) of any road, parking area, trail, or refuge structure on the refuge.

4. You must use daylight florescent orange in accordance with State regulations (see § 32.2(d) of this chapter).

5. You may enter the refuge no earlier than 1 hour before legal morning shooting time and you must exit the refuge by 1 hour after legal sunset.

6. We prohibit the use of centerfire and rimfire rifles.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. General Hunt Regulations.

i. Conditions A.1.i. through A.1.v., A.1.vii., A.1.viii., A.1.xii., B2, and B3 apply.

ii. We prohibit organized deer drives.

iii. We allow the use of temporary tree stands and blinds for hunting. All stands and blinds left on refuge property unoccupied must be tagged in plain sight with your permit number and the years that are printed on your permit. You must remove all stands and blinds by legal sunset of a date established annually by the refuge manager. We are not responsible for damage, theft, or use of the stand by other hunters.

iv. You may use marking devices, including flagging or tape, but you must remove them by legal sunset on a date established annually by the refuge manager. You may not use paint or any other permanent marker to mark trails.

v. You must use daylight florescent orange in accordance with State regulations during all designated firearm and muzzleloader deer hunts (see § 32.2(d) of this chapter).

2. General and Disabled Deer Draw Hunt Areas.

i. Youth hunters must obtain a hunting permit before applying for a General and Disabled Deer Draw Area Permit (signed brochure). Hunters age 15 or younger must obtain a hunting permit; however, A.1.iv. still applies.

ii. You must obtain a Daily General or Disabled Deer Draw Area Permit (signed brochure), which reserves your hunt unit/area/site in advance for a specific date using an online system.

iii. You must print and sign your Daily Deer Draw Area Permit (signed brochure) in ink.

3. For designated disabled hunt areas, A.2.v. applies.

*D. Sport Fishing.* We allow fishing and crabbing on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Conditions A.1.i. through A.1.iv. apply for those age 17 and older.

2. All youth age 16 or younger must be accompanied by a licensed angler age 18 or older who possesses all documents required in D.1.i.

3. The refuge is open from ½ hour before legal sunrise to ½ hour after legal sunset.

4. Other than using motor vehicles on designated roads, you may only access the refuge by foot, except as authorized by the refuge manager.

5. We allow fishing and crabbing from boats and from designated areas of the refuge, on designated days, during designated times, routes of travel, waterways, and launch sites.

i. You must remove boats from the water by legal sunset.

ii. When on Turkle and Fleetwood Ponds, you may only propel boats manually or with electric motors.

iii. We allow a maximum of 30 horsepower (HP) outboard or motor.

iv. You must abide by the slow, no-wake zones on designated portions of refuge waterways as depicted in maps or within the brochure.

6. Fishing tackle and crabbing gear:

i. You must use hook-and-line tackle when fishing for finfish.

ii. You may use only hand lines, crab dip nets, hoop crab nets, and/or manually operated crab traps (collapsible traps) in any combination for crabbing.

iii. You must attend to your crabbing and fishing lines or gear at all times.

* * * * *

■ 6. Amend § 32.28 by:

■ a. Under the entry Lake Woodruff National Wildlife Refuge:

■ i. Revising paragraphs C.1, C.2, C.8, and C.16;

■ ii. Adding paragraphs C.17 and C.18;

■ iii. Removing paragraph D.5; and

■ iv. Redesignating paragraph D.6 as D.5;

■ b. Under the entry Lower Suwanee National Wildlife Refuge:

■ i. Revising paragraphs A.9, A.12, and A.14; and

■ ii. Adding paragraph D.4; and

■ c. Under the entry Merritt Island National Wildlife Refuge:

■ i. Revising paragraphs A.3 through A.6;

■ ii. Adding paragraphs A.10 and A.11;

■ iii. Revising paragraphs A.14, A.16, C.8, C.15, C.16, C.24, and D.3;

■ iv. Removing paragraph D.9;

■ v. Redesignating paragraphs D.10 through D.14 as D.9 through D.13, respectively;

■ vi. Removing paragraph D.15;

■ vii. Redesignating paragraphs D.16 and D.17 as D.14 and D.15, respectively;

■ viii. Revising newly redesignated paragraph D. 14; and

■ ix. Removing paragraph D.18.

The additions and revisions read as follows:

**§ 32.28 Florida.**

* * * * *

**Lake Woodruff National Wildlife Refuge**

* * * * *

*C.* * * *

1. You must have a valid signed Lake Woodruff National Wildlife Refuge Big Game Permit (signed brochure). The permits (signed brochure) are free and nontransferable, and anyone on refuge land engaged in hunting must sign and carry the permit at all times.

2. You must obtain a State-issued Lake Woodruff Quota Hunt Permit (Quota Permit), which can be purchased through Florida Fish and Wildlife Conservation Commission (FWC). You must have on your person all applicable Florida hunting licenses and permits. State requirements for hunter safety apply.

* * * * *

8. Hunting areas on the refuge are seasonally closed to all public use except to permitted hunters during the season, and are marked on refuge maps. The refuge is closed between legal sunset and legal sunrise, except permitted hunters may access the refuge 2 hours prior to legal sunrise each hunting day. All hunters must leave the refuge within 2 hours of legal sunset.

* * * * *

16. Archery hunters must wear a vest or jacket containing back and front panels of at least 500 square inches (3,226 square centimeters) of solid-fluorescent-orange color when moving to and from their vehicle, to their deer stand or their hunting spot, and while tracking or dragging out deer.

17. We prohibit using dogs for tracking unless authorized by a Federal wildlife officer. Dogs must remain on a leash and be equipped with a GPS tracking device.

18. It is unlawful to drive nails, spikes, or other metal objects into any tree, or to hunt from any tree in which a metal object has been driven (see § 32.2(i) of this chapter).

* * * * *

**Lower Suwanee National Wildlife Refuge**

*A.* * * *

9. In addition to State hunter-education requirements, an adult (parent or guardian) age 21 or older must supervise and must remain within sight of and in normal voice contact of the youth hunter age 15 or younger. Parents or adult guardians are responsible for ensuring that hunters age 15 and younger do not engage in conduct that would constitute a violation of refuge regulations. An adult may not supervise more than two youths.

* * * * *

12. We prohibit marking any tree, or other refuge feature, with flagging, litter, paint, tacks, spider eyes, or blaze.

* * * * *

14. You may leave a temporary tree stand on refuge property starting 1 week before archery season, but you must remove it by the last day of hog season. All tree stands left on the refuge within the hunt season must display the hunter's name and hunting license number legibly written on or attached to the stand. We may seize and dispose of any tree stands not in compliance, according to Federal regulations. You may also use a temporary tree stand during small game season, but you must remove it by the last day of small game season.

* * * * *

*D.* * * *

4. We prohibit the use or possession of alcohol while fishing.

* * * * *

**Merritt Island National Wildlife Refuge**

*A.** * *

3. You must carry (or hunt within 30 yards of a hunter who possesses) a valid State-issued Merritt Island Waterfowl Quota Permit (Waterfowl Quota Permit), which can be purchased through the Florida Fish and Wildlife Conservation Commission (FWC) while hunting in areas 1 or 4 from the beginning of the regular waterfowl season through the end of January. The Waterfowl Quota Permit can be used for a single party consisting of the permit holder and up to three guests. The permit holder must be present.

4. During the State's waterfowl season, we allow hunting on Wednesdays, Saturdays, Sundays, and the following Federal holidays: Thanksgiving, Christmas, and New Year's Day.

5. We allow hunting in four designated areas of the refuge as delineated in the refuge hunting regulations map. We prohibit hunters entering the normal or expanded restricted areas of the Kennedy Space Center (KSC). Merritt Island National Wildlife Refuge and KSC maintain the right to close any portion of the refuge

for any length of time. In that case, we will not refund or reissue any permits.

6. We allow hunting of waterfowl on refuge-established hunt days from ½ hour before legal sunrise until 12 p.m. (noon). Hunters must remove all equipment and check out at the refuge check station prior to 1 p.m. daily.

* * * * *

10. We prohibit accessing a hunt area from Black Point Wildlife Drive, Playalinda Beach Road (Beach Road), and Scrub Ridge Trail. We prohibit launching a boat and leaving vehicles parked for hunting purposes on Black Point Wildlife Drive, Playalinda Beach Road (Beach Road), or Scrub Ridge Trail.

11. We prohibit construction of permanent blinds or digging into dikes (see § 27.92 of this chapter).

* * * * *

14. You must leave the refuge by 1 p.m. Prior to that, you must stop at posted refuge waterfowl check stations and report statistical hunt information on the Migratory Bird Hunt Report (FWS Form 3–2361) to refuge personnel.

* * * * *

16. You may use gasoline or diesel motors only inside the impoundment perimeter ditch. Outside the perimeter ditch, vessels must be propelled by paddling, push pole, or electric trolling motor.

* * * * *

*C.* * * *

8. You are prohibited from entering the normal or expanded restricted areas of KSC. Merritt Island National Wildlife Refuge and KSC maintain the right to close any portion of the refuge for any length of time. In that case, we will not refund or reissue any permits.

* * * * *

15. We allow legally permitted hunters to scout within their permitted zones up to 7 days prior to their permitted hunts. You must carry your valid Quota Hunt Permit identifying the permitted hunt zone while scouting. You may not possess hunting weapons while scouting.

16. We allow parking for scouting and/or hunting only along State Road (SR) 3, but not within the hunt areas or on any road marked as ''Area Closed.''

* * * * *

24. The bag limit and antler requirements for white-tailed deer on the refuge will follow State regulations but will not exceed two deer per hunt. We define antlered and antlerless deer according to State regulations.

* * * * *

*D.* * * *

3. You may launch boats for night fishing and boating activities only from Bair's Cove, Beacon 42, and Biolab boat ramps.

* * * * *

14. When inside the impoundment perimeter ditch, you may use gasoline or diesel motors. Outside the perimeter ditch, vessels must be propelled by paddling, push pole, or electric trolling motor.

* * * * *

■ 7. Amend § 32.29 by revising paragraphs A, B, and C under the entry Savannah National Wildlife Refuge to read as follows:

**§ 32.29 Georgia.**

* * * * *

**Savannah National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl and mourning dove on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. All hunters age 16 and older must possess and carry a signed refuge hunt permit (name/address/phone) and a State license. We charge a fee for all hunt permits.

2. To participate in the youth waterfowl hunt, youth hunters must submit the Waterfowl Lottery Application (FWS Form 3–2355). You must pay an application fee to enter the hunt drawing.

3. We allow temporary blinds only. You must remove decoys and other personal property from the refuge daily (see § 27.93 of this chapter).

4. We allow shotguns for all migratory game bird hunting, but only with nontoxic shot size #2 or smaller.

5. Youth hunters, defined as those age 15 and younger, must remain within sight and normal voice contact of an adult age 21 or older; the adult must possess a valid hunting license for the State in which they are hunting. One adult may supervise no more than two youth hunters.

6. You may take feral hog and coyote during all refuge hunts (migratory bird, upland, and big game) with weapons authorized and legal for those hunts.

7. You may use retrieving dogs. Dogs must remain under direct and constant control of the hunter.

8. You must comply with all provisions of State and local law when possessing, transporting, or carrying firearms on national wildlife refuges. You may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32.)

*B. Upland Game Hunting.* We allow hunting of squirrel and rabbit on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Conditions A1, A6, and A8 apply.

2. For squirrel hunting, we allow rimfire rifles, rimfire pistols, or shotguns with nontoxic shot size #2 shot or smaller. We recommend but do not require solid copper or other nontoxic rimfire bullets. For rabbit hunting, we allow shotguns, but only with nontoxic shot size #2 or smaller.

3. You may not hunt on or within 100 yards (90 meters) of public roads, refuge facilities, roads and trails, and railroad rights-of-way, or in closed areas.

4. You may not use dogs for upland game hunting.

5. During the period when upland game hunting coincides with the refuge gun hunt for deer and hogs, you must wear an outer garment containing a minimum of 500 square inches (3,226 square centimeters) of hunter-orange material above the waistline.

6. Youth hunters, defined as those age 15 and younger, must remain within sight and normal voice contact of an adult age 21 or older; the adult must possess a valid hunting license for the State in which they are hunting. One adult may supervise no more than one youth hunter.

*C. Big Game Hunting.* We allow hunting of white-tailed deer, turkey, feral hog, and coyote on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Conditions A1, A6, A8, B3, and B6 apply.

2. To participate in the gun hunt for wheelchair-dependent hunters, hunters must submit the Quota Deer Hunt Application (FWS Form 3–2354). To participate in the Youth Turkey Hunt & Learn Weekend, youth hunters must submit the Big/Upland Game Hunt Application (FWS Form 3–2356). You must pay an application fee to enter these hunt drawings.

3. To participate in the youth-only deer or turkey hunts, youth hunters must request a free hunt permit from the refuge headquarters.

4. You may only use bows, in accordance with State regulations, for deer, hog, and coyote hunting during the archery hunt for these species.

5. You may only use shotguns (20 gauge or larger, slugs only), center-fire rifles, center-fire pistols, muzzleloaders, and bows, in accordance with State regulations, for deer, hog, and coyote hunting during the firearm hunts for these species.

6. You must remove hunt stands following each day's hunt (see § 27.93 of this chapter).

7. Hunters may take as many as five deer (no more than two antlered). There is no bag limit on feral hog or coyote.

8. Turkey hunters may harvest only three gobblers (male turkey).

9. We allow only shotguns with nontoxic #2 shot or smaller, and bows, in accordance with State regulations, for turkey hunting. We prohibit the use of slugs or buckshot for turkey hunting.

10. We prohibit the use of trail or game cameras. We also prohibit the use of trail marking tacks, bright eyes, reflectors, reflecting tape, and any other markers, including biodegradable markers such as toilet paper and paper tape.

11. We prohibit the use of dogs for big game hunting.

* * * * *

■ 8. Amend § 32.37 by:

■ a. Revising paragraph A.19 under the entry Bayou Sauvage National Wildlife Refuge;

■ b. Revising paragraphs A.14, C.3, C.5, and C.7 under the entry Bayou Teche National Wildlife Refuge;

■ c. Under the entry Big Branch Marsh National Wildlife Refuge:

■ i. Revising paragraphs A.15, C.5, C.6, D.5, and D.6; and

■ ii. Adding paragraph D.8;

■ d. Under the entry Bogue Chitto National Wildlife Refuge:

■ i. Revising paragraphs A.6, A.7, A.10, A.11, B.4, C.3, and C.8;

■ ii. Adding paragraphs C.11 and C.12; and

■ iii. Revising paragraph D.3;

■ e. Revising paragraphs B.2, B.7, and C.5 under the entry Catahoula National Wildlife Refuge;

■ f. Revising paragraph A.16 under the entry Delta National Wildlife Refuge; and

■ g. Revising paragraph A.12 under the entry Mandalay National Wildlife Refuge.

The additions and revisions read as follows:

**§ 32.37 Louisiana.**

* * * * *

**Bayou Sauvage National Wildlife Refuge**

*A.* * * *

19. We prohibit the use of any type of material used as flagging or trail markers, except reflective tacks.

* * * * *

**Bayou Teche National Wildlife Refuge**

*A.* * * *

14. We prohibit the use of any type of material used as flagging or trail markers, except reflective tacks.

* * * * *

*C.* * * *

3. We allow hunting in the Centerville, Garden City, Bayou Sale, North Bend East, and North Bend West Units. We do not allow hunting within 500 feet (152.4 meters) of the Garden City parking area and boardwalk. The Bayou Sale Unit is not open for big game firearm hunts.

* * * * *

5. You may take feral hogs only as incidental take while participating in the refuge deer archery hunt.

* * * * *

7. During deer gun seasons, all hunters, except waterfowl hunters, must wear and display 400 square inches (2,580.6 square centimeters) of unbroken hunter-orange or blaze pink as the outermost layer of clothing on the chest and back and a hunter-orange or blaze pink cap. Deer hunters hunting from concealed ground blinds must display a minimum of 400 square inches (2,580.6 square centimeters) of hunter-orange or blaze pink above or around their blinds; this must be visible from 360 degrees.

* * * * *

**Big Branch Marsh National Wildlife Refuge**

*A.* * * *

15. We prohibit all-terrain vehicles (ATVs) and utility-terrain vehicles (UTVs).

* * * * *

*C.* * * *

5. You may erect temporary deer stands 2 days prior to the start of deer archery season. You must remove all deer stands within 2 days after the archery deer season closes. You may place only one deer stand on the refuge. Deer stands must have the owner's name, address, and phone number clearly printed on the stand. Hunting stands are not allowed on trees painted with white bands. You must place stands in a non-hunting position when not in use (see § 27.93 of this chapter).

6. You may take hogs only as incidental take while participating in the refuge deer archery hunt.

* * * * *

*D.* * * *

5. We prohibit all commercial finfishing and shellfishing, including guiding, outfitting, lodging, club membership, or participating in a paid guided fishing trip (see § 27.97 of this chapter).

6. Conditions A6, A8, A9, and A14 through A17 apply.

* * * * *

8. You must attend to any fishing, crabbing, and crawfishing equipment at all times.

* * * * *

**Bogue Chitto National Wildlife Refuge**

*A.* * * *

6. An adult at least age 21 must supervise youth hunters during all hunts. State regulations define youth hunter age and hunter-education requirements. One adult may supervise two youths during small game hunts and migratory bird hunts but may supervise only one youth during big game hunts. Youths must remain within normal voice contact of the adult who is supervising them. Parents or adult guardians are responsible for ensuring that youth hunters do not engage in conduct that would constitute a violation of refuge regulations.

7. We prohibit hunting within 150 feet (45.7 meters) from the centerline of any public road, refuge road, designated or maintained trail, building, residence, designated camping area, or designated public facility, or from or across aboveground oil, gas, or electric facilities. We prohibit hunting in refuge-designated closed areas, which we post on the refuge and identify in the refuge hunt permits.

* * * * *

10. You may not act as a hunting guide, outfitter, or in any other capacity whereby another individual(s) pays or promises to pay directly or indirectly for services rendered. You may not provide payment to any other person or persons for hunting on the refuge, regardless of whether the payment is for guiding, outfitting, lodging, or club membership (see § 27.97 of this chapter).

11. We prohibit horses, trail cameras, all-terrain vehicles (ATVs), and utility-terrain vehicles (UTVs), except UTVs are allowed on designated physically challenged hunt trails for big game. We provide specific size and tire pressure restrictions for UTVs in the refuge hunt permit (signed brochure).

* * * * *

*B.* * * *

4. All hunters in Louisiana (including archery hunters and small game hunters), except waterfowl hunters, must wear and display not less than 400 square inches (2,580.6 square centimeters) of unbroken hunter-orange or blaze pink as the outermost layer of clothing on the chest and back and a hunter-orange cap during deer gun seasons. While walking to and from elevated stands, all deer hunters must display a minimum of 400 square inches (2,580.6 square centimeters) of hunter-orange or blaze pink or a hunter-orange

or blaze pink hat. All hunters in Mississippi must wear at least 500 square inches (3,226 square centimeters) of hunter-orange or blaze pink; this replaces the 400 square inches (2,580.6 square centimeters) required in Louisiana. During the dog season for squirrels and rabbits, all hunters, except waterfowl hunters, must wear a hunter-orange or blaze pink hat. Deer hunters hunting from concealed blinds must display at least 400 square inches (2,580.6 square centimeters) of hunter-orange or blaze pink above or around their blinds; this must be visible from 360 degrees.

* * * * *

*C.* * * *

3. We allow archery deer hunting during the open State deer archery season. You may take deer of either sex in accordance with State regulations. The State season limits apply.

* * * * *

8. You may take hog as incidental game while participating in the refuge archery, primitive weapon, and general gun deer hunts and where otherwise specified. We list specific dates for the special hog hunts in February in the refuge hunt permit (signed brochure). During the special hog hunt in February, you must use trained hog-hunting dogs to aid in the take of hog. During the special hog hunt, you may take hog from ½ hour before legal sunrise until ½ hour after legal sunset. You may possess only approved nontoxic shot or pistol or rifle ammunition not larger than .22 caliber rimfire to take the hog after it has been caught by dogs. Condition A8 applies during special hog hunts in February.

* * * * *

11. We prohibit using shot larger than BB lead or T steel while hunting during turkey season.

12. We allow physically challenged big game hunters exclusive use of designated physically challenged hunt trails with limited use of UTVs in accordance with specific size and weight specifications. Specific hunt trails will be designated on the refuge hunt permit. Physically challenged hunters must pre-register hunting dates and specific location at the refuge office. An assistant may accompany the physically challenged hunter, but the assistant may not hunt.

*D.* * * *

3. We close the fishing ponds at the Pearl River Turnaround to fishing from April through the first full week of June and to boating during the months of April, May, June, and July.

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**Catahoula National Wildlife Refuge**

* * * * *

*B.* * * *

2. At the Headquarters Unit, we only allow squirrel and rabbit hunting. We set seasons annually.

* * * * *

7. You may use shotguns for hunting but only with nontoxic shot and rifles .22 caliber rimfire or smaller. We prohibit possession of toxic shot when hunting.

*C.* * * *

5. We allow hunting of deer with primitive firearms during the first segment of the State season for area 1, weekdays only (Monday through Friday) and 2 days in December with these dates set annually. We allow either-sex, deer gun hunting for the Friday, Saturday, and Sunday immediately following Thanksgiving Day and for 2 days in December with these dates to be set annually.

* * * * *

**Delta National Wildlife Refuge**

*A.* * * *

16. We prohibit the use of any type of material used as flagging or trail markers, except reflective tacks.

* * * * *

**Mandalay National Wildlife Refuge**

*A.* * * *

12. We prohibit the use of any type of material used as flagging or trail markers, except reflective tacks.

* * * * *

■ 9. Amend § 32.39 by:

■ a. Revising paragraphs A, C, D.2, and D.3 under the entry Blackwater National Wildlife Refuge; and

■ b. Revising paragraph C and D.4 under the entry Eastern Neck National Wildlife Refuge.

The revisions read as follows:

**§ 32.39 Maryland.**

* * * * *

**Blackwater National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose and duck on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. You must obtain a refuge waterfowl hunting permit (signed brochure) by signing the corresponding season's refuge waterfowl hunting brochure in ink. You must abide by the terms and conditions outlined in the brochure (see § 32.2(e) of this chapter). Refuge waterfowl hunting brochures contain seasons, bag limits, methods of hunting, maps depicting areas open to hunting, hunt unit reservation procedures, and the terms and conditions under which we issue hunting permits. They are available at the refuge visitor center, administration office, and on the refuge's Web site.

2. You must reserve your hunt unit in advance for a specific date using the call reservation system. You must be age 18 or older to reserve a hunt unit.

3. Up to three additional hunters may accompany you on your reserved unit.

4. You and those who accompany you must possess on your person a valid Maryland hunting license and all required stamps, a valid form of government-issued photo identification, and a printed valid hunting permit (signed brochure) at all times while on refuge property. We will not accept photocopies or electronic copies of these forms.

5. We prohibit the use of natural vegetation for camouflaging blind material.

6. Other than using motor vehicles on designated roads, you may only access the refuge by foot, except as authorized by the refuge manager.

7. You may use trained dogs to assist in the retrieval of harvested birds.

* * * * *

*C. Big Game Hunting.* We allow the hunting of white-tailed and sika deer and turkey on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. General Hunt Regulations.

i. Condition A6 applies.

ii. You must obtain a deer or turkey hunting permit (Big/Upland Game Hunt Application, FWS Form 3–2356 or Quota Deer Hunt Application, FWS Form 3–2354). Hunting brochures, hunting application procedures, seasons, bag limits, methods of hunting, maps depicting areas open to hunting, and the terms and conditions under which we issue hunting permits are available at the refuge visitor center, administration office, and on the refuge's Web site.

iii. You must possess on your person at all times while on refuge property: A valid Maryland hunting license and all required stamps, a valid form of government-issued photo identification, and a printed valid hunting permit (Big/Upland Game Hunt Application, FWS Form 3–2356 or Quota Deer Hunt Application, FWS Form 3–2354) issued by the refuge. We will not accept photocopies or electronic copies of these forms.

iv. You may not hunt from a permanently constructed tree stand or blind.

v. We prohibit organized deer drives, unless otherwise authorized by the

refuge manager on designated hunt days.

vi. You must notify and receive permission from a Service law enforcement officer, refuge manager, or designee if you need to retrieve game from a refuge closed area or a hunting area for which you do not possess a valid permit.

vii. We prohibit shooting a projectile from a firearm, muzzleloader, bow, or crossbow from, down, or across any refuge road. A refuge road is any road that is traveled by vehicular traffic.

viii. We prohibit parking in front of any gate. Parked vehicles may not impede any road traffic (see § 27.31(h) of this chapter).

ix. You must make a reasonable effort to retrieve all wounded or killed game and include it in your daily bag limit. We prohibit leaving deer or turkey entrails or other waste within 50 feet (15.2 meters) of any road, parking area, trail, or refuge structure on the refuge.

x. We allow the use of temporary tree stands and blinds for hunting. All stands and blinds left on refuge property, unoccupied, must be tagged in plain sight with your permit number and the years that are printed on your permit. You must remove all stands and blinds by legal sunset of a date established annually by the refuge manager.

xi. We allow the use of marking devices, including flagging or tape, but you must remove them by legal sunset of a date established annually by the refuge manager. You may not use paint or any other permanent marker to mark trails.

xii. You must wear fluorescent orange in accordance with State regulations during all designated firearm and muzzleloader deer hunts.

xiii. You must check all deer harvested at the refuge-sponsored check station during hunt days when the refuge-sponsored check station is open. If you fail to check deer during operation hours of the check station, you must notify the hunt coordinator by noon on the day after your kill.

xiv. You must adhere to the bag limits set forth annually in the brochure. Deer harvested on the refuge do not count toward State bag limits but must be recorded and checked with the State. Deer harvested on the refuge must be checked pursuant to the refuge hunt in which they are taken, regardless of the weapon used or corresponding State season.

xv. The maximum speed limit on all refuge unpaved roads is 15 miles per hour (MPH).

xvi. We prohibit the use of rimfire or centerfire rifles and all handguns, including muzzleloading pistols, for hunting.

2. Archery Deer Hunt.

i. We do not allow archery hunters to hunt within areas designated for the youth hunt on designated days.

ii. Archery hunters are not required to wear fluorescent orange during State youth hunt days.

3. Turkey Hunt.

i. We allow you to take one bearded turkey per year; turkeys taken on the refuge count toward the State bag limit.

ii. We allow turkey hunt permit holders to have an assistant, who must remain within sight and normal voice contact.

a. Assistants must not be engaged in hunting; must read the turkey hunting brochure; and must sign, in ink, the permit (Big/Upland Game Hunt Application, FWS Form 3–2356 or Quota Deer Hunt Application, FWS Form 3–2354) of the person they are assisting.

b. Assistants must possess a valid government-issued photo identification on their person while assisting.

c. Assistants who call and/or set up decoys must possess a valid Maryland hunting license.

4. Youth Deer and Turkey Hunt.

i. We allow hunters to hunt on designated areas on designated days (Youth Hunt) if they meet the criteria of a ''youth hunter'' as defined by State law.

ii. Youth hunters must be accompanied by an assistant consistent with the regulations established by State law.

iii. All youth deer hunters and their assistants must wear fluorescent orange in accordance with State regulations while hunting in designated youth hunt areas.

iv. Assistants must possess a valid refuge hunt brochure, signed in ink, and a valid government-issued photo identification.

v. Deer taken during youth days do not count toward the State bag limit and are in addition to any other deer taken during any other hunts on the refuge.

vi. Deer and turkey taken must be recorded and checked with the State.

5. Designated Disabled Hunt Areas.

i. All disabled hunters must possess a Federal Government Access pass (OMB Control 1024–0252).

ii. Disabled hunters are required to have their Federal Government Access pass (OMB Control 1024–0252) in their possession while hunting in disabled areas. We will not accept photocopies or electronic copies.

iii. Disabled hunters may have an assistant, at least age 18, who must remain within sight and normal voice contact.

a. Non-hunting assistants must not be engaged in hunting and must possess a valid refuge hunt brochure, signed in ink, and a valid government-issued photo identification. Non-hunting assistants must also use fluorescent orange in accordance with condition C.1.xii.

b. Assistants who wish to hunt deer must possess a valid hunt permit (Big/Upland Game Hunt Application, FWS Form 3–2356 or Quota Deer Hunt Application, FWS Form 3–2354) for that day for any hunt area.

c. We do not allow assistants to enter a designated disabled hunting area unless they are accompanied by a certified disabled hunter.

d. All refuge-provided hunt blinds are reserved for disabled hunters only; however, when a disabled hunter and their assistant occupy the same blind, both may take game.

e. We do not require assistants to maintain sight and normal voice contact while retrieving game.

iv. We only allow disabled hunters to operate all-terrain vehicles (ATVs) and off-road vehicles (ORVs); when the disabled hunter is unable to physically do so, the assistant may operate the ATV/ORV.

a. Assistants may not operate an ATV/ORV without being accompanied on the same ATV/ORV by a disabled hunter.

b. ATVs/ORVs must have at least one headlight and one red tail light that are operational between legal sunset and legal sunrise.

c. Anyone who operates or rides on an ATV/ORV must wear protective headgear that meets the standards established in Transportation Article, section 21–1306, Annotated Code of Maryland, and use an eye-protective device or a windscreen that is of a type approved in Transportation Article, section 21–1306, Annotated Code of Maryland.

d. We only allow ATVs/ORVs to be operated on established routes of travel and around field edges.

e. We do not allow ATVs/ORVs to be operated in excess of 15 MPH.

*D.* * * *

2. We allow only fishing and crabbing from the Key Wallace roadway (bridge) across the Little Blackwater River and by boat, unless otherwise authorized by the refuge manager.

3. You must possess a valid Maryland sport fishing license, all required stamps, and a valid form of government-issued photo identification while fishing on the refuge.

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**Eastern Neck National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State hunting regulations and subject to the following conditions:

1. General Hunt Regulations.

i. You must obtain a deer or turkey hunting permit (Big/Upland Game Hunt Application, FWS Form 3–2356). Hunting brochures contain hunting application procedures, seasons, bag limits, methods of hunting, maps depicting areas open to hunting, and the terms and conditions under which we issue hunting permits. They are available at the refuge visitor center, administration office, and on the refuge's Web site.

ii. You must possess on your person at all times while on refuge property: A valid Maryland hunting license and all required stamps, a valid form of government-issued photo identification, and a valid hunting permit (Big/Upland Game Hunt Application, FWS Form 3–2356) issued by the refuge. We will not accept photocopies or electronic copies of these documents.

iii. You must display your refuge hunt parking pass in plain sight, on the dash of your vehicle during hunt and scout days.

iv. We prohibit hunting from a permanently constructed tree stand or blind.

v. You must notify and receive permission from a Service law enforcement officer, refuge manager, or designee if you need to retrieve game from a refuge closed area or a hunting area for which you do not possess a valid permit (Big/Upland Game Hunt Application, FWS Form 3–2356).

vi. Other than using motor vehicles on designated roads, you may only access the refuge by foot, except as authorized by the refuge manager.

vii. We prohibit shooting a projectile from a firearm, muzzleloader, bow, or crossbow from, down, or across any refuge road. A refuge road is any road that is traveled by vehicular traffic.

viii. You must park in designated areas. We prohibit parking in front of any gate. Parked vehicles may not impede any road traffic (see § 27.31(h) of this chapter).

ix. You must make a reasonable effort to retrieve all wounded or killed game and include it in your daily bag limit. We prohibit leaving deer entrails or other waste within 50 feet (15.2 meters) of any refuge road, trail, parking area, or structure.

x. We allow the use of temporary tree stands and blinds for hunting. All stands and blinds left on refuge property, unoccupied, must be tagged in plain sight with your permit number and the years that are printed on your permit. You must remove all stands and blinds by legal sunset of a date established annually by the refuge manager.

xi. We allow the use of marking devices, including flagging or tape, but they must be removed by legal sunset of date established annually by the refuge. You may not use paint or any other permanent marker to mark trails.

xii. You must use florescent orange in accordance with State regulations during all designated firearm and muzzleloader deer hunts.

xiii. We prohibit the use of rimfire or centerfire rifles and all handguns, including muzzleloading pistols, for hunting.

xiv. You must adhere to the bag limits set fourth annually in the brochure. Deer harvested on the refuge do not count toward State bag limits but must be recorded and checked with the State. Deer harvested on the refuge must be checked pursuant to the refuge hunt in which they are taken, regardless of the weapon used or corresponding State season.

xv. The maximum speed limit on unpaved refuge roads is 15 miles per hour (MPH).

2. Youth Deer Hunt.

i. We allow hunters to hunt on designated areas on designated days (Youth Hunt) if they meet the criteria of a ''youth hunter'' as defined by State law.

ii. Youth hunters must be accompanied by an assistant consistent with the regulations established by State law.

iii. All youth deer hunters and their assistants must wear fluorescent orange in accordance with State regulations while hunting in designated youth hunt areas.

iv. Assistants must possess a valid refuge hunt brochure, signed in ink, and a valid government-issued photo identification.

v. Deer taken during youth days do not count toward the State bag limit and are in addition to any other deer taken during any other hunts on the refuge.

vi. Deer taken must be recorded and checked with the State.

3. Designated Disabled Hunt.

i. All disabled hunters must possess a Federal Government Access pass (OMB Control 1024–0252). Disabled hunters are required to have their Federal Government Access pass (OMB Control 1024–0252) in their possession while hunting in disabled areas. We will not accept photocopies or electronic copies of the Federal Government Access pass.

ii. Disabled hunters may have an assistant who must be age 18 or older and remain within sight and normal voice contact.

a. Non-hunting assistants must not be engaged in hunting and must possess a valid refuge hunt brochure, signed in ink, and a valid government-issued photo identification. We will not accept photocopies of these documents. Non-hunting assistants must also wear fluorescent orange in accordance with C.1.xii.

b. Assistants who wish to deer hunt must possess a valid refuge hunt permit (Big/Upland Game Hunt Application, FWS Form 3–2356) for that day.

c. We do not allow assistants to enter a designated disabled hunting area unless they are accompanied by a certified disabled hunter.

d. All refuge-provided hunt blinds are reserved for disabled hunters only; however, when a disabled hunter and their assistant occupy the same blind, both may take game.

e. We do not require assistants to maintain sight and normal voice contact while retrieving game.

iii. We allow only disabled hunters to operate all-terrain vehicles (ATVs) and off-road vehicles (ORVs); when the disabled hunter is unable to physically do so, the assistant may operate the ATV/ORV.

a. Assistants may not operate an ATV without being accompanied on the same ATV by a disabled hunter.

b. ATVs/ORVs must have at least one headlight and one red tail light that are operational between legal sunset and legal sunrise.

c. Anyone who operates or rides on a ATV/ORV must wear protective headgear that meets the standards established in Transportation Article, section 21–1306, Annotated Code of Maryland, and must use an eye-protective device or a windscreen of a type approved in Transportation Article, section 21–1306, Annotated Code of Maryland.

d. We only allow ATVs/ORVs to be operated on established routes of travel and around field edges.

e. We do not allow ATVs/ORVs to be operated in excess of 15 miles per hour (MPH).

*D.* * * *

* * * * *

4. You must possess a valid Maryland sport fishing license and all required stamps, and valid form of government-issued photo identification while fishing on the refuge.

* * * * *

■ 10. Amend § 32.43 by:

■ a. Under the entry Hillside National Wildlife Refuge:

■ i. Revising paragraphs A.1 and A.7;
■ ii. Redesignating paragraph A.21 as A.22; and
■ iii. Adding a new paragraph A.21;
■ b. Revising paragraph B.6 under the entry Holt Collier National Wildlife Refuge;
■ c. Under the entry Mathews Brake National Wildlife Refuge:
■ i. Revising paragraph A.7; and
■ ii. Adding paragraph A.22;
■ d. Under the entry Morgan Brake National Wildlife Refuge:
■ i. Revising paragraph A.7; and
■ ii. Adding paragraph A.21;
■ e. Under the entry Panther Swamp National Wildlife Refuge:
■ i. Revising introductory text in paragraph A and paragraph A.7; and
■ ii. Adding paragraphs A.22 and C.9; and
■ f. Under the entry Yazoo National Wildlife Refuge:
■ i. Revising paragraph A.7;
■ ii. Adding paragraph A.20; and
■ iii. Revising introductory text in paragraphs B and C.

The additions and revisions read as follows:

**§ 32.43 Mississippi.**

* * * * *

**Hillside National Wildlife Refuge**

*A.* * * *

1. Each person age 16 and older hunting or fishing must possess a valid Theodore Roosevelt Complex Annual Public Use Permit (name/address/phone number).

* * * * *

7. We prohibit the use of plastic flagging tape, reflective tacks, and other similar marking devices.

* * * * *

21. Waterfowl hunters are limited to 25 shotshells per person in the field.

* * * * *

**Holt Collier National Wildlife Refuge**

* * * * *

*B.* * * *

6. We prohibit the use of plastic flagging tape, reflective tacks, and other similar marking devices.

* * * * *

**Mathews Brake National Wildlife Refuge**

*A.* * * *

7. We prohibit the use of plastic flagging tape, reflective tacks, and other similar marking devices.

* * * * *

22. Waterfowl hunters are limited to 25 shotshells per person in the field.

* * * * *

**Morgan Brake National Wildlife Refuge**

*A.* * * *

7. We prohibit the use of plastic flagging tape, reflective tacks, and other similar marking devices.

* * * * *

21. Waterfowl hunters are limited to 25 shotshells per person in the field.

* * * * *

**Panther Swamp National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, merganser, coot, and dove on designated areas of the refuge in accordance with State regulations and subject to the following regulations:

* * * * *

7. We prohibit the use of plastic flagging tape, reflective tacks, and other similar marking devices.

* * * * *

22. Waterfowl hunters are limited to 25 shotshells per person in the field.

* * * * *

*C.* * * *

9. Limited draw hunts for persons with disabilities will be held in November, December, and/or January. We will make hunt dates and permit application procedures (name/address/phone number) available at the Theodore Roosevelt Complex headquarters.

* * * * *

**Yazoo National Wildlife Refuge**

*A.* * * *

7. We prohibit the use of plastic flagging tape, reflective tacks, and other similar marking devices.

* * * * *

20. Waterfowl hunters are limited to 25 shotshells per person in the field.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, and raccoon on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

* * * * *

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

* * * * *

**§ 32.44 [Amended]**

■ 11. Amend § 32.44 by removing the heading ''Squaw Creek National Wildlife Refuge''; adding in its place the heading ''Loess Bluffs National Wildlife Refuge''; and moving the entry into alphabetical order within the section.

■ 12. Amend § 32.47 by revising paragraph A.5 under the entry Stillwater National Wildlife Refuge to read as follows:

**§ 32.47 Nevada.**

* * * * *

**Stillwater National Wildlife Refuge**

*A.* * * *

5. We prohibit boating outside of the waterfowl and youth waterfowl hunting season except in Willow Lake where we allow nonmotorized boating from July 1 to March 1.

* * * * *

■ 13. Amend § 32.49 by revising paragraph D.1 under the entry Wallkill River National Wildlife Refuge to read as follows:

**§ 32.49 New Jersey.**

* * * * *

**Wallkill River National Wildlife Refuge**

* * * * *

*D.* * * *

1. We allow fishing in and along the banks of the Wallkill River. We allow shore fishing only in the pond at Owens Station Crossing, Vernon, New Jersey. Fishing at Owens State Crossing is catch and release only.

* * * * *

■ 14. Amend § 32.51, the entry for Montezuma National Wildlife Refuge, by:
■ a. Redesignating paragraphs A.1.xiii through A.1.xix as A.1.xiv through A.1.xx;
■ b. Adding a new paragraph A.1.xiii;
■ c. Revising newly redesignated paragraphs A.1.xvii and A.1.xx; and
■ d. Revising paragraphs A.2.iii, B.1, and C.13.

The revisions and addition read as follows:

**§ 32.51 New York.**

* * * * *

**Montezuma National Wildlife Refuge**

*A.* * * *

1. * * *

xiii. If you have a reservation but do not show up to hunt, and do not cancel your reservation 12 hours prior to legal shooting time, then you may be ineligible to hunt the next 3 hunt days. This decision is at the refuge manager's discretion.

* * * * *

xvii. Waterfowl hunters may possess a maximum of 15 shot shells on their person or in their means of conveyance.

* * * * *

xx. You must possess, carry, and present upon request to any law enforcement officer a valid daily hunt permit card (Migratory Bird Hunt Report, FWS Form 3–2361). You must return the daily hunt permit card at the end of hunting. You may obtain a

permit at the Hunter Check Station during the check-in process, and return it to the Hunter Check Station or at the box located at the north end of the Tschache Pool dike.

2. * * *

iii. You must possess, carry, and present upon request to any Service law enforcement officer a valid daily hunt permit card (Migratory Bird Hunt Report, FWS Form 3–2361). You must return the daily hunt permit card at the end of hunting or at the end of the day. You may obtain a permit at the Hunter Check Station on State Route 89 and return it to the same location; obtaining a permit will be on a first-come, first-served basis each hunt day.

* * * * *

*B.* * * *

1. You must carry and present upon request to any Service law enforcement officer a valid daily hunt permit card (Big/Upland Game Hunt Application, FWS Form 3–2356). You must return the daily hunt permit card at the end of hunting or at the end of the day. You may obtain a permit at the Hunter Check Station on State Route 89 and return it to the same location; obtaining a permit during the fall season will be on a first-come, first-served basis each hunt day.

* * * * *

*C.* * * *

13. We prohibit boats and canoes on refuge pools. We prohibit hunting on the open-water portions of the refuge pools until the pools are frozen; when frozen, we allow access for hunting at the refuge manager's discretion.

* * * * *

■ 15. Amend § 32.53 by:

■ a. Revising paragraph C introductory text under the entry Des Lacs National Wildlife Refuge; and

■ b. Under the entry Upper Souris National Wildlife Refuge:

■ i. Revising paragraph B introductory text and paragraphs B.1 through B.5; and

■ ii. Revising paragraph C introductory text.

The revisions read as follows:

**§ 32.53 North Dakota.**

* * * * *

**Des Lacs National Wildlife Refuge**

* * * * *

*C. Big Game Hunting.* We allow deer and moose hunting on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

* * * * *

**Upper Souris National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* We allow hunting of wild turkey during the spring season, and sharp-tailed grouse, Hungarian partridge, and pheasant on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We allow the use of dogs for hunting and retrieving of upland game birds with the exception of wild turkey. Dogs must be under immediate control of the hunter (see § 26.21(b) of this chapter).

2. We open for sharp-tailed grouse, Hungarian partridge, and pheasant hunting on Unit I during the State hunting season. Unit I includes all refuge land north of the township road that runs east of Tolley, across Dam 41 (Carter Dam), and east to State Route 28.

3. We open for sharp-tailed grouse, Hungarian partridge, and pheasant hunting on Unit II during the State hunting season, except we close from the first day of the regular State waterfowl season through the last day of State deer gun season. Unit II includes refuge land between Lake Darling Dam and Unit I.

4. We close land south of Lake Darling Dam to sharp-tailed grouse, Hungarian partridge, and pheasant hunting.

5. We prohibit sharp-tailed grouse, Hungarian partridge, pheasant, and spring wild turkey hunting in the area around refuge headquarters, buildings, shops, residences, Outlet Fishing Area, and Lake Darling Dam water control structure. We post these areas with ''Closed to Hunting'' signs.

* * * * *

*C. Big Game Hunting.* We allow deer and moose hunting on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

* * * * *

■ 16. Amend § 32.55 by:

■ a. Revising paragraphs A.7, A.8, B.6, C.1, C.3, and C.5 under the entry Deep Fork National Wildlife Refuge; and

■ b. Revising paragraphs B and C under the entry Sequoyah National Wildlife Refuge.

The revisions read as follows:

**§ 32.55 Oklahoma.**

* * * * *

**Deep Fork National Wildlife Refuge**

*A.* * * *

7. We prohibit horse and mule use on the refuge.

8. We provide access for hunters with disabilities.

* * * * *

*B.* * * *

6. We offer refuge-controlled turkey hunts. You must possess a State-issued controlled hunt letter and pay a fee for these hunts.

* * * * *

*C.* * * *

1. You must possess and carry a signed refuge permit (name only) for the archery deer hunt. Hunters must turn in a Big Game Harvest Report (FWS Form 3–2359) by December 31 annually. Failure to submit the report will render the hunter ineligible for the next year's limited season archery deer hunt.

* * * * *

3. You may hunt feral hog during any established refuge hunting season. Refuge permits (either a signed refuge permit or a State-issued controlled hunt letter) and legal weapons apply for the current hunting season.

* * * * *

5. We offer refuge-controlled deer hunts (primitive weapon, disabled primitive, and youth primitive). You must possess a permit (a State-issued controlled hunt letter) and pay a fee for these hunts.

* * * * *

**Sequoyah National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* We allow hunting of Eastern gray and fox squirrel and swamp and Eastern cottontail rabbit on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Conditions A3, A4, A5, A8, and A12 apply.

2. You must possess and carry a signed refuge brochure; this serves as your Upland Game Hunting Permit. The permit/brochure is available free of charge at the refuge headquarters, at various entry points to the refuge, and on our Web site. You must abide by all rules and regulations listed on the permit (see § 32.2(e) of this chapter).

3. We prohibit hunters entering the Sandtown Bottom Unit prior to 5 a.m. during the hunting season. Hunters must leave the Sandtown Bottom Unit by 1 hour after legal sunset.

4. We open the refuge to hunting on Saturdays, Sundays, Mondays, and Tuesdays. We generally open the following units: Sandtown Bottom, Webber Bottom, Girty Bottom, Possum Hollow, and Vian Creek.

5. Season lengths and bag limits will be in accordance with State regulations with the exception that all upland game hunting will close on January 31 of each year.

6. We only allow legal shotguns and approved nontoxic shot (see § 32.2(k) of this chapter). You must plug hunting shotguns so that they are incapable of holding more than three shells. We also

allow .22/.17 rimfire rifles for hunting upland game.

7. We prohibit squirrel and rabbit hunting in the Cook, Hi-Saw/Shelby, Delta Islands, and Haskell Management Units.

8. Incidental take of feral hogs may occur during squirrel and rabbit hunting season.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. Conditions A8, A9, and A12 apply.

2. You must possess and carry a hunt permit (State-issued permit), and comply with the designated refuge season, hunting methods, and location guidelines for that year.

3. Hunters must apply to the State-controlled deer hunt drawing administered by the Oklahoma Department of Wildlife Conservation for selection. You must attend a pre-hunt briefing.

4. You must pay State and Federal special deer hunting fees.

5. Incidental take of feral hogs may occur during deer hunting season.

* * * * *

■ 17. Amend § 32.56 by:

■ a. Under the entry Baskett Slough National Wildlife Refuge:

■ i. Revising paragraph A.1;

■ ii. Redesignating paragraphs A.2 through A.11 as A.3 through A.12, respectively;

■ iii. Adding a new paragraph A.2; and

■ iv. Revising newly redesignated paragraph A.8; and

■ b. Revising paragraph D under the entry Siletz Bay National Wildlife Refuge.

The addition and revisions read as follows:

**§ 32.56 Oregon.**

* * * * *

**Baskett Slough National Wildlife Refuge**

*A.* * * *

1. Only hunters age 17 or younger are allowed to participate in the Youth Waterfowl Hunt. Youths must be accompanied by an adult age 21 or older.

2. Youth must obtain a refuge waterfowl hunting permit using the Waterfowl Lottery Application (FWS Form 3–2355). All youth hunting waterfowl must do so from designated blinds.

* * * * *

8. Waterfowl and goose permit hunters are required to check in and out at the Hunter Check Station (refuge office), which is open from 1½ hours before legal hunting hours to 8 a.m. and from 11 a.m. to 1 p.m. We prohibit hunting after 12 p.m. (noon).

* * * * *

**Siletz Bay National Wildlife Refuge**

* * * * *

*D. Sport Fishing.* We allow fishing and clamming in accordance with State regulations and subject to the following conditions:

1. We allow recreational bank fishing from the Alder Island Nature Trail.

2. We allow clamming on refuge lands and access across refuge lands to State-managed tidelands for clamming on the west side of U.S. Highway 101.

3. We prohibit pets on refuge trails or other refuge lands. We allow leashed pets only in the parking lot.

4. We allow fishing only from legal sunrise to legal sunset.

* * * * *

■ 18. Amend § 32.63, the entry for Hagerman National Wildlife Refuge, by:

■ a. Revising paragraph A.10;

■ b. Adding paragraph A.15;

■ c. Revising paragraph B;

■ d. Revising paragraphs C.2, D.2, and D.4; and

■ e. Adding paragraphs D. 15 through D.18.

The additions and revisions read as follows:

**§ 32.63 Texas.**

* * * * *

**Hagerman National Wildlife Refuge**

*A.* * * *

10. We prohibit airboats, hovercraft, and personal watercraft (such as Jet Skis, wave runners, and jet boats) on refuge waters.

* * * * *

15. We prohibit blocking of gates and roads (see § 27.31(h) of this chapter).

*B. Upland Game Hunting.* We allow hunting of squirrel and rabbit in the months of February and September on designated areas of the refuge in accordance with State regulations and subject to the following conditions: Conditions A1 through A15 apply.

*C.* * * *

2. Conditions A2, A5 through A7, and A10 through A15 apply.

* * * * *

*D.* * * *

2. Conditions A10, and A12 through A15 apply.

* * * * *

4. We allow wade fishing March 15 through October 1 annually from all areas except Refuge Road, Wildlife Drive, Plover Road, Tern Road, and Egret Road.

* * * * *

15. We prohibit boats and other floating devices on all open waters of Lake Texoma, except Big Mineral Creek from October 1 through March 14 annually.

16. At the point where Big Mineral Creek joins Lake Texoma, Big Mineral Creek becomes a year-round no wake zone to the end of upstream navigable waters.

17. From October 1 through March 14, we allow only nonmotorized boats in Big Mineral Creek from the point where it joins Lake Texoma to the upstream end of navigable waters. You may not have any type of gas or electric motor onboard that is capable of use. You may launch boats from a boat ramp only from L Pad Road or by hand at the Big Mineral Day Use Area.

18. We prohibit discarding fish whole or in part on refuge lands and waters.

* * * * *

■ 19. Amend § 32.65 by revising paragraphs A.1.ii, A.1.iii, A.1.iii.c, A.1.iii.d, A.1.iv.a through A.1.iv.d, A.1.iv.g through A.1.iv.i, A.1.iv.m, A.1.iv.p, A.1.v.c, and introductory text of A.1.vi. under the entry Missisquoi National Wildlife Refuge to read as follows:

**§ 32.65 Vermont.**

* * * * *

**Missisquoi National Wildlife Refuge**

*A.* * * *

1. * * *

ii. Maquam Shore Area encompasses a 30-acre area along the lakeshore of Maquam Bay and is bounded by private land on the west and a Vermont wildlife management area on the east. In the Maquam Shore Area, conditions A.1.i.a. through A.1.i.f. apply.

iii. Saxes Pothole/Creek and Shad Island Pothole encompass Saxes Creek, Saxes Pothole, and Shad Island Pothole. This is a controlled hunting area. We stake and make available five zones (numbered 1 through 5) to five hunting parties in Saxes Pothole; zone 6 is staked and available to one hunting party in Shad Island Pothole.

* * * * *

c. You may apply to a preseason lottery (Waterfowl Lottery Application, FWS Form 3–2355) to obtain a permit (Migratory Bird Hunt Report, FWS Form 3–2361) for the opening day of duck hunting season through the first Sunday of the duck hunting season and for the second weekend of the duck hunting season. During the years when the State elects to have a split season, you may also obtain your permit (Migratory Bird Hunt Report, FWS Form 3–2361) for the second opening day through the following Sunday through application

to the preseason lottery (Waterfowl Lottery Application, FWS Form 3–2355). On all other hunt days, you must acquire a permit (Migratory Bird Hunt Report, FWS Form 3–2361) through self-registration at the Mac's Bend Landing no earlier than 2 hours before legal shooting time on the day of the hunt.

d. Hunters selected during the preseason lottery (Waterfowl Lottery Application, FWS Form 3–2355) must pay a $10 fee. The refuge must receive the fee no later than 2 days before the opening of the season or the selected hunter forfeits the permit (Migratory Bird Hunt Report, FWS Form 3–2361), which we will then make available to other hunters on a first-come, first-served basis. The fee is paid for any permit (Migratory Bird Hunt Report, FWS Form 3–2361) assigned before the day of the hunt. There is no fee for any permit (Migratory Bird Hunt Report, FWS Form 3–2361) obtained on the day of the hunt.

* * * * *

iv. * * *

a. Junior waterfowl hunters (ages 12–17, inclusive, at the time of the hunt), following successful completion of the annual training program (usually held the third or fourth Saturday in August), vie for blind site assignments during a lottery drawing (Waterfowl Lottery Application, FWS Form 3–2355) at the conclusion of the training. The 11 blind sites are available exclusively to these junior waterfowl hunters and their mentors during the first four Saturdays and Sundays of the duck season.

b. During a lottery drawing (Waterfowl Lottery Application, FWS Form 3–2355) at the conclusion of the annual junior waterfowl hunter training, adult volunteers who serve as mentors to junior waterfowl hunters will vie for the use of junior hunt area blind sites on the first Wednesday following the second weekend of the season. This is known as Mentor Day, and there is no fee charged to mentors. Any junior hunt area blinds not assigned at the conclusion of the annual junior waterfowl hunter training will be available to other adult hunters via a preseason lottery (Waterfowl Lottery Application, FWS Form 3–2355). Mentors will also be permitted to hunt alongside the junior hunters on the last two Saturdays and Sundays of the junior hunt period.

c. Following the use of the blind sites in this area by junior hunters and junior hunter mentors, all blind sites are then available to all adult hunters by permit (Migratory Bird Hunt Report, FWS Form 3–2361) awarded via a preseason lottery (Waterfowl Lottery Application, FWS Form 3–2355) for the second Wednesday following the second weekend of the duck season; and on weekends following the junior hunt by a first-come, first-served basis; hunters must self-register at the Mac's Bend boat launch.

d. Hunters, including junior hunters, with preregistered permits (Migratory Bird Hunt Report, FWS Form 3–2361) must sign in at the Mac's Bend boat launch no later than 7 a.m. on the date of their scheduled hunt. After 7 a.m., other hunters may sign in, self-register, and use unoccupied blind sites. Only junior hunters may hunt on the first four Saturdays and Sundays of the season. Adult mentors may hunt alongside their junior hunters for the last two Saturdays and Sundays of the junior hunt period. During this time, there still can only be two hunters per blind site (one junior and one mentor, or two juniors), regardless of the number of mentees.

* * * * *

g. Each adult hunter, except mentors on Mentor Day, must pay $10 for each permit (Migratory Bird Hunt Report, FWS Form 3–2361) issued during the preseason lottery (Waterfowl Lottery Application, FWS Form 3–2355). Permits acquired by self-registration are free.

h. Only junior hunters may discharge a firearm in this area during the youth weekend and the first two weekends of the season. Adult mentors may hunt alongside one junior mentee for the remainder of the junior hunt period.

i. We allow and recommend hunting from portable blinds and boat blinds constructed and placed by the refuge at some of the junior blind sites. Junior hunters are assigned a blind location by a lottery. We prohibit permanent blinds.

* * * * *

m. At the end of each day's hunt, each hunter must complete and deposit at Mac's Bend boat launch that portion of their permit (Migratory Bird Hunt Report, FWS Form 3–2361) that provides the number of birds harvested and number of birds knocked down but not retrieved.

* * * * *

p. A hunting party consists of the hunter named on the permit (Migratory Bird Hunt Report, FWS Form 3–2361) and one guest hunter per blind site per day. Junior hunters may not invite a guest hunter unless it is another refuge-trained junior hunter. Nonhunters may accompany a hunting party.

* * * * *

v. * * *

c. Hunters selected during the preseason lottery (Waterfowl Lottery Application, FWS Form 3–2355) must pay a $10 fee. The refuge must receive the fee no later than 2 days before the opening of the season or the selected hunter forfeits the permit (Migratory Bird Hunt Report, FWS Form 3–2361), which will be made available first to standby hunters identified at the time of the drawing, and second to other hunters on a first-come, first-served basis. You must pay the fee for any permit (Migratory Bird Hunt Report, FWS Form 3–2361) before the day of the hunt. There is no fee for any permit (Migratory Bird Hunt Report, FWS Form 3–2361) obtained on the day of the hunt.

* * * * *

vi. Maquam Swamp Area encompasses about 200 acres (80.9 hectares) west of the Central Vermont Railroad and south of Coleman's inholding and is open to migratory bird hunting with the following special requirements:

* * * * *

■ 20. Amend § 32.66 by:

■ a. Revising paragraphs A, C, and D under the entry Chincoteague National Wildlife Refuge;

■ b. Under the entry Eastern Shore of Virginia National Wildlife Refuge:

■ i. Revising paragraphs C.3 and C.5;

■ ii. Removing paragraphs C.6, C.10, and C.11;

■ iii. Redesignating paragraphs C.7 through C.9 as C.6 through C.8, respectively; and

■ iv. Revising newly redesignated paragraph C.8; and

■ c. Revising paragraph C under the entry Wallops Island National Wildlife Refuge.

The revisions read as follows:

**§ 32.66 Virginia.**

* * * * *

**Chincoteague National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl (as defined by the Virginia Waterfowl Hunting Guide) and rail on designated areas of the refuge within Wildcat Marsh, Morris Island, Assawoman Island, and Metompkin Island Divisions in accordance with State regulations and subject to the following conditions:

1. You must obtain a Refuge Migratory Game Bird Hunt Permit (Migratory Bird Hunt Application, FWS Form 3–2357) and maintain the permit on your person while hunting on the refuge.

2. You may only access hunting areas by boat.

3. You may erect portable blinds and deploy decoys; however, during the regular duck seasons, you must remove the blinds and decoys at the end of each day's hunt (see § 27.93 of this chapter).

We prohibit hunting from a permanent blind or pit blind.

4. You may use trained dogs to assist in the retrieval of harvested birds.

5. We prohibit hunting on Assawoman and Metompkin Islands' beach and dune habitats beginning March 15.

6. We do not allow hunting on Sunday.

* * * * *

*C. Big Game Hunting.* We allow hunting of white-tailed deer and sika in designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. General hunt information:

i. You must possess a refuge hunt permit (Quota Deer Hunt Application, FWS Form 3–2354) while hunting.

ii. You must certify on your application you have viewed the refuge's hunt orientation.

iii. We allow holders of a refuge hunt permit (Quota Deer Hunt Application, FWS Form 3–2354) to access areas of the refuge typically closed to the non-hunting public. All occupants of a vehicle or hunt party must possess a refuge hunt permit and be actively engaged in hunting. We allow an exception to exist for those persons aiding a disabled person who possesses a valid State-issued Commonwealth of Virginia Disabled Resident Lifetime License or Commonwealth of Virginia Resident Disabled Veteran's Lifetime License.

iv. You must sign in at the hunter registration station prior to entering your hunt zone and sign out upon exiting your hunt zone. All hunters must sign out no later than 2 hours after the end of legal shooting hours.

v. You must check all harvested animals at the hunter registration station prior to signing out.

vi. We prohibit the use of a boat, all-terrain vehicle (see § 27.31(f) of this chapter), or saddled animal to access hunt areas or while hunting.

vii. We allow the use of portable tree stands, but you must remove stands at the end of each day's hunt (see § 27.93 of this chapter).

viii. You may not hunt within 100 feet (30.5 meters) of any building.

ix. We prohibit deer drives. We define a ''drive'' as four or more persons involved in the act of chasing, pursuing, disturbing, or otherwise directing deer so as to make the animal more susceptible to harvest.

x. We prohibit hunting on Sundays.

2. Archery hunt information:

i. We allow hunting of white-tailed deer and sika with archery tackle, as defined by the State, in designated areas of the refuge.

ii. You may not hunt or nock an arrow or crossbow bolt within 50 feet (15.2 meters) of the centerline of any road, whether improved or unimproved, or paved trail.

3. Firearm hunt information:

i. We allow hunting of white-tailed deer and sika with firearms in designated areas of the refuge.

ii. You may not hunt or discharge a firearm on or within 50 feet (15.2 meters) of the centerline of any road, whether improved or unimproved, or paved trail. You may not shoot across or down any road or paved trail.

*D. Sport Fishing.* We allow sport fishing, crabbing, and clamming from the shoreline of the refuge in designated areas of Tom's Cove, Swan's Cove, and the Atlantic Ocean in accordance with State regulations and subject to the following conditions:

1. You may not wade or launch a vessel in any water management areas.

2. You must attend minnow traps, crab traps, crab pots, and handlines at all times.

3. We prohibit the use of seine nets and pneumatic (compressed air or otherwise) bait launchers.

4. The State regulates certain species of finfish, shellfish, and crustacean (crab) using size or possession limits. You may not alter these species, to include cleaning or filleting, in such a way that we cannot determine its species or total length.

5. In order to fish after the refuge closes, anglers must obtain an overnight fishing pass (name/address/phone) issued by the National Park Service. Anglers can obtain a pass in person at the National Park Service Tom's Cove Visitor Center.

6. We allow only three surf fishing poles per licensed angler, and those poles must be attended at all times. This includes persons age 65 or older who are license-exempt in Virginia.

**Eastern Shore of Virginia National Wildlife Refuge**

* * * * *

*C.* * * *

3. We allow holders of a refuge big game hunt permit (signed brochure) to access areas of the refuge typically closed to the non-hunting public. All occupants of a vehicle or hunt party must possess a refuge hunt permit and be actively engaged in hunting. We allow an exception to exist for those persons aiding a disabled person who possesses a valid State-issued Commonwealth of Virginia Disabled Resident Lifetime License or Commonwealth of Virginia Resident Disabled Veteran's Lifetime License.

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5. We allow the use of portable tree stands, but stands must be removed daily.

* * * * *

8. We only allow shotguns loaded with buckshot during the firearm season.

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**Wallops Island National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer in designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. You must obtain a refuge hunt permit (Big/Upland Game Hunt Application, FWS Form 3–2356) and carry it on your person while hunting.

2. You must sign in at the hunter registration station prior to entering your hunt zone and sign out upon exiting your hunt zone. All hunters must sign out no later than 2 hours after the end of legal shooting hours.

3. You must report all harvested animals on the sign-out sheet at the hunter registration station when signing out.

4. We allow the use of portable tree stands. You must remove stands by the end of the hunt season (see § 27.93 of this chapter).

5. We prohibit dogs.

6. You must park your vehicle in designated areas.

7. We prohibit deer drives. We define a ''drive'' as four or more persons involved in the act of chasing, pursuing, disturbing, or otherwise directing deer so as to make the animal more susceptible to harvest.

* * * * *

■ 21. Amend § 32.69 by:

■ a. Under the entry Fox River National Wildlife Refuge:

■ i. Removing paragraph C.2;

■ ii. Redesignating paragraphs C.3 through C.5 as C.2 through C.4, respectively; and

■ iii. Revising newly redesignated paragraph C.3;

■ b. Revising paragraphs A, B, and C under the entry Horicon National Wildlife Refuge; and

■ c. Revising paragraph D under the entry Leopold Wetland Management District.

The revisions read as follows:

**§ 32.69 Wisconsin.**

* * * * *

**Fox River National Wildlife Refuge**

* * * * *

*C.* * * *

3. You may enter the refuge no earlier than 1 hour before legal shooting hours and must exit the refuge no later than 1 hour after legal shooting hours end.

* * * * *

**Horicon National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations and subject to the following condition: We allow only participants in the Learn to Hunt and other special programs to hunt.

*B. Upland Game Hunting.* We allow hunting of wild turkey, ring-necked pheasant, gray partridge, squirrel, and cottontail rabbit on designated areas of the refuge in accordance with State regulations during the State seasons and subject to the following conditions:

1. For hunting, you may possess only approved nontoxic shot shells while in the field, including shot shells used for hunting wild turkey (see § 32.2(k) of this chapter).

2. We prohibit field possession of upland game species in areas closed to upland game hunting.

3. We prohibit engaging in hunting in areas closed to upland game hunting.

*C. Big Game Hunting.* We allow hunting of white-tailed deer in designated areas of the refuge in accordance with State regulations and subject to the following conditions:

1. We prohibit the construction or use of permanent blinds, platforms, or ladders.

2. You must remove all stands and personal property from the refuge following each day's hunt. We prohibit hunting from any stand left up overnight (see §§ 27.93 and 27.94 of this chapter).

3. You must possess a refuge permit (Big/Upland Game Hunt Application, FWS Form 3–2356) to hunt in Area E (surrounding the office/visitor center).

4. You may only hunt in Area D (auto tour/hiking trail) during the State 9-day gun season and December antlerless-only hunts. The refuge will post these dates annually.

5. You may enter the refuge no earlier than 1 hour before legal shooting hours and must exit the refuge no later than 1 hour after legal shooting hours.

6. Any ground blind used during any gun deer season must display at least 144 square inches (929 square centimeters) of solid-blaze-orange material visible from all directions.

7. We prohibit the field possession of white-tailed deer in areas closed to white-tailed deer hunting.

8. We prohibit engaging in hunting in areas closed to white-tailed deer hunting.

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**Leopold Wetland Management District**

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D. *Sport Fishing.* We allow sport fishing on Waterfowl Production Areas throughout the District in accordance with State regulations and subject to the following condition: We prohibit the use of motorized boats.

* * * * *

Dated: July 13, 2017.

**Virginia Johnson,**

*Acting Assistant Secretary, Fish and Wildlife and Parks.*

[FR Doc. 2017–16374 Filed 8–9–17; 8:45 am]

**BILLING CODE 4333–15–P**

# Notices

Federal Register
Vol. 82, No. 153
Thursday, August 10, 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

August 7, 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 and other forms of information technology.

Comments regarding this information collection received by September 11, 2017 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commentors are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

**Forest Service**

*Title:* Interagency Generic Clearance for Federal Land Management Agencies Collaborative Visitor Feedback Surveys on Recreation and Transportation Related Programs and Systems.

*OMB Control Number:* 0596–0236.

*Summary of Collection:* Section 1119 of Public Law 112–141, the Moving Ahead for Progress in the 21st Century Act (MAP–21) requires the Secretary of Transportation to implement transportation planning procedures for Federal lands and tribal transportation facilities that are consistent with the planning processes required under sections 134 and 135 of title 23[6]. The section also specifies the collection and reporting of data necessary to implement the Federal lands transportation program, the Federal lands access program, and the tribal transportation program in accordance with the Indian Self-Determination and Education Assistance Act. The Federal Land Management Agencies (FLMAs) include, but are not limited to: Forest Service, the Bureau of Land Management, U.S. Fish and Wildlife Service, National Park Service, U.S. Army Corps of Engineers, Presidio Trust, U.S. Geological Survey, Bureau of Reclamation and the Department of Transportation. FLMAs will collect information to help them improve transportation conditions, site-or area-specific services, programs, services, and recreation and resource management of FLMA lands.

*Need and Use of the Information:* A combination of surveys, focus groups and interviews, are designed to collect information about visitors' perceptions, experiences and expectations, with respect to road and/or travel transportation conditions, services, and recreation opportunities at various FLMA locations and across areas that could include multiple locations managed by different FLMAs. This information is vital to establish and/or revise goals and objectives that will help improve transportation systems and recreation and resource management plans and to facilitate interagency coordination at area, state, regional, and/or national scales which will better meet the needs of the public and the resources under FLMA management.

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 69,900.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 15,255.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2017–16885 Filed 8–9–17; 8:45 am]

BILLING CODE 3411–15–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2015–0102]**

### Notice of Determination of the Classical Swine Fever, Swine Vesicular Disease, African Swine Fever, Foot-and-Mouth Disease, and Rinderpest Status of Malta

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are adding the Republic of Malta to the lists of regions considered to be free of swine vesicular disease (SVD), African swine fever (ASF), foot-and-mouth disease (FMD), and rinderpest, and to the list of regions considered free or low risk for classical swine fever (CSF), subject to conditions in the regulations governing the importation of certain animals and animal products into the United States. Based on our evaluation of the animal health status of Malta, which we made available to the public for review and comment through a previous notice, the Administrator has determined that Malta is free of SVD, ASF, FMD, and rinderpest, and is low risk for CSF. This action establishes the disease status of Malta with regard to SVD, ASF, FMD, rinderpest, and CSF while continuing to protect the United States from introduction of those diseases.

**DATES:** This change in disease status will be recognized on September 11, 2017.

**FOR FURTHER INFORMATION CONTACT:** Dr. Chip Wells, Senior Staff Veterinarian, Regionalization Evaluation Services,

National Import Export Services, VS, APHIS, USDA, 4700 River Road Unit 38, Riverdale, MD 20737–1231; *Chip.J.Wells@aphis.usda.gov;* (301) 851–3317.

**SUPPLEMENTARY INFORMATION:**

## Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States to prevent the introduction of various animal diseases, including classical swine fever (CSF), foot-and-mouth disease (FMD), rinderpest, African swine fever (ASF), and swine vesicular disease (SVD). The regulations prohibit or restrict the importation of live ruminants and swine, and products from these animals, from regions where these diseases are considered to exist.

The regulations in 9 CFR 92.2 contain requirements for requesting the recognition of the animal health status of a region (as well as for the approval of the export of a particular type of animal or animal product to the United States from a foreign region). If, after review and evaluation of the information submitted in support of the request, the Animal and Plant Health Inspection Service (APHIS) believes the request can be safely granted, APHIS will make its evaluation available for public comment through a document published in the **Federal Register**.

In accordance with that process, on May 13, 2016, we published in the **Federal Register** (81 FR 29834–29836, Docket No. APHIS–2015–0102) a notice [1] announcing the availability for review and comment of our risk evaluation of the FMD, rinderpest, ASF, CSF, and SVD status of the Republic of Malta. Based on this evaluation, we determined that the animal disease surveillance, prevention, and control measures implemented by Malta are sufficient to minimize the likelihood of introducing FMD, rinderpest, ASF, CSF, and SVD into the United States via imports of species or products susceptible to these diseases.

We also determined in our evaluation that Malta is low risk for CSF and therefore eligible to be added to the APHIS-defined European CSF region. This region is subject to the conditions in § 94.31 for pork, pork products, and swine and § 98.38 for swine semen. We also determined that the provisions of § 94.11 for import conditions for meat or meat products from ruminants or swine from FMD-free regions, and of § 94.13 for import conditions for pork or pork products from SVD-free regions, are applicable to Malta. With respect to rinderpest, the global distribution of the disease has diminished significantly. In May 2011, the World Organization for Animal Health (OIE) announced its recognition of global rinderpest freedom.

We solicited comments on the notice of availability for 60 days ending on July 12, 2016, and received one comment by that date. The commenter, representing a national pork industry association, expressed concern over the risk of allowing imports into the United States of live swine, pork and pork products from Malta. The commenter stated that any incursion of FMD, CSF, ASF, or SVD into the United States resulting from such imports would precipitate an immediate and costly loss of export markets for these commodities. The comment is discussed below.

*Disease Surveillance*

The commenter disagreed with our determination that passive disease surveillance conducted by the veterinary authority of Malta is sufficient to mitigate the risk to the United States from importations of swine, pork, and pork products.

The commenter noted that in the risk analysis, we cited Malta's ''lack of capacity or intention for developing exports'' to support our conclusion that passive disease surveillance would be sufficient to detect any cases of CSF, SVD, ASF, FMD, or rinderpest. In challenging our conclusion, the commenter cited two articles. One article noted Malta's efforts to improve the health and management of its pigs in order to compete with European Union (EU) pork production standards, and reported that surplus swine are exported from Malta to Sicily for finishing and producing Parma ham.[2] The other article stated that Malta was engaged in discussions with other EU Member States about exporting pork.[3] The commenter asked if the information contained in these articles is significant enough for APHIS to reconsider its risk evaluation and require Malta to undertake active disease surveillance of its swine before recognizing Malta as being free of SVD, ASF, and FMD and adding Malta to the APHIS-defined European CSF region.

We acknowledge the commenter's concerns but do not consider the information presented in the articles to be sufficient to reconsider the findings of our risk evaluation. APHIS considers both active and passive surveillance activities when evaluating the animal health system of a region.[4] In the case of Malta, APHIS noted its long history of disease freedom (over 33 years) based on the results of both periodic active (most recently in 2007 and 2010) and passive surveillance; its geographic isolation and lack of land borders; movement controls based on EU Member State standards; requirements for farmers and private veterinarians to file notice of any suspected cases of diseases of concern; frequent farm visits by official veterinarians (about every 2 weeks); as well as its small livestock population and limited capacity to enlarge the scope or size of its animal and animal product export market. These factors lead APHIS to conclude that the constraints upon enlargement of the Maltese swine industry have not changed, and that a primarily passive surveillance program will be sufficient to detect incursions of these diseases early enough to avoid introduction into the United States.

The commenter also expressed concern about diseases of swine in Malta that present symptoms similar to those caused by FMD, CSF, ASF, and SVD. The commenter noted that Malta vaccinates swine for Circo Virus, Pig Wasting Disease, Atrophic Rhinitis, Enzootic Pneumonia, and Porcine Reproductive and Respiratory Syndrome, and that these diseases are therefore likely to be present in Malta's pig populations. For this reason, the commenter stated that FMD, SVD, CSF, and ASF should be considered as differential diagnoses whenever case-compatible lesions and other signs of disease are observed and reported in pigs. The commenter further noted that, since 2002, the Veterinary Regulation Directorate of Malta has reported no suspicious cases with such case-compatible signs. The commenter concluded that the lack of such reports suggests that passive surveillance may not be adequate for early disease detection, as producers and veterinarians in Malta are likely seeing case-compatible lesions and other signs

[1] To view the notice of availability, risk evaluation, environmental assessment, and the comment we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0102.*

[2] ACMC Ltd., April 18, 2011.

[3] *Malta Independent,* March 19, 2014: *http://www.independent.com.mt/articles/2014-03-19/news/plans-to-export-pork-put-on-the-back-burner-4309385218/.*

[4] APHIS did cite in its risk assessment that it concludes that Malta might benefit from an active CSF surveillance program in order to limit any spread of disease within the island's swine population, but noted that this benefit might be limited if Malta's emergency response would be to completely depopulate its swine herd.

of disease but are not reporting them. The commenter asked APHIS if this lack of reporting warrants requiring an active surveillance program to detect FMD, SVD, rinderpest, CSF, and ASF in Malta before APHIS recognizes Malta as free of these diseases and adds it to the APHIS-defined European CSF region.

We acknowledge that an active surveillance program provides some benefits for early detection of these diseases but have determined that passive surveillance is sufficient to ensure early disease detection in Maltese swine, particularly in combination with other factors. For instance, Maltese regulations prohibit the movement of swine that are not considered healthy regardless of whether any specific disease has been diagnosed. Furthermore, APHIS concludes that Malta has the capacity to handle initial serology screening and has a plan to obtain confirmatory testing at EU community laboratories for diseases under evaluation.

APHIS does agree with the commenter that FMD, SVD, CSF, and ASF should be considered during passive surveillance program investigations of cases where case-compatible lesions or other signs are present. We also agree that a review of more frequent suspicious case investigations would increase confidence in the quality of Malta's passive surveillance program. However, we found no indications of failure through passive surveillance to detect FMD, SVD, CSF, and ASF.

The commenter also raised questions about our statement in the risk analysis that we ''consider the conditions in Malta to be equivalent to the conditions of other EU Member States for which APHIS imposes additional special restrictions on the importation of susceptible animals and their products.'' The commenter cited a version of the OIE Terrestrial Animal Health Code,[5] which states that for domestic pigs, appropriate surveillance, capable of detecting the presence of infection even in the absence of clinical signs, is required for determining CSF status. The commenter suggested that APHIS' decision not to require an active surveillance program in recognizing Malta's CSF status is inconsistent with surveillance requirements for other countries in the APHIS-defined European CSF region. Based on this information, the commenter asked APHIS to consider requiring Malta to implement active surveillance to detect FMD, SVD, CSF, and ASF as a condition of recognizing its disease status.

We disagree with the commenter's point that APHIS' disease surveillance requirements for Malta are inconsistent with those required of other EU Member States. The commenter has cited surveillance requirements from an outdated version of the OIE Terrestrial Animal Health Code. Chapter 15.2.2 of the current version [6] of the OIE manual recommends appropriate surveillance in accordance with Article 15.2.26, which states that ''surveillance strategies employed for demonstrating freedom from CSF at an acceptable level of confidence should be adapted to the local situation.'' We have determined that the local conditions in Malta are equivalent to those of EU Member States where APHIS imposes additional special restrictions on the importation of susceptible livestock. The application of the requirements of § 94.11 for FMD and rinderpest, § 94.13 for SVD, and §§ 94.31 and 98.38 for CSF will mitigate risk for these diseases in Malta at a level consistent with that of other EU Member States authorized to export swine, pork, and pork products to the United States.

APHIS evaluated multiple factors regarding Malta's animal health system and determined that the country's reliance primarily on passive surveillance is adequate for Malta to detect incursions of CSF. For this reason, we determined that the likelihood is low of CSF being introduced into the United States through movement of infected animals or contaminated animal products from Malta. We consider our evaluation of Malta to be consistent with the current OIE recommendation to determine that an acceptable level of confidence be adapted to the local situation.

*Waste Feeding*

The commenter also raised concerns about the risk of disease transmission from the practice of feeding garbage and other waste to swine raised for export. The commenter noted that in the risk evaluation, APHIS stated that ''waste feeding, specifically, feeding FMD-contaminated meat products to swine, is regarded as the most likely pathway for exposure of susceptible livestock to imported contaminated meat products.'' The commenter added that APHIS affirmed this determination again in a 2001 pathways assessment.[7] The commenter asked what level of confidence does APHIS have that the assessments adequately reflect the current risk to the U.S. pork industry, and suggested that the 1995 work be repeated using more current data. The commenter also asked whether APHIS is confident that swine diseases will be detected in licensed and unlicensed garbage-feeding operations and what the estimated time is for detection in each of these operations.

We remain confident that the risk evaluations cited by the commenter provide an accurate account of risks to the current U.S. pork industry. If contaminated meat products were imported from Malta and managed to make it into plate waste, U.S. garbage feeding regulations are sufficient to mitigate that risk. Treatment of food waste fed to swine is covered under the Swine Health Protection Act [8] (SHPA) regulations in 9 CFR part 166 and supported by APHIS' Veterinary Service (VS) Swine Health Program. Under the regulations, waste feeder operations must be licensed and regularly inspected by APHIS inspectors. In addition to other safeguards, the licensing process requires that producers adequately cook the waste fed to swine using methods designed to destroy foreign animal disease agents.

In the 1995 study cited by the commenter, we conducted a pathway analysis to estimate the likelihood of exposing domestic swine to infected waste. With 95 percent confidence, we estimated that 0.023 percent or less of plate and manufacturing waste would be inadequately processed prior to feeding to swine. Based on this percentage, less than 1 part in 4,300 of imported beef fed to swine as plate or manufacturing waste is likely to be inadequately cooked. Furthermore, the findings of the 2001 APHIS survey the commenter cited, which showed a substantial reduction in waste-feeding operations, indicated that the risk of FMD exposure via feeding of contaminated waste to swine was continuing to decline.

We acknowledge that waste feeding continues to be a potential pathway for transmission of swine diseases and that interstate trade patterns are subject to change. We maintain, however, that the 1995 and 2001 risk findings, combined with existing SHPA requirements, indicate to us a low likelihood of

[5] Chapter 15.2, Article 15.2.2, ''General criteria for the determination of the CSF status of a country, zone or compartment.''

[6] OIE Terrestrial Animal Health Code, 25th Edition, 2016: *http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre_csf.htm.*

[7] USDA–APHIS–VS, Pathway assessment of foot-and-mouth disease (FMD) risk to the United States: An evaluation in response to international FMD outbreaks in 2001. United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Centers for Epidemiology and Animal Health. 2001. A copy of the document can be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

[8] 7 U.S.C. 3801.

exposure of domestic swine to CSF, FMD, SVD, and rinderpest from food waste originating from Malta.

*Environmental Assessment*

The commenter noted that in the supporting documents provided for this notice, the environmental assessment (EA) we used to support this notice was a May 2011 EA for the importation of swine and swine commodities from Slovakia. The commenter also noted that we used an amended finding of no significant impact (FONSI) from importation of swine and swine commodities from Slovakia as the basis for the amended finding related to Malta. The commenter asked us to explain how it is justifiable to use an EA conducted for another country to amend the finding to Malta.

Since 2006, we have recognized the CSF, FMD, SVD, and rinderpest status for EU Member States Latvia, Lithuania, Poland, the Czech Republic, Slovakia, Slovenia, Estonia, and Hungary.

Given that the EU applies and ensures enforcement of the same disease mitigation requirements across all of its Member States, we recognized that the single-state EAs we were conducting were redundant and thus unnecessary with respect to meeting the requirements of the National Environmental Policy Act (NEPA). After consulting with Agency specialists on NEPA compliance, we conducted an environmental impact analysis comparison of the Slovakia EA and similar proposed actions for other EU Member States. We determined that the environmental analysis of the Slovakia EA is sufficiently similar to cover the proposed action for Malta. The 2011 Slovakia EA stated that for any like or similar future regionalization actions proposed for EU Member States, APHIS would incorporate the Slovakia EA by reference in a new FONSI issued for a proposed new action for an EU Member State. That is what we have done for this action regarding Malta.

Additionally, we determined that future proposed actions of this nature pose negligible environmental impacts to each EU Member State or country that has entered into an agricultural equivalency agreement with the EU, provided that a disease assessment finds them to be free of or a low risk for relevant diseases. As Malta is an EU Member State and because we have determined that Malta is free of SVD, FMD, and rinderpest, and at low risk for CSF, we conclude that the ''like or similar action'' environmental analyses approach as presented in the 2011 Slovakia EA and FONSI is appropriate to use with respect to Malta.

Based on the evaluation and the reasons given in this document in response to comments, we are recognizing Malta as free of FMD, rinderpest, ASF, and SVD, and low risk for CSF. The lists of regions free of or at low risk of these diseases or where these diseases currently exist are available on the APHIS Web site at: *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/ct_animal_disease_status* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Authority:** 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 4th day of August 2017.

**Michael C. Gregoire,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2017–16832 Filed 8–9–17; 8:45 am]

**BILLING CODE 3410–34–P**

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

**[Docket No. ATBCB–2017–0002]**

## Proposed Submission of Information Collection for OMB Review; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the Architectural and Transportation Barriers Compliance Board (Access Board) invites comment on the proposed extension of its existing generic clearance for the collection of qualitative feedback on agency service delivery, which expires in January 2018 (OMB Control No. 3014–0011, Expiration: Jan. 31, 2018). This information collection was developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery. With this notice, the Access Board solicits comments on extension of its existing generic clearance, with proposed revisions to the type (and number) of information collection activities that reflect the agency's anticipated increasing use of customer feedback surveys over the next several years to garner qualitative feedback and improve service delivery in a timely and effective manner. Following review of comments received in response to this 60-day notice, the Access Board intends to submit a request to the Office of Management and Budget (OMB) to renew its generic clearance for collection of qualitative feedback for another three-year term.

**DATES:** Submit comments by October 10, 2017.

**ADDRESSES:** You may submit comments, by any of the following methods:

- *Federal eRulemaking Portal http://www.regulations.gov.* Follow the directions for sending comments.
- *Email: spiegel@access-board.gov.* Include ATBCB–2017–0002 in the subject line of the message.
- *Fax:* 202–272–0081.
- *Mail or Hand Delivery/Courier:* Frances Spiegel, Office of General Counsel, U.S. Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111.

*Instructions:* All submissions received must include the agency name and docket number for this Notice (identified by ATBCB–2017–0002). All comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* For this reason, please do not include information of a confidential nature in your comments, such as sensitive personal or proprietary information.

**FOR FURTHER INFORMATION CONTACT:** Frances Spiegel, Attorney Advisor, Office of General Counsel, U.S. Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Phone: (202) 272–0041 (voice). Email: *spiegel@access-board.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Background

Under the PRA and its implementing regulations (5 CFR part 1320), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor (*e.g.,* contractually-required information collection by a third-party). ''Collection of information,'' within the meaning of the PRA, includes agency requests that pose identical questions to, or impose reporting or record keeping obligations on ten or more persons, regardless of whether response to such request is mandatory or voluntary. *See* 5 CFR 1320.3(c); *see also* 44 U.S.C. 3502(3). Before seeking clearance from OMB, agencies are generally required, among other things, to publish a 60-day notice in the **Federal Register** concerning any proposed information collection—

including extension of a previously-approved collection—and provide an opportunity for comment. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

The Access Board initially requested OMB approval of a generic clearance for the collection of qualitative feedback on agency service delivery in 2011. *See* Notice and Request for Comments, 76 FR 38355 (June 30, 2011) (30-day notice); *see also* 75 FR 80542 (Dec. 22, 2010) (government-wide 60-day notice published by OMB). In 2014, we requested renewal of this generic clearance for another three-year term. *See* Notice and Request for Comments, 79 FR 61285 (Oct. 10, 2014) (30-day notice); Notice and Request for Comments, 79 FR 43709 (July 28, 2014) (60-day notice). OMB approved the renewal of our generic clearance, and this extension is set to expire at the end of January 2018.

**B. Proposed Information Collection Request**

With this notice, the Access Board provides notice of its intent to seek renewal of its existing generic clearance for the collection of qualitative feedback on agency service delivery. We anticipate seeking OMB approval for revisions to the type (and number) of information collection activities relative to our existing generic clearance that expires in January 2018. In particular, the Access Board intends to seek an increase in the number of approved respondents (and burden hours) under the generic clearance, primarily because we expect to solicit feedback from customers across a broader spectrum of agency services relating to technical assistance, training, and other education and outreach initiatives. To date, we have found the feedback garnered through qualitative customer satisfaction surveys (and similar information collections) to be beneficial, by providing useful insights in experiences, perceptions, opinions, and expectations regarding Access Board services or focusing attention on areas in need of improvement. We thus intend to seek approval for expansion of our current efforts to solicit qualitative customer feedback by seeking input from customers across a broader array of agency programs and services. Online surveys will be used unless the customer contacts the agency by phone for technical assistance or an individual otherwise expresses a preference for another survey format (*i.e.,* fillable form in portable document format or paper survey). In addition, paper surveys may be used to garner feedback from participants at in-person trainings or similar events.

*OMB Control Number:* 3014–0011.

*Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*Type of Review:* Extension with revisions.

*Abstract:* The proposed information collection activity facilitates collection of qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Federal Government's commitment to improving service delivery. By qualitative feedback we mean information collections that provide useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insight into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of services. These collections will allow for ongoing, collaborative, and actionable communications between the Access Board and its customers and stakeholders.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results from such quantitatively-inclined information collections are likely to have, such collections might still be eligible for submission under another type of other generic clearance.

*Respondents/Affected Public:* Individuals and Households; Businesses and Organizations; State, Local or Tribal Government.

*Burden Estimates:* In the table below (Table 1), the Access Board provides estimates for the annual reporting burden under this proposed information collection. (The Access Board does not anticipate incurring any capital or other direct costs associated with this information collection. Nor will there be any costs to respondents, other than their time.)

TABLE 1—ESTIMATED ANNUAL BURDEN HOURS

| Type of collection | Number of respondents | Frequency of response (per year) | Average response time (minutes) | Total burden (hours) |
|---|---|---|---|---|
| Customer feedback survey: Training/Webinar | 1,200 | 1 | 6 | 120 |
| Customer feedback survey: Technical Assistance | 2,700 | 1 | 3 | 135 |
| Customer feedback survey: Compliance & Enforcement | 40 | 1 | 4 | 3 |
| Totals | 3,940 | n/a | n/a | 258 |

**Note:** Total burden hours per collection rounded to the nearest full hour.

*Request for Comment:* The Access Board seeks comment on any aspect of the proposed renewal of its existing generic clearance for the collection of qualitative feedback on agency service delivery, including (a) whether the proposed collection of information is necessary for the Access Board's performance; (b) the accuracy of the estimated burden; (c) ways for the Access Board to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. Comments will be summarized and included in our request for OMB's

approval of renewal of our existing generic clearance.

**David M. Capozzi,**

*Executive Director.*

[FR Doc. 2017–16836 Filed 8–9–17; 8:45 am]

**BILLING CODE 8150–01–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, September 5, 2017. The purpose of the meeting is for the Committee to vote on a proposal on human trafficking in Oregon.

**DATES:** The meeting will be held on Tuesday, September 5, 2017, at 1:00 p.m. PDT.

*Public Call Information:*

*Dial:* (888) 428–9505.

*Conference ID:* 7368061.

**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) 428–9505, conference ID number: 7368061. 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. Welcome
II. Review of Proposal on Human Trafficking
III. Vote on Proposal
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: August 4, 2017.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2017–16838 Filed 8–9–17; 8:45 am]

**BILLING CODE P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Arizona 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 Arizona Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (Pacific Time) Thursday, September 7, 2017. The purpose of the meeting is for the Committee to address outstanding projects from the 2015–2017 Committee term.

**DATES:** The meeting will be held on Thursday, September 7, 2017, at 1:00 p.m. PDT.

*Public Call Information:*

*Dial:* (888) 737–3628.

*Conference ID:* 8729373.

**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) 737–3628, conference ID number: 8729373. 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=235.* 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. Welcome
II. Discussion on Committee Meetings
III. Discussion on Outstanding Committee Project
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: August 4, 2017.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2017–16837 Filed 8–9–17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Census Bureau

### 2018 End-to-End Census Test—Address Canvassing Operation

**AGENCY:** Census Bureau, Commerce.

**ACTION:** Notice, comment request.

**SUMMARY:** The Census Bureau publishes this notice to announce a change in the expected burden for the 2018 End-to-End Census Test—Address Canvassing Operation. The Census Bureau invites public comment on the increase in burden, as described below.

*Agency:* U.S. Census Bureau.

*Title:* 2018 End-to-End Census Test—Address Canvassing Operation.

*OMB Control Number:* 0607–0997.

*Type of Request:* New Collection.

*Number of Respondents:* 85,093.

*Average Hours per Response:* 5 minutes.

*Burden Hours:* 7,091.

*Needs and Uses:* The Address Canvassing operation is the first operation in the 2018 End-to-End Census Test, with field activity beginning in the summer of 2017. The purpose of the Address Canvassing operation is (1) to deliver a complete and accurate address list and spatial database for enumeration and tabulation, and (2) to determine the type and address characteristics for each living quarter. The Address Canvassing operation consists of two major components: In-Office Address Canvassing and In-Field Address Canvassing. Only the latter component involves collection of information from residents at their living quarters.

The following objectives are crucial to a successful Address Canvassing operation:

- Test the listing and mapping capabilities required by In-Field Address Canvassing.
- Validate the creation of In-Field Address Canvassing workload by In-Office Address Canvassing.
- Conduct a listing quality control operation during In-Field Address Canvassing.

The results of this test will inform the Census Bureau's final preparations for the Address Canvassing Operation in advance of the 2020 Census.

The number of housing units with respondent burden in the original OMB package was calculated based on the national estimate of 25 percent of addresses in the Self-Response areas needing In-Field Address Canvassing. This estimate was based on our original approach to In-Office Address Canvassing Operation, which included two phases: Interactive Review and Active Block Resolution. In the Interactive Review phase staff make an initial assessment of the stability of the blocks under review, determining whether a block is ''stable,'' or undergoing minor changes or no changes at all, or ''unstable,'' which indicates that there are significant changes within the block. In the Active Block Resolution phase, which we are no longer pursuing for the 2020 Census, staff would have done a second, ''deep dive'' into the ''unstable'' blocks to attempt to resolve them by accurately identifying the changes taking place. The Census Bureau discontinued this second phase because we were experiencing significant issues with productivity and quality control in the Active Block Resolution phase. The result of this decision is that our estimated national workload for In-Field Address Canvassing has increased from 25 percent to 30 percent. Prior to the suspension of Active Block Resolution, some of the blocks in the three test sites were removed from In-Field Address Canvassing workload as result of this phase of the In-Office Address Canvassing operation. Therefore, in order to ensure that the operations implemented in the 2018 End-to-End Census Test are consistent with the operations we plan to execute in the 2020 Census, the Census Bureau determined it was appropriate to add the blocks originally resolved during Active Block Resolution back into the in-field workload for this test.

The original estimate of burden was calculated to be:

*Estimated Number of Respondents:* 43,965 households.

*Estimated Time per Response:* 5 minutes.

*Estimated Total Annual Burden Hours:* 3,664 hours.

| Test site | Estimated number of respondents | Estimated time per response (minutes) | Total burden hours |
|---|---|---|---|
| Pierce County, Washington | 20,818 | 5 | 1,735 |
| Providence County, Rhode Island | 17,526 | 5 | 1,461 |
| Bluefield-Beckley-Oak Hill, West Virginia Area | 5,621 | 5 | 468 |
| Totals | 43,965 | ..... | 3,664 |

The new burden estimate is calculated to be:

*Estimated Number of Respondents:* 85,093 households.

*Estimated Time per Response:* 5 minutes.

*Estimated Total Annual Burden Hours:* 7,091 hours.

| Test site | Estimated number of respondents | Estimated time per response (minutes) | Total burden hours |
|---|---|---|---|
| Pierce County, Washington | 43,806 | 5 | 3,651 |
| Providence County, Rhode Island | 25,409 | 5 | 2,117 |
| Bluefield-Beckley-Oak Hill, West Virginia Area | 15,878 | 5 | 1,323 |
| Totals | 85,093 | ..... | 7,091 |

Written comments and recommendations on this change in burden should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

**Sheleen Dumas,**

*Departmental PRA Lead, Office of the Chief Information Officer.*

[FR Doc. 2017–16875 Filed 8–9–17; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–909]**

### Certain Steel Nails From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results Pursuant to Court Decision

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On July 3, 2017, the Court of International Trade (CIT or Court) sustained the Department of Commerce's (the Department) final remand results pertaining to the sixth administrative review of the antidumping duty order on certain steel nails from the People's Republic of China (PRC) covering the period of August 1, 2013, through July 31, 2014. The Department is notifying the public that the final judgment in this case is not in harmony with the final results of the administrative review. Therefore, the Department is amending the final results with respect to the dumping margin assigned to SDC International Aust. PTY. Ltd. (SDC).

**DATES:** Applicable July 13, 2017.

**FOR FURTHER INFORMATION CONTACT:** Annathea Cook, AD/CVD Operations Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0250.

**SUPPLEMENTARY INFORMATION:**

## Background

As part of the sixth administrative review of certain steel nails from the PRC, on August 29, 2014, Mid-Continent Nail Corporation (Mid Continent), the petitioner, requested a review of ''SDC INTERNATIONAL AUSTRALIA (PTY) LTD.'' [1] On September 2, 2014, Progressive Steel and Wire (Progressive Wire), a domestic interested party, requested a review of ''SDC International Aust. Pty., Ltd.'' and ''SDC International Australia Pty., Ltd.'' [2] On September 30, 2014, the Department initiated a review of, among other companies: ''SDC International Aust. Pty., Ltd.,'' ''SDC International Australia Pty., Ltd.,'' and ''SDC International Australia (Pty) Ltd.''

On March 8, 2016, the Department issued the *6th AR Final Results,*[3] where the Department continued to grant a separate rate only to ''SDC International Aust. PTY. LTD.''—the full business name requested by SDC in its separate rate certification and supported by the company's business license.[4] SDC challenged the *6th AR Final Results* before the CIT.[5]

The Department requested a voluntary remand to address whether the Department improperly included permutations of SDC's company name as part of the PRC-wide entity, subjecting these name permutations to the PRC-wide entity rate. On January 20, 2017, the Court granted the Department's request for a voluntary remand to reevaluate its determination regarding permutations of SDC's name.

On July 3, 2017, the CIT sustained the Department's final remand determination, affirming the Department's determination to continue to grant a separate rate to the name SDC provided on its business license—''SDC International Aust. PTY. LTD.''—and no other names.[6] The CIT further affirmed the Department's determination to amend its *6th AR Final Results,* issue accompanying liquidation instructions indicating that any entries under ''SDC International Australia Pty., Ltd.'' and ''SDC International Australia (Pty) Ltd.'' for this review period may be assessed at the separate rate for ''SDC International Aust. PTY. LTD.,'' and to no longer list these name permutations in the PRC-wide entity.

## Timken Notice

In its decision in *Timken,*[7] as clarified by *Diamond Sawblades,*[8] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's July 3, 2017, judgment in *SDC International Aust. PTY. Ltd.* v. *United States* constitutes a final decision of the Court that is not in harmony with the Department's *AR6 Final Results.* This notice is published in fulfillment of the publication requirement of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise at issue pending expiration of the period to appeal or, if appealed, a final and conclusive court decision.

## Amended Final Results

Because there is now a final court decision, the Department hereby amends the *AR6 Final Results* with respect to the companies identified below. Based on the Remand Results, as affirmed by the Court in *SDC International Aust. PTY. Ltd.* v. *United States,* the revised combination-rate weighted average-dumping margin for the companies listed below during the period August 1, 2013, through July 31, 2014 is as follows:

| Exporter | Weighted-average margin (percent) |
|---|---|
| SDC International Aust. PTY. Ltd. (SDC) [9] | 11.95 |

In the event that the CIT's ruling is not appealed or, if appealed, is upheld by a final and conclusive court decision, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on

[1] *See* Mid Continent's ''Request for Sixth Administrative Review,'' August 29, 2014, at Attachment 1.

[2] *See* Progressive Steel & Wire LLC's ''Request for Administrative Review,'' September 2, 2014, at Attachment 1.

[3] *See Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014,* 81 FR 14092 (March 16, 2016) (*6th AR Final Results*) and accompanying Issues and Decision Memorandum.

[4] *See 6th AR Final Results.*

[5] CIT Court No. 16–00062.

[6] *See SDC International Aust. PTY. LTD.* v. *United States,* CIT Slip Op. 17–78, Ct. No. 16–00062 (July 3, 2017).

[7] *See Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[8] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[9] The Department determines that any entries under ''SDC International Australia Pty., Ltd.'' and ''SDC International Australia (Pty) Ltd.'' for this review period may be assessed at the separate rate for ''SDC International Aust. PTY. LTD.'' The Department will issue accompanying liquidation instructions indicating that these permutations are assessed at the separate rate, *i.e.* 11.95%, and will no longer identify these name permutations as part of the PRC-wide entity for this review period. These changes to the 6th AR Final Results are specific to, and a result of, the above-referenced remand redetermination.

unliquidated entries of subject merchandise based on the revised dumping margin listed above.

**Cash Deposit Requirements**

Because there is now a final court decision, we are amending the *AR6 Final Results* and have revised the weighted-average dumping margin for the companies as shown above. As a result of the Final Remand Results, and as affirmed by the Court in *SDC International Aust. PTY. Ltd.* v. *United States,* the cash deposit rate for the companies listed above is 11.95%, effective July 13, 2017. The Department will instruct CBP accordingly.

**Notification to Interested Parties**

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: August 3, 2017.

**Carole Showers,**

*Executive Director, Office of Policy, performing the duties of Deputy Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2017–16874 Filed 8–9–17; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF213**

### Marine Mammals; File No. 16609–01

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application for permit amendment.

**SUMMARY:** Notice is hereby given that Zoological Society of San Diego [Douglas Myers, Responsible Party], P.O. Box 120551, San Diego, CA 92112, has applied for an amendment to Scientific Research Permit No. 16609.

**DATES:** Written, telefaxed, or email comments must be received on or before September 11, 2017.

**ADDRESSES:** The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16609 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Shasta McClenahan or Jennifer Skidmore, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 16609 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 16609, issued on April 27, 2017 (82 FR 29053), authorizes the receipt, import, and export of biological samples to establish and bank cell lines from any species of cetacean, pinniped, or sea turtle, including ESA-listed species, from up to 30 individuals of each species. The permit holder is requesting to amend the authorization to increase the annual number of samples to 60 individuals of each species, for receipt, import, and export to fulfill a new research objective to perform contaminant analysis.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

**Julia Harrison,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2017–16900 Filed 8–9–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF574**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to US 101/ Chehalis River Bridge-Scour Repair in Washington State

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed incidental harassment authorization (IHA); request for comments.

**SUMMARY:** NMFS has received a request from Washington State Department of Transportation (WSDOT) for authorization to take marine mammals incidental to US 101/Chehalis River Bridge-Scour Repair in Washington State. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to incidentally take marine mammals during the specified activities.

**DATES:** Comments and information must be received no later than September 11, 2017.

**ADDRESSES:** Comments 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.guan@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.htm* 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:** Shane Guan, 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

Issuance of an MMPA 101(a)(5)(D) authorization requires compliance with the National Environmental Policy Act.

NMFS preliminary determined the issuance of the proposed IHA is consistent with categories of activities identified in CE B4 (issuance of incidental harassment authorizations under section 101(a)(5)(A) and (D) of the MMPA for which no serious injury or mortality is anticipated) of the Companion Manual for NAO 216–6A and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual for NAO 216–6A that would preclude this categorical exclusion.

We will review all comments submitted in response to this notice prior to making a final decision as to whether application of this CE is appropriate in this circumstance.

## Summary of Request

NMFS received a request from WSDOT for an IHA to take marine mammals incidental to US 101/Chehalis River Bridge-Scour Repair in the State of Washington. WSDOT's request was for harassment only and NMFS concurs that serious injury or mortality is not expected to result from this activity. Therefore, an IHA is appropriate.

In November 2016, WSDOT submitted a request to NMFS requesting an IHA for the possible harassment of small numbers of marine mammal species incidental to US 101/Chehalis River Bridge-Scour Repair in Washington State, between July 16 to September 30, 2018. WSDOT subsequently updated its project scope and submitted a revised IHA application on July 5, 2017. NMFS determined the IHA application was complete on July 14, 2017. NMFS is proposing to authorize the take by Level B harassment of the following marine mammal species: Harbor seal (*Phoca vitulina*); California sea lion (*Zalophus californianus*); Steller sea lion (*Eumetopias jubatus*); gray whale (*Eschrichtius robustus*); and harbor porpoise (*Phocoena phocoena*).

## Description of Proposed Activity

### *Overview*

WSDOT is proposing to repair an area of scour associated with Pier 14 of the US 101 Chehalis River Bridge (Figures 1–3 and 1–4 in the IHA application). The bridge foundation at Pier 14 is ''scour critical'' due to the bridge foundation being unstable for calculated scour depths. The southwest quadrant of Pier 14 is undermined by scour void as much as 8 feet deep, and some of the untreated timber pilings have been directly exposed to river/estuary water since 2008. Marine borers may weaken enough pilings to require more extensive pier repair if this project is not built in the near future. In addition, the footing and seal are exposed at the other three quadrants of Pier 14.

The purpose of the US 101/Chehalis River Bridge Project is to make the bridge foundation stable for calculated scour depths, protect the foundation from further scour by removing debris, filling the scour void under Pier 14 with cementitious material (to protect the pilings from marine borers), and filling the scour hole and protecting the pier with scour resistant material.

### *Dates and Duration*

Due to NMFS and the U.S. Fish and Wildlife Service (USFWS) in-water work timing restrictions to protect ESA-listed salmonids, planned WSDOT in-water construction is limited each year to July 16 through February 15. For this project, in-water construction is planned to take place between July 16 to September 30, 2018. The total worst-case time for pile installation and removal is 50 hours over 12 days (Table 1).

### *Specified Geographic Region*

The US 101 Chehalis River Bridge is located in the City of Aberdeen, Grays Harbor County, Washington (Figure 1–1 in the IHA application). The bridge is located in Township 17 North, Range 9 West, Section 9, where the Chehalis River enters Grays Harbor. Land use in the Aberdeen area is a mix of residential, commercial, industrial, and open space and/or undeveloped lands (Figure 1–2 in the IHA application).

### *Detailed Description of In-Water Pile Driving Associated With the US 101 Chehalis River Bridge Repair Project*

The proposed project includes vibratory hammer driving and removal creating elevated in-water and in-air noise that may impact marine mammals.

Vibratory hammers are commonly used in steel pile driving where sediments allow and involve the same vibratory hammer used in pile removal. The pile is placed into position using a choker and crane, and then vibrated between 1,200 and 2,400 vibrations per minute. The vibrations liquefy the sediment surrounding the pile allowing it to penetrate to the required seating depth, or to be removed.

Details of pile driving activities are provided below and are summarized in Table 1.

Vibratory driving of six steel H piles. This will take approximately 30 minutes per pile, with all 6 piles installed in one day.

- Vibratory driving of 44 sheet piles. This will take approximately 30 minutes per pile, with 10 piles installed per day over 5 days.
- Vibratory removal of 6 steel H piles. This will take approximately 30 minutes per pile, with all 6 piles removed in one day.
- Vibratory removal of 44 sheet piles. This will take approximately 30 minute per pile, with 10 piles removed per day over 5 days.

TABLE 1—SUMMARY OF IN-WATER PILE DRIVING AND REMOVAL DURATIONS

| Method | Pile type | Pile size (inch) | Pile number | Duration per pile (minutes) | Duration (days) |
|---|---|---|---|---|---|
| Vibratory driving | Steel H pile | 12 | 6 | 30 | 1 |
| Vibratory driving | Sheet pile | | 44 | 30 | 5 |
| Vibratory removal | Steel H pile | 12 | 6 | 30 | 1 |
| Vibratory removal | Sheet pile | | 44 | 30 | 5 |
| Total | | | 100 | | 12 |

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 Specified Activities**

We have reviewed the applicants' 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 3 and 4 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/*), or in the U.S. Navy's Marine Resource Assessments (MRA) for relevant operating areas. The MRAs are available online at: *www.navfac.navy.mil/products_and_services/ev/products_and_services/marine_resources/marine_resource_assessments.html.* Table 2 lists all species with expected potential for occurrence in Chehalis Bridge project area 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, 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.

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.

Five species (with five managed stocks) are considered to have the potential to co-occur with the proposed construction activities. All values presented in Table 2 are the most recent available at the time of publication and are available in the 2015 SARs (Carretta *et al.,* 2016) and draft 2016 SARs (available online at: *www.nmfs.noaa.gov/pr/sars/draft.htm*).

TABLE 2—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROPOSED PROJECT AREA

| Common name | Scientific name | Stock | ESA/MMPA status; Strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | PBR | Annual M/SI [3] |
|---|---|---|---|---|---|---|
| **Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)** | | | | | | |
| Family Eschrichtiidae | | | | | | |
| Gray whale | *Eschrichtius robustus* | Eastern North Pacific | N | 20,990 | 624 | 132 |
| Family Phocoenidae (porpoises) | | | | | | |
| Harbor porpoise | *Phocoena phocoena* | Washington inland waters. | N | 11,233 | 66 | 7.2 |

TABLE 2—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROPOSED PROJECT AREA—Continued

| Common name | Scientific name | Stock | ESA/MMPA status; Strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | PBR | Annual M/SI [3] |
|---|---|---|---|---|---|---|
| **Order Carnivora—Superfamily Pinnipedia** | | | | | | |
| Family Otariidae (eared seals and sea lions) | | | | | | |
| California sea lion ..... | *Zalophus californianus* | U.S. ..... | N | 296,750 | 9,200 | 389 |
| Steller sea lion ..... | *Eumetopias jubatus* .... | Eastern U.S ..... | N | 71,562 | 2,498 | 108 |
| Family Phocidae (earless seals) | | | | | | |
| Harbor seal ..... | *Phoca vitulina* ..... | Washington northern inland waters. | N | [4] 11,036 | 1,641 | 43 |

[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.

[3] 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). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Harbor seal estimate is based on data that are 8 years old, but this is the best available information for use here.

**Potential Effects of Specified Activities on Marine Mammals and Their Habitat**

This section includes a summary and discussion of the ways that components of the specified activity 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 and Determination'' 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.

Potential impacts to marine mammals from the proposed US 101/Chehalis Bridge repair project are from noise generated during in-water pile driving and pile removal activities.

*Acoustic Effects*

Here, we first provide background information on marine mammal hearing before discussing the potential effects of the use of active acoustic sources on marine mammals.

Marine Mammal Hearing—Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, 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 directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Generalized hearing is estimated to occur between approximately 7 Hertz (Hz) and 35 kilohertz (kHz), with best hearing estimated to be from 100 Hz to 8 kHz;
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz, with best hearing from 10 to less than 100 kHz;
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera Kogia and Cephalorhynchus; including two members of the genus Lagenorhynchus, on the basis of recent echolocation data and genetic data): Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz.
- Pinnipeds in water; Phocidae (true seals): Generalized hearing is estimated to occur between approximately 50 Hz to 86 kHz, with best hearing between 1–50 kHz;
- Pinnipeds in water; Otariidae (eared seals): Generalized hearing is estimated to occur between 60 Hz and 39 kHz, with best hearing between 2–48 kHz.

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range

(Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2016) for a review of available information. Nine marine mammal species (2 cetacean and 3 pinniped (2 otariid and 1 phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 2. Of the cetacean species that may be present, one species is classified as low-frequency cetaceans (*i.e.,* gray whale), and one is classified as high-frequency cetaceans (*i.e.,* harbor porpoise).

The WSDOT's US 101 Chehalis River Bridge Project using in-water pile driving and pile removal could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area.

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift (TS)—an increase in the auditory threshold after exposure to noise (Finneran *et al.,* 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of TS just after exposure is the initial TS. If the TS eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is a temporary threshold shift (TTS) (Southall *et al.,* 2007).

*Threshold Shift (noise-induced loss of hearing)*—When animals exhibit reduced hearing sensitivity (*i.e.,* sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced TS. An animal can experience TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.,* there is complete recovery), can occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran *et al.,* 2000, 2002, 2003, 2005, 2007, 2010a, 2010b; Finneran and Schlundt, 2010; Lucke *et al.,* 2009; Mooney *et al.,* 2009a, 2009b; Popov *et al.,* 2011a, 2011b; Kastelein *et al.,* 2012a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

Lucke *et al.* (2009) found a TS of a harbor porpoise after exposing it to airgun noise with a received sound pressure level (SPL) at 200.2 dB (peak–to-peak) re: 1 micropascal (μPa), which corresponds to a sound exposure level of 164.5 dB re: 1 $\mu Pa^2$ s after integrating exposure. Because the airgun noise is a broadband impulse, one cannot directly determine the equivalent of root mean square (rms) SPL from the reported peak-to-peak SPLs. However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (McCauley, *et al.,* 2000) to correct for the difference between peak-to-peak levels reported in Lucke *et al.* (2009) and rms SPLs, the rms SPL for TTS would be approximately 184 dB re: 1 μPa, and the received levels associated with PTS (Level A harassment) would be higher. Therefore, based on these studies, NMFS recognizes that TTS of harbor porpoises is lower than other cetacean species empirically tested (Finneran & Schlundt, 2010; Finneran *et al.,* 2002; Kastelein and Jennings, 2012).

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 (similar to those discussed in auditory masking, below). 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 time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals, which utilize sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking is when other noises such as from human sources interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band that the animals utilize. Therefore, since noise generated from vibratory pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Foote *et al.,* 2004; Holt *et al.,* 2009).

Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of sound pressure level) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand, 2009). For WSDOT's Chehalis Bridge repair activities, noises from vibratory pile driving and pile removal contribute to the elevated ambient noise levels in the project area, thus increasing potential for or severity of masking. Baseline ambient noise levels in the vicinity of project area are high due to ongoing

shipping, construction and other activities in the Puget Sound.

Finally, marine mammals' exposure to certain sounds could lead to behavioral disturbance (Richardson *et al.,* 1995), such as: 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 noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.,* 2007). Currently NMFS uses a received level of 160 dB re 1 μPa (rms) to predict the onset of behavioral harassment from impulse noises (such as impact pile driving), and 120 dB re 1 μPa (rms) for continuous noises (such as vibratory pile driving). For the WSDOT's US 101 Chehalis River Bridge Project, only the 120-dB level is considered for effects analysis because WSDOT plans to use vibratory pile driving and pile removal.

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 biologically significant if the change affects growth, survival, and/or reproduction, which depends on the severity, duration, and context of the effects.

*Potential Effects on Marine Mammal Habitat*

The primary potential impacts to marine mammal habitat are associated with elevated sound levels produced by vibratory pile removal and pile driving in the area. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.,* 1981) and possibly avoid predators (Wilson and Dill, 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins, 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona, 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.,* 1993). In general, fish react more strongly to pulses of sound (such as noise from impact pile driving) rather than continuous signals (such as noise from vibratory pile driving) (Blaxter *et al.,* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

During the coastal construction only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the pile driving activity ceases. Thus, the proposed construction would have little, if any, impact on marine mammals' prey availability in the area where construction work is planned.

Finally, the time of the proposed construction activity would avoid the spawning season of the ESA-listed salmonid species.

**Estimated Take**

This section provides an estimate of the number of incidental takes authorized 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 B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to noise generated from vibratory pile driving and removal. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown measures—discussed in detail below in Proposed Mitigation section), Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or 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 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.

Applicant's proposed activity includes the use of continuous (vibratory pile driving and removal)

source, and therefore the 120 dB re 1 µPa (rms) is 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). Applicant's proposed activity includes the use non-impulsive (vibratory pile driving and pile removal) source.

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 3—CURRENT ACOUSTIC EXPOSURE CRITERIA FOR NON-EXPLOSIVE SOUND UNDERWATER

| Hearing group | PTS onset thresholds | | Behavioral thresholds | |
|---|---|---|---|---|
| | Impulsive | Non-impulsive | Impulsive | Non-impulsive |
| Low-Frequency (LF) Cetaceans. | $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB. | $L_{E,LF,24h}$: 199 dB ..... | $L_{rms,flat}$: 160 dB ..... | $L_{rms,flat}$: 120 dB |
| Mid-Frequency (MF) Cetaceans. | $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB. | $L_{E,MF,24h}$: 198 dB. | | |
| High-Frequency (HF) Cetaceans. | $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB. | $L_{E,HF,24h}$: 173 dB. | | |
| Phocid Pinnipeds (PW) (Underwater). | $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB. | $L_{E,PW,24h}$: 201 dB. | | |
| Otariid Pinnipeds (OW) (Underwater). | $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB. | $L_{E,OW,24h}$: 219 dB. | | |

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

**Note:** Peak sound pressure (Lpk) has a reference value of 1 µPa, and cumulative sound exposure level (LE) has a reference value of 1µPa2s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

*Ensonified Area*

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds.

*Source Levels*

The project includes vibratory pile driving and removal of steel H piles and sheet piles. The dimension of the H piles is unknown, but not is expected to be more than 12 inches (in).

Source levels for the steel H pile vibratory driving are based on in-water measurements reported by CALTRANS (2015) of 12-in steel H pile, which are 150 $dB_{rms}$ and 165 $dB_{peak}$ re 1 µPa at 10 meters (m). Source levels for the sheet pile are based on in-water measurements at the Elliot Bay Seawall Project (The Greenbush Group, 2015), which is 165 $dB_{rms}$ and 180 $dB_{peak}$ re 1 µPa at 10 m. For vibratory pile removal, the source levels are conservatively estimated using the pile driving source levels as proxies.

A summary of source levels from different pile driving and pile removal activities is provided in Table 4.

TABLE 4—SUMMARY OF IN-WATER PILE DRIVING SOURCE LEVELS

[at 10 m from source]

| Method | Pile type/size | SEL (dB re 1 µPa²-s) | $SPL_{rms}$ (dB re 1 µPa) |
|---|---|---|---|
| Vibratory driving/removal ..... | 12-in steel H pile ..... | 150 | 150 |
| Vibratory driving/removal ..... | Sheet pile ..... | 165 | 165 |

These source levels are used to compute the Level A injury zones and to estimate the Level B harassment zones. For Level A harassment zones, since the peak source levels for both pile driving are below the injury thresholds, cumulative SEL were used to do the calculations using the NMFS acoustic guidance (NMFS 2016).

*Estimating Injury Zones*

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 cumulative SEL (*LE*), distances to marine mammal injury thresholds were estimated using NMFS Optional User Spreadsheet based on the noise exposure guidance.

Isopleths to Level B behavioral zones are based on rms SPL ($SPL_{rms}$) that are specific for non-impulse (vibratory pile driving) sources. Distances to marine mammal behavior thresholds were calculated using practical spreading.

A summary of the measured and modeled harassment zones is provided in Table 5.

TABLE 5—DISTANCES TO HARASSMENT ZONES

| Pile type, size and pile driving method | Injury zone (m) | | | | | Behavior zone (m) |
|---|---|---|---|---|---|---|
| | LF cetacean | MF cetacean | HF cetacean | Phocid | Otariid | |
| Vibratory driving & removal, sheet pile, 10 piles/day | 36.9 | 3.3 | 54.6 | 22.4 | 1.6 | 10,000 |
| Vibratory driving & removal, steel H pile, 6 piles/day | 2.6 | 0.2 | 3.9 | 1.6 | 0.1 | 1,000 |

*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.

In most cases, marine mammal density data are from the U.S. Navy Marine Species Density Database (U.S. Navy 2015). Harbor seal density is based on a counts of harbor seals at 44 low-tide haul outs in Grays Harbor by Jeffries, *et al.* (2000), the estimated density of harbor seals in the US 101 Chehalis River Bridge project area is 29.4 animals per square kilometer ($km^2$).

The Navy Marine Species Density Database (U.S. Navy 2015) estimates the density of California sea lions in the waters offshore of Grays Harbor as 0.033 animals/$km^2$. This estimate will be used as a surrogate for Grays Harbor.

The Navy Marine Species Density Database (U.S. Navy 2015) estimates the density of Steller sea lions in the waters offshore of Grays Harbor as 0.0145 animals/$km^2$. This estimate will be used as a surrogate for Grays Harbor.

The Navy Marine Species Density Database (U.S. Navy 2015) estimates the density of harbor porpoises in the waters offshore of Grays Harbor as a range between 0.69 and 1.67 animals per square kilometer. According to Evenson, *et al.* (2016), the maximum harbor porpoise density in the Strait of Juan de Fuca (approximately 105 miles north of Grays Harbor) in 2014 was 0.768 animals/$km^2$. The higher density estimate for waters offshore of Grays Harbor (1.67) will be used for this analysis.

According to counts conducted by Calambokidis *et al.* (2012), 29 gray whales were observed over a 12-year period during the months of July through September (the proposed period of project activities). Based on this data, an average of 2.25 gray whales may be present in Grays Harbor/south Washington coast during the 3-month period.

*Take Calculation and Estimation*

Here we describe how the information provided above is brought together to produce a quantitative take estimate. For all marine mammal species except gray whale, estimated takes are calculated based on ensonified area for a specific pile driving activity multiplied by the marine mammal density in the action area, multiplied by the number of pile driving (or removal) days. Distances to and areas of different harassment zones are listed in Tables 5 and 6. Total days for sheet pile driving and removal are five days each, and the total day for steel H pile driving and removal is one day each.

TABLE 6—AREAS OF HARASSMENT ZONES

| Pile type, size and pile driving method | Injury zone ($km^2$) | | | | | Behavior zone ($km^2$) |
|---|---|---|---|---|---|---|
| | LF cetacean | MF cetacean | HF cetacean | Phocid | Otariid | |
| Vibratory driving & removal, sheet pile, 10 piles/day | 0.004 | 0.000 | 0.009 | 0.002 | 0.000 | 2.13 |
| Vibratory driving & removal, steel H pile, 6 piles/day | 0.000 | 0.000 | 0.000 | 0.000 | 0.000 | 0.67 |

The results predicted that a total of 666 harbor seals, 1 California sea lion, 0 Steller sea lion, and 38 harbor porpoise could be exposure to received levels that would cause Level B harassment. However, owing to the prior observations that California sea lion and Steller sea lion's presence in the project area, we adjusted the take number of these species to 10.

For gray whales, the Level B takes were estimate based on an average sighting of 2.25 whales in Grays Harbor/south Washington Coast during the months of July through September (Calambokidis *et al.,* (2012) adjusted upwards to 3 animals.

Due to the extreme small injury zones (maximum zone is 0.009 $km^2$ for high-frequency cetacean), the calculation predicted no animals would be exposed to noise levels that could cause Level A harassment, and therefore no Level A take is proposed for authorization. A summary of estimated marine mammal Level B takes is listed in Table 7.

TABLE 7—ESTIMATED NUMBERS OF MARINE MAMMALS THAT MAY BE EXPOSED TO RECEIVED NOISE LEVELS THAT CAUSE LEVEL B HARASSMENT

| Species | Density (animals/km$^2$) | Estimated Level B take | Abundance | Percentage |
|---|---|---|---|---|
| Pacific harbor seal | 29.4 | 666 | 11,036 | 6.03 |
| California sea lion | 0.033 | 10 | 296,750 | 0.00 |
| Steller sea lion | 0.0145 | 10 | 71,562 | 0.00 |
| Gray whale | NA | 3 | 20,990 | 0.00 |
| Harbor porpoise | 1.67 | 38 | 11,233 | 0.34 |

**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 consider 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. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned) 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.

*Mitigation for Marine Mammals and Their Habitat*

1. Time Restriction

Work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted. In addition, all in-water construction will be limited to the period between July 16, 2018, and September 30, 2018.

2. Establishing and Monitoring Level A, Level B Harassment Zones, and Exclusion Zones

Before the commencement of in-water construction activities, which include vibratory pile driving and pile removal, WSDOT shall establish Level A harassment zones where received underwater $SEL_{cum}$ could cause PTS (see above).

WSDOT shall also establish Level B harassment zones where received underwater SPLs are higher than 120 $dB_{rms}$ re 1 µPa for non-impulsive noise sources (vibratory pile driving and pile removal).

WSDOT shall establish exclusion zones within which marine mammals could be taken by Level A harassment. For Level A harassment zones that is less than 10 m from the source, a minimum of 10 m distance should be established as an exclusion zone.

A summary of exclusion zones is provided in Table 8.

TABLE 8—EXCLUSION ZONES FOR VARIOUS PILE DRIVING ACTIVITIES AND MARINE MAMMAL HEARING GROUPS

| Pile type, size and pile driving method | Exclusion zone (m) | | | | |
|---|---|---|---|---|---|
| | LF cetacean | MF cetacean | HF cetacean | Phocid | Otariid |
| Vibratory driving & removal, sheet pile, 10 piles/day | 37 | 10 | 55 | 22 | 10 |
| Vibratory driving & removal, steel H pile, 6 piles/day | 10 | 10 | 10 | 10 | 10 |

NMFS-approved protected species observers (PSO) shall conduct an initial survey of the exclusion zones to ensure that no marine mammals are seen within the zones before pile driving and pile removal of a pile segment begins. If marine mammals are found within the exclusion zone, pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 30 minutes. If no marine mammals are seen by the observer in that time it can be assumed that the animal has moved beyond the exclusion zone.

If pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated exclusion zone prior to commencement of pile driving, the observer(s) must notify the pile driving operator (or other authorized individual) immediately and continue to monitor the exclusion zone. Operations may not resume until the marine mammal has exited the exclusion zone or 30 minutes have elapsed since the last sighting.

3. Shutdown Measures

WSDOT shall implement shutdown measures if a marine mammal is detected within an exclusion zone or is about to enter an exclusion zone listed in Table 8.

Further, WSDOT shall implement shutdown measures if the number of authorized takes for any particular species reaches the limit under the IHA (if issued) and if such marine mammals

are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

Based on our evaluation of the required measures, NMFS has preliminarily determined that the prescribed mitigation measures 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.

**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 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.

*Proposed Monitoring Measures*

WSDOT shall employ NMFS-approved PSOs to conduct marine mammal monitoring for its US 101/Chehalis Bridge Repair Project. The purposes of marine mammal monitoring are to implement mitigation measures and learn more about impacts to marine mammals from WSDOT's construction activities. The PSOs will observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. NMFS-approved PSOs shall meet the following requirements:

1. Independent observers (*i.e.,* not construction personnel) are required;

2. At least one observer must have prior experience working as an observer;

3. Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience;

4. 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

5. NMFS will require submission and approval of observer CVs;

Monitoring of marine mammals around the construction site shall be conducted using high-quality binoculars (*e.g.,* Zeiss, 10 x 42 power). Due to the different sizes of ZOIs from different pile types, two different ZOIs and different monitoring protocols corresponding to a specific pile type will be established.

- For vibratory pile driving and pile removal of sheet piles, a total of four land-based PSOs will monitor the exclusion zones and Level B harassment zone.
- For vibratory pile driving and pile removal of H piles, a total of three land-based PSOs will monitor the exclusion zones and Level B harassment zone.

Locations of the land-based PSOs and routes of monitoring vessels are shown in WSDOT's Marine Mammal Monitoring Plan, which is available online at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm.*

To verify the required monitoring distance, the exclusion zones and ZOIs will be determined by using a range finder or hand-held global positioning system device.

*Reporting Measures*

WSDOT is required to submit a draft monitoring report within 90 days after completion of the construction work or the expiration of the IHA (if issued), whichever comes earlier. This report would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. NMFS would have an opportunity to provide comments on the report, and if NMFS has comments, WSDOT would address the comments and submit a final report to NMFS within 30 days.

In addition, NMFS would require WSDOT to notify NMFS' Office of Protected Resources and NMFS' West Coast Stranding Coordinator within 48 hours of sighting an injured or dead marine mammal in the construction site. WSDOT shall provide NMFS and the Stranding Network with the species or description of the animal(s), the condition of the animal(s) (including carcass condition, if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that WSDOT finds an injured or dead marine mammal that is not in the construction area, WSDOT would report the same information as listed above to NMFS as soon as operationally feasible.

**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).

To avoid repetition, this introductory discussion of our analyses applies to all the species listed in Table 7, given that the anticipated effects of WSDOT's Chehalis Bridge repair project activities involving pile driving and pile removal on marine mammals are expected to be relatively similar in nature. There is no information about the nature or severity of the impacts, or the size, status, or structure of any species or stock that would lead to a different analysis by species for this activity, or else species-specific factors would be identified and analyzed.

For all marine mammal species, takes that are anticipated and authorized are expected to be limited to short-term Level B harassment (behavioral) because of the small scale (only a total of 100 piles to be installed and removed), lower source levels (small piles by vibratory pile driving and pile removal), and short durations (maximum five hours pile driving or pile removal per day). Marine mammals present in the vicinity of the action area and taken by Level B harassment would most likely show overt brief disturbance (startle reaction) and avoidance of the area from elevated noise levels during pile driving and pile removal. For these reasons, these behavioral impacts are not expected to affect marine mammals' growth, survival, and reproduction, especially considering the limited geographic area that would be affected in comparison to the much larger habitat for marine mammals in the Pacific Northwest.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat, as analyzed in detail in the ''Anticipated Effects on Marine Mammal Habitat'' section. There is no ESA designated critical area in the vicinity of the Chehalis Bridge Project area. The project activities would not permanently modify existing marine mammal habitat. The activities may kill some fish and cause other fish to leave the area temporarily, thus 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. Therefore, given the consideration of potential impacts to marine mammal prey species and their physical environment, WSDOT's proposed construction activity at Chehalis Bridge would not adversely affect marine mammal habitat.

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 injury, series injury, or mortality is anticipated or authorized;
- All harassment is Level B harassment in the form of short-term behavioral modification; and
- No areas of specific importance to affected species are impacted.

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 prescribed monitoring and mitigation measures, NMFS finds that the total take from the proposed 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 estimated takes are below seven percent of the population for all marine mammals except harbor porpoise (Table 7).

Based on the analysis contained herein of the proposed activity (including the prescribed 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 Subsistence 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)**

No incidental take of ESA-listed species is proposed for authorization 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.

**Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to issue an IHA to WSDOT for conducting US 101/Chehalis Bridge Repair Project between July 1, 2018, and June 30, 2019, 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 Authorization is valid from July 1, 2018, through June 30, 2019.

2. This Authorization is valid only for activities associated with in-water construction work at the US 101/Chehalis Bridge Repair Project in the State of Washington.

3. (a) The species authorized taking by Level B harassment and in the numbers shown in Table 7 are: Pacific harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), gray whale (*Eschrichtius robustus*), and harbor porpoise (*Phocoena phocoena*).

(b) The authorization for taking by harassment is limited to the following acoustic sources and from the following activities:

- Vibratory pile driving; and
- Vibratory pile removal.

4. Prohibitions.

(a) The taking, by incidental harassment only, is limited to the species listed under condition 3(a) above and by the numbers listed in Table 7 of this notice. The taking by injury, series injury, or death of these species or the taking by harassment, injury or death of any other species of marine mammal is prohibited unless separately authorized or exempted under the MMPA and may result in the modification, suspension, or revocation of this Authorization.

(b) The taking of any marine mammal is prohibited whenever the required protected species observers (PSOs), required by condition 7(a), are not present in conformance with condition 7(a) of this Authorization.

5. Mitigation.

(a) *Time Restriction.* In-water construction work shall occur only during daylight hours.

(b) Establishment of Level A and Level B Harassment Zones.

(A) Before the commencement of in-water pile driving/removal activities, WSDOT shall establish Level A harassment zones. The modeled Level A zones are summarized in Table 5.

(B) Before the commencement of in-water pile driving/removal activities, WSDOT shall establish Level B harassment zones. The modeled Level B zones are summarized in Table 5.

(C) Before the commencement of in-water pile driving/removal activities, WSDOT shall establish exclusion zones. The proposed exclusion zones are summarized in Table 8.

(c) Monitoring of marine mammals shall take place starting 30 minutes before pile driving begins until 30 minutes after pile driving ends.

(d) Shutdown Measures.

(i) WSDOT shall implement shutdown measures if a marine mammal is detected within or to be approaching the exclusion zones provided in Table 8 of this notice.

(ii) WSDOT shall implement shutdown measures if the number of any allotted marine mammal takes reaches the limit under the IHA, if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during pile removal activities.

6. Monitoring.

(a) Protected Species Observers.

WSDOT shall employ NMFS-approved PSOs to conduct marine mammal monitoring for its construction project. NMFS-approved PSOs will meet the following qualifications.

(i) Independent observers (*i.e.,* not construction personnel) are required.

(ii) At least one observer must have prior experience working as an observer.

(iii) Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience.

(iv) 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.

(v) NMFS will require submission and approval of observer CVs.

(b) Monitoring Protocols: PSOs shall be present on site at all times during pile removal and driving.

(i) A 30-minute pre-construction marine mammal monitoring will be required before the first pile driving or pile removal of the day. A 30-minute post-construction marine mammal monitoring will be required after the last pile driving or pile removal of the day. If the constructors take a break between subsequent pile driving or pile removal for more than 30 minutes, then additional 30-minute pre-construction marine mammal monitoring will be required before the next start-up of pile driving or pile removal.

(iii) Marine mammal visual monitoring will be conducted for different ZOIs based on different sizes of piles being driven or removed, as shown in maps in WSDOT's Marine Mammal Monitoring Plan.

(A) For vibratory pile driving and pile removal of sheet piles, a total of four land-based PSOs will monitor the exclusion zones and Level B harassment zone.

(B) For vibratory pile driving and pile removal of H piles, a total of three land-based PSOs will monitor the exclusion zones and Level B harassment zone.

(iv) If marine mammals are observed, the following information will be documented:

(A) Species of observed marine mammals;

(B) Number of observed marine mammal individuals;

(C) Behavior of observed marine mammals;(D) Location within the ZOI; and

7. Reporting:

(a) WSDOT shall provide NMFS with a draft monitoring report within 90 days of the conclusion of the construction work or within 90 days of the expiration of the IHA, whichever comes first. This report shall detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed.

(b) If comments are received from NMFS Office of Protected Resources on the draft report, a final report shall be submitted to NMFS within 30 days thereafter. If no comments are received from NMFS, the draft report will be considered to be the final report.

(c) In the unanticipated event that the construction activities clearly cause the take of a marine mammal in a manner prohibited by this Authorization (if issued), such as an injury, serious injury, or mortality, WSDOT shall immediately cease all operations and immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) description of the incident;

(iii) status of all sound source use in the 24 hours preceding the incident;

(iv) environmental conditions (*e.g.,* wind speed and direction, sea state, cloud cover, visibility, and water depth);

(v) description of marine mammal observations in the 24 hours preceding the incident;

(vi) species identification or description of the animal(s) involved;

(vii) the fate of the animal(s); and

(viii) photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with WSDOT to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. WSDOT may not resume their activities until notified by NMFS via letter, email, or telephone.

(E) In the event that WSDOT discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), WSDOT will immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with WSDOT to determine whether modifications in the activities are appropriate.

(F) In the event that WSDOT discovers an injured or dead marine mammal, and the lead PSO 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, or scavenger damage), WSDOT shall report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinators, within 24 hours of the discovery. WSDOT shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. WSDOT can continue its operations under such a case.

8. 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.

9. A copy of this Authorization must be in the possession of each contractor who performs the construction work at the US 101/Chehalis Bridge Repair Project.

**Request for Public Comments**

We request comment on our analyses, the draft authorization, and any other aspect of this Notice of Proposed IHA for the WSDOT's US 101/Chehalis Bridge Repair Project. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: August 7, 2017.

**Donna S. Wieting,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2017–16881 Filed 8–9–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF598**

### 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 joint public meeting of its Whiting Committee and Advisory Panel on August 29, 2017 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Tuesday, August 29, 2017 at 9 a.m.

**ADDRESSES:** The meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

**Agenda**

The Committee and Advisory Panel will receive an annual monitoring report and recommended 2018–20 specifications from the Plan Development Team (PDT). The report includes a summary of 2016 landings and estimated discards, as well as assessment updates for northern and southern stocks of red and silver hake. They will also receive a summary of impact analyses and recommendations for preferred alternatives in Draft Amendment 22 from the PDT. The committee and advisors will discuss and identify management priorities for 2018 as well as discuss and identify small-mesh multispecies fishery regulations that could be consolidated or eliminated to improve regulatory efficiency. The committee and advisors may identify a process and timeline for this work. Other business will be discussed as necessary.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. This meeting will be recorded. Consistent with U.S.C. 1852, a copy of the recording is available upon request. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 7, 2017.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–16864 Filed 8–9–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF589**

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting (webinar).

**SUMMARY:** The Pacific Fishery Management Council's (Pacific Council) Salmon Technical Team (STT) and Model Evaluation Workgroup (MEW) will hold a joint meeting via webinar to discuss and make recommendations on issues on the Council's September 2017 agenda. The meeting is open to the public.

**DATES:** The webinar meeting will be held on Thursday, August 24, 2017, from 10 a.m. until business for the day has been completed.

**ADDRESSES:** The meeting will be held via webinar. To attend the webinar (1) join the meeting by visiting this link *https://www.gotomeeting.com/webinar,* (2) enter the Webinar ID: 287–587–251, and (3) enter your name and email address (required). After logging in to the webinar, please (1) dial this TOLL number 1–213–929–4232 (not a toll-free number), (2) enter the attendee phone audio access code 612–742–547, and (3) then enter your audio phone pin (shown after joining the webinar). *Note:* We have disabled Mic/Speakers as an option and require all participants to use a telephone or cell phone to participate. Technical Information and system requirements: PC-based attendees are required to use Windows® 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See the GoToMeeting WebinarApps). You may send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at (503) 820–2280, extension 411 for technical assistance. A public listening station is available at the Pacific Council office (address below).

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Ehlke, Pacific Council; telephone: (503) 820–2410.

**SUPPLEMENTARY INFORMATION:** The STT and MEW will discuss items on the Pacific Council's September 2017 meeting agenda. Major topics include, but are not limited to, Salmon Methodology Review and the Sacramento River Winter Chinook Harvest Control Rule Update. The STT and MEW may also address one or more of the Council's scheduled Administrative Matters. Public comments during the webinar will be received from attendees at the discretion of the STT and MEW Chairs.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document 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 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 Mr. Kris Kleinschmidt (503) 820–2411 at least 10 business days prior to the meeting date.

Dated: August 7, 2017.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–16866 Filed 8–9–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF545**

### Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of SEDAR 50 Review Workshop for South Atlantic *Blueline Tilefish*.

**SUMMARY:** The SEDAR 50 assessment of the Atlantic stock of *Blueline Tilefish* will consist of a series of workshops and webinars: Data Workshops; an Assessment Workshop and webinars; and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The SEDAR 50 Review Workshop will be held on August 29–30, 2017, from 8:30 a.m. until 6 p.m.; and August 31, 2017, from 8:30 a.m. until 1 p.m. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

**ADDRESSES:**

*Meeting address:* The SEDAR 50 Review Workshop will be held at the Doubletree by Hilton Atlantic Beach Oceanfront Hotel, 2712 West Fort Macon Road, Atlantic Beach, NC 28512; telephone: (252) 240–1155.

*SEDAR address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *www.sedarweb.org.*

**FOR FURTHER INFORMATION CONTACT:** Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *julia.byrd@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing a workshop and webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Review Workshop are as follows:

Independent peer review of the assessment developed during the Data Workshop and Assessment Process. Panelists will review the assessment and document their comments and recommendations in a Summary Report.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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 intent to take final action to address the emergency.

**Special Accommodations**

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 10 business days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

**Authority:** 16 U.S.C. *et seq.*

Dated: August 7, 2017.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–16862 Filed 8–9–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF595**

### Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's (Council) Spiny Dogfish Advisory Panel (AP) will meet to review recent fishery performance and develop a Fishery Performance Report and/or other recommendations in preparation for the Council's review of specifications at the October 2017 Council meeting.

**DATES:** The meeting will be held Thursday, August 24, 2017, from 1 p.m. to 4 p.m.

**ADDRESSES:** The meeting will be held via webinar, but anyone can also attend at the Council office address (see below). The webinar link is: *http://mafmc.adobeconnect.com/dogfishap2017/.* Please call the Council at least 24 hours in advance if you wish to attend at the Council office.

*Council address:* Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's Web site,

*www.mafmc.org* also has details on the proposed agenda, webinar access, and briefing materials.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to create a Fishery Performance Report by the Council's Spiny Dogfish Advisory Panel. The intent of the report is to facilitate structured input from the Advisory Panel members into the specifications process. Spiny dogfish specifications were previously set for the 2016–2018 fishing years, but the Council and its Scientific and Statistical Committee (SSC) review the performance of multi-year specifications each year.

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

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: August 7, 2017.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–16863 Filed 8–9–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF609**

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council's (Pacific Council) Scientific and Statistical Committee (SSC) and the SSC's Groundfish Subcommittee will convene two meetings, which are open to the public. The SSC meetings will also be streamed online for those who want to follow the proceedings remotely.

**DATES:** The SSC meeting will be held Monday, August 28, 2017 from 8 a.m. until 5:30 p.m. (Pacific Standard Time) or when business for the day has been completed. The SSC's Groundfish Subcommittee will meet on Tuesday, August 29, 2017 from 8 a.m. until 1 p.m. or when business for the day has been completed.

**ADDRESSES:** The SSC and the SSC's Groundfish Subcommittee meetings will be held in the Traynor Room at the National Marine Fisheries Service Western Regional Center's Sand Point facility, Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, Seattle, WA 98115; telephone: (206) 526–4000. Members of the SSC's Groundfish Subcommittee will be attending the meeting in person at the NMFS Alaska Fisheries Science Center and the rest of the SSC are invited to attend both meetings via webinar.

To attend via webinar, (1) join the meeting by visiting this link *http://www.gotomeeting.com/online/webinar/join-webinar;* (2) enter the webinar ID: 368–736–003, and (3) enter your name and email address (required). After logging into the webinar, please (1) dial this TOLL number: 1–562–247–8422 (not a toll-free number); (2) enter the attendee phone audio access code: 639–618–333; and (3) then enter your audio phone pin (shown after joining the webinar). **Note:** We have disabled mic/speakers as on option and require all participants to use a telephone or cell phone to participate. Technical Information and System Requirements: PC-based attendees are required to use Windows® 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See the GoToMeeting WebinarApps). You may send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at (503) 820–2280, extension 411 for technical assistance.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

**FOR FURTHER INFORMATION CONTACT:** Mr. John DeVore, Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2280.

**SUPPLEMENTARY INFORMATION:** The purpose of the August 28th SSC meeting is to review draft 2017 stock assessment documents, stock assessment review (STAR) panel reports, and any other pertinent information for new benchmark stock assessments for lingcod, Pacific ocean perch, yelloweye rockfish, yellowtail rockfish, blue rockfish, deacon rockfish, and California scorpionfish; review catch-only updates of 2015 assessments for canary and chilipepper rockfish; and consider endorsing these assessments for use by the Pacific Council family and other interested persons for developing management recommendations for fisheries in 2019 and beyond. Additionally, the SSC will consider endorsing new 2019 and 2020 overfishing limits and stock categories for groundfish stocks.

The purpose of the August 29 SSC Groundfish Subcommittee meeting is to review new proposed analyses informing sigmas (*i.e.,* values associated with assessment uncertainty) for older assessments and the proxy stock categories used to determine acceptable biological catches for groundfish stocks. Additionally, the SSC Groundfish Subcommittee will review a proposal for a new stock assessment methodology for determining stock compositions from mixed stock landings. No management actions will be decided by the SSC or the SSC's Groundfish Subcommittee. The SSC members' role will be development of recommendations and reports for consideration by the Pacific Council at its September meeting in Boise, ID. The full SSC is expected to complete their reports at their September meeting in Boise, ID.

Although nonemergency issues not contained in the meeting agendas may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent of the SSC to take final action to address the emergency.

All visitors to the National Marine Fisheries Service Western Regional Center's Sand Point facility should bring one of the following forms of identification:

- Enhanced Driver's License from the states of Washington, Minnesota, and New York
- U.S. Passport
- U.S. Passport Card
- U.S. Department of Defense CAC
- U.S. Federal agency HSPD–12 compliant ID cards

- U.S. Veterans ID
- U.S. Military Dependent's ID Card
- U.S. Trusted Traveler Card—Global Entry, SENTRI, or NEXUS
- U.S. Transportation Workers Identification Credential (TWIC)
- State issued Real ID Compliant Driver's Licenses and Identification Cards.

Visitors who are foreign nationals (defined as a person who is not a citizen or national of the United States) will require additional security clearance to access the NMFS Northwest Fisheries Science Center. Foreign national visitors should contact Dr. Martin Dorn at (206) 526–6548 at least two weeks prior to the meeting date to initiate the security clearance process.

**Technical Information and System Requirements**

PC-based attendees: Windows® 7, Vista, or XP operating system required. Mac®-based attendees: Mac OS® X 10.5 or newer required. Mobile attendees: iPhone®, iPad®, Android™ phone or Android tablet required (use *GoToMeeting* Webinar Apps).

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (503) 820–2280 at least 10 days prior to the meeting date.

Dated: August 7, 2017.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–16867 Filed 8–9–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF542**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the South Atlantic States; Amendment 43

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice announcing the preparation of an environmental assessment (EA).

**SUMMARY:** The NMFS Southeast Region, in collaboration with the South Atlantic Fishery Management Council (Council), is preparing an EA in accordance with the National Environmental Policy Act (NEPA) for Amendment 43 to the Fishery Management Plan (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region (Amendment 43). This notice is intended to inform the public of the change from the preparation of a draft environmental impact statement (EIS) to an EA for Amendment 43. Additionally, this notice serves to announce the change of the scope of actions being considered in Amendment 43 by the Council. The purpose of Amendment 43 is to revise annual catch limits (ACLs) for red snapper in the South Atlantic to provide fishing access while preventing overfishing.

**FOR FURTHER INFORMATION CONTACT:** Frank Helies, NMFS Southeast Regional Office, telephone: 727–824–5305; or email: *frank.helies@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** According to the most recent stock assessment, the red snapper stock in the South Atlantic is undergoing overfishing and is overfished (2016 Southeast Data, Assessment, and Review (SEDAR) 41). Currently, the commercial and recreational ACLs are set at zero and red snapper seasons are determined through an annual process established in Amendment 28 to the FMP (78 FR 44461, July 24, 2013). Red snapper removals (total landings and dead discards) in the 2014, 2015, and 2016 fishing years exceeded the stock's acceptable biological catch and therefore harvest and possession of red snapper was not allowed in the 2015, 2016, or 2017 fishing years. Despite the overfishing determination resulting from SEDAR 41, NMFS notified the Council in March 2017, that adequate management action has been taken to address overfishing and continue to rebuild the stock through the harvest prohibition in 2015 and 2016.

On January 6, 2017, NMFS published a notice of intent (NOI) in the **Federal Register** to prepare a draft EIS for Amendment 43 (82 FR 1720). As originally developed, Amendment 43 considered changes to commercial and recreational ACLs and the recreational annual catch target by modifying the annual process in Amendment 28. Amendment 43 also included actions to modify red snapper management reference points, establish seasonal and area closures, reduce discard mortality, and improve the quantity and quality of data collected from recreational fishermen. NMFS also announced scoping meeting dates, times, and locations that were scheduled to occur in January and February 2017.

In June 2017, the Council decided to reduce the scope of actions considered in Amendment 43. The amendment now would only modify the process implemented through Amendment 28 by revising the process to determine the commercial and recreational ACLs for red snapper. The Council may consider the other actions specified in the NOI in a future amendment. The scope of Amendment 43 was reconsidered by the Council to increase the likelihood that the revised ACL action in the amendment would be implemented by the red snapper commercial and recreational season starting dates in July 2018.

Consequently, NMFS reassessed the action in the amendment relative to NEPA. Based on the reduced scope of actions being considered in Amendment 43, NMFS, in collaboration with the Council, will develop an EA rather than proceeding with the development of a draft EIS. If the EA results in a Finding of No Significant Impact (FONSI), the EA and FONSI will be the final environmental documents prepared to inform this decision. If the EA reveals that significant environmental impacts may be reasonably expected to result from the proposed actions, NMFS and the Council will develop a draft EIS to further evaluate those impacts. The Council will hold public hearings to discuss the actions included in Amendment 43 in webinars in August 2017, and will take public comment on the document at the September 2017, Council meeting in Charleston, SC. Exact dates, times, and locations of any future public hearings will be announced by the Council. A copy of the Amendment 43 draft options paper is available at: *http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/sg/index.html.*

NMFS will announce, through a document published in the **Federal Register**, all public comment periods on the final amendment, its proposed implementing regulations, and the availability of its associated EA. NMFS will consider all public comments received during the Secretarial review period, whether they are on the final amendment, the proposed regulations, or the EA, prior to final agency action.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 7, 2017.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–16894 Filed 8–9–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF597**

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting (webinar).

**SUMMARY:** The Pacific Fishery Management Council's (Pacific Council) Habitat Committee (HC) will hold a meeting via webinar that is open to the public.

**DATES:** The webinar will begin Wednesday, August 23, 2017 at 10 a.m. and end by 1 p.m. on the same day.

**ADDRESSES:** The meeting will be held via webinar. To attend the webinar, (1) join the meeting by visiting this link *http://www.gotomeeting.com/online/webinar/join-webinar;* (2) enter the webinar ID: 925–539–683, and (3) enter your name and email address (required). After logging in to the webinar, please (1) dial this TOLL number: 1–562–247–8422 (not a toll-free number); (2) enter the attendee phone audio access code 323–770–274; and (3) then enter your audio phone pin (shown after joining the webinar). *Note:* We have disabled mic/speakers as on option and require all participants to use a telephone or cell phone to participate. Technical Information and System Requirements: PC-based attendees are required to use Windows® 7, Vista, or XP; Mac®-based attendees are required to use Mac OS® X 10.5 or newer; Mobile attendees are required to use iPhone®, iPad®, Android™ phone or Android tablet (See the GoToMeeting WebinarApps). You may send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at (503) 820–2280, extension 411 for technical assistance. A public listening station will also be available at the Pacific Council office (see address below).

*Council address:* Pacific Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Gilden, Pacific Council; telephone: (503) 820–2418.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the HC meeting is to develop a report for the Pacific Council pertaining to Oroville Dam relicensing, including preliminary fish weir plans, thermal controls, and timing of the relicensing process. The HC's report will be conveyed for consideration by the Pacific Council at its September 11–18, 2017 meeting in Boise, ID. Public comments during the webinar will be accepted at the discretion of the chair of the HC.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document 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 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 Mr. Kris Kleinschmidt at (503) 820–2411 at least 10 business days prior to the meeting date.

Dated: August 7, 2017.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–16865 Filed 8–9–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Strategic Environmental Research and Development Program Scientific Advisory Board; Notice of Federal Advisory Committee Meeting

**AGENCY:** Under Secretary of Defense for Acquisition Technology and Logistics, 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 Strategic Environmental Research and Development Program Scientific Advisory Board will take place.

**DATES:** Open to the public Tuesday, September 12, 2017 from 8:30 a.m. to 4:25 p.m.

**ADDRESSES:** The address of the open meeting is the Potomac Institute for Policy Studies, 901 North Stuart Street, Suite 200, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Herb Nelson, 571–372–6400 (Voice), *herbert.h.nelson10.civ@mail.mil* (Email). Mailing address is SERDP Office, 4800 Mark Center Drive, Suite 17D03, Alexandria, VA 22350–3605. Web site: *https://www.serdp-estcp.org/About-SERDP-and-ESTCP/About-SERDP/Scientific-Advisory-Board.* The most up-to-date changes to the meeting agenda can be found on the Web site.

**SUPPLEMENTARY INFORMATION:** 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.

This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

*Purpose of the Meeting:* The purpose of the September 12, 2017 meeting is to review new start research and development projects requesting Strategic Environmental Research and Development Program funds as required by the SERDP Statute, U.S. Code—Title 10, Subtitle A, Part IV, Chapter 172, section 2904.

*Agenda:* 8:30 a.m. Convene/Opening Remarks/Approval of June 2017 Minutes—Dr. Joseph Hughes, Chair; 8:40 a.m. Program Update—Dr. Herb Nelson, Acting Executive Director; 9:10 a.m. Resource Conservation and Resiliency Overview—Dr. Kurt Preston, Resource Conservation and Resiliency Program Manager; 9:20 a.m. RC18–C1–1065 (RC18–1065): Managing Metapopulations of Threatened Species Across Jurisdictional Boundaries: Quantifying Effects of Climate Change, Environmental Synchrony, Dispersal, and Corridors (FY18 New Start)—Dr. William Morris, Duke University; 10:50 a.m. Break; 10:05 a.m. RC18–C1–1348 (RC18–1348): Engaging a Crowd-Sourced eDNA Database to Enhance DoD-relevant Conservation Goals (FY18 New Start)—Dr. Michael Schwarz, USDA & U.S. Forest Service National Genomics Center for Wildlife and Fish Conservation; 11:05 a.m. RC18–C1–1103 (RC18–1103): Critical Habitat Breadth for Gopherus Tortoises: A New Paradigm for Managing Threatened and Endangered Species in a Non-Stationary World (FY18 New Start)—Dr. Kevin Shoemaker, University of Nevada; 11:50 a.m. Lunch; 12:50 p.m. RC18–C1–1207 (RC18–1207): The Impacts of Land Use and Climate Change on Mojave Desert Tortoise Gene Flow Dynamics and Corridor Functionality (FY18 New Start)—Dr. Jill Heaton, University of

Nevada; 1:35 p.m. RC18–C1–1034 (RC18–1034): A Data-Driven Decision Support System to Identify Optimal Land Use Alternatives for Protecting Species of Concern on DoD and Surrounding Lands (FY18 New Start)—Dr. Charles Hawkins, Utah State University; 2:20 p.m. Break; 2:35 p.m. Resource Conservation and Resiliency Overview—Dr. Kurt Preston, Resource Conservation and Resiliency Program Manager; 2:45 p.m. RC18–C2–1170 (RC18–1170): Interior Alaska DoD Training Land Wildlife Habitat Vulnerability to Permafrost Thaw, an Altered Fire Regime, and Hydrologic Changes (FY18 New Start)—Dr. Thomas Douglas, U.S. Army ERDC Cold Regions Research and Engineering Laboratory; 3:30 p.m. Resource Conservation and Resiliency Overview—Dr. Kurt Preston; Resource Conservation and Resiliency Program Manager; 3:40 p.m. RC17–F2–1004 (RC17–1004): Resilience of Boreal Ecosystems Assessed Using High-frequency Records of Dissolved Organic Matter and Nitrate in Streams (Follow-On to FY15 Limited Scope Project)—Dr. Tamara Harms, University of Alaska; 4:25 p.m. Public Discussion/Adjourn Meeting.

*Meeting Accessibility:* The meeting location has proper and working facilities for those with disabilities. Please contact the DFO if there are any issues.

*Written Statements:* Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Strategic Environmental Research and Development Program, Scientific Advisory Board. Written statements may be submitted to the committee at any time or in response to an approved meeting agenda. All written statements shall be submitted to the Designated Federal Officer (DFO) for the Strategic Environmental Research and Development Program, Scientific Advisory Board. The DFO will ensure that the written statements are provided to the membership for their consideration. Time is allotted at the close of each meeting day for the public to make comments.

*Oral Section:* Oral comments are allowed during the public discussion portion of the meeting agenda. Oral comments are limited to 5 minutes per person.

Dated: August 4, 2017.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2017–16840 Filed 8–9–17; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Strategic Environmental Research and Development Program Scientific Advisory Board; Notice of Federal Advisory Committee Meeting

**AGENCY:** Under Secretary of Defense for Acquisition Technology and Logistics, 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 Strategic Environmental Research and Development Program Scientific Advisory Board will take place.

**DATES:**

Day 1—Open to the public Wednesday, September 13, 2017 from 8:30 a.m. to 4:50 p.m.

Day 2—Open to the public Thursday, September 14, 2017 from 8:30 a.m. to 3:40 p.m.

**ADDRESSES:** The address of the open meeting is the Potomac Institute for Policy Studies, 901 North Stuart Street, Suite 200, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Herb Nelson, 571–372–6400 (Voice), *herbert.h.nelson10.civ@mail.mil* (Email). Mailing address is SERDP Office, 4800 Mark Center Drive, Suite 17D03, Alexandria, VA 22350–3605. Web site: *https://www.serdp-estcp.org/About-SERDP-and-ESTCP/About-SERDP/Scientific-Advisory-Board.* The most up-to-date changes to the meeting agenda can be found on the Web site.

**SUPPLEMENTARY INFORMATION:** 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.

This notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463).

*Purpose of the Meeting:* The purpose of the September 13–14, 2017 meeting is to review new start research and development projects requesting Strategic Environmental Research and Development Program funds as required by the SERDP Statute, U.S. Code—Title 10, Subtitle A, Part IV, Chapter 172, § 2904.

*Agenda:*

*Wednesday, September 13, 2017:* 8:30 a.m. Convene/Opening Remarks—Dr. Joseph Hughes, Chair; 8:40 a.m. Weapons Systems and Platforms Overview—Dr. Robin Nissan, Weapons Systems and Platforms Program Manager; 8:50 a.m. WP18–C1–1074 (WP18–1074): Formation of Detergent Stabilized Oil-Water Emulsion in Bilge Water and a Method to Thwart the Same (FY18 New Start)—Dr. Manoj Chaudhury, Lehigh University; 9:35 a.m. WP18–C1–1215 (WP18–1215): Relating the Phase, Flow, and Coalescence Behavior of Complex Shipboard Emulsions to the Physical and Chemical Properties of Model Surfactant-Oil-Water Systems (FY18 New Start)—Dr. John Howarter, Purdue University; 10:20 a.m. Break; 10:35 a.m. WP18–C1–1031 (WP18–1031): Understanding Shipboard Oil/Water Emulsions Using Macro- and Micro-scale Flows (FY18 New Start)—Dr. Cari Dutcher, University of Minnesota; 11:20 a.m. Weapons Systems and Platforms Overview—Dr. Robin Nissan, Weapons Systems and Platforms Program Manager; 11:30 a.m. WP18–C3–1203 (WP18–1203): MTNI-based Replacement for Comp B in a Printed M67 Grenade (FY18 New Start)—Dr. Karl Oyler, U.S. Army RDECOM–ARDEC; 12:15 p.m. Lunch; 1:15 p.m. WP18–C3–1299 (WP18–1299): A ''Green'' Propylnitroguanidine (PrNQ) Based Solution for Comp B Applications (FY18 New Start)—Dr. Chase Munson, U.S. Army Research Laboratory; 2:00 p.m. WP18–F3–1468 (WP18–1468): Tactical Solid Rocket Motor Propellant Systems that Eliminate Isocyanates and Ammonium Perchlorate (Follow-On to FY14 SEED Project)—Dr. Andrew Guenthner, Air Force Research Laboratory; 2:45 p.m. Break; 3:00 p.m. Weapons Systems and Platforms Overview—Dr. Robin Nissan, Weapons Systems and Platforms Program Manager; 3:10 p.m. WP18–C4–1176 (WP18–1176): From Waste Steel to Weapons: Additive Manufacturing Enabled Agile Manufacturing (FY18 New Start)—Dr. Diran Apelian, Worcester Polytechnic Institute; 3:55 p.m. Environmental Restoration Overview—Dr. Andrea Leeson, Environmental Restoration Program Manager; 4:05 p.m. ER18–C3–1303 (ER18–1303): Treatment Media for Control of Persistent Organic Pollutants and Metals in Stormwater (FY18 New Start)—Dr. Birthe Kjellerup, University

of Maryland; 4:50 p.m. Public Discussion/Adjourn for the day.

*Thursday, September 14, 2017:* 8:30 a.m. Convene—Dr. Joseph Hughes, Chair; 8:40 a.m. Environmental Restoration Overview—Dr. Andrea Leeson, Environmental Restoration Program Manager; 8:50 a.m. ER18–C3–1371 (ER18–1371): Development of Tools to Inform the Selection of Stormwater Controls at DoD Bases to Limit Potential Sediment Recontamination (FY18 New Start)—Dr. Danny Reible, Texas Tech University; 9:35 a.m. ER18–C3–1145 (ER18–1145): Prevention of Sediment Recontamination by Improved BMPs to Remove Organic and Metal Contaminants from Stormwater Runoff (FY18 New Start)—Dr. Richard Luthy, Stanford University; 10:20 a.m. Break; 10:35 a.m. ER18–C3–1230 (ER18–1230): Development, Evaluation, and Technology Transfer of BMPs for Optimizing Removal of PAHs, PCBs, PFASs, and Metals from Stormwater at DoD Sites (FY18 New Start)—Dr. Staci Simonich, Oregon State University; 11:20 a.m. Environmental Restoration Overview—Dr. Andrea Leeson, Environmental Restoration Program Manager; 11:30 a.m. ER18–C4–1428 (ER18–1428): Drinking Water Treatment Residuals as Material for In Situ Capping of Metal Contaminated Sediments (FY18 New Start)—Dr. Jean-Claude Bonzongo, University of Florida; 12:15 p.m. Lunch; 1:15 p.m. Munitions Response Overview—Dr. Herbert Nelson, Munitions Response Program Manager; 1:25 p.m. MR18–C1–1051 (MR18–1051): Simulation, Signal Extraction, and Augmented Visualization for 3D BOSS data (FY18 New Start)—Dr. Timothy Marston University of Washington; 2:10 p.m. MR18–C1–1406 (MR18–1406): Demonstration of Physics-Based Inversions of Multibeam Echosounder for Sediment Properties (FY18 New Start)—Dr. Brian Hefner, University of Washington; 2:55 p.m. Break; 3:10 p.m. Strategy Session; 3:40 p.m. Public Discussion/Adjourn meeting.

*Meeting Accessibility:* The meeting location has proper and working facilities for those with disabilities. Please contact the Designated Federal Officer (DFO) if there are any issues.

*Written Statements:* Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Strategic Environmental Research and Development Program, Scientific Advisory Board. Written statements may be submitted to the committee at any time or in response to an approved meeting agenda. All written statements shall be submitted to the DFO for the Strategic Environmental Research and Development Program, Scientific Advisory Board. The DFO will ensure that the written statements are provided to the membership for their consideration. Time is allotted at the close of each meeting day for the public to make comments.

*Oral Statements:* Oral comments are allowed during the public discussion portion of the meeting agenda. Oral comments are limited to 5 minutes per person.

Dated: August 7, 2017.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2017–16897 Filed 8–9–17; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF ENERGY

**[OE Docket No. PP–420]**

### Amended Application for Presidential Permit; Nogales Interconnection Project

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of amended application.

**SUMMARY:** Nogales Transmission, L.L.C. (Nogales Transmission, or the Applicant) has submitted two amendments to its application for a Presidential permit to construct, operate, maintain, and connect an electric transmission line across the United States border with Mexico.

**DATES:** Comments or motions to intervene must be submitted on or before September 11, 2017.

**ADDRESSES:** Comments or motions to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Christopher Lawrence (Program Office) at 202–586–5260 or via electronic mail at *Christopher.Lawrence@hq.doe.gov;* Rishi Garg (Program Attorney) at 202–586–0258.

**SUPPLEMENTARY INFORMATION:** The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country requires a Presidential permit issued pursuant to Executive Order (E.O.) 10485, as amended by E.O. 12038.

On April 8, 2016, Nogales Transmission filed an application with the Office of Electricity Delivery and Energy Reliability of the U.S. Department of Energy (DOE) for a Presidential permit for the proposed Nogales Interconnection Project (the Project). Nogales Transmission has its principal place of business in Dallas, Texas. It is a subsidiary of Hunt Power, L.P., a Delaware limited partnership, which in turn is a subsidiary of Hunt Consolidated, Inc.

On May 19, 2016, DOE published a Notice of Application in the **Federal Register** for the proposed Project. In the initial application, the proposed Project would originate at the existing UNS Electric, Inc. (UNSE) Valencia Substation in Nogales, Arizona. A new, approximately 3-mile, overhead, 138-kV alternating current (AC) transmission line would be constructed from the Valencia Substation west to the proposed Gateway Substation. An approximately two-mile, overhead, 230-kV AC line would be constructed from the proposed Gateway Substation to the proposed international border crossing at the U.S.-Mexico border.

A 300 MW bi-directional back-to-back high-voltage direct current (HVDC) converter (*i.e.,* DC tie) would be located at the proposed Gateway Substation, which would allow for an asynchronous connection between the U.S. and Mexico. The DC tie would be constructed in two phases, with each phase capable of 150 megawatts (MW) of bi-directional flow, for a total of up to 300 MW. Minor modifications within the existing Valencia Substation would be made to accommodate the connection of the proposed 138-kV transmission line.

In the initial application, the U.S. portion of the proposed Project would cross the U.S.-Mexico border at 31°19′57.844″ N., 110°58′35.908″ W., which is just west of the Mariposa Port of Entry. On January 9, 2017, Nogales Transmission amended its application to modify the proposed international border crossing to a location approximately 25 feet to the east at 31°19′57.846″ N., 110°58′35.620″ W. A portion of the new, approximately two-mile, overhead, 230-kV AC transmission line extending south from the proposed Gateway Substation to the proposed international border crossing was also proposed to be shifted approximately 25 feet to the east (the location of the proposed right-of-way [ROW] was not proposed to be changed).

On May 31, 2017, DOE received a letter from Nogales Transmission amending its initial Presidential permit application a second time to reflect

changes to the proposed electrical configuration, which has been designed to make the proposed Project more cost-effective for the Applicant.

The reconfiguration would connect the proposed Project to the UNSE transmission system at the proposed Gateway Substation rather than at the existing Valencia Substation, as initially proposed. A new, approximately 3-mile, overhead double-circuit 138-kV AC transmission line would be constructed on new monopoles. The first circuit would originate at an existing pole 1,900 feet west of the existing Valencia Substation and terminate at the proposed Gateway Substation. At this origination point, the existing UNSE ''Vail to Valencia'' transmission line would be severed and connected to this new line, thereby converting the existing UNSE ''Vail to Valencia'' transmission line to the ''Vail to Gateway'' transmission line. The second circuit would originate at the proposed Gateway Substation and proceed in an easterly direction to the same pole (1,900 feet west of the existing Valencia Substation), where it would connect with the existing portion of the UNSE 138-kV ''Vail to Valencia'' transmission line that travels east to the existing Valencia Substation. This circuit would constitute the new ''Gateway to Valencia'' transmission line and serve as the source for Valencia. The existing UNSE Vail to Valencia line currently connects to the Valencia Substation; this line is the current (and only) source of power for the City of Nogales. The Valencia Substation is the first existing substation within the U.S. The Nogales Interconnection project would change the configuration such that the Vail to Valencia line would become the Vail to Gateway line. Because the Valencia Substation still needs a source of power, the Gateway to Valencia line would be built. Minor modifications to relaying equipment within the Valencia Substation would be made to accommodate this Gateway to Valencia line.

In addition to the DC tie at the Gateway site as initially proposed (now referred to as the Nogales Gateway Substation), on the eastern portion of the Gateway site, a 138-kV UNSE Gateway Substation would consist of a three bay breaker and a half open air configuration to accommodate the line from Vail, the line to Valencia, and the connection to the DC tie, as well as a future UNSE distribution transformer. The Nogales Gateway Substation and the UNSE Gateway Substation would be located on the Gateway site and collectively referred to as the Gateway Substation. There were no additional changes proposed in this amendment to the location of the new, approximately two-mile, overhead, 230-kV AC transmission line extending south from the proposed Gateway Substation to the proposed international border crossing. The proposed reconfiguration would not affect the location of the proposed route or ROW requirements, but certain changes were proposed to be made to the conductors and towers. A comparison of the initial configuration and the reconfiguration for each of the alternative routes is provided in the application amendment.

The draft Environmental Assessment contains relevant figures in Chapters 1 and 2. It can be downloaded from the Document Library page on the project Web site: *http://nogalesinterconnectionea.com/*.

The Proposed Project One-line Diagram (Figure 2.4–5) illustrates the details of the configuration as proposed by the amendment. A side-by-side comparison of the reconfiguration to the original application is also in the appendix to the Applicant's amendment (which can also be downloaded from the project Web site).

*Procedural Matters:* Any person may comment on this application by filing such comment at the address provided above. Any person seeking to become a party to this proceeding must file a motion to intervene at the address provided above in accordance with Rule 214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure (18 CFR 385.214). Two copies of each comment or motion to intervene should be filed with DOE on or before the date listed above.

Additional copies of such motions to intervene also should be filed directly with: Enrique Marroquin, Nogales Transmission, L.L.C., 1900 North Akard Street, Dallas, Texas 75201.

Before a Presidential permit may be issued or amended, DOE must determine that the proposed action is in the public interest. In making that determination, DOE considers the environmental impacts of the proposed project pursuant to the National Environmental Policy Act of 1969, as amended, determines the project's impact on electric reliability by ascertaining whether the proposed project would adversely affect the operation of the U.S. electric power supply system under normal and contingency conditions, and any other factors that DOE may also consider relevant to the public interest. DOE also must obtain the concurrences of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of this application amendment will be made available for public inspection and copying (upon request) at the address provided above, and by accessing the program Web site at: *http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulatio-2.*

Issued in Washington, DC, on August 3, 2017.

**Christopher A. Lawrence,**

*Electricity Policy Analyst, Transmission Permitting and Technical Assistance Division, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. 2017–16882 Filed 8–9–17; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EF17–4–000]**

### Bonneville Power Administration; Notice of Filing

Take notice that on July 31, 2017, Bonneville Power Administration submitted tariff filing per: BP–18 IS–18 Rate to be effective 10/1/2017.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of 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 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for 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.

*Comment Date:* 5:00 p.m. Eastern Time on August 30, 2017.

Dated: August 2, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017–16880 Filed 8–9–17; 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 corporate filings:

*Docket Numbers:* EC17–134–000.

*Applicants:* Ameren Illinois Company.

*Description:* Supplement to June 28, 2017 Application of Ameren Illinois Company for Authorization under Section 203 of the Federal Power Act (revised Attachment N).

*Filed Date:* 8/4/17.

*Accession Number:* 20170804–5130.

*Comments Due:* 5 p.m. ET 8/14/17.

*Docket Numbers:* EC17–149–000.

*Applicants:* Bayshore Solar A, LLC.

*Description:* Application for Authorization under Section 203 of the Federal Power Act the Disposition of Jurisdictional Facilities, Request for Expedited Consideration and Confidential Treatment of Bay Shore Solar A, LLC.

*Filed Date:* 8/3/17.

*Accession Number:* 20170803–5179.

*Comments Due:* 5 p.m. ET 8/24/17.

*Docket Numbers:* EC17–150–000.

*Applicants:* Apple Blossom Wind, LLC.

*Description:* Application for Authorization of Transaction Pursuant to Section 203 of the Federal Power Act and Request of Apple Blossom Wind, LLC.

*Filed Date:* 8/4/17.

*Accession Number:* 20170804–5170.

*Comments Due:* 5 p.m. ET 8/25/17.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG17–137–000.

*Applicants:* Techren Solar I LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Techren Solar I LLC.

*Filed Date:* 8/3/17.

*Accession Number:* 20170803–5195.

*Comments Due:* 5 p.m. ET 8/24/17.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER17–1789–001.

*Applicants:* Interstate Power and Light Company.

*Description:* Tariff Amendment: Amendment to IPL Wholesale Tariff Application to be effective 8/8/2017.

*Filed Date:* 8/4/17.

*Accession Number:* 20170804–5189.

*Comments Due:* 5 p.m. ET 8/25/17.

*Docket Numbers:* ER17–2075–001.

*Applicants:* Idaho Power Company.

*Description:* Tariff Amendment: Amendment to EIM Tariff Filing to be effective 1/25/2018.

*Filed Date:* 8/4/17.

*Accession Number:* 20170804–5179.

*Comments Due:* 5 p.m. ET 8/25/17.

*Docket Numbers:* ER17–2238–000.

*Applicants:* Nexus Energy Inc.

*Description:* Baseline eTariff Filing: Nexus Energy Market-based Rate Tariff v1 to be effective 11/1/2017.

*Filed Date:* 8/4/17.

*Accession Number:* 20170804–5004.

*Comments Due:* 5 p.m. ET 8/25/17.

*Docket Numbers:* ER17–2239–000.

*Applicants:* NorthWestern Corporation.

*Description:* Notice of Termination of Transmission Service Agreement No. 19–SD of NorthWestern Corporation.

*Filed Date:* 8/3/17.

*Accession Number:* 20170803–5181.

*Comments Due:* 5 p.m. ET 8/24/17.

*Docket Numbers:* ER17–2240–000.

*Applicants:* New York Independent System Operator, Inc.

*Description:* 205(d) Rate Filing: 205 filing re: Removal of Bunce Creek PARs cost recovery mechanism to be effective 10/3/2017.

*Filed Date:* 8/4/17.

*Accession Number:* 20170804–5075.

*Comments Due:* 5 p.m. ET 8/25/17.

*Docket Numbers:* ER17–2241–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* 205(d) Rate Filing: First Revised Service Agreement No. 3903, Queue No. T174/AB1–106 to be effective 7/9/2017.

*Filed Date:* 8/4/17.

*Accession Number:* 20170804–5078.

*Comments Due:* 5 p.m. ET 8/25/17.

*Docket Numbers:* ER17–2242–000.

*Applicants:* Southern California Edison Company.

*Description:* 205(d) Rate Filing: Amended and Restated Silver Peak 55 kV Interconnection Agreement to be effective 8/6/2017.

*Filed Date:* 8/4/17.

*Accession Number:* 20170804–5110.

*Comments Due:* 5 p.m. ET 8/25/17.

*Docket Numbers:* ER17–2243–000.

*Applicants:* Public Service Company of Oklahoma.

*Description:* 205(d) Rate Filing: PSO CSW Operating Companies MBR Concurrence Cancellation to be effective 6/30/2017.

*Filed Date:* 8/4/17.

*Accession Number:* 20170804–5141.

*Comments Due:* 5 p.m. ET 8/25/17.

*Docket Numbers:* ER17–2244–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Cancellation: Notice of Cancellation of Interconnection Construction Service Agreement No 3460 to be effective 7/12/2017.

*Filed Date:* 8/4/17.

*Accession Number:* 20170804–5146.

*Comments Due:* 5 p.m. ET 8/25/17.

*Docket Numbers:* ER17–2245–000.

*Applicants:* Moffett Solar 1, LLC.

*Description:* Baseline eTariff Filing: Baseline—Market-Based Rate Tariff to be effective 9/1/2017.

*Filed Date:* 8/4/17.

*Accession Number:* 20170804–5158.

*Comments Due:* 5 p.m. ET 8/25/17.

*Docket Numbers:* ER17–2246–000.

*Applicants:* Midcontinent Independent System Operator.

*Description:* § 205(d) Rate Filing: 2017–08–04_Tariff revisions to implement regional cost allocation for TMEPs to be effective 10/4/2017.

*Filed Date:* 8/4/17.

*Accession Number:* 20170804–5159.

*Comments Due:* 5 p.m. ET 8/25/17.

*Docket Numbers:* ER17–2247–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Original Service Agreement No. 4591, Non-Queue No. NQ143 to be effective 7/7/2017.

*Filed Date:* 8/4/17.

*Accession Number:* 20170804–5168.

*Comments Due:* 5 p.m. ET 8/25/17.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES17–51–000.

*Applicants:* NorthWestern Corporation.

*Description:* Application for Authorization Under Section 204 of the Federal Power Act to Issue Securities of NorthWestern Corporation.

*Filed Date:* 8/4/17.

*Accession Number:* 20170804–5133.

*Comments Due:* 5 p.m. ET 8/25/17.

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: August 4, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017–16877 Filed 8–9–17; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP17–464–000]**

### Rover Pipeline LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Majorsville Compressor Station Amendment and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Amendment to the Rover Pipeline Project involving construction and operation of facilities by Rover Pipeline, LLC (Rover) in Marshall County, West Virginia. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before September 4, 2017.

If you sent comments on this amendment to the Commission before the opening of this docket on May 17, 2017, you will need to file those comments in Docket No. CP17–464–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

#### Public Participation

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on *eRegister.* If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP17–464–000 with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

#### Summary of the Proposed Project

Rover proposes to install a third 3,550 horsepower natural gas compressor unit at the Majorsville Compressor Station [1] and a new equipment run at the Majorsville Meter Station in Marshall County, West Virginia. The new unit would bring the Majorsville Compressor Station to a total of 10,650 horsepower. The proposal would increase the point capacity of the Majorsville Compressor Station and the Majorsville Meter Station from 300 million cubic feet per day (MMcf/d) to 400 MMcf/d. Rover would house the new unit (and the previously approved units) in a larger compressor building. Rover has not proposed to expand the station boundary beyond the previously approved limits. The general location of the project facilities is shown in appendix 1.[2]

#### Land Requirements for Construction

Construction of the proposed facilities would occur at Rover's previously approved and under construction Majorsville Compressor Station. Following construction, Rover would maintain about the project's facilities as part of operations associated with the Rover Pipeline Project.

#### The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss the environmental impacts that could occur as a result of the construction and operation of the proposed project. We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments

[1] The Majorsville Compressor Station was approved by the Commission on February 2, 2017 in docket no. CP15–93–000 as a component of the Rover Pipeline Project and is currently under construction.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called eLibrary or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] We, us, and our refer to the environmental staff of the Commission's Office of Energy Projects.

received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

**Environmental Mailing List**

The environmental mailing list includes federal, state, and local government representatives and agencies; environmental and public interest groups; and other interested parties. This list also includes all affected landowners (as defined in the Commission's regulations) who are within 0.5 mile of the Majorsville Compressor Station, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an intervenor which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the Document-less Intervention Guide under the e-filing link on the Commission's Web site. Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.*

**Additional Information**

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on General Search and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP17–464). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, any public sessions or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: August 4, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017–16878 Filed 8–9–17; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP17–56–000; CP17–57–000]**

### Texas Eastern Transmission, L.P, Brazoria Interconnector Gas Pipeline, LLC; Notice of Schedule for Environmental Review of the Stratton Ridge Expansion Project

On February 3, 2017, Texas Eastern Transmission, LP (Texas Eastern) and Brazoria Interconnector Gas Pipeline, LLC (BIG Pipeline) filed jointly an application in Docket Nos. CP17–56–000 and CP17–57–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Stratton Ridge Expansion Project (Project), and is designed to provide the capacity necessary for Texas Eastern to transport up to 322,000 dekatherms per day of natural gas on a firm basis from Texas Eastern's existing interconnections to a delivery point on the BIG Pipeline near Stratton Ridge, Texas.

On February 16, 2017, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

**Schedule for Environmental Review**

Issuance of EA—October 5, 2017
90-day Federal Authorization Decision Deadline—January 3, 2018

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

**Project Description**

The Stratton Ridge Project would consist of:

- A new Angleton Compressor Station, consisting of a 12,500 horsepower electric motor-driven compressor in Brazoria County, Texas;
- a new 0.5 mile, 30-inch-diameter pipeline lateral in Brazoria County, Texas to interconnect with the BIG intrastate pipeline system;
- installation of Clean Burn Equipment at the Mont Belvieu Compressor Station in Chambers County, Texas; and
- installation of minor auxiliary and support facilities (*e.g.* launcher and receiver modification, valves, piping modification) at existing Texas Eastern facilities in San Jacinto, Lavaca, Waller, and Shelby Counties, Texas.

**Background**

On March 24, 2017, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Stratton Ridge Project and*

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

*Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received comments from the Texas Parks and Wildlife Department, United States Environmental Protection Agency, and one local resident. The primary issues raised by the commenters are impacts on: land use; water supplies; migratory birds; threatened and endangered species; cultural resources; air quality; and environmental justice.

**Additional Information**

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. 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.*

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, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP17–56 and CP17–57), and follow the instructions.

For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: August 4, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017–16879 Filed 8–9–17; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[CERCLA–04–2017–3757; FRL–9965–77–Region 4]**

### Coronet Industries, Inc. Plant City, Hillsborough County, Florida; Notice of Amendment to Federal Register Notice

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; amendment.

**SUMMARY:** On July 26, 2017, the Environmental Protection Agency (EPA) published a Notice of Settlement under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) addressing cost for work performed at the Coronet Industries, Inc. Site located in Plant City, Hillsborough County, Florida, FRL–9965–49–Region 4 (82 FR 34655). The published notice did not list Coronet Industries Inc, as one of the settling parties to the settlement.

**DATES:** The comment period for the original notice is unchanged. The Agency will consider public comments on the settlement until August 25, 2017. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

**ADDRESSES:** Copies of the settlement are available from the Agency by contacting Ms. Paula V. Painter, Program Analyst, using the contact information provided in this notice. Comments may also be submitted by referencing the Site's name through one of the following methods:

- *Internet: https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notices.*
- *U.S. Mail:* U.S. Environmental Protection Agency, Superfund Division, Attn: Paula V. Painter, 61 Forsyth Street SW., Atlanta, Georgia 30303.
- *Email: Painter.Paula@epa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Paula V. Painter at 404–562–8887. Attn: Paula V. Painter, 61 Forsyth Street SW., Atlanta, Georgia 30303.

- *Email: Painter.Paula@epa.gov.*

Dated: July 27, 2017.

**Anita L. Davis,**

*Chief, Enforcement and Community Engagement Branch, Superfund Division.*

[FR Doc. 2017–16899 Filed 8–9–17; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice to All Interested Parties of the Termination of the Receivership of 10517—Hometown National Bank Longview, Washington

*Notice is hereby given* that the Federal Deposit Insurance Corporation (FDIC) as Receiver for Hometown National Bank, Longview, Washington (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed Receiver of Hometown National Bank on October 2, 2015. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 34.6, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: August 7, 2017.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2017–16883 Filed 8–9–17; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** Tuesday, August 15, 2017 at 10:00 a.m. and its Continuation at the Conclusion of the Open Meeting on August 17, 2017.

**PLACE:** 999 E Street NW., Washington, DC.

**STATUS:** This Meeting Will Be Closed to the Public.

**ITEMS TO BE DISCUSSED:** Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Laura E. Sinram,**

*Acting Deputy Secretary of the Commission.*

[FR Doc. 2017–17019 Filed 8–8–17; 4:15 pm]

**BILLING CODE 6715–01–P**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request

**AGENCY:** Federal Trade Commission (''FTC'' or ''Commission'').

**ACTION:** Notice.

**SUMMARY:** The FTC seeks public comments on proposed information requests sent pursuant to compulsory process to a combined ten or more of the largest cigarette manufacturers and smokeless tobacco manufacturers. The information sought would include, among other things, data on manufacturer annual sales and marketing expenditures. The current FTC clearance from the Office of Management and Budget (''OMB'') to conduct such information collection expires January 31, 2018. The Commission intends to ask OMB for renewed three-year clearance to collect this information.

**DATES:** Comments on the proposed information requests must be received on or before October 10, 2017.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: ''Tobacco Reports: Paperwork Comment, FTC File No. P054507'' on your comment, and file the comment online at *https://ftcpublic.commentworks.com/ftc/tobaccoreportspra* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed collection of information should be addressed to Michael Ostheimer, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Mailstop CC–10507, Washington, DC 20580. Telephone: (202) 326–2699.

**SUPPLEMENTARY INFORMATION:** For fifty years, the FTC has published periodic reports containing data on domestic cigarette sales and marketing expenditures by the major U.S. cigarette manufacturers. The Commission has published comparable reports on smokeless tobacco sales and marketing expenditures for thirty years. Originally, both reports were issued pursuant to statutory mandates. After those statutory mandates were terminated, the Commission continued to collect and publish information obtained from the cigarette and smokeless tobacco industries pursuant to Section 6(b) of the FTC Act, 15 U.S.C. 46(b). As noted above, the current PRA clearance to collect this information is valid through January 31, 2018 (OMB Control No. 3084–0134).

The Commission plans to continue sending information requests annually to the ultimate parent company of several of the largest cigarette companies and smokeless tobacco companies in the United States (''industry members''). The information requests will seek data regarding, *inter alia:* (1) The tobacco sales of industry members; (2) how much industry members spend advertising and promoting their tobacco products, and the specific amounts spent in each of a number of specified expenditure categories; (3) whether industry members are involved in the appearance of their products or brand imagery in television shows, motion pictures, on the Internet, or on social media; (4) how much industry members spend on advertising intended to reduce youth tobacco usage; (5) the events, if any, during which industry members' tobacco brands are televised; (6) how much industry members spend on public entertainment events promoting their companies but not specific tobacco products or tobacco products generally; and (7) for the cigarette industry, the ''tar'', nicotine, and carbon monoxide yields of their cigarettes. The information will again be sought using compulsory process under Section 6(b) of the FTC Act.

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the proposed collection of information.

The Commission invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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.

*Estimated hours burden:* The FTC staff's estimate of the hours burden is based on the time required each year to respond to the Commission's information request. Although the FTC currently anticipates sending information requests each year to the four largest cigarette companies and the five largest smokeless tobacco companies, the burden estimate is based on up to 15 information requests being issued per year to take into account any future changes in these industries. These companies vary greatly in size, in the number of products they sell, and in the extent and variety of their advertising and promotion.

The companies have not taken issue with the staff's burden estimates in prior requests for PRA reauthorization,[1] suggesting that the time most companies would require to gather, organize, format, and produce their responses would range from 30 to 80 hours per information request for the smaller companies, to as much as hundreds of hours for the very largest companies. As

[1] *E.g.,* 79 FR 47463 (Aug. 13, 2014); 79 FR 72176 (Dec. 5, 2014).

an approximation, staff continues to assume a per company average of 180 hours for the nine largest recipients of the Commission's information requests to comply—cumulatively, 1,620 hours per year.

Staff anticipates that if the Commission decides to issue information requests to any additional companies, those companies would be smaller than the primary nine recipients and that the response burden per additional recipient would be less than for the larger companies. Staff believes that the burden should not exceed 60 hours per entity for the smaller recipients of the information requests. Cumulatively, then, the total burden for six additional respondents should not exceed 360 hours per year. Thus, the overall estimated burden for a maximum of 15 recipients of the information requests is 1,980 hours per year. These estimates include any time spent by separately incorporated subsidiaries and other entities affiliated with the ultimate parent company that has received the information request.

*Estimated cost burden:* Commission staff cannot calculate with precision the labor costs associated with this data production, as those costs entail varying compensation levels of management and/or support staff among companies of different sizes. The staff assumes that paralegals and computer analysts will perform most of the work involved in responding to the Commission Orders, although in-house legal personnel will be involved in reviewing the actual submission to the Commission. The staff continues to use a combined hourly wage of $100/hour for the combined efforts of these individuals.[2] Using this figure, staff's best estimate for the total labor costs for up to 15 information requests is $198,000 per year. Staff believes that the capital or other non-labor costs associated with the information requests are minimal. Although the information requests may necessitate that industry members maintain the requested information provided to the Commission, they should already have in place the means to compile and maintain business records.

*Request for comment:* You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 10, 2017. Write ''Tobacco Reports: Paperwork Comment, FTC File No. P054507'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.*

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/tobaccoreportspra,* by following the instructions on the web-based form. When this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Tobacco Reports: Paperwork Comment, FTC File No. P054507'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610, Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Web site at *https://www.ftc.gov/,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Web site—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC Web site, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 10, 2017. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

**David C. Shonka,**

*Acting General Counsel.*

[FR Doc. 2017–16898 Filed 8–9–17; 8:45 am]

**BILLING CODE 6750–01–P**

[2] Commission staff believes this estimate is conservative: According to data from the Bureau of Labor Statistics, the mean hourly wages for these three occupations are as follows: $25.57 for paralegals; $44.36 for computer and information analysts; and $67.25 for lawyers. Economic News Release, Bureau of Labor Statistics, Table 1—National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2016 (Mar. 31, 2011) (Table 1), *available at http://www.bls.gov/news.release/ocwage.t01.htm.* Even if employees of the major cigarette and smokeless tobacco manufacturers earn more than these hourly wages, the staff believes its $100/hour estimate is appropriate.

## GENERAL SERVICES ADMINISTRATION

**[Notice–ID–2017–02; Docket 2017–0002; Sequence No. 14]**

## Privacy Act of 1974; System of Records

**AGENCY:** General Services Administration (GSA).

**ACTION:** Notice of a modified system of records.

**SUMMARY:** *Login.gov* is a single sign-on platform to facilitate access to government services. GSA is modifying the routine uses applicable to the system of records by removing the words ''NIST-compliant'' from one existing *Login.gov* routine use and adding a new routine use for the system.

**DATES:** The modifications to the system of records that are described in this notice are effective upon publication in today's **Federal Register,** with the exception of the one new routine use to allow *Login.gov* to mail users a confirmation or notification (see new routine use ''j'' below) which is effective September 11, 2017. Comments on that routine use must be submitted by September 11, 2017.

**ADDRESSES:** Submit comments identified by ''Notice–ID–2017–02, Notice of Modified System of Records'' by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for Notice–ID–2017–02, Notice of Modified System of Records. Select the link ''Comment Now'' that corresponds with ''Notice–ID–2017–02, Notice of Modified System of Records.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Notice–ID–2017–02, Notice of Modified System of Records'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Sosa/Notice–ID–2017–02, Notice of Modified System of Records.

*Instructions:* Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Call the GSA Chief Privacy Officer at telephone 202–322–8246; or email *gsa.privacyact@gsa.gov*.

**SUPPLEMENTARY INFORMATION:** GSA proposes to clarify an existing routine use and add a new routine use for *Login.gov,* a system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. The National Institute of Standards and Technology (NIST) develops information security standards and guidelines, including minimum requirements for Federal information systems, but does not endorse or certify specific implementations. Therefore, GSA is modifying existing routine use ''b'' to remove the reference to ''NIST-compliant'' third party identity proofing service providers. New routine use ''j'' will enable *Login.gov* to disclose a user's name and mailing address to the Government Publishing Office (GPO) to mail that user an address confirmation form or any other requested mailed notifications. *Login.gov* provides a single, secure platform through which members of the public can log-in and access services from partner agencies, and increases user security by facilitating identity proofing and authentication as necessary in order to access specific government services.

Dated: August 7, 2017.

**Richard Speidel,**

*Chief Privacy Officer, Office of the Deputy Chief Information Officer, General Services Administration.*

**SYSTEM NAME AND NUMBER:**

*Login.gov,* GSA/TTS–1.

**SECURITY CLASSIFCATION:**

Unclassified.

**SYSTEM LOCATION:**

The system is owned and maintained by GSA, housed in secure datacenters in continental United States. Contact the System Manager listed below for additional information.

**SYSTEM MANAGER:**

Joel Minton, Director, *Login.gov,* General Services Administration, 1800 F Street NW., Washington, DC 20405. *https://www.Login.gov*.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside GSA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when: (a) GSA or any component thereof, or (b) any employee of GSA in his/her official capacity, or (c) any employee of GSA in his/her individual capacity where DOJ or GSA has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and GSA determines that the records are both relevant and necessary to the litigation.

b. To third party identity proofing services, as necessary to identity proof an individual for access to a service at the required level of assurance.

c. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

d. To a Member of Congress or his or her staff in response to a request made on behalf of and at the request of the individual who is the subject of the record.

e. To the Office of Management and Budget (OMB) and the Government Accountability Office (GAO) in accordance with their responsibilities for evaluation or oversight of Federal programs.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To appropriate agencies, entities, and persons when (1) GSA suspects or has confirmed that there has been a breach of the system of records; (2) GSA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, GSA (including its information systems, programs and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with GSA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

i. To another Federal agency or Federal entity, when GSA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national

security, resulting from a suspected or confirmed breach.

j. To the Government Publishing Office (GPO), when *Login.gov* needs to mail a user an address confirmation form or if a user requests mailed notifications of account changes or of proofing attempts.

* * * * *

**HISTORY:**

This notice modifies the routine use section of the system of records notice that is published in full at 82 FR 6552, January 19, 2017. The comments GSA received on that notice, and its responses to them, may be searched for and viewed on *regulations.gov* using Docket ID ''GSA–GSA–2017–0002''.

[FR Doc. 2017–16852 Filed 8–9–17; 8:45 am]

**BILLING CODE 6820–34–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10147]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by September 11, 2017.

**ADDRESSES:** When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR*, Email: *OIRA_submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at Web site address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.

3. Call the Reports Clearance Office at (410) 786–1326.

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. No comments were received in response to the 60-day comment period. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Prescription Drug Coverage and Your Rights; *Use:* Through the delivery of this standardized notice, Part D plan sponsors' network pharmacies are in the best position to inform enrollees (at the point of sale) about how to contact their Part D plan if their prescription cannot be filled and how to request an exception to the Part D plan's formulary. The notice restates certain rights and protections related to the enrollees Medicare prescription drug benefits, including the right to receive a written explanation from the drug plan about why a prescription drug is not covered. *Form Number:* CMS–10147 (OMB control number: 0938–0975); *Frequency:* Occasionally; *Affected Public:* Private sector (business or other for-profits); *Number of Respondents:* 62,000; *Total Annual Responses:* 40,100,000; *Total Annual Hours:* 668,066. (For policy questions regarding this collection contact Sabrina Sparkman at 410–786–3209.)

Dated: August 7, 2017.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2017–16892 Filed 8–9–17; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

*Title:* Personal Responsibility Education Program (PREP) Multi-Component Evaluation Extension.

*OMB No.:* 0970–0398.

*Description:* The Family and Youth Services Bureau (FYSB) and the Office of Planning, Research, Evaluation (OPRE) in the Administration for Children and Families (ACF) are requesting an extension without change of a currently approved information collection (OMB No. 0970–0398). The purpose of the extension is to complete the ongoing follow-up data collection for the Personal Responsibility Education Program (PREP) Multi-Component Evaluation, which was designed to document how PREP programs are designed and implemented in the field, collect performance measure data for PREP programs, and assess the effectiveness of selected PREP-funded programs.

The PREP Multi-Component Evaluation contains three components: A Design and Implementation Study, a Performance Analysis Study, and an Impact and In-Depth Implementation Study. Data collection related to the

Design and Implementation Study is complete; data collection related to the Performance Analysis Study will be complete in late summer 2017. This notice is specific to data collection activities for the Impact and In-Depth Implementation Study, which is being conducted in four sites. The proposed extension is necessary to complete ongoing follow-up data collection. The resulting data will be used in a rigorous program impact analysis to assess the effectiveness of each program in reducing teen sexual activity and associated risk behaviors.

*Respondents:* Youth participants who agreed to participate in the study upon enrollment in the four impact study sites.

ANNUAL BURDEN ESTIMATES

| Instrument | Total/annual number of respondents | Number of responses per respondents | Average burden hours per response | Total/annual burden hours |
|---|---|---|---|---|
| Second follow-up survey | 325 | 1 | .75 | 244 |

*Estimated Total/Annual Burden Hours:* 244

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Mary Jones,**

*ACF/OPRE Reports Clearance Officer.*

[FR Doc. 2017–16843 Filed 8–9–17; 8:45 am]

**BILLING CODE 4184–37–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

*Title:* Variations in Implementation of Quality Interventions (VIQI) Project: Data Collection.

*OMB No.:* New Collection.

*Description:* The Administration for Children and Families (ACF), Office of Planning, Research and Evaluation (OPRE) proposes to collect information as part of the Variations in Implementation of Quality Interventions (VIQI): Examining the Quality-Child Outcomes Relationship in Child Care and Early Education Project.

The VIQI Project will inform policymakers, practitioners, and stakeholders about effective ways to support the quality and effectiveness of early care and education (ECE) centers for promoting young children's learning and development. In partnership with ECE centers across the United States that serve young children with diverse economic backgrounds, the VIQI Project aims to (1) identify dimensions of quality within ECE settings that are key levers for promoting children's outcomes; (2) inform what levels of quality are necessary to successfully support children's developmental gains; (3) identify drivers that facilitate and inhibit successful implementation of interventions aimed at strengthening quality; and (4) understand how these relations vary across different ECE settings, staff, and children. To achieve these aims, the VIQI Project will include a year-long pilot study that will pilot up to three curricular and professional development models, followed by a year-long impact evaluation and process study that involve testing the effectiveness of two curricular and professional development models that aim to strengthen teacher practices, the quality of classroom processes, and children's outcomes. The study will include up to 189 community-based and Head Start ECE centers spread across seven different metropolitan areas in the United States.

To test the effectiveness of the curricular and professional development models, the VIQI project will consist of a 3- or 4-group experimental design in the pilot study and a 3-group experimental design in the impact evaluation and the process study in which the initial quality and other characteristics of ECE centers are measured. The centers then will be stratified based upon select information collected—by setting type (*e.g.,* Head Start and community-based ECE centers) and initial levels of quality—and randomly assigned to one of the intervention conditions where they will be offered curricular and professional development supports aimed at strengthening the quality of classroom and teacher practices, or to a business-as-usual comparison condition.

In the pilot study, 24 centers in one metropolitan area will participate in the VIQI Project. Information about center and staff characteristics and classroom and teacher practices will be collected (1) to stratify and randomly assign centers; (2) to describe how the different interventions are implemented and are experienced by centers and teachers; and (3) to document the treatment differentials across research conditions. The information will then be used to adjust and to refine the research design and measures that will be used in the impact evaluation and process study.

In the impact evaluation and process study, 165 centers in seven metropolitan areas will participate in the VIQI Project. Information about center and staff characteristics and classroom and teacher practices will be collected (1) to stratify and randomly assign centers; (2) to identify subgroups of interest; (3) to describe how the interventions are implemented and are experienced by

centers and teachers; (4) to document the treatment differentials across research conditions; and (5) to assess the impacts of each of the interventions on different dimensions of quality and teacher practices when compared to a business-as-usual comparison condition for the impact evaluation sample and separately for subgroups of interest. In addition, information about the background characteristics of families and children being served in the centers will be collected, as well as measures of children's skills at the beginning and end of the year-long impact evaluation for a subset of children in these centers. This information will also be used (1) to define subgroups of interest defined by family and child characteristics, and (2) to assess the impacts of each of the interventions on children's skills for the full impact evaluation sample and separately for subgroups of interest. Lastly, the information on quality, teacher practices and children's skills will be used in a set of analyses that will rigorously examine the nature of the quality-to-child outcomes relationship by exploring the effects of different dimensions and thresholds (or levels) of quality on child outcomes for the full impact evaluation sample and separately for subgroups of interest.

The data collection instruments for the VIQI Project include the following:

(1) Instruments for Screening and Recruitment of ECE Centers will be used in the pilot study, impact evaluation, and process study to assess ECE centers' eligibility, to inform the sampling strategy, and to recruit ECE centers to participate in the VIQI Project;

(2) Baseline Instruments for the Pilot Study, Impact Evaluation, and Process Study will be used to collect background information about centers, classrooms, center staff, and families and children being served in the centers. All of the instruments will be administered at the beginning of the pilot study, impact evaluation, and process study, with the exception of the baseline survey administered to parents of children enrolled in participating ECE centers and the protocol for baseline assessments of children's skills at the beginning of the impact evaluation and process study;

(3) Follow-Up Instruments for the Pilot Study, Impact Evaluation, and Process Study will be used to inform how centers, classrooms, teachers, and children changed and to assess the impacts of each of the interventions over the course of the pilot study, impact evaluation, and process study. All of the instruments will be administered at the end of the pilot study, impact evaluation, and process study, with the exception of the protocol for follow-up assessments of children's skills at the end of the impact evaluation and process study; and,

(4) Fidelity of Implementation Instruments for Pilot Study and Process Study will be used to document how the curricular and professional development models are delivered and experienced by staff, to document treatment differentials across research conditions, and to provide context for interpreting the findings of the impact evaluation.

*Respondents:* The target population of the VIQI Project will include staff members working in Head Start grantee and community-based child care oversight agencies, staff members working in 189 ECE centers in seven metropolitan areas across the United States, and parents and children being served in these centers.

ANNUAL BURDEN ESTIMATES

| Instrument | Total number of respondents | Annual number of respondents | Number of responses per respondent | Average burden hours per response | Annual burden hours |
|---|---|---|---|---|---|
| **Instruments for Screening and Recruitment of ECE Centers** | | | | | |
| Landscaping protocol with Stakeholder Agencies (staff burden in Head Start (HS) *grantee* and community-based child care *agencies*) | 100 | 33 | 1 | 1.50 | 50 |
| Screening protocol for phone calls (staff burden in HS *grantees* and community-based child care *agencies*) | 110 | 37 | 1 | 2 | 74 |
| Screening protocol for phone calls (HS and community-based child care *center* staff burden) | 280 | 93 | 1 | 1.20 | 112 |
| Protocol for in-person visits for screening and recruitment activities (staff burden in HS *grantees* and community-based child care *agencies*) | 488 | 163 | 1 | 1.50 | 245 |
| Protocol for in-person visits for screening and recruitment activities (HS and community-based child care *center* staff burden) | 760 | 253 | 1 | 1.20 | 304 |
| **Baseline Instruments for the Pilot Study, Impact Evaluation, and Process Study** | | | | | |
| Baseline administrator survey | 236 | 79 | 1 | 0.60 | 47 |
| Baseline coach survey | 223 | 74 | 1 | 0.60 | 44 |
| Baseline teacher/assistant teacher survey | 1358 | 453 | 1 | 0.60 | 272 |
| Baseline parent/guardian information form in Impact Evaluation only | 8,568 | 2,856 | 1 | 0.20 | 571 |
| Baseline classroom observation protocol (teacher burden) | 543 | 181 | 1 | 0.30 | 54 |
| Baseline protocol for child assessments in Impact Evaluation only (child burden) | 1980 | 660 | 1 | 0.50 | 330 |
| **Follow-Up Instruments for Pilot Study, Impact Evaluation, and Process Study** | | | | | |
| Follow-up administrator survey | 189 | 63 | 1 | 0.50 | 32 |
| Follow-up coach survey | 178 | 59 | 1 | 0.50 | 30 |
| Follow-up teacher/assistant teacher survey | 1086 | 362 | 1 | 0.75 | 272 |
| Teacher reports to questions about children in classroom (administered as part of the follow-up teacher survey) | 543 | 181 | 1 | 0.67 | 121 |

ANNUAL BURDEN ESTIMATES—Continued

| Instrument | Total number of respondents | Annual number of respondents | Number of responses per respondent | Average burden hours per response | Annual burden hours |
|---|---|---|---|---|---|
| Follow-up classroom observation protocol (teacher burden) | 543 | 181 | 2 | 0.30 | 109 |
| Follow-up protocol for child assessments in Impact Evaluation only (child burden) | 1980 | 660 | 1 | 1 | 660 |
| **Fidelity of Implementation Instruments for Pilot Study and Process Study** | | | | | |
| Coach Log | 117 | 39 | 55 | 0.25 | 536 |
| Teacher/assistant teacher Log | 1086 | 362 | 36 | 0.25 | 3258 |
| Implementation fidelity observation protocol (teacher burden) | 72 | 24 | 1 | 0.30 | 7 |
| Interview/Focus group protocol (administrator, teacher/assistant teacher and coach burden) | 322 | 107 | 1 | 1.5 | 161 |

*Estimated Total Annual Burden Hours:* 7,289.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW., Washington, DC 20201, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Mary Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2017–16854 Filed 8–9–17; 8:45 am]

**BILLING CODE 4184–23–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–D–1279]**

### Qualification of Medical Device Development Tools; Guidance for Industry, Tool Developers, and Food and Drug Administration Staff; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of the guidance entitled ''Qualification of Medical Device Development Tools (MDDT).'' This document formalizes the MDDT program and provides guidance to FDA staff, industry, healthcare providers, researchers, and patient and consumer groups on a new voluntary process within the Center for Devices and Radiological Health (CDRH) for qualification of medical device development tools (MDDT) for use in device development and evaluation programs. In addition, the guidance discusses the framework of an MDDT, including definitions of applicable terms, criteria for evaluating an MDDT for a specific context of use, considerations for qualification, and the contents of a qualification package. FDA considered comments on the draft guidance and revised the guidance as appropriate.

**DATES:** Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

**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–2013–D–1279 for ''Qualification of Medical Device Development Tools.'' 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.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Qualification of Medical Device Development Tools'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

**FOR FURTHER INFORMATION CONTACT:** Kathryn O'Callaghan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5418, Silver Spring, MD 20993–0002, (301) 796–6349.

**SUPPLEMENTARY INFORMATION:**

## I. Background

MDDT is a scientifically validated tool that aids device development and regulatory evaluation. The guidance describes the framework and process for the voluntary CDRH qualification of MDDT, including definitions of applicable terms, criteria for evaluating a MDDT for a specific context of use, the threshold for qualification, and the contents of a qualification submission.

The intent of this voluntary qualification policy is to: (1) Enable faster, more efficient development of important life-saving and health promoting medical devices, (2) promote the development of tools to facilitate more timely device evaluation, (3) provide a mechanism to better leverage advances in regulatory science, and (4) more quickly and more clearly communicate with CDRH stakeholders about important advances in regulatory science that may be leveraged to speed device development and regulatory evaluation. CDRH expects the qualification process to expedite development of publicly available tools, which could potentially be used widely in multiple device development programs.

The intent of this voluntary MDDT program is to promote the development and use of tools to streamline device development and evaluation. Once an MDDT is submitted in accordance with the FDA guidance entitled ''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff'' (Ref. 1) and qualified for a specific context of use, it can be used by any medical device sponsor for that context of use. MDDTs can be used for the qualified context of use without the need to reconfirm the suitability and utility of the MDDT when used in a premarket submission. Qualification may contribute to acceptance and application of MDDTs across multiple medical device development programs. Qualified MDDTs can be utilized by many sponsors to aid in optimizing device development and evaluation.

As discussed in the November 14, 2013, **Federal Register** notice (78 FR 68459), FDA announced the availability of the draft of this guidance and interested persons were invited to comment by February 12, 2014. In the August 15, 2014, **Federal Register** notice (79 FR 48170), FDA began accepting nominations for participation in the voluntary MDDT Pilot Program. FDA reviewed and considered all public comments received and revised this guidance as appropriate.

## II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Qualification of Medical Device Development Tools.'' 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. This guidance is not subject to Executive Order 12866.

## III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Qualification of Medical Device Development Tools'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1882 to identify the guidance you are requesting.

## IV. Paperwork Reduction Act of 1995

This guidance contains information collection that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information under the guidance entitled ''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff'' have been approved under OMB control number 0910–0756.

**V. Reference**

The following reference is on display in the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *https://www.regulations.gov.* FDA has verified the Web site address, as of the date this document publishes in the **Federal Register**, but Web sites are subject to change over time.

1. FDA Guidance, ''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff.'' Available at *https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM311176.pdf.*

Dated: August 4, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017–16827 Filed 8–9–17; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2017–N–1957]**

### Medical Imaging Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; establishment of a public docket; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) announces a forthcoming public advisory committee meeting of the Medical Imaging Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

**DATES:** The public meeting will be held on September 8, 2017, from 8 a.m. to 4 p.m.

**ADDRESSES:** FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2017–N–1957. The docket will close on September 7, 2017. Submit either electronic or written comments on this public meeting by September 7, 2017.

Comments received on or before August 24, 2017, will be provided to the committee. Comments received after that date will be taken into consideration by the Agency.

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 September 7, 2017. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of September 7, 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–1957 for ''Medical Imaging Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' 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:** Jennifer Shepherd, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *MIDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

**SUPPLEMENTARY INFORMATION:**

*Agenda:* The committee will discuss the potential risk of gadolinium retention in the brain and other body organs in patients receiving gadolinium-based contrast agents for magnetic resonance clinical imaging procedures.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the docket (see the **ADDRESSES** section) on or before August 24, 2017, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 16, 2017. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 17, 2017.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require special accommodations due to a disability, please contact Jennifer Shepherd at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 7, 2017.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2017–16891 Filed 8–9–17; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2017–D–2834]**

### Extension of Certain Tobacco Product Compliance Deadlines Related to the Final Deeming Rule; Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Extension of Certain Tobacco Product Compliance Deadlines Related to the Final Deeming Rule.'' This guidance is intended to assist persons who manufacture, package, sell, offer to sell, distribute, or import for sale and distribution within the United States newly regulated tobacco products, roll-your-own (RYO) tobacco, and cigarette tobacco in complying with the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), and FDA regulations.

**DATES:** Submit either electronic or written comments on Agency guidances at any time.

**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–2017–D–2834 for ''Extension of Certain Tobacco Product Compliance Deadlines Related to the Final Deeming Rule.'' 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 this guidance to the Center for Tobacco Products, Food and Drug Administration, Document Control Center, Bldg. 71, Rm. G335, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

**FOR FURTHER INFORMATION CONTACT:** Gerie Voss, Center for Tobacco Products, Food and Drug Administration, 10903 New Hampshire Ave., Document Control Center, Bldg. 71, Rm. G335, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, email: *CTPRegulations@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a guidance for industry entitled ''Extension of Certain Tobacco Product Compliance Deadlines Related to the Final Deeming Rule.'' This guidance is intended to assist persons who manufacture, package, sell, offer to sell, distribute, or import for sale and distribution within the United States newly regulated tobacco products, RYO tobacco, and cigarette tobacco in complying with the FD&C Act, as amended by the Tobacco Control Act, and FDA regulations. We are issuing this guidance consistent with our good guidance practices (GGP) regulation (section 10.115 (21 CFR 10.115)). We are implementing this guidance without prior public comment, because we have determined that prior public participation is not feasible or appropriate (section 10.115(g)(2)). We made this determination because FDA needs to communicate the extensions in a timely manner given the upcoming compliance deadlines and the amount of time needed for firms to prepare for them. Although this guidance document is immediately effective, it remains subject to comment in accordance with FDA's GGP regulation.

The Tobacco Control Act (Pub. L. 111–31) granted FDA the authority to immediately regulate the manufacture, marketing, and distribution of cigarettes, cigarette tobacco, RYO, and smokeless tobacco products to protect the public health and to reduce tobacco use by minors.

The Tobacco Control Act also gave FDA the authority to issue a regulation deeming all other products that meet the statutory definition of a tobacco product to be subject to Chapter IX of the FD&C Act (section 901(b) (21 U.S.C. 387a(b)) of the FD&C Act). On May 10, 2016, FDA issued that rule, extending FDA's tobacco product authority to all products that meet the definition of tobacco product in the law (except for accessories of newly regulated tobacco products), including electronic nicotine delivery systems, cigars, hookah, pipe tobacco, nicotine gels, dissolvables that were not already subject to the FD&C Act, and other tobacco products that may be developed in the future (81 FR 28974 at 28976) (''the final deeming rule'')). Chapter IX of the FD&C Act now applies to newly regulated tobacco products, including sections 904(a)(1) and (4) (21 U.S.C.387d(a)(1) and (4)) (ingredient listing, health document submissions), 903(a)(4) and (a)(8) (21 U.S.C. 387c(a)(4) and (a)(8)) (labeling requirements), 904(c)(1), 905(b), (c), (d), (h) (registration), (21 U.S.C. 387e(b), (c), (d), (h)) 905(i)(1) (product listing), 907(a)(1)(B) (21 U.S.C. 387g(a)(1)(B)) (additional special rule), 911 (21 U.S.C. 387k) (modified risk claims), 904(a)(3) and 915 (21 U.S.C. 387o) (harmful and potentially harmful constituent reporting), and 920 (21 U.S.C. 387t) (labeling, recordkeeping, records inspection). The final rule also included several requirements that apply to a subgroup of products referred to as ''covered tobacco products.''

In May 2017, FDA published the first edition of this guidance document, under which it provided a 3-month extension of all future compliance deadlines for requirements under the final deeming rule. This guidance is the second edition, and it revises and updates the first edition by further extending certain of the future compliance dates.

The guidance represents the current thinking of FDA on this topic. 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. This guidance is not subject to Executive Order 12866.

## II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in section 910(c)(1)(A)(i) of the FD&C Act and 21 CFR part 1143 have been approved under OMB control number 0910–0768; the collections of information in section 905(j) of the FD&C Act have been approved under OMB control number 0910–0673; the collections of information in section 904(a)(4) of the FD&C Act have been approved under OMB control number 0910–0654; the collections of information in 21 CFR part 1107 have been approved under OMB control number 0910–0684; the collections of information in section 904(c)(1), 905(b),(c),(d), (h),and 905(i)(1) of the FD&C Act have been approved under OMB control number 0910–0650.

### III. Electronic Access

Persons with access to the internet may obtain an electronic version of the guidance at either *https://www.regulations.gov* or *https://www.fda.gov/TobaccoProducts/Labeling/RulesRegulationsGuidance/default.htm.*

Dated: August 4, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2017–16839 Filed 8–9–17; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2017–0648]**

### Certificate of Alternative Compliance for Viking Yacht Company's 92C Enclosed Bridge Yacht, HIN: VKY92111I617

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice.

**SUMMARY:** The Coast Guard announces that the District Five Prevention Division (Dp) has issued a Certificate of Alternate Compliance (COAC) from the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), for Viking Yacht Company's 92C Enclosed Bridge yacht, HIN: VKY92111I617, as required by statue. Due to the construction and placement of the pilothouse aft of amidships, the vessel cannot fully comply with the masthead light provisions of the 72 COLREGS without interfering with the vessel's design and construction, as there are no structures forward of amidships on which a masthead light could be affixed. This notice promotes the Coast Guard's maritime safety and stewardship missions.

**ADDRESSES:** Documents mentioned in the preamble are part of docket USCG–2017–0648. To view documents mentioned in this preamble as being available in the docket, go to the Federal eRulemaking Portal at *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 notice.

**FOR FURTHER INFORMATION CONTACT:** For further information or questions about this notice, call or email: CDR Scott W. Muller, District Five, Chief, Inspections and Investigations, U.S. Coast Guard; telephone: 757–398–6389, email: *Scott.W.Muller@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The United States is signatory to the International Maritime Organization's International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), as amended. The special construction or purpose of some vessels makes them unable to comply with the light, shape, and sound signal provisions of the 72 COLREGS. Under statutory law [1] and Coast Guard regulation, [2] a vessel may instead meet alternative requirements and the vessel's owner, builder, operator, or agent may apply for a COAC. For vessels of special construction, the cognizant Coast Guard District Office determines whether the vessel for which the COAC is sought complies as closely as possible with the 72 COLREGS and decides whether to issue the COAC. Once issued, a COAC remains valid until information supplied in the COAC application or the COAC terms become inapplicable to the vessel. Under the governing statute [3] and regulation,[4] the Coast Guard must publish notice of this action.

The Commandant, U.S. Coast Guard, hereby finds and certifies that Viking Yacht Company's 92C Enclosed Bridge yacht, HIN: VKY92111I617, is a vessel of special construction or purpose and that, with respect to the position of the masthead light, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS without interfering with the design and construction of the vessel. The Prevention Division, Fifth Coast Guard District, further finds and certifies that the proposed placement of the masthead light is in the closest possible compliance with the applicable provisions of the 72 COLREGS and that full compliance with the 72 COLREGS would not significantly enhance the safety of the vessel's operation.

This notice is issued under authority of 33 U.S.C. 1605(c) and 33 CFR 81.

Dated: July 31, 2017.

**Jerry R. Barnes,**

*Captain, Chief, Prevention Division, U. S. Coast Guard.*

[FR Doc. 2017–16844 Filed 8–9–17; 8:45 am]

**BILLING CODE 9110–04–P**

[1] 33 U.S.C. 1605(c).

[2] 33 CFR 81.3.

[3] 33 U.S.C. 1605(c).

[4] 33 CFR 81.18.

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2017–0219]**

### Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0078

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting a Reinstatement, without change, of a previously approved collection for which approval has expired: 1625–0078, Credentialing and Manning Requirements for Officers on Towing Vessels; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before October 10, 2017.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2017–0219] to the Coast Guard 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.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR AVE SE., STOP 7710, WASHINGTON, DC 20593–7710.

**FOR FURTHER INFORMATION:** Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a

Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2017–0219], and must be received by October 10, 2017.

**Submitting Comments**

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. Documents mentioned in this notice, and all public comments, are 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.

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).

**Information Collection Request**

*Title:* Credentialing and Manning Requirements for Officers on Towing Vessels.

*OMB Control Number:* 1625–0078.

*Summary:* Credentialing and manning requirements ensure that towing vessels operating on the navigable waters of the U.S. are under the control of credentialed officers who meet certain qualification and training standards.

*Need:* Title 46 Code of Federal Regulations parts 10 and 11 prescribe regulations for the credentialing of maritime personnel. This information collection is necessary to ensure that a mariner's training information is available to assist in determining his or her overall qualifications to hold certain credentials.

*Forms:* N/A.

*Respondents:* Owners and operators of towing vessels.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has increased from 15,869 hours to 18,635 hours a year due to an estimated increase in the annual number of respondents.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: August 3, 2017.

**Marilyn L. Scott-Perez,**

*U.S. Coast Guard, Chief, Office of Information Management.*

[FR Doc. 2017–16870 Filed 8–9–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2017–0106]**

### Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0073

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Requests (ICRs) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0073, Alteration of Unreasonably Obstructive Bridges without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before October 10, 2017.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2017–0106] to the Coast Guard 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.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593–7710.

**FOR FURTHER INFORMATION:** Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will

consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2017–0106], and must be received by October 10, 2017.

**Submitting Comments**

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. Documents mentioned in this notice, and all public comments, are 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.

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).

**Information Collection Request**

*Title:* Alteration of Unreasonably Obstructive Bridges.

*OMB Control Number:* 1625–0073.

*Summary:* The collection of information is a request to determine if the bridge is unreasonably obstructive.

*Need:* 33 U.S.C. 494, 502, 511, 513, 514, 515, 516, 517, 521, 522, 523 and 524 authorize the Coast Guard to remove or alter bridges and causeways over the navigable waters of the United States that the Coast Guard deems to be unreasonably obstructive.

*Forms:* Not applicable.

*Respondents:* Public and private owners of bridges over navigable waters of the United States.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has decreased from 240 hours to 160 hours a year. There are six additional engineering projects that have been added to this information collection since 2014. Two of the four previous projects have been completed since 2014; making a total of eight current projects. The reduction in burden is based on having previously completed the majority of the review for each study.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: August 3, 2017.

**Marilyn L. Scott-Perez,**

*U.S. Coast Guard, Chief, Office of Information Management.*

[FR Doc. 2017–16871 Filed 8–9–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2017–0104]**

### Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0019

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting a Reinstatement, without change, of a previously approved collection for which approval has expired for the following collection of information: 1625–0019, Alternative Compliance for International and Inland Navigation Rules—33 CFR parts 81 through 89 without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before October 10, 2017.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2017–0104] to the Coast Guard 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.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2017–0104], and must be received by October 10, 2017.

**Submitting Comments**

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. Documents mentioned in this notice, and all public comments, are 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.

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).

**Information Collection Request**

*Title:* Alternative Compliance for International and Inland Navigation Rules—33 CFR parts 81 through 89.

*OMB Control Number:* 1625–0019.

*Summary:* The information collected provides an opportunity for an owner, operator, builder, or agent of a unique vessel to present their reasons why the vessel cannot comply with existing International/Inland Navigation Rules and how alternative compliance can be achieved. If appropriate, a Certificate of Alternative Compliance is issued.

*Need:* Certain vessels cannot comply with the International Navigation Rules (see 33 U.S.C. 1601 through 1608; 28 U.S.T. 3459, and T.I.A.S. 8587) and Inland Navigation Rules (33 U.S.C. 2001 through 2073). The Coast Guard thus provides an opportunity for alternative compliance. However, it is not possible to determine whether alternative compliance is appropriate, or what kind of alternative procedures might be necessary, without this collection.

*Forms:* Not applicable.

*Respondents:* Vessel owners, operators, builders and agents.

*Frequency:* One-time application.

*Hour Burden Estimate:* The estimated burden has decreased from 230 hours to 207 hours a year due to a decrease in the estimated annual number of responses.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: August 3, 2017.

**Marilyn L. Scott-Perez,**

*Chief, U.S. Coast Guard, Office of Information Management.*

[FR Doc. 2017–16872 Filed 8–9–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2016–1093]**

### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0102

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement, without change, of the following collection of information: 1625–0102, National Response Resource Inventory; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before September 11, 2017.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2016–1093] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Stop 7710, Washington, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

**SUPPLEMENTARY INFORMATION:**

**Public Participation and Request for Comments**

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2016–1093], and must be received by September 11, 2017.

**Submitting Comments**

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. Documents mentioned in this notice, and all public comments, are 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.

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).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0102.

**Previous Request for Comments**

This request provides a 30-day comment period required by OIRA. The

Coast Guard has published the 60-day notice (82 FR 10375, February 10, 2017) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

**Information Collection Request**

*Title:* National Response Resource Inventory.

*OMB Control Number:* 1625–0102.

*Summary:* The information is needed to improve the effectiveness of deploying response equipment in the event of an oil spill. It may also be used in the development of contingency plans.

*Need:* Section 4202 of the Oil Pollution Act of 1990 (Pub. L. 101–380) requires the Coast Guard to compile and maintain a comprehensive list of spill removal equipment in a response resource inventory (RRI). This collection helps fulfill that requirement.

*Forms:* None.

*Respondents:* Oil spill removal organizations.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has decreased from 1,752 hours to 1,378 hours a year. The change in burden is due to a change in the methodology for calculating burden. In past ICRs we did not differentiate between the industry hour burden for inputting a new RRI submission or updating an existing RRI submission. In this ICR, we estimate that it takes fewer hours (*i.e.,* 50 percent fewer hours) to review/update an existing RRI submission than to input a new submission.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: August 4, 2017.

**Marilyn L. Scott-Perez,**

*Chief, U.S. Coast Guard, Office of Information Management.*

[FR Doc. 2017–16869 Filed 8–9–17; 8:45 am]

**BILLING CODE 9110–04–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1048]**

### Certain Intravascular Administration Sets and Components Thereof; Issuance of a Limited Exclusion Order Against the Respondent Found in Default; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order against certain intravascular administration sets and components thereof of Yangzhou WeiDeLi Trade Co., Ltd. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *https://www.usitc.gov.*

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), on April 12, 2017, based on a complaint filed by Curlin Medical Inc. of East Aurora, New York; ZEVEX, Inc. of Salt Lake City, Utah; and Moog Inc. of East Aurora, New York (collectively, ''Complainants'') (82 FR 17690, April 12, 2017). The complaint alleges a violation of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 6,164,921 (''the '921 patent'') and 6,371,732 (''the '732 patent''). The complaint named Yangzhou WeiDeLi Trade Co., Ltd. of Yangzhou, China (''Yangzhou'' or ''Respondent'') as the only respondent in this investigation. The Commission's Office of Unfair Import Investigations was named as a party.

On May 23, 2017, the ALJ ordered Yangzhou to show cause why it should not be found in default. *See* Order No. 5. No response to Order No. 5 was filed. On June 13, 2017, the ALJ issued an initial determination finding Yangzhou in default under Commission Rule 210.16(a)(1) (19 CFR 210.16(a)(l)). *See* Order No. 6.

The Commission requested briefing from the parties and the public on the issues of remedy, the public interest, and bonding. The Commission received timely responsive and reply submissions from Complainants and the Commission Investigative Attorney. The submissions agreed that the appropriate remedy is the entry of a limited exclusion order (''LEO'') against Yangzhou, that the public interest factors do not weigh against granting such a remedy, and that bonding should be set at 100 percent of the entered value of the infringing products.

The Commission has determined that the appropriate form of relief in this investigation is a LEO prohibiting the unlicensed entry of intravascular administration sets and components thereof that are covered by one or more of claims 1–3 of the '732 patent and claims 1–34 of the '921 patent and that are manufactured abroad by or on behalf of, or imported by or on behalf of, Respondent Yangzhou. The Commission has further determined that the public interest factors enumerated in section 337(g)(l) (19 U.S.C. 1337(g)(l)) do not preclude the issuance of the LEO. Finally, the Commission has determined that the bond for importation during the period of Presidential review shall be in the amount of 100 percent of the entered value of the imported subject articles of Respondent Yangzhou. The Commission's order was delivered to the President and the United States Trade Representative on the day of its issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: August 4, 2017.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2017–16842 Filed 8–9–17; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–388, 389, and 391 and 731–TA–817, 818, and 821 (Third Review)]**

### Cut-to-Length Carbon Steel Plate From India, Indonesia, and Korea; Scheduling of Full Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation

of the antidumping duty and countervailing duty orders on cut-to-length carbon steel plate from India, Indonesia, and Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

**DATES:** August 4, 2017.

**FOR FURTHER INFORMATION CONTACT:** Carolyn Carlson ((202) 205–3002), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background*—On March 6, 2017, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews should proceed (82 FR 14030, March 16, 2017); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

*Participation in the reviews and public service list*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report*—The prehearing staff report in the reviews will be placed in the nonpublic record on December 4, 2017, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

*Hearing*—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on Thursday, December 20, 2017, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 14, 2017. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on December 18, 2017, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written submissions*—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is December 12, 2017. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is January 4, 2018. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before January 4, 2018. On January 24, 2018, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 26, 2018, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: August 7, 2017.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2017–16893 Filed 8–9–17; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2010–0026]**

### Standard on the Mechanical Power Presses; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Mechanical Power Presses Standard for General Industry.

**DATES:** Comments must be submitted (postmarked, sent, or received) by October 10, 2017.

**ADDRESSES:**

*Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0026, Occupational Safety and Health Administration, U.S. Department of Labor, N–3653, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., e.t.

*Instructions:* All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2010–0026). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The collection of information contained in the Mechanical Power Presses Standard for General Industry are necessary to reduce workers' risk of death or serious injury by ensuring that employers maintain the mechanical power presses used by the workers in safe operating condition.

The following sections describe who uses the information collected under each requirement, as well as how they use it.

*Section 1910.217(e)(1)(i)*

Paragraph (e)(1)(i) requires employers to establish and follow a program of periodic and regular inspections of power presses to ensure that all their parts, auxiliary equipment, and safeguards are in safe operating condition and adjustment. Employers must maintain a certification record of inspections that includes the date of inspection, the signature of the person who performed the inspection, and the serial number, or other identifiers, of the power press that was inspected.

*Section 1910.217(e)(1)(ii)*

Paragraph (e)(1)(ii) requires employers to inspect and test each press no less than weekly to determine the condition of the clutch/brake mechanism, antirepeat feature, and single-stroke mechanism. Employers must perform and complete necessary maintenance or repair or both before the press is operated. In addition, employers must maintain a record of inspections, tests, and maintenance work. The record must include the date of the inspection, test, or maintenance; the signature of the person who performed the inspection, test, or maintenance; and the serial number, or other identifiers, of the press that was inspected, tested, or maintained.

#### II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

#### III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements specified in the Standard on Mechanical Power Presses (29 CFR 1910.217(e)(1)). The Agency is requesting a slight burden hour adjustment decrease of 124 hours from 38,091 hours to 37,967 hours. The 124 burden hour reduction is a result of

OSHA determining that employers disclosing information to OSHA during an inspection is outside the scope of the PRA.

The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

*Type of Review:* Extension of a currently approved collection.

*Title:* Standard on Mechanical Power Presses (29 CFR 1910.217(e)(1)).

*OMB Control Number:* 1218–0229.

*Affected Public:* Business or other for-profit; farms.

*Respondents:* 295,000.

*Number of Responses:* 115,050.

*Frequency of Response:* On occasion, weekly, monthly.

*Average Time per Response:* Various.

*Estimated Total Burden Hours:* 37,967 hours.

*Estimated Cost (Operation and Maintenance):* $0.

## IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0026). You may supplement electronic submissions by uploading document files. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures affecting the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

## V. Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.* ) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, on August 3, 2017.

**Loren Sweatt,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2017–16835 Filed 8–9–17; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: (17–057)]**

### Applied Sciences Advisory Committee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Applied Sciences Advisory Committee (ASAC). This Committee functions in an advisory capacity to the Director, Earth Science Division, in the NASA Science Mission Directorate. The meeting will be held for the purpose of soliciting, from the applied sciences community and other persons, scientific and technical information relevant to program planning.

**DATES:** Monday, September 11, 2017, 12:00 p.m. to 3:00 p.m., Eastern Daylight Time (EDT).

**FOR FURTHER INFORMATION CONTACT:** Ms. KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, or *khenderson@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** This meeting will be open to the public telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the USA toll free conference call number (888) 677–3055, passcode 4301862, followed by the # sign, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/;* the meeting number is 990 708 045 and the password is FYy83Sh@.

The agenda for the meeting includes the following topics:

- Applied Sciences Program Updates
- Continuity Study

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2017–16884 Filed 8–9–17; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

**[NARA–2017–059]**

### 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 September 11, 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 Agriculture, Agricultural Marketing Service (DAA–0136–2017–0001, 1 item, 1 temporary item). Case files of plant variety protection records, including certificates issued for intellectual protection and patents for new plant varieties.

2. Department of Defense, Defense Logistics Agency (DAA–0361–2017–0005, 4 items, 4 temporary items). Records relating to the disposal of government property including contracts, bid sheets, correspondence, waivers, vouchers, and similar documents.

3. Department of Homeland Security, Immigration and Customs Enforcement (DAA–0567–2015–0012, 9 items, 8 temporary items). Records of office self-inspections, external party non-disclosure agreements, and investigations or inspections of security programs, routine employee misconduct, mismanagement allegations, detention facility safety, and ICE employees testifying in criminal trials. Proposed for permanent retention are significant employee misconduct case files.

4. Department of Homeland Security, Immigration and Customs Enforcement (DAA–0567–2017–0001, 10 items, 10 temporary items). Master files of an electronic information system used to process, track, and store information about aliens who remain in the United States after receiving a final order of removal, deportation, or exclusion.

5. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2017–0011, 8 items, 7 temporary items). Applications for asylum and cancellation of removal, and supporting documentation, when rejected for incorrect fees or non-sufficient funds, when having incomplete or missing signature(s), when abandoned, when denied, when terminated, when administratively closed, and when withdrawn. Proposed for permanent retention are applications for asylum and cancellation of removal, and supporting documentation, when approved.

6. Department of the Treasury, Bureau of Engraving and Printing (DAA–0318–2017–0003, 1 item, 1 temporary item). Intermediate-stage graphic image materials, such as printing plates and glass plate negatives, produced to enable the manufacture of currency and other products.

7. Department of Veterans Affairs, Veterans Health Administration (DAA–0015–2017–0001, 5 items, 5 temporary items). Records related to call centers and hotlines, including recorded calls, chat and texts, referrals, and follow-ups.

8. Department of Veterans Affairs, Veterans Health Administration (DAA–0015–2017–0002, 7 items, 7 temporary items). Records related to compliance audits, self-assessments, and training for privacy and freedom of information programs at agency facilities.

9. National Aeronautics and Space Administration, Agency-wide (DAA–0255–2017–0010, 6 items, 6 temporary items). Records of the Export Control Office, including administration records, case records, transaction records, and shipping information.

10. National Archives and Records Administration, Government-wide (DAA–GRS–2017–0008, 6 items, 6 temporary items). General Records Schedule for records of three areas of agency accountability: Internal controls, mandatory reporting on administrative functions to external agencies, and interaction with the U.S. Office of Special Counsel concerning allegations

and claims that fall under its jurisdiction.

11. National Archives and Records Administration, Government-wide (DAA–GRS–2017–0010, 20 items, 20 temporary items). General Records Schedule for records related to occupational and non-occupational health including occupational injury and illness program records, occupational health and safety training, workplace environmental monitoring and exposure, Safety Data Sheets, individual medical case files, non-occupational health and wellness program records, Employee Assistance Program (EAP) counseling, Drug-free Workplace Program records, and clinic scheduling.

12. National Archives and Records Administration, Government-wide (DAA–GRS–2017–0011, 2 items, 2 temporary items). Update to General Records Schedule for employee acquisition records adding job applicant drug test records.

13. National Archives and Records Administration, Government-wide (DAA–GRS–2017–0012, 5 items, 5 temporary items). General Records Schedule for records of rulemaking, agency copies of **Federal Register** notices, and agency input into the unified agenda.

14. Office of Personnel Management, Agency-wide (DAA–0478–2017–0007, 1 item, 1 temporary item). Records related to merit system accountability and compliance including strategic plans, policies, procedures, and general reports.

15. United States Agency for International Development, Office of Security (DAA–0286–2017–0001, 3 items, 3 temporary items). Master files of an electronic information system used to vet funding requests by individuals, businesses, and organizations.

**Laurence Brewer,**

*Chief Records Officer for the U.S. Government.*

[FR Doc. 2017–16890 Filed 8–9–17; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL COUNCIL ON DISABILITY

### Sunshine Act Meetings

**TIME AND DATES:** The Members of the National Council on Disability (NCD) will hold a quarterly meeting on Thursday, August 24, from 9:00 a.m.–4:15 p.m., Eastern Time, in Washington, DC.

**PLACE:** This meeting will occur in Washington, DC, at the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004. Interested parties may join the meeting in person at the meeting location or may join by phone in a listening-only capacity (other than the period allotted for public comment noted below) using the following call-in information: Teleconference number: 1–888–452–4030; Conference ID: 1255123; Conference Title: NCD Meeting; Host Name: Clyde Terry.

**MATTERS TO BE CONSIDERED:** The Council will receive agency updates on policy projects, finance, governance, and other business. The Council will vote on final drafts of the Individuals with Disabilities Education Act (IDEA) report series; the foreign policy and disability report; and the guardianship report. The Council will also receive its annual ethics training. The Council will receive a panel presentation on promising practices regarding charter schools and vouchers and later receive public comment on charter schools and vouchers in the context of IDEA. The Council will conclude its work by discussing the draft Agency Reform Plan (pursuant to Executive Order 13781) and NCD's draft FY18–FY22 Strategic Plan and then receiving comments about those documents.

**AGENDA:** The times provided below are approximations for when each agenda item is anticipated to be discussed (all times Eastern):

**Thursday, August 24**

9:00 a.m.–9:30 a.m.—Welcome and Introductions
9:30–10:45 a.m.—NCD Business Meeting, including votes on: IDEA Report Series; Foreign Policy and Disability Report; Guardianship Report
10:45–11:00 a.m.—Break
11:00 a.m.–12:00 p.m.—Ethics Training
12:00–1:00 p.m.—Lunch on Your Own
1:00–2:00 p.m.—Charter Schools & Vouchers Part 2: Promising Practices
2:00–2:30 p.m.—Town Hall to Receive Comments on Charter Schools & Vouchers (Commenters will be limited to three minutes each. The thoughts shared during this town hall are intended to help shape future work in this area.)
2:30–2:45 p.m.—Break
2:45–3:45 p.m.—Council Discussion of Agency Reform Plan and NCD Strategic Plan
3:45–4:15 p.m.—Public Comment Period on Agency Reform Plan and NCD Strategic Plan
4:15 p.m.–Adjournment

**PUBLIC COMMENT:** To better facilitate NCD's public comment, any individual interested in providing public comment is asked to register his or her intent to provide comment in advance by sending an email to *PublicComment@ncd.gov* with the subject line ''Public Comment'' with your name, organization, state, and topic of comment included in the body of your email. Full-length written public comments may also be sent to that email address. All emails to register for public comment at the quarterly meeting must be received by Wednesday, August 23, 2017. Priority will be given to those individuals who are in-person to provide their comments during the town hall portions of the agenda. Those commenters on the phone will be called on per the list of those registered via email. Due to time constraints, NCD asks all commenters to limit their comments to three minutes. Comments received at the August quarterly meeting will be limited to those regarding charter schools and vouchers in the context of IDEA; and later to the draft agency reform plan and agency strategic plan.

**CONTACT PERSON:** Anne Sommers, NCD, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (V), 202–272–2074 (TTY).

**ACCOMMODATIONS:** A CART streamtext link has been arranged for this meeting. The web link to access CART on Thursday, August 24, 2017 is: *https://www.streamtext.net/player?event=NCD.*

Those who plan to attend the meeting in-person and require accommodations should notify NCD as soon as possible to allow time to make arrangements. To help reduce exposure to fragrances for those with multiple chemical sensitivities, NCD requests that all those attending the meeting in person refrain from wearing scented personal care products such as perfumes, hairsprays, and deodorants.

Dated: August 8, 2017.

**Sharon M. Lisa Grubb,**

*Director of Operations and Administration.*

[FR Doc. 2017–16970 Filed 8–8–17; 11:15 am]

**BILLING CODE 8421–03–P**

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meetings; National Science Board

The National Science Board (NSB), pursuant to National Science Foundation (NSF) regulations (45 CFR part 614), the National Science Foundation Act, as amended, (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of

meetings for the transaction of NSB business as follows:

**TIMES AND DATES:** August 15, 2017 from 8:00 a.m. to 5:00 p.m., and August 16, 2017 from 8:30 a.m. to 2:30 p.m. EDT.

**PLACE:** These meetings will be held at the NSF headquarters, 4201 Wilson Blvd., Arlington, VA 22230. Meetings are held in Room 1235. All visitors must contact the Board Office (call 703–292–7000 or send an email to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the meeting and provide your name and organizational affiliation. Visitors must report to the NSF visitor's desk in the lobby of the 9th and N. Stuart Street entrance to receive a visitor's badge. Due to recent security changes, visitors should allot some extra time for the entrance process.

**STATUS:** Some of these meetings will be open to the public. Others will be closed to the public. See full description below.

**SUPPLEMENTAL INFORMATION:** Public meetings and public portions of meetings held in Room 1235 will be webcast. To view these meetings, go to: *http://www.tvworldwide.com/events/nsf/170815* and follow the instructions. The public may listen to public committee meetings held in Room 1295. Contact the Board Office (call 703–292–7000 or send an email to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the meeting for dial-in information.

Please refer to the NSB Web site for additional information. Meeting information and schedule updates (time, place, subject matter, and status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp.*

The NSB will continue its program to provide some flexibility around meeting times. After the first meeting of each day, actual meeting start and end times will be allowed to vary by no more than 15 minutes in either direction. As an example, if a 10:00 meeting finishes at 10:45, the meeting scheduled to begin at 11:00 may begin at 10:45 instead. Similarly, the 10:00 meeting may be allowed to run over by as much as 15 minutes if the Chair decides the extra time is warranted. The next meeting would start no later than 11:15.

Arrive at the NSB boardroom or check the webcast 15 minutes before the scheduled start time of the meeting you wish to observe. Members of the public are invited to provide feedback on this program. Contact: *nationalsciencebrd@nsf.gov.*

**MEETINGS THAT ARE OPEN TO THE PUBLIC:**

**August 15, 2017**

8:00–8:30 a.m. Plenary NSB introduction
8:30–10:00 a.m. Committee on Strategy (CS)
10:15–11:45 a.m. Committee on Oversight (CO)
1:00–1:40 p.m. Committee on External Engagement (EE)

**August 16, 2017**

8:30–9:15 a.m. Committee on Awards and Facilities (A&F)
9:15–10:15 a.m. Committee on National Science and Engineering Policy (SEP)
1:00–2:30 p.m. Plenary

**MEETINGS THAT ARE CLOSED TO THE PUBLIC:**

**August 15, 2017**

1:40–1:45 (CO)
1:45–3:00 p.m. (CS)
3:15–5:00 p.m. (A&F)

**August 16, 2017**

10:30–11:00 a.m. Plenary
11:00–11:30 a.m. Plenary Executive

**MATTERS TO BE CONSIDERED:**

**Tuesday, August 15, 2017**

*Plenary Board meeting*

Open session: 8:00–8:30 a.m.
- NSB Chair's Opening Remarks
- Overview of Major Issues for Meeting
- NSF Director's Remarks
- Summary of Meetings on Capitol Hill

*Committee on Strategy (CS)*

Open session: 8:30–10:00 a.m.
- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- FY 2018 Budget Request Update
- National Academies of Science, Engineering, and Medicine (NASEM) Studies Briefing
- The Value of SBE to National Priorities
- A New Vision of Center-Based Engineering Research
- Fostering Integrity in Research
- Facilities and Administrative Costs Discussion

*Committee on Oversight (CO)*

Open session: 10:15–11:45 a.m.
- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- NSF FY 2016 Annual Report on Merit Review
- Resolution
- Inspector General's Update
- OIG Review of Institutions' Implementation of NSF's Responsible Conduct of Research Requirements
- Chief Financial Officer's Update

*Committee on External Engagement (EE)*

Open session: 1:00–1:40 p.m.
- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- Briefing on Board Member Meetings with Members of Congress
- Update on Planning for Listening Sessions During Board's October LIGO Livingston, Louisiana Site Visit
- Update on NSB Members to Host a Member of Congress in Home District
- Discussion of Guidance for Public Statements by NSB Members

*Committee on Oversight (CO)*

Closed session: 1:40–1:45 p.m.
- Committee Chair's Opening Remarks
- Office of the Inspector General FY 2019 OMB Budget Submission

*Committee on Strategy (CS)*

Closed session: 1:45–3:00 p.m.
- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- Presentation of NSBO FY 2019 OMB Budget Submission
- Agency Reform and Strategic Plan
- Action Item: FY 2019 OMB Budget Submission

*Committee on Awards and Facilities (A&F)*

Closed Session: 3:15–5:00 p.m.
- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- Action Item: National Ecological Observatory Network (NEON) Supplemental Proposal for Initial Operations and Maintenance
- Action Item: National High Magnetic Field Laboratory (NHMFL) Operations
- Status of Astronomy Facilities Divestment Plan
- Information Item: Ocean Observatories Initiative (OOI) Operations and Management

**MATTERS TO BE DISCUSSED:**

**Wednesday, August 16, 2017**

*Committee on Awards and Facilities (A&F)*

Open session: 8:30–9:15 a.m.
- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- CY 2017 Schedule of Planned Action and Information Items

- No Cost Overrun Policy Brief Report
- Oversight for Major Research Facilities

*Committee on National Science and Engineering Policy (SEP)*

Open session: 9:15–10:15 a.m.
- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- Discussion of S&E Indicators 2018 Draft ''Orange Book'' Feedback
- Update on Indicators 2018 Draft ''Digest'' and ''Overview of the State of the U.S. S&E Enterprise in a Global Context''
- Discussion on Policy Companion Statements/Briefs to Indicators 2018

*Plenary Board*

Closed session: 10:30–11:00 a.m.
- Board Chair's Opening Remarks
- Director's Remarks
- Approval of Prior Minutes
- Closed Committee Reports
- Vote: National High Magnetic Field Laboratory (NHMFL) Operations
- Vote: National Ecological Observatory Network (NEON) Proposal for Initial Operations and Maintenance
- Vote: NSF FY 2019 OMB Budget Submission

*Plenary Board (Executive)*

Closed session: 11:00–11:30 a.m.
- Board Chair's Opening Remarks
- Approval of Prior Minutes
- Director's Remarks
- Award Involving an NSB Member

*Plenary Board*

Open Session: 1:00–2:30 p.m.
- Board Chair's Opening Remarks
- NSF Director's Remarks
- Approval of Prior Minutes
- Open Committee Reports
- Vote: Merit Review Resolution
- Approval of CY 2018 Meeting Schedule
- Discussion of Skilled Technical Workforce
- Board Chair's Closing Remarks

**MEETING ADJOURNS:** 2:30 p.m.

**CONTACT PERSONS FOR MORE INFORMATION:** The NSB Office contact is Brad Gutierrez, *bgutierr@nsf.gov,* 703–292–7000. The Public Affairs contact is Nadine Lynn, *nlymn@nsf.gov,* 703–292–2490.

**Chris Blair,**

*Executive Assistant, National Science Board Office.*

[FR Doc. 2017–17031 Filed 8–8–17; 4:15 pm]

**BILLING CODE 7555–01–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of notice required under 39 U.S.C. 3642(d)(1):* August 10, 2017.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 4, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 339 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–167, CP2017–260.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2017–16834 Filed 8–9–17; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of notice required under 39 U.S.C. 3642(d)(1):* August 10, 2017.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Reed, (202) 268–3179.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 4, 2017, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 21 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2017–168, CP2017–261.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2017–16833 Filed 8–9–17; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81328; File No. SR–BatsBZX–2017–51]**

### Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Bats BZX Exchange, Inc.'s Options Platform

August 7, 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 July 31, 2017, Bats BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-Members of the Exchange pursuant to BZX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at *www.bats.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[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] The term ''Member'' is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform (''BZX Options'') to modify the qualification criteria of Tier 2 of the Firm,[6] Broker Dealer[7] and Joint Back Office[8] Non-Penny Pilot[9] Add Volume Tiers under footnote 8.

The Exchange currently offers three Firm, Broker Dealer and Joint Back Office Non-Penny Add Volume Tiers under footnote 8, which provide an enhanced rebate ranging from $0.33 to $0.82 per contract for qualifying orders that add liquidity in Non Penny Pilot Securities and yield fee code NF.[10] The Exchange now proposes to modify Tier 2's required criteria.

Currently under Tier 2, a Member's orders that yield fee code NF receive an enhanced rebate of $0.53 per contract where the Member has an: (i) ADV[11] greater than or equal to 3.00% of average OCV[12]; and (ii) ADAV[13] in Market Maker[14] orders greater than or equal to 2.75% of average OCV. The Exchange proposes to modify the second prong of the qualification criteria to instead require an ADAV in Market Maker orders greater than or equal to 2.50% of average OCV. The Exchange does not propose any other changes to Tier 2. Accordingly, as amended, the Exchange proposes to provide an enhanced rebate of $0.53 per contract for orders that yield fee code NF where the Member has an: (i) ADV greater than or equal to 3.00% of average OCV; and (ii) ADAV in Market Maker orders greater than or equal to 2.50% of average OCV.

Implementation Date

The Exchange proposes to implement the above changes to its fee schedule on August 1, 2017.[15]

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[16] in general, and furthers the objectives of Section 6(b)(4),[17] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that the proposed modification to the Exchange's tiered pricing structure is reasonable, fair and equitable, and non-discriminatory. The Exchange operates in a highly competitive market in which market participants may readily send order flow to many competing venues if they deem fees at the Exchange to be excessive or incentives provided to be insufficient. The proposed structure remains intended to attract order flow to the Exchange by offering market participants a competitive pricing structure. The Exchange believes it is reasonable to offer and incrementally modify incentives intended to help to contribute to the growth of the Exchange.

Volume-based pricing structures such as that maintained by the Exchange have been widely adopted by exchanges, including the Exchange, and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provisions and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes. In particular, the proposed change to footnote 8 is a minor change intended to make meeting Tier 2 more attainable, which, in turn, is intended to continue to incentivize Members to send increased order flow to the Exchange in an effort to qualify for the enhanced rebates made available by the tier. This increased order flow, in turn, contributes to the growth of the Exchange. The Exchange also believes the rebate associated with the tier is reasonable as it continues to reflect the difficulty in achieving the tier. These incentives remain reasonably related to the value to the Exchange's market quality associated with higher levels of market activity, including liquidity provision and the introduction of higher volumes of orders into the price and volume discovery processes. The proposed change to the tiered pricing structure is not unfairly discriminatory because it will apply equally to all Members.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes the proposed amendment to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in

[6] ''Firm'' applies to any transaction identified by a Member for clearing in the Firm range at the OCC, excluding any Joint Back Office transaction. *See* the Exchange's fee schedule *available at http://www.bats.com/us/options/membership/fee_schedule/bzx/.*

[7] ''Broker Dealer'' applies to any order for the account of a broker dealer, including a foreign broker dealer, that clears in the Customer range at the Options Clearing Corporation (''OCC''). *Id.*

[8] ''Joint Back Office'' applies to any transaction identified by a Member for clearing in the Firm range at the OCC that is identified with an origin code as Joint Back Office. A Joint Back Office participant is a Member that maintains a Joint Back Office arrangement with a clearing broker-dealer. *Id.*

[9] ''Penny Pilot Securities'' are those issues quoted pursuant to Exchange Rule 21.5, Interpretation and Policy .01. *Id.* ''Non-Penny Pilot'' refers to all other issues.

[10] Fee code NF is appended to Firm, Broker Dealer and Joint Back Office orders in Non-Penny Pilot Securities that add liquidity. Orders that yield fee code NF are provided a standard rebate of $0.30 per contract. *Id.*

[11] ''ADV'' means average daily volume calculated as the number of contracts added or removed, combined, per day. *Id.*

[12] ''OCV'' means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation (''OCC'') for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close. *Id.*

[13] ''ADAV'' means average daily added volume calculated as the number of contracts added per day. *See* the Exchange's fee schedule *available at http://www.bats.com/us/options/membership/fee_schedule/bzx/.*

[14] ''Market Maker'' applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is registered with the Exchange as a Market Maker as defined in Rule 16.1(a)(37). *Id.*

[15] The Exchange notes that is has already amended the Fee Schedule applicable to BZX Options for August 1, 2017, and thus, has not proposed to amend the date of the Fee Schedule. See SR–BatsBZX–2017–48, *available at http://www.bats.com/us/equities/regulation/rule_filings/bzx/.*

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(4).

the financial markets. The Exchange does not believe that the proposed change to the Exchange's tiered pricing structure burdens competition, but instead, enhances competition, as it is intended to increase the competitiveness of the Exchange.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and paragraph (f) of Rule 19b–4 thereunder.[19] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBZX–2017–51 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBZX–2017–51. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2017–51 and should be submitted on or before August 31, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–16931 Filed 8–9–17; 8:45 am]

**BILLING CODE 8011–01–P**

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f).

[20] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81316; File No. SR–IEX–2017–10]**

## Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2, Relating to Auctions in IEX-Listed Securities, Dissemination of Auction-Related Market Data, and Trading Halts and Pauses

August 4, 2017.

**I. Introduction**

On April 20, 2017, Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules governing auctions in IEX-listed securities, provide for the dissemination of auction-related market data, and establish rules relating to trading halts and pauses. The proposed rule change was published for comment in the **Federal Register** on May 9, 2017.[3] The Commission received one comment regarding the proposal.[4] IEX responded to the comment on June 5, 2017.[5] On June 22, 2017, pursuant to Section 19(b)(2) of the Act,[6] the Commission extended the time for Commission action on the proposal until August 7, 2017.[7] IEX filed Amendment No. 1 to the proposal on July 10, 2017. On July 19, 2017, IEX filed Amendment No 2 to the proposal, which superseded and replaced Amendment No. 1 in its entirety.[8] The Commission is publishing this notice to solicit comment on Amendment No. 2 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

**II. Description of the Proposed Rule Change, as Modified by Amendment No. 2**

*A. Overview*

The Commission recently granted IEX's Form 1 application for registration

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 80583 (May 3, 2017), 82 FR 21634 (May 9, 2017) (''Notice'').

[4] *See* letter from Joan C. Conley, Senior Vice President and Corporate Secretary, Nasdaq, to Brent J. Fields, Secretary, Commission, dated May 30, 2017 (''Nasdaq Letter'').

[5] *See* letter from Sophia Lee, General Counsel, IEX, to Brent J. Fields, Secretary, Commission, dated June 5, 2017 (''IEX Response'').

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 80998 (June 22, 2017), 82 FR 29355 (June 28, 2017).

[8] As discussed more fully below, Amendment No. 2 revises the proposal to: (1) Clarify the process for determining the auction match price; (2) modify certain definitions used to determine the auction match price to account for the requirement under the National Market System Plan to Implement a Tick Size Pilot Program (''Tick Size Pilot'') that certain securities be traded in nickel increments; (3) modify the process for affecting incremental extensions of the period for accepting orders after a Limit Up-Limit Down (''LULD'') trading pause; and (4) make other conforming and clarifying changes. To promote transparency of its proposed amendment, when IEX filed Amendment No. 2 with the Commission, it also submitted Amendment No. 2 as a comment letter to the file, which the Commission posted on its Web site and placed in the public comment file for SR–IEX–2017–10 (available at *https://www.sec.gov/comments/sr-iex-2017-10/iex201710-1865053-156219.pdf*). The Exchange also posted a copy of its Amendment No. 2 on its Web site (available at *https://iextrading.com/docs/rule-filings/SR-IEX-2017-10-Amendment-2.pdf*) when it filed Amendment No. 2 with the Commission.

as a national securities exchange.[9] IEX's Form 1 application contained provisions, including standards for initial and continued listing on IEX, that would allow IEX to act as a primary listing exchange. In connection with its plans to become a primary listing exchange, IEX proposes to adopt new rules to govern auctions in IEX-listed securities and to amend certain related rule provisions concerning the same. In addition, IEX proposes to amend certain of its rules governing trading halts and the operation of certain aspects of LULD trading pauses.

Specifically, the proposal will allow IEX to conduct the following auctions for IEX-listed securities: (1) An opening auction (''Opening Auction''); (2) a closing auction (''Closing Auction''); (3) an auction for an initial public offering (''IPO'') or the launch of a new issue (''IPO Auction''); (4) an auction following a trading halt in a security (''Halt Auction''); and (5) an auction to re-open a security after such security is subject to a LULD trading pause (''Volatility Auction'') (collectively, the ''IEX Auctions''). The IEX Auctions will utilize a double auction process that is designed to maximize the number of shares executed at a single price (the ''Auction Clearing Price'').[10] The proposal also provides for the dissemination of auction-related market data, establishes rules (in addition to Volatility Auctions) relating to LULD trading pauses, and authorizes IEX to halt trading in securities listed or traded on IEX under certain circumstances when IEX deems it necessary to protect investors and the public interest.

1. Auction Process

IEX will offer the following new order types specific to the IEX Auctions: Market-on-Open (''MOO''); Limit-on-Open (''LOO''); Market-on-Close (''MOC''); and Limit-on-Close (''LOC'').[11] To determine the Auction Clearing Price, IEX Auctions will consider orders that queue prior to the auction match (the ''Auction Book'') and orders resting on the Exchange's order book that are not on the Auction Book and are available for continuous trading (the ''Continuous Book'') (collectively, the ''Order Book'').[12] Orders resting on the Order Book will be ranked and maintained based on price-display-time priority.[13]

2. IEX Auction Information

For each IEX Auction beginning at a specified time, IEX will disseminate, and update every one second thereafter, the current status of price, size, order imbalance, auction collar, and other relevant auction-related information (''IEX Auction Information'').[14] IEX will add IEX Auction Information to its Top of Book Quote and Last Sale feed (''TOPS'') and IEX Depth of Book and Last Sale feed (''DEEP''), and to the IEX Data Platform, which is available on IEX's public Web site.[15] IEX Auction Information will be available to IEX data recipients, and on IEX's public Web site, free of charge.[16]

*B. Opening Auctions*

On each trading day, IEX will attempt to conduct an Opening Auction for all IEX-listed securities.[17] IEX Users may submit orders to IEX at the beginning of the Pre-Market Session for participation in the Opening Auction, and orders designated for the Opening Auction Book will be queued until the Opening Auction match.[18] Between the Opening Auction Lock-in Time (two minutes prior to the Opening Auction match, *i.e.,* 9:28 a.m.)[19] and the Opening Auction match, Auction Eligible Orders on the Opening Auction Book may not be canceled or modified (*i.e.,* they are ''locked in'').[20] Between the Opening Auction Lock-in Time and the Opening Auction match, IEX will reject Hyper-aggressive Auction Orders upon entry.[21] IEX represents that the rejection of Hyper-aggressive Auction Orders after the Lock-in Time is designed to minimize the increase of imbalances or large price swings resulting from aggressively priced orders in the Auction Book during the last minutes leading into the auction.[22] IEX will accept LOO orders and limit orders with a time-in-force of DAY or GTX that are not Hyper-aggressive Orders until the Opening Auction Lock-out Time (*i.e.,* 10 seconds prior to the Opening Auction match),[23] which will allow Users to continue to submit auction orders and offset auction imbalances via orders specifically designated for the Auction Book in the minutes leading up to the auction match.[24] Incoming orders to the Opening Auction Book that are received between the Opening Auction Lock-out Time (*i.e.,* 10 seconds prior to the Opening Auction match) and the Opening Auction match will be rejected upon receipt.[25] IEX will begin to disseminate IEX Auction Information associated with the Opening Auction starting at the Opening Auction Lock-in Time, and will update it every one second thereafter.[26] Before IEX will

[9] *See* Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142 (June 23, 2016) (File No. 10–222) (''Form 1 Order'').

[10] *See* Notice, *supra* note 3, 82 FR at 21634. The proposed rules establish a series of steps that IEX will follow to arrive to arrive at a single Auction Clearing Price. *See* proposed IEX Rules 11.350(c)(2)(B), 11.350(d)(2)(B), 11.350(e)(2)(C), 11.350(f)(2)(E), and 11.350(f)(3)(B)(ii). IEX states that its clearing price determination process is similar to the clearing price determination process used by The NASDAQ Stock Market LLC (''Nasdaq''). *See* Notice, *supra* note 3, 82 FR at 21644.

[11] *See* proposed IEX Rules 11.350(a)(20), 11.350(a)(21), 11.350(a)(24), and 11.350(a)(25). MOO and LOO orders will be available for Opening Auctions, IPO Auctions, and, in certain circumstances, Halt Auctions, while MOC and LOC orders will be available for Closing Auctions and, in certain circumstances, Volatility Auctions. *See* proposed IEX Rules 11.350(a)(20), 11.350(a)(21), 11.350(a)(24), and 11.350(a)(25).

[12] *See* proposed IEX Rules 11.350(a)(1) and 11.350(a)(4). The proposal amends IEX Rule 11.190(a)(2)(E) to allow market orders with a time-in-force of DAY to be entered in the Pre-Market, thereby permitting such orders to queue in IEX's System for participation in the Opening Auction or in a Halt Auction. *See* Notice, *supra* note 3, 82 FR at 21636.

[13] *See* proposed IEX Rule 11.350(b)(1). IEX represents that its proposed auction priority is substantially similar to the auction priority utilized by Nasdaq and Bats BZX Exchange, Inc. (''Bats''). *See* Notice, *supra* note 3, 82 FR at 21641.

[14] *See* proposed IEX Rule 11.350(a)(9). *See also* Notice, *supra* note 3, 82 FR at 21657.

[15] *See* proposed IEX Rule 11.330(a)(1)–(3). *See also* Notice, *supra* note 3, 82 FR at 21657.

[16] *See* Notice, *supra* note 3, 82 FR at 21657 and 21667. IEX data recipients include IEX Members and non-Members that have entered into an agreement with IEX that permits them to receive IEX data. *See* Notice, *supra* note 3, 82 FR at 21657 n.92.

[17] *See* proposed IEX Rule 11.350(c)(2).

[18] *See* proposed IEX Rule 11.350(c)(1)(A). IEX Rule 1.160(z) defines ''Pre-Market Session'' as the time between 8:00 a.m. and 9:30 a.m. Eastern Time.

[19] *See* proposed IEX Rule 11.350(a)(22).

[20] *See* proposed IEX Rules 11.350(a)(22) and 11.350(c)(1)(B).

[21] *See* proposed IEX Rules 11.350(a)(22) and 11.350(c)(1)(B). For the Opening Auction, Hyper-aggressive Auction Orders are MOO orders and market orders with a TIF of DAY, as well as LOO orders and limit orders with a TIF of DAY or GTX to buy (sell) priced above (below) the latest upper (lower) threshold of the Opening/Closing Auction Collar calculated by the System. *See* proposed IEX Rules 11.350(a)(8)(A) and 11.350(a)(27) (defining ''Opening/Closing Auction Collar'').

[22] *See* Notice, *supra* note 3, 82 FR at 21666.

[23] *See* proposed IEX Rule 11.350(a)(23).

[24] *See* Notice, *supra* note 3, 82 FR at 21648. *See also* proposed IEX Rules 11.350(a)(1)(A) and 11.350(c)(1)(B). IEX states that allowing Users to offset imbalances on the Auction Book after the Lock-in Time is designed to promote stability and equilibrium leading into the auction match; consequently, these orders may not be cancelled or modified after entry. *See* Notice, *supra* note 3, 82 FR at 21648.

[25] *See* proposed IEX Rules 11.350(a)(23) and 11.350(c)(1)(C). Orders submitted to the Continuous Book after the Lock-out Time remain eligible for execution on the Continuous Book and in the upcoming Opening Auction match. *See* proposed IEX Rule 11.350(a)(23). IEX states that the Lock-out Time is designed to freeze the Auction Book and to provide Users with an opportunity to offset any remaining imbalance by submitting limit orders on the Continuous Book. *See* Notice, *supra* note 3, 82 FR at 21648.

[26] *See* proposed IEX Rule 11.350(c)(2)(A). *See also* IEX Rule 11.350(a)(9).

perform the opening match in an IEX-listed security, the Opening Auction price must be at or within the Opening/Closing Auction Collar.[27] IEX will apply Opening Auction Contingency Procedures if a disruption occurs that prevents the execution of the Opening Auction.[28] These procedures are designed to ensure the orderly and timely opening of IEX-listed securities.[29]

*C. Closing Auctions*

On each trading day, IEX will attempt to conduct a Closing Auction for all IEX-listed securities.[30] Users will be able to submit orders for participation in the Closing Auction at the beginning of the Pre-Market Session,[31] or at the beginning of the Order Acceptance Period for an IPO Auction.[32] The Closing Auction Book consists of MOC and LOC orders, which will be queued until the Closing Auction match.[33] Between the Closing Auction Lock-in Time (*i.e.,* 3:50 p.m. or 10 minutes prior to the end of the Regular Market Session on days that IEX is subject to an early closing),[34] and the Closing Auction match, orders on the Closing Auction Book may not be cancelled or modified.[35] Hyper-aggressive Auction Orders submitted between the Closing Auction Lock-in Time and the Closing Auction match will be rejected upon entry.[36] LOC orders that are not Hyper-aggressive Auction orders will be accepted until the Closing Auction Lock-out Time (*i.e.,* 10 seconds prior to the Closing Auction match).[37] IEX believes that rejecting Hyper-aggressive Auction Orders for the Closing Auction after the Lock-in Time, while allowing LOC orders that are priced within the auction collar to be entered and eligible for execution in the Closing Auction until the Lock-out Time, will allow Users to continue to submit orders and offset imbalances on the Closing Auction Book in the minutes leading up to the auction match while attempting to avoid increasing auction imbalances resulting from aggressively priced orders in the Auction Book during the last ten minutes of the auction process.[38] Orders eligible for the Closing Auction Book received between the Closing Auction Lock-out Time and the Closing Auction match will be rejected.[39] At the beginning of the Closing Auction Lock-in Time, and updated every one second thereafter, IEX will disseminate IEX Auction Information associated with the Closing Auction.[40] Before IEX will perform the closing match in an IEX-listed security, the Closing Auction price must be within the Opening/Closing Auction Collar.[41] When a disruption occurs that prevents the execution of the Closing Auction, IEX will apply either its Primary Closing Auction Contingency Procedures or its Secondary Closing Auction Contingency Procedures.[42] These procedures are designed to ensure the orderly and timely closing of IEX-listed securities.[43]

*D. IPO Auctions*

IEX will conduct an IPO Auction for an initial public offering or for the launch of a new issue.[44] Users will be able to submit Auction Eligible Orders for an IPO Auction beginning at the start of IEX's system hours (*i.e.,* 8:00 a.m.), unless otherwise specified.[45] Such orders will be queued, and may be cancelled or modified, until the time of the auction match.[46] Thirty minutes prior to the scheduled auction match, IEX will begin to disseminate and update every one second IEX Auction Information associated with the IPO Auction.[47] IEX will generally attempt to conduct an auction for corporate IPOs at 10:15 a.m. and an auction for new issues at 9:30 a.m.[48] If IEX is unable to complete an IPO Auction before the end of Post-Market Hours (*i.e.,* 5:00 p.m.), all open orders in the subject security on the Order Book will be canceled.[49] Likewise, if a disruption occurs that prevents the execution of an IPO Auction, IEX will publicly announce that the Order Acceptance Period for the IPO Auction will be reset, cancel all orders in that subject security, and disseminate a new schedule for the Order Acceptance Period and auction match.[50]

*E. Halt Auctions*

IEX may initiate trading halts under certain circumstances in which the Exchange deems it necessary to protect investors and the public interest.[51] Following a trading halt in an IEX-listed security pursuant to proposed IEX Rules 11.280(g)(1), (4), or (5), IEX will conduct a Halt Auction.[52] IEX Users will be able

[27] *See* proposed IEX Rules 11.350(c)(2)(B)(iv), 11.350(a)(27) (defining ''Opening/Closing Auction Collar''), and 11.350(a), Supplementary Material .01. IEX states that the default 10% threshold used to determine the Opening/Closing Auction Collar will provide an appropriate range within which price discovery may occur to maximize the number of shares executed in the auction. *See* Notice, *supra* note 3, 82 FR at 21646. IEX notes that a modification of the default threshold percentage values for the Opening/Closing Auction Collar would be subject to the requirements of Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, 17 CFR 240.19b–4. *See id.* at 21646 n.51.

[28] *See* proposed IEX Rule 11.350(c)(4)(A).

[29] *See* Notice, *supra* note 3, 82 FR at 21649 and 21666.

[30] *See* proposed IEX Rule 11.350(d)(2).

[31] *See* note 18, *supra.*

[32] *See* proposed IEX Rule 11.350(d)(1)(A). The Order Acceptance Period for an IPO Auction begins at 8:00 a.m., unless otherwise specified. *See* proposed IEX Rule 11.350(a)(29)(A).

[33] *See* proposed IEX Rule 11.350(d)(1)(A).

[34] *See* proposed IEX Rule 11.350(a)(22).

[35] *See* proposed IEX Rule 11.350(d)(1)(B). However, between the Closing Auction Lock-in Time and five minutes before the Closing Auction match, On-Close orders may be cancelled if the User requests that IEX correct a legitimate error in the order (*e.g.,* side, size, symbol, price, or duplication of an order). On-Close orders may not be cancelled or modified at or after five minutes before the Closing Auction match for any reason. *See* proposed IEX Rule 11.350(d)(1)(C).

[36] *See* proposed IEX Rule 11.350(d)(1)(B). For the Closing Auction, Hyper-aggressive Auction Orders are MOC and LOC orders to buy (sell) priced above (below) the latest upper (lower) threshold of the Opening/Closing Auction Collar calculated by the System. *See* proposed IEX Rule 11.350(a)(8)(B).

[37] *See* Notice, *supra* note 3, 82 FR at 21650 and proposed IEX Rule 11.350(a)(23) (defining ''Lock-out Time''). IEX notes that the Lock-out Time for the Closing Auction is designed to provide Users with an opportunity to offset any remaining imbalance during a period of relative stability (while the Auction Book is locked) by submitting limit orders to the Continuous Book. *See* Notice, *supra* note 3, 82 FR at 21650.

[38] *See* Notice, *supra* note 3, 82 FR at 21650.

[39] *See* proposed IEX Rule 11.350(d)(1)(D).

[40] *See* proposed IEX Rule 11.350(d)(2)(A).

[41] *See* proposed IEX Rules 11.350(d)(2)(B)(iv), 11.350(a)(27) (defining ''Opening/Closing Auction Collar''), and 11.350(a), Supplementary Material .01.

[42] *See* proposed IEX Rule 11.350(d)(4).

[43] *See* Notice, *supra* note 3, 82 FR at 21666.

[44] *See* proposed IEX Rule 11.350(e).

[45] *See* proposed IEX Rule 11.350(a)(29)(A) and Notice, *supra* note 3, 82 FR at 21652. The Order Acceptance Period may be automatically or manually extended under certain circumstances. *See* proposed IEX Rule 11.350(e)(2)(B). In addition, the Pre-Launch Period for an IPO may be extended under certain circumstances. *See* proposed IEX Rule 11.280(h)(8)(B). The underwriter, with the concurrence of IEX, may determine to postpone and reschedule the IPO at any point during the IPO Auction process. *See* proposed IEX Rule 11.280(h)(8)(B).

[46] *See* proposed IEX Rule 11.350(e)(1)(A)–(B) and Notice, *supra* note 3, 82 FR at 21652.

[47] *See* proposed IEX Rules 11.350(e)(2)(A) and 11.350(a)(5). The term ''Post-Market Hours'' or ''Post-Market Session'' refers to the time between 4:00 p.m. and 5:00 p.m. Eastern Time. *See* IEX Rule 1.160(aa).

[48] *See* Notice, *supra* note 3, 82 FR at 21653.

[49] *See* proposed IEX Rule 11.350(e)(1)(D).

[50] *See* proposed IEX Rule 11.350(e)(4)(A).

[51] *See* proposed IEX Rule 11.280(g). Proposed IEX Rule 11.280(h) establishes the procedures that IEX must follow to initiate or terminate a trading halt.

[52] *See* proposed IEX Rule 11.350(e). Proposed IEX Rule 11.280(g)(1) allows IEX to halt trading to permit the dissemination of material news; IEX Rule 280(g)(4) allows IEX to halt trading in an American Depository Receipt (''ADR'') or other security listed on IEX when the IEX-listed security or security underlying the ADR is listed on or registered with another national or foreign securities exchange or market, and that exchange or market, or a regulatory overseeing that exchange or market, halts trading in the security for regulatory reasons; and IEX Rule 11.280(g)(5) allows IEX to halt trading in a security listed on IEX when IEX requests information from the issuer relating to

to submit Auction Eligible Orders for a Halt Auction five minutes prior to the scheduled auction match.[53] Such orders will be queued, and may be cancelled or modified, until the time of the Halt Auction.[54] At the start of the Order Acceptance Period for a Halt Auction, IEX will begin to disseminate IEX Auction Information associated with the Halt Auction and will update that information every one second thereafter.[55] If there is insufficient crossing interest to conduct a Halt Auction, no Halt Auction will occur and the security will be transitioned to continuous trading.[56] If IEX is unable to complete a Halt Auction before the end of Post-Market Hours (*i.e.,* 5:00 p.m.), all open orders in the subject security on the Order Book will be canceled.[57] When a disruption occurs that prevents the execution of a Halt Auction, IEX will publicly announce that no Halt Auction will occur, cancel all orders in that subject security, and open the security for trading without an auction.[58]

*F. Volatility Auctions*

IEX will conduct a Volatility Auction to re-open an IEX-listed security after that security is subject to a trading pause pursuant to the National Market System Plan to Address Extraordinary Market Volatility (''Limit Up-Limit Down Plan'' or ''LULD Plan'').[59] Orders may be submitted for a Volatility Auction during a five-minute Order Acceptance Period beginning immediately after the dissemination of the trading pause and are queued until the auction match.[60] Orders may be canceled or modified at any time prior to the auction match.[61] IEX will begin to disseminate IEX Auction Information associated with the Volatility Auction commencing at the start of the Order Acceptance Period for such auction, and will update that information every one second thereafter.[62] Before IEX will perform the Volatility Auction match, the Volatility Auction price must be at or within the Volatility Auction Collar.[63] When a disruption occurs that prevents the execution of the Volatility Auction, IEX will apply its Volatility Auction Contingency Procedures.[64]

In place of its normal Closing Auction procedures, IEX will close an IEX-listed security using a Volatility Auction when the IEX-listed security is paused pursuant to IEX Rule 11.280(e) at or after the Closing Auction Lock-in Time, or when the Order Acceptance Period for a Volatility Auction for a security paused before the Closing Auction Lock-Time pursuant to IEX Rule 11.280(e) would otherwise be extended to a time after the Closing Auction Lock-in Time.[65]

In addition, IEX proposes several amendments to IEX Rule 11.280 relating to LULD trading pauses.[66] In Amendment No. 2, IEX states that it intends to continue coordinating with other LULD Plan participants and the Securities Information Processors (''SIPs'') regarding the implementation timeline of changes to the SIPs pursuant to the twelfth amendment to the LULD Plan to support dissemination of certain data related to re-opening auctions after LULD trading pauses.[67]

*G. Additional Changes*

IEX proposes to adopt several additional provisions relating to IEX Auctions. New IEX Rule 11.350(g) will address the handling during Opening, Closing, Halt, and Volatility Auctions of short sale orders for covered securities not marked short exempt when the Short Sale Price Test of Rule 201 of Regulation SHO (''Short Sale Price Test'') is in effect.[68]

In addition, new IEX Rule 11.350(h) will allow IEX to adjust the timing of or suspend an IEX Auction with prior notice to Users when, in IEX's judgment, the interests of a fair and orderly market require such action. IEX believes that this discretion is necessary to give IEX latitude to adapt to quickly changing, volatile market conditions that may negatively impact market participants.[69]

New IEX Rule 11.350(i) provides that, for purposes of Rule 611(b)(3) of Regulation NMS and section VI(D)(6) of Tick Size Pilot, orders executed pursuant to IEX Auctions may trade-through or trade-at the price of any other trading center's Manual or Protected Quotations if the transaction that traded-at or constituted a trade-through was a single-priced opening, re-opening, or closing transaction at the trading center.

Finally, new IEX Rule 11.350(j) specifies that, for purposes of the Rule, references to a.m. and p.m. mean Eastern Time.

## III. Summary of Comments and IEX's Response

As noted above, the Commission received one comment regarding the proposal, and a response to the

material news, the issuer's ability to meet IEX listing qualification requirements, or any other information necessary to protect investors and the public interest.

[53] *See* IEX Rule 11.350(a)(29)(B) and Notice, *supra* note 3, 82 FR at 21652.

[54] *See* proposed IEX Rule 11.350(e)(1)(A)–(B) and Notice, *supra* note 3, 82 FR at 21652.

[55] *See* proposed IEX Rules 11.350(e)(2)(A) and 11.350(a)(5). IEX will extend the Order Acceptance Period automatically for one minute when there are unmatched shares from market orders on the Auction Book or the Indicative Clearing Price differs by the greater of five percent or fifty cents from any of the previous fifteen Indicative Clearing Prices disseminations. *See* proposed IEX Rules 11.350(e)(2)(B)(i) and (ii) and 11.350(a)(9)(E) (defining ''Indicative Clearing Price'').

[56] *See* proposed IEX Rule 11.350(e)(2)(C).

[57] *See* proposed IEX Rule 11.350(e)(1)(D). *See also* IEX Rule 1.160(aa) (defining ''Post-Market Hours'').

[58] *See* proposed IEX Rule 11.350(e)(4)(B).

[59] *See* proposed IEX Rule 11.350(f). *See also, e.g.,* Securities Exchange Act Release Nos. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (approving LULD Plan); 80455 (April 13, 2017), 82 FR 18519 (April 19, 2017) (approving thirteenth amendment to LULD Plan).

[60] *See* proposed IEX Rules 11.350(f)(1)(A), 11.350(a)(29)(C), and 11.350(f)(1)(B). The Order Acceptance Period for a Volatility Auction may be extended under certain circumstances. *See* proposed IEX Rules 11.350(f)(2)(C) and (D).

[61] *See* proposed IEX Rule 11.350(f)(1)(C).

[62] *See* proposed IEX Rules 11.350(f)(2)(A) and 11.350(a)(5).

[63] *See* proposed IEX Rules 11.350(f)(2)(B); 11.350(a)(31) (defining ''Volatility Auction Collar''); 11.350(a), Supplementary Material .02. IEX states that its proposed Volatility Auction Collar functionality is consistent with the commitment made by each primary listing exchange set forth in the twelfth amendment to the LULD Plan to file rule changes with the Commission under Section 19(b) of the Act to amend its respective trading practice for automated re-openings following a trading pause consistent with a standardized approach agreed to by LULD Plan participants that would allow for extensions of an LULD trading pause if equilibrium cannot be met for a re-opening price within specified parameters. *See* Securities Exchange Act Release No. 79845 (January 19, 2017), 82 FR 8551 (January 26, 2017) (''LULD Plan Twelfth Amendment Approval Order'') and Notice, *supra* note 3, 82 FR at 21646.

[64] *See* proposed IEX Rule 11.350(f)(2)(H).

[65] *See* proposed IEX Rule 11.350(f)(3).

[66] In particular, IEX proposes to amend IEX Rule 11.280 to provide that Auction Eligible Orders on the Auction Book are not price slid or canceled due to LULD price bands; that the Exchange may declare an LULD trading pause for a NMS Stock listed on the Exchange during a straddle state; and that following a trading pause, the Exchange will re-open trading in IEX-listed securities pursuant to the procedures set forth in proposed IEX Rule 11.350(f). *See* proposed IEX Rules 11.280(e)(5)(F) and (e)(7) and (8). In addition, the revised rule indicates that trading in non-IEX-listed securities will re-open upon receipt of the Price Bands from the single plan processor responsible for consolidation of information for the security. *See* proposed IEX Rule 11.280(e)(8).

[67] *See* Amendment No. 2, *supra* note 8, at 44–45. *See also* LULD Plan Twelfth Amendment Approval Order, *supra* note 63, 82 FR at 8553–54 n.22 (expecting LULD participants to implement the twelfth amendment no later than six months after the date of the order); 80549 (April 28, 2017), 82 FR 20928 (May 4, 2017) (extending the time frame to implement the LULD twelfth amendment to no later than the end of the third quarter of 2017).

[68] *See* proposed IEX Rule 11.350(g). IEX notes that a security in an IPO Auction will never be subject to the Short Sale Price Test because there will have been no prior trading in the security. *See* Notice, *supra* note 3, 82 FR at 21656–57.

[69] *See* Notice, *supra* note 3, 82 FR at 21657.

comment from IEX.[70] In its proposal, IEX expresses its intention to disseminate ''substantially the same information'' as the IEX Auction Information through the Consolidated Quotation System operated by the Consolidated Tape Association (''CTA'') securities information processor, ''pending approval by the Operating Committee of the CTA.'' [71] IEX states that ''[f]ollowing such approval, IEX will amend Rule 11.330 to reflect this additional means of dissemination.'' [72] The commenter expresses the view that any Commission approval of the current proposal ''should not be construed as approval for dissemination of [IEX Auction Information] data through the CQS,'' and that the Commission, if it approves the proposal, should make clear that its approval of the proposal does not constitute an approval of the inclusion of IEX Auction Information in the CQS.[73] The commenter further states that ''there are serious legal and policy impediments to the dissemination of IEX Auction Information . . . through the facilities of the CQ Plan,'' and ''that an opportunity for public comment and formal action by the Commission, either in the context of a proposed CQ Plan amendment or a proposed rule change, is needed to ensure that these issues are given adequate consideration.'' [74] The commenter acknowledges, however, that this issue is not directly before the Commission at this time.[75]

IEX submitted a letter in response to the comment letter, which acknowledges that the dissemination of IEX Auction Information through the CQS would require action by the CTA Operating Committee.[76] IEX states that it would file a separate proposed rule change with the Commission that would be subject to notice and comment if it decides to pursue such dissemination.[77]

The Commission believes that IEX's response addresses the concern raised by the commenter. The Commission notes that IEX's proposal and proposed rule text do not provide for the dissemination of IEX Auction Information through the facilities of the CQ Plan. Accordingly, despite IEX's statement in the current proposal of its intention to pursue such dissemination in the future, the issue is not presently before the Commission as part of the current proposal.

## IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[78] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[79] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. This order approves the proposed rule change in its entirety, although only certain more significant aspects of the proposed rules are discussed below.

In its filing, IEX notes that its auctions were designed based on its understanding of how the auctions work on other primary listing exchanges, including the New York Stock Exchange, NYSE Arca, Nasdaq, and Bats.[80] IEX further notes that its proposed auctions contain a number of attributes that are ''substantially similar to existing exchange auction models, and will therefore be familiar'' to Users.[81] In addition, the Commission notes that the price determination process in the IEX Auctions is substantially similar to the opening process that the Commission recently approved IEX to use for non-IEX-listed securities.[82]

IEX states that its proposal is integral to its future operation of a listing market,[83] and that the proposed rules will benefit issuers and investors by allowing IEX to provide companies with an additional listing option.[84] IEX believes that the operation of IEX Auctions for securities listed on IEX will assist in the price discovery process and help to ensure a fair and orderly market for securities listed on IEX.[85] IEX further believes that its auction is designed to provide a transparent, efficient, and robust process for aggregating trading interest submitted by a broad range of market participants to be matched at a single clearing price.[86]

IEX's auction process is designed to match orders at a single price that maximizes the number of shares to be executed.[87] IEX has designed the IEX Auctions to be conducted within specified periods of time and in accordance with specified order entry, calculation, price, and execution priority parameters. IEX may adjust the timing of or suspend IEX Auctions with prior notice to Users, whenever, in the judgement of the Exchange, the interests of a fair and orderly market so require.[88] IEX's auction rules are designed to open, close, or re-open trading in each IEX-listed security by matching as much interest as possible at a price determined through an objective process set forth in the proposed rules.

Finally, the Commission believes that the proposed rules relating to Volatility Auctions are designed to further the goal of establishing a standardized approach for how primary listing exchanges will conduct certain aspects of an automated re-opening following an LULD trading pause, which should help to provide certainty for market participants regarding how a security would re-open following an LULD trading pause, regardless of the listing exchange.[89]

## V. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

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[70] *See* Nasdaq Letter, *supra* note 4; and IEX Response, *supra* note 5.

[71] *See* Notice, *supra* note 3, 82 FR at 21657.

[72] *See id.* at 21657 n.134.

[73] Nasdaq Letter, *supra* note 4, at 2.

[74] *Id.* at 3.

[75] *Id.* at 3 n.3.

[76] *See* IEX Response, *supra* note 5, at 1.

[77] *See id.* at 1–2.

[78] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[79] 15 U.S.C. 78f(b)(5).

[80] *See* Notice, *supra* note 3, 82 FR at 21634.

[81] *See id.*

[82] *See* IEX Rule 11.231 and Securities Exchange Act Release No. 81195 (July 24, 2017), 82 FR 35250 (July 28, 2017) (order approving File No. SR–IEX–2017–11).

[83] The Commission notes that it has separately approved rules for the qualification, listing, and delisting of companies on IEX. *See* Form 1 Order, *supra* note 9.

[84] *See* Notice, *supra* note 3, 82 FR at 21662.

[85] *See id.*

[86] *See id.*

[87] *See id.* at 21642.

[88] *See* proposed IEX Rule 11.350(h).

[89] *See* Securities Exchange Act Release Nos. 79846 (January 19, 2017), 82 FR 8548 (January 26, 2017) (order approving File No. SR–NYSEArca–2016–130); 79884 (January 26, 2017), 82 FR 8968 (February 1, 2017) (order approving File No. SR–BatsBZX–2016–61); and 79876 (January 25, 2017), 82 FR 8888 (January 31, 2017) (order approving File No. SR–Nasdaq–2016–131).

*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–IEX–2017–10 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2017–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2017–10, and should be submitted on or before August 31, 2017.

## VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of the notice of Amendment No. 2 in the **Federal Register**. The Commission believes that the proposed changes to the description of the process for determining the Auction Clearing Price that were included in Amendment No. 2 add clarity to the price determination process without materially changing the proposal from what the Exchange originally filed. Additionally, the Commission believes that the proposed addition of a rounding process to prevent certain Tick Size Pilot securities from trading in an impermissible increment eliminates a potential conflict between the Tick Size Pilot and IEX Auctions. Further, the Commission believes that the proposed modification of the process for affecting incremental extensions of the period for accepting orders after an LULD trading pause will clarify the process and ensure consistency with the standardized approach agreed to by the LULD Plan participants. The Commission does not believe that any of the changes proposed in Amendment No. 2 introduce novel concepts, but rather add detail to better reflect in the proposed rule text how the proposed IEX Auctions would work for IEX-listed securities, and also reconciles the proposed IEX Auctions with the tick-size requirements of the Tick Size Pilot.

Accordingly, for the reasons noted above, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.[90]

## VII. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[91] that the proposed rule change (SR–IEX–2017–10), as modified by Amendment No. 2, is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[92]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–16830 Filed 8–9–17; 8:45 am]

**BILLING CODE 8011–01–P**

[90] 15 U.S.C. 78s(b)(2).

[91] *Id.*

[92] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81315; File No. SR–CHX–2017–12]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Regarding Qualified Contingent Trades and Related Information Recording Obligations by Certain Participants

August 4, 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 July 26, 2017, the Chicago Stock Exchange, Inc. (''CHX'' or ''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 Substance of the Proposed Rule Change

CHX proposes to amend the Rules of the Exchange (''CHX Rules'') regarding Qualified Contingent Trades (''QCTs'')[3] and related information recording obligations by certain Participants.[4] The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/regulatory-operations/rule-filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend CHX Rules to effect the following changes:

• Clarify the operation of cross orders[5] and Cross With Size handling.[6]

• Only permit Participants that are registered with the Exchange as Institutional Brokers (''IBs'')[7] to submit an NMS stock component order of a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* Section A.1(1).

[4] A Participant is a ''member'' of the Exchange for purposes of the Act. *See* CHX Article 1, Rule 1(s).

[5] *See* CHX Article 1, Rule 2(a)(2).

[6] *See* CHX Article 1, Rule 2(g)(1).

[7] *See* CHX Article 1, Rule 1(n); *see also generally* CHX Article 17.

QCT (''QCT Cross'') to the Matching System.[8]

- Clarify the scope of information recording obligations under current Article 11, Rule 3.
- Adopt rules describing the CHX Broker Back Office System (''BBOS''), a trade management system developed and maintained by the Exchange.
- Require IBs to record certain information in the BBOS regarding component orders and trades related to QCT Crosses executed within the Matching System.
- Clarify the agency, principal and error accounts requirements for IBs.

(1) Background

In 2006,[9] the Commission granted an exemption from Rule 611(a) of Regulation NMS [10] (''QCT Exemption'') for any trade-throughs caused by the execution of an order involving one or more NMS stocks (each an ''Exempted NMS Stock Transaction'') that are components of a QCT, which was modified in 2008 to eliminate the Size Condition.[11] Consistent with the QCT Exemption, the Exchange permits Participants to submit cross orders marked with the QCT modifier (*i.e.,* QCT Crosses) to the Matching System to effect transactions that comprise the NMS stock components of QCTs.[12]

Mechanically, upon receipt of a QCT Cross, the Exchange will immediately execute the QCT Cross without regard to the protected quotations of away markets if the state of the CHX limit order book (''CHX book'') in the relevant security would permit the QCT Cross to execute within the Matching System.[13] If the QCT Cross is blocked by an order resting on the CHX book, the QCT Cross will be immediately cancelled. The Exchange does not conduct a pre-execution verification of each QCT Cross for compliance with the terms of the QCT Exemption due to the practical difficulties of conducting such verification within the constraints of the ''at or near the same time'' requirement for the execution of the component orders that comprise the QCT.[14] Instead, the Exchange maintains and operates a comprehensive Surveillance and Examination program that, among other things, reviews executed QCT Crosses for compliance with CHX Rules and the QCT Exemption.

The Exchange believes that the operation of the Matching System and the Surveillance and Examination program, in general, and as applied to the execution and review of QCT Crosses, in particular, are ''reasonably designed'' in compliance with the requirements of Rule 611(a)(1) of the Regulation NMS.[15] The Exchange also regularly surveils to ascertain the effectiveness of its policies and procedures required by Rule 611(a)(1) and has taken prompt action to remedy deficiencies in such policies and procedures, consistent with the requirements of Rule 611(a)(2) of Regulation NMS.[16] As part of its ongoing effort to update and optimize the Surveillance and Examination program, the Exchange has developed and deployed BBOS, a trade management system that, among other things, permits the Exchange to review additional information to identify the specific component transactions [17] that are being used to hedge executed QCT Crosses. Currently, the Exchange encourages its IBs to include certain information for away executions related to QCT Crosses submitted to the Matching System into the BBOS,[18] which the Exchange uses to verify that the components to the QCT satisfy the derivative relationship and fully-hedged requirements of the QCT Exemption.[19] In addition, CHX Rules require IBs to input all orders and related information [20] it receives for execution into an automated system (*e.g.,* Brokerplex [21]), which includes QCT Crosses.

The Exchange now proposes various amendments to the CHX Rules in order to clarify the operation of cross orders, to clarify the scope of certain Participant obligations and to codify current practices related to the enhancement of the Exchange's oversight of QCTs.

(2) Amendments Related to Cross Orders

The Exchange proposes to adopt various non-substantive amendments to CHX Rules to clarify the operation of cross orders and Cross With Size handling.[22] Current Article 1, Rule 2(a)(2) defines cross order as an order to buy and sell the same security at a specific price better than the Working Price, as defined under Article 1, Rule 1(pp), of all resting orders on the CHX Book and which would not constitute a trade-through under Regulation NMS (including all applicable exceptions and exemptions). The rule also provides that a cross order may represent interest of one or more Participants of the Exchange, but may only be executed in an increment permitted by Article 20, Rule 4(a)(7)(b). The rule then provides that a cross order may be subject to special handling, pursuant to Article 20, Rule 2(g).

While the current definition is technically accurate, the Exchange believes that it can be amended to clarify that the pricing requirement for cross orders is prerequisite for execution within the Matching System, but not a prerequisite for submission into the Matching System. That is, a cross order that does not meet the pricing requirement, and is thus cancelled by

[8] The Matching System is an automated order execution system, which is a part of the Exchange's ''Trading Facilities,'' as defined under CHX Article 1, Rule 1(z).

[9] *See* Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (''QCT Exemptive Order'').

[10] 17 CFR 242.611(a).

[11] ''Qualified contingent trade'' is defined as ''a transaction consisting of two or more component orders, executed as agent or principal where: (1) At least one component order is in an NMS stock; (2) All components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent; (3) The execution of one component is contingent upon the execution of all other components at or near the same time; (4) The specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined at the time the contingent order is placed; (5) The component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled; and (6) The Exempted NMS Stock Transaction is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade. *See* Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (''Modified QCT Exemptive Order''). In 2008, the Commission modified the QCT Exemptive Order to eliminate a seventh requirement (''Size Condition'') that the Exempted NMS Stock Transaction that is part of a contingent trade involves at least 10,000 shares or has a market value of at least $200,000. *See id.* at 19274.

[12] While CHX Rules currently permit any Participant to submit a QCT Cross, in practice, only IBs have submitted QCT Crosses, in large part due to the complexities of coordinating the execution of the various components of a QCT and allocating positions to the various parties to the QCT.

[13] *See* CHX Article 1, Rule 2(a)(2).

[14] *See* CHX Article 1, Rule 2(b)(2)(E)(iii); *see also supra* note 11.

[15] 17 CFR 242.611(a)(1).

[16] 17 CFR 242.611(a)(2).

[17] Currently, the vast majority of component transactions used to hedge QCT Crosses involve exchange traded options. As such, BBOS permits users to automatically link QCT Crosses with specific exchange-traded options transactions via the use of unique sequence numbers. While the BBOS permits the entry of other types of component transactions, such as futures transactions, the full details of such component transactions must be entered manually. *See infra* note 18.

[18] Current data fields include: QCT Type; Related Exchange; Print Time; Expiration Year; Expiration Month; Price; Contracts; Strike Price; Call/Put; Volume; and Short Sale Indicator. The alternatives under ''QCT Type'' include exchange traded options, over-the-counter traded options, FLEX Options, equities, futures and ''other.'' *See id.*

[19] *See supra* note 11.

[20] *See* CHX Article 11, Rule 3(a) and (b).

[21] *See* CHX Article 17, Rule 5.

[22] *See* CHX Article 1, Rule 2(g)(1).

the Matching System, is still a cross order by definition, albeit not an executable one. As such, the Exchange proposes to amend the first paragraph of current Article 1, Rule 2(a)(2) to provide as follows:

''Cross order'': An order to buy and sell the same security at a specific price. A cross order may only execute within the Matching System if it is priced better than the Working Price, as defined under Article 1, Rule 1(pp), of all resting orders on the CHX Book. A cross order may represent interest of one or more Participants of the Exchange, but may only be executed in an increment permitted by Article 20, Rule 4(a)(7)(b). A cross order may be subject to special handling, pursuant to paragraph (g) below.

Similarly, the Exchange proposes to amend Article 1, Rule 2(g)(1)(A) to clarify the requirements for Cross With Size handling and to remove redundant references to compliance various CHX Rules and federal securities laws and regulations:

''Cross With Size'': A cross order (except any cross order subject to Non-Regular Way Settlement) to buy and sell at least 5,000 shares of the same security with a total value of at least $100,000 will execute, notwithstanding resting orders in the CHX Book at the same price, where: (A) There are no resting orders on the CHX Book with a Working Price, as defined under Article 1, Rule 1(pp), better than the cross order; and

In addition, the Exchange proposes to amend Article 20, Rule 8(e) to replace a redundant summary of the operation of cross orders and Cross With Size handling with specific references to the relevant rules. Also, since Cross With Size is a special handling for cross orders and not a separate order type or order modifier, the Exchange proposes to eliminate reference to ''Cross With Size,'' but to maintain the citation to the relevant CHX Rules. Thus, amended Article 20, Rule 8(e) provides that ''Cross orders shall be handled pursuant to Article 1, Rule 2(a)(2) and Rule 2(g)(1) above.''

(3) Amendments Related to QCT Modifier

As noted above,[23] while CHX Rules permit any Participant to submit QCT Crosses, in practice, non-IB Participants do not currently submit QCT Crosses. Moreover, CHX Rules require only IBs to input additional information into Brokerplex,[24] which facilitates the ability of the Exchange to gather crucial information related to its review of QCT Crosses executed on the Exchange. Given that non-IBs do not currently submit QCTs and the Surveillance and Examination program is optimized to review QCT Crosses submitted by IBs, the Exchange proposes to amend Article 1, Rule 2(b)(2)(E) to provide that QCT Crosses may only be submitted by IBs.[25] The Exchange believes that the proposed restriction will ensure consistent recordkeeping requirements related to QCTs for those Participants that submit QCT Crosses. Also, given that any Participant may apply to register as an IB,[26] the Exchange submits that the proposal is not unfairly discriminatory to non-IB Participants.[27]

(4) Clarifying Amendments to Recordkeeping Requirement for Certain Participants

The Exchange also proposes various non-substantive clarifying amendments to Article 11, Rule 3 (Records of Orders and Executions).[28] Specifically, the Exchange proposes to amend Article 11, Rule 3(a) to clarify that the provisions of Article 11, Rule 3 only apply to certain Participants described under Rule 3(e), which limits the applicability of Article 11, Rule 3 to IBs, CHX-registered Market Makers,[29] Participants for whom the Exchange is the Designated Examining Authority (''DEA'') and any other Participant to the extent that the information under Article 11, Rule 3 is required by the rules of the other self-regulatory organizations of which they are members.[30] Similarly, the Exchange proposes to amend the title of Article 11, Rule 3 to provide ''Records of Orders and Executions by Certain Participants,'' which better describes the scope of the rule and distinguishes it from Article 11, Rule 2 (Maintenance of Books and Records), which requires all Participants to comply with the requirements of Rules 17a–3 [31] and 17a–4 under the Exchange Act.[32]

The Exchange further proposes to amend paragraph .01 under the Interpretations and Policies of Article 11, Rule 3 to clarify that proprietary orders, such as those submitted by Market Makers, fall under the purview of Article 11, Rule 3. Specifically, while the second sentence under paragraph .01 excludes from the scope of orders described under Article 11, Rule 3(a) the actual decision to purchase or sell a security by a Participant on a proprietary basis and not the proprietary order itself, the Exchange believes that the sentence could be misconstrued to exclude all proprietary orders from the scope of Article 11, Rule 3. The Exchange also believes that current Article 11, Rule 3(a)(1)–(3) adequately describes the types of orders subject to current Article 11, Rule 3. Accordingly, the Exchange proposes to delete the second sentence of paragraph .01 in its entirety.

Current paragraph .03 under the Interpretations and Policies of Article 11, Rule 3 provides, in pertinent part, that Article 11, Rule 3 shall not apply to orders sent or received through the Matching System or through any other electronic system that the Exchange expressly recognizes as providing the required information in a format acceptable to the Exchange. The purpose of current paragraph .03 is to clarify that Participants that submit or receive orders through Exchange-approved electronic systems are not required to maintain a separate record of the information required under Article 11, Rule 3. However, the Exchange believes that paragraph .03 could be misconstrued as to exclude orders sent or received through an Exchange-approved electronic system from the scope of Article 11, Rule 3 entirely, which is incorrect. Accordingly, the Exchange proposes to amend paragraph .03 to provide that a Participant that sends or receives orders, cancellations and executions, as applicable, through the Matching System or through any other electronic systems that the Exchange expressly recognizes as providing the required information in a format acceptable to the Exchange is not required to maintain a separate record of such orders, cancellations and executions.[33] Moreover, the Exchange

[23] *See supra* Section A.1(1).

[24] *See* CHX Article 17, Rule 3.

[25] The Exchange also proposes to add the acronym ''QCT'' to CHX Article 1, Rule 2(b)(2)(E) to clarify that the term ''QCT'' refers to ''Qualified Contingent Trade.''

[26] *See* CHX Article 17, Rule 1.

[27] *See infra* Section A.2.

[28] The provisions under current CHX Article 11, Rule 3 that the Exchange is proposing to clarify were originally adopted in 2006 as part of the Exchange's transition to its current electronic trading model. *See* Exchange Act Release No. 54550 (September 29, 2006), 71 FR 59563 (October 10, 2006) (SR–CHX–2006–05).

[29] *See* CHX Article 16, Rule 1.

[30] The Exchange proposes to amend Article 11, Rule 3(e) to clarify that the provisions of Article 11, Rule 3 would apply to IBs, Market Makers, Participants for which the Exchange is its DEA and any other Participant to the extent that the information under Article 11, Rule 3 is required by *the Exchange Act and the rules thereunder,* as well as the rules of the other self-regulatory organizations of which they are members. The Exchange believes that this amendment is appropriate given that Participants are ''members'' of the Exchange, as defined under the Exchange Act, and any provisions under the Exchange Act and the rules thereunder that apply to a ''member'' of an exchange would apply to Participants. *See* CHX Article 1, Rule 1(s).

[31] 17 CFR 240.17a–3.

[32] 17 CFR 240.17a–4.

[33] The Exchange notes that the proposed amendment to paragraph .03 would have no impact on a Participant's recordkeeping obligations under Article 11, Rule 2, which requires, among other

Continued

proposes to add the term ''expressly'' before the term ''recognize'' under the second sentence of current paragraph .03 to be stylistically consistent with the amended first sentence and to make other grammatical amendments.

(5) Proposed Recordkeeping Requirements for Away Component Trades for QCT Crosses Executed Within the Matching System

The Exchange proposes to require IBs to record certain information[34] for away QCT component orders and trades related to QCT Crosses executed within the Matching System into the BBOS. While the Exchange currently encourages IBs to enter such information into the BBOS,[35] the CHX Rules do not currently require IBs to do so. Given that current Article 11, Rule 3(a)(1)–(3) does not contemplate such component orders and trades, as some component orders may not originate or otherwise be handled by the Participant, the Exchange proposes to adopt Article 11, Rule 3(a)(4), which would bring within the scope of Article 11, Rule 3 every component order and trade, whether handled by the Participant or not, related to a QCT Cross that is submitted by the Participant and executed within the Matching System. Correspondingly, the Exchange proposes to amend the citation under Article 11, Rule 3(b) to include proposed Article 11, Rule 3(a)(4).

Moreover, the Exchange proposes to amend Article 11, Rule 3(b)(27) [36] to provide that subject to certain enumerated exceptions, each Participant must accurately record, with respect to any cross orders marked Qualified Contingent Trade executed within the Matching System, (A) the date and time of receipt by the Participant of the corresponding order from its customer and (B) all information specified by the Exchange regarding any related component orders and trades executed within the Matching System or away, which shall be entered into the BBOS (as applicable), in a manner prescribed by the Exchange.[37]

The Exchange also proposes to adopt Article 17, Rule 7 (Broker Back Office System) to describe the BBOS. Proposed Rule 7(a) provides that BBOS is a trade management system developed and maintained by the Exchange that permits IBs to input certain information and to generate reports therefrom. The rule also states that BBOS is an automated system approved by the Exchange for the purposes of amended Rule 3(a) above.

Proposed Rule 7(b) provides that users of the BBOS are responsible for entering all transaction, order and other information into the system as required by CHX Rules. The rule further states that as operator of BBOS, the Exchange retains information entered into BBOS on behalf of the user in conformity with applicable rules and regulations. The rule then provides that the Exchange provides such information to IBs in a format designated by the Exchange to assist IBs: In conducting research regarding their own trading activities; in responding to requests for information from customers, regulatory authorities or by process of law; and for other legitimate business purposes. The rule also states that the Exchange charges IBs the fees specified in its published Schedule of Fees and Assessments for the collection and retrieval of such information.[38]

Proposed Rule 7(c) lists the specific information regarding component orders and trades related to QCT Crosses that IBs are required to enter into the BBOS. Specifically, proposed Rule 7(c) provides that for all orders and trades described under amended Article 11, Rule 3(b)(27), IBs must record the following information into the BBOS, as applicable: (1) QCT Type; (2) Related Exchange; (3) Print Time; (4) Expiration Year; (5) Expiration Month; (6) Price; (7) Contracts; (8) Strike Price; (9) Call/Put; (10) Volume; and (11) Short Sale Indicator.

In addition, in order to contemplate the proposed IB responsibilities related to the QCT Crosses, the Exchange proposes to amend Article 17, Rule 3(a) to broaden its scope so as to provide that each IB must enter all orders it receives for execution and any other information as required under Article 11 into an automated system approved by the Exchange. Correspondingly, the Exchange proposes to amend the header to Article 17, Rule 3(a) to state ''Entry of orders and related information into an automated system.'' Given that amended Article 11, Rule 3(b)(27) may require the recording of information related to orders that the IB did not actually receive or otherwise handle, the Exchange believes that broadening the scope of Article 17, Rule 3(a) is necessary, as it currently only applies to orders received by the IB.

(6) Clarifying Amendments Related to IB Trading Accounts

Current Article 17, Rule 3(c) provides that each IB must maintain separate accounts for handling (1) agency transactions; (2) principal transactions; and (3) transactions involving errors, and must enter transactions into the appropriate accounts. The Exchange proposes to amend the rule to clarify that the required accounts relate to special recordkeeping accounts that must be maintained at CHX, which is necessary for the Exchange to adequately surveil and examine the relevant IB trading activity, as well as to provide additional detail as to the types of transactions that must be recorded in the respective accounts. Accordingly, amended Article 17, Rule 3(c) provides that each IB must establish and maintain separate CHX recordkeeping accounts at the Exchange for the sole purpose of recording the following activity: (1) An agency recordkeeping account for agency transactions; (2) a principal recordkeeping account for principal and riskless principal [39] transactions; and (3) an error recordkeeping account for transactions involving only Bona Fide Errors.[40] The rule also provides that an IB must record each above-mentioned transaction into the appropriate CHX recordkeeping account.

(7) Operative Date

In the event the proposed rule change is approved by the Commission, the proposed rule change shall be operative pursuant to notice by the Exchange to Participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,[41] and furthers the objectives of Section 6(b)(5)

things, that Participants comply with the recordkeeping requirements of Rule 17a–3 under the Act. For example, the proposed amendment to paragraph .03 would not impinge on a Participant's obligation pursuant to Article 11, Rule 2 and Rule 17a–3(a)(6)(i) under the Act to maintain a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted.

[34] *See supra* Section A.1(1).

[35] *See id.*

[36] The Exchange proposes to move the current language under current CHX Article 11, Rule 3(b)(27) to proposed CHX Article 11, Rule 3(b)(28). Correspondingly, the Exchange proposes to amend paragraph .06 of the Interpretations and Policies of CHX Article 11, Rule 3 to contemplate the addition of Rule 3(b)(28).

[37] The required information would be identical to the current data fields available in the BBOS. *See supra* note 18. As described below, the Exchange proposes to codify the required information under proposed Article 17, Rule 7(c).

[38] The Exchange does not propose to assess a fee for use of the BBOS in addition to the current fees related to costs incurred by the Exchange in creating any requested reports, which shall be rebilled to Participants at cost. *See* Section K of the Fee Schedule of CHX.

[39] *See* CHX Article 9, Rule 14.

[40] *See* CHX Article 1, Rule 1(ii).

[41] 15 U.S.C. 78f(b).

in particular,[42] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that permitting only IBs to submit QCT Crosses to the Matching System would protect investors and the public interest, as IBs have historically been the only Participants that have submitted QCT Crosses and, thus, have the necessary experience in ensuring that QCT Crosses are submitted to the Matching System in a manner consistent with CHX Rules and the QCT Exemption. Moreover, given that the Surveillance and Examination program as applied to QCTs is optimized with respect to the submission of QCT Crosses by IBs, the Exchange believes that the proposal would permit the Exchange to more effectively monitor the use of QCT Crosses by ensuring that all QCT activity on the Exchange is monitored via the same surveillance and examination protocols, which further the protection of investors and the public interest.

The Exchange also believes that permitting only IBs to submit QCT Crosses to the Matching System would not result in unfair discrimination among Participants. Initially, the Exchange notes that any Participant that has satisfied all Exchange requirements to operate as an IB may register as an IB,[43] which would, in effect, permit any Participant that meets Exchange requirements to submit QCT Crosses. Moreover, even if the proposal discriminates between IB and non-IB Participants, given the complexity of facilitating QCTs, the Exchange believes that the heightened recordkeeping requirements for QCTs are necessary and appropriate to ensure that QCTs are executed in a manner consistent with CHX Rules and the QCT Exemption. Since the Surveillance and Examination program as applied to QCTs is optimized with respect to the submission of QCT Crosses by IBs, the Exchange believes that the most effective way to surveil for compliance with CHX Rules and the QCT Exemption is to limit the submission of QCTs to IBs. The Exchange also believes that the proposal would eliminate the possibility of regulatory disparities that may result from the transmission of QCT-related information to the Exchange through different means and ensure consistent recordkeeping obligations among Participants that submit QCT Crosses. Thus, the Exchange submits that any discrimination between IB and non-IB Participants is justified.

In addition, the Exchange believes that the proposed IB recordkeeping requirements for component orders related to QCT Crosses executed within the Matching System and the requirement that such information be entered into the BBOS would protect investors and the public interest by requiring the entry of more detailed information, which will enhance the ability of the Exchange to monitor compliance by the IBs with CHX Rules and the QCT Exemption.

Also, the Exchange believes that the non-substantive amendments to the operation of the cross order type and Cross With Size handling under Article 1, Rule 2(a)(2), Article 1, Rule 2(g)(1) and Article 20, Rule 8(e); the recordkeeping requirements under Article 11, Rule 3; and the IB recordkeeping account requirements under Article 17, Rule 3(c), clarifies the scope and meaning of those rules, which furthers the objectives of Section 6(b)(1)[44] in that it further enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Participants and persons associated with its Participants, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change enhances the Exchange's Surveillance and Examination program as applied to QCTs and otherwise clarifies existing CHX Rules. Thus, the Exchange does not believe that the proposed rule change raises any competitive issues.

*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.

[42] 15 U.S.C. 78f(b)(5).

[43] *See* CHX Article 17, Rule 1.

[44] 15 U.S.C. 78f(b)(1).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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–CHX–2017–12 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–CHX–2017–12. 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–CHX–2017–12, and should be submitted on or before August 31, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–16829 Filed 8–9–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–81318; File No. SR–FINRA–2017–021]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Make Available a New TRACE Security Activity Report

August 4, 2017.

### I. Introduction

On June 19, 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 make available a new ''Security Activity Report.'' The proposed rule change was published for comment in the **Federal Register** on June 29, 2017.[3] The Commission received two comments on the proposal.[4] On August 3, 2017, FINRA submitted a letter responding to comments.[5] As discussed below, the Commission is 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. FINRA proposed to amend Rule 7730 to make available a new Security Activity Report, which will provide aggregated statistics by security for TRACE-Eligible Securities that are corporate or agency bonds (collectively ''CA Bonds''). FINRA stated that the Security Activity Report will include basic descriptive elements for each CA Bond, such as the issuer's name and the security's coupon and maturity date, as well as aggregate transaction statistics. These statistics will include par value volume and number of customer buy transactions, par value volume and number of customer sell transactions, and par value volume and number of inter-dealer transactions.[6] FINRA noted that, currently, transactions whose volume is over the dissemination cap [7] becomes available only after 18 months as part of the Historic TRACE Data product.[8] FINRA will provide the Security Activity Report on a 90-day delay to address potential confidentiality concerns.

The Security Activity Report also will provide information regarding the number of unique MPIDs that report transactions in a particular security. The report will provide the aggregate activity of the five most active MPIDs in each CA Bond and the number of unique MPIDs for disseminated uncapped and capped transactions.[9] In addition, the report will include the percentage, in aggregate, of the total number of transactions and the total par value volume traded by the top five MPIDs for each particular security.

FINRA believes that the Security Activity Report might be useful for both business and regulatory purposes. For example, FINRA noted that members might use the information provided in the Security Activity Report to better ascertain their relative trading activity in particular CA Bonds. Interested parties also could use the information in the Security Activity Report in connection with regulatory obligations, such as assessing, classifying, and reviewing the liquidity risk of individual securities pursuant to Rule 22e–4 under the Investment Company Act.[10]

FINRA has stated that it will announce in a *Regulatory Notice* the effective date of the proposed rule change, which will be no later than 365 days following Commission approval.[11] FINRA intends to establish a fee for the TRACE Security Activity Report in the future. The fee will be established pursuant to a separate rule filing.

### III. Summary of Comments and FINRA's Response

As previously noted, the Commission received two comment letters [12] and a FINRA Response Letter [13] on the proposed rule change. Both commenters expressed general support for the proposal and noted that the additional data provided by the Security Activity Report would assist in regulatory compliance with Rule 22e–4.[14] One commenter raised concerns about the implementation, calculation, and the format of the Security Activity Report.[15] This commenter noted that the delay period reduction for the Historic TRACE Data product from 18 months to six months had the potential to impact market participant behavior, and recommended delaying the implementation of the Security Activity

[45] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81007 (June 23, 2017), 82 FR 29602 (June 29, 2017) (''Notice'').

[4] *See* letters to Brent J. Fields, Secretary, Commission, from Bennett Golub, Chief Risk Officer, and Alexis Rosenblum, Director, BlackRock, Inc., dated July 20, 2017 (''BlackRock Letter''); and Sean Davy, Managing Director, Capital Markets Division, Securities Industry and Financial Markets Association (''SIFMA''), dated July 20, 2017 (''SIFMA Letter'').

[5] *See* letter to Brent J. Fields, Secretary Commission, from Racquel L. Russell, Associate General Counsel, FINRA, dated August 3, 2017 (''Response Letter'').

[6] The Security Activity Report will reflect differing levels of par value volume detail depending on whether the transaction size is larger than the dissemination cap and whether there are more than six transactions occurring in a calendar month. Additionally, if a CA Bond has more than six transactions in a month, the par value volume traded would appear on the report within specified size categories along with a range of the number of transactions that occur within the specified volume size categories. These size categories will be announced in the *Regulatory Notice* which announces the effective date of the Security Activity Report.

[7] Currently, the actual par value traded is publicly disseminated only if it is below the size cap in that asset class. For transactions in investment grade CA bonds over a $5 million par value, TRACE disseminates the size as ''5MM+.'' For transactions in non-investment grade corporate bonds over a $1 million par value, TRACE disseminates the size as ''1MM+.''

[8] The Commission notes that on June 23, 2017 it approved a proposed rule change to reduce the minimum delay from 18 months to six months for transactions included in the Historic TRACE Data Sets relating to CA Bonds. This approval occurred after the current proposed rule change was filed with the Commission. *See* Securities Exchange Act Release No. 81011 (June 23, 2017), 82 FR 29597 (June 29, 2017). The effective date of this change is October 2, 2017. *See also,* FINRA *Regulatory Notice* 17–23.

[9] FINRA stated that the number of unique reporting MPIDs will be provided by displaying either the actual number of unique MPIDs where there are six or more unique MPIDs or as ''1 to 5'' where there are five or fewer reporting MPIDs. Specific market participants that engaged in the transactions will not be identified in the Security Activity Report.

[10] 17 CFR 270.22e–4.

[11] In its Response Letter FINRA stated that it intends for the effective date for the Security Activity Report to be no sooner than February 1, 2018. *See* Response Letter at 2.

[12] *See supra* note 4.

[13] *See supra* note 5.

[14] *See* SIFMA Letter at 1; BlackRock Letter at 1.

[15] *See* SIFMA Letter at 2–3.

Report for at least six months from the effective date of the reduced delay period.[16] FINRA disagreed that an additional implementation delay related to the Historic TRACE Data product was necessary for the Security Activity Report. FINRA stated that proposed features of the Security Activity Report, such as the 90-day publication delay and other grouping of activity reduce information leakage risks and mitigate any potential impacts.[17] FINRA stated that it intends for the effective date of the Security Activity Report to be no sooner than February 1, 2018.[18]

This commenter also believed there would be confidentiality concerns if market concentration percentages were not aggregated across the top five MPIDs for each particular security.[19] In its Response Letter, FINRA clarified and reiterated that the activity of the top five MPIDs will be expressed in aggregate figures.[20]

Finally, this commenter stated that it would be beneficial for FINRA to publicly share a draft template of the Security Activity Report so that market participants could educate themselves on the format and contents of the report.[21] FINRA responded that it intends to post a file layout for the Security Activity Report on its Web site at least 30 days before the Security Activity Report's effective date.[22]

## IV. Discussion

After careful 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.[23] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[24] 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 does not believe that commenters raised any issue that would preclude approval of FINRA's proposal. The Commission notes that the Security Activity Report does not require member firms to provide FINRA with any additional data. The product is optional and responds to consumer demand for a more useful market data product. Finally, the Security Activity Report appears reasonably designed to promote transparency while minimizing the potential for information leakage.

## IV. Conclusion

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act[25] that the proposed rule change (SR–FINRA–2017–021) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–16831 Filed 8–9–17; 8:45 am]

**BILLING CODE 8011–01–P**

[16] *See id.* at 2.

[17] *See* Response Letter at 2.

[18] *See id.*

[19] *See* SIFMA Letter at 2.

[20] *See* Response Letter at 2.

[21] *See* SIFMA Letter at 2–3.

[22] *See* Response Letter at 2.

[23] 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).

[24] 15 U.S.C. 78o–3(b)(6).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice: 10081]**

### Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''The Metropolis in Latin America, 1830–1930'' Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''The Metropolis in Latin America, 1830–1930,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Getty Research Institute at the Getty Center, in Los Angeles, California, from on or about September 16, 2017, until on or about January 7, 2018; the Americas Society, in New York, New York, from on or about February 28, 2018, until on or about June 24, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the imported objects, contact Julie Simpson in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467) or email: *section2459@state.gov.* The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015). I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**Alyson Grunder,**

*Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2017–16853 Filed 8–9–17; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice: 10060]**

### 30-Day Notice of Proposed Information Collection: J–1 Visa Waiver Recommendation Application

**ACTION:** Notice of request for public comment.

**SUMMARY:** The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

**DATES:** The Department will accept comments from the public up to September 11, 2017.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests

for copies of the proposed collection instrument and supporting documents may be sent to *PRA_BurdenComments@state.gov.*

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* J–1 Visa Waiver Recommendation Application.
- *OMB Control Number:* 1405–0135.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Visa Office (CA/VO/L/R).
- *Form Number:* DS–3035.
- *Respondents:* J–1 visa holders applying for a waiver of the two-year foreign residence requirement.
- *Estimated Number of Respondents:* 7,628.
- *Estimated Number of Responses:* 7,628.
- *Average Time Per Response:* 1 hour.
- *Total Estimated Burden Time:* 7,628 annual hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

**Abstract of Proposed Collection**

Form DS–3035 is used to determine the eligibility of a J–1 visa holder for a waiver of the two-year foreign residence requirement.

**Methodology**

Applicants will complete the DS–3035 online at *travel.state.gov.* Applicant's information will be downloaded into a barcode, and then will be immediately issued a waiver case number and further instructions. Applicants must then print their online form with the barcode. After the form is completed and printed out, applicants must mail their waiver application and fee payment to: Department of State J–1, Waiver, P.O. Box 979037, St. Louis, MO 63197–9000.

**Karin King,**

*Acting Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.*

[FR Doc. 2017–16851 Filed 8–9–17; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2017–0039]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 89 individuals for an exemption from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) operating a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before September 11, 2017.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2017–0039 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 e.t., 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 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 89 individuals listed in this notice have requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3). 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 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.

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population.

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441). The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the three year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

## II. Qualifications of Applicants

*Jason W. Ackerson*

Mr. Ackerson, 41, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Ackerson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ackerson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Arizona.

*Harry R. Albright*

Mr. Albright, 24, has had ITDM since 1999. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Albright understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Albright meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Pennsylvania.

*Pablo Alduende*

Mr. Alduende, 59, has had ITDM since 2012. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Alduende understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Alduende meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from New Jersey.

*Abe C. Applewhite*

Mr. Applewhite, 37, has had ITDM since 2010. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Applewhite understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Applewhite meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

*William L. Bacon*

Mr. Bacon, 53, has had ITDM since 2013. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Bacon understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bacon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

*Eric M. Ballard*

Mr. Ballard, 29, has had ITDM since 2012. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Ballard understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ballard meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

*Thomas R. Bingham*

Mr. Bingham, 42, has had ITDM since 1988. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Bingham understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bingham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Montana.

*Harley E. Boone*

Mr. Boone, 44, has had ITDM since 2014. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Boone understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Boone meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Idaho.

*Raymond P. Boskat, Sr.*

Mr. Boskat, 63, has had ITDM since 2014. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Boskat understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Boskat meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from New York.

*Kevin M. Bruton, Jr.*

Mr. Bruton, 29, has had ITDM since 2001. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Bruton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bruton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

*Dylan J. Bryan*

Mr. Bryan, 24, has had ITDM since 2012. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Bryan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bryan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*Vincente Burciaga*

Mr. Burciaga, 52, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Burciaga understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Burciaga meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

*Roger E. Burkholder*

Mr. Burkholder, 62, has had ITDM since 2014. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Burkholder understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Burkholder meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*James M. Butcher*

Mr. Butcher, 54, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Butcher understands diabetes management and monitoring, has stable control of his diabetes using

insulin, and is able to drive a CMV safely. Mr. Butcher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

*Dino Chapman*

Mr. Chapman, 57, has had ITDM since 1990. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Chapman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Chapman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

*Glen C. Davis*

Mr. Davis, 46, has had ITDM since 1995. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Davis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Davis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Tennessee.

*Glenn W. Davis*

Mr. Davis, 57, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Davis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Davis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

*Jimmy D. Davis*

Mr. Davis, 75, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Davis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Davis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

*Michael J. Dunnuck*

Mr. Dunnuck, 48, has had ITDM since 1991. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Dunnuck understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dunnuck meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

*Billy R. Edge*

Mr. Edge, 61, has had ITDM since 2013. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Edge understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Edge meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Alabama.

*Craig Elgard*

Mr. Elgard, 66, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Elgard understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Elgard meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Jersey.

*Filiberto Espinoza*

Mr. Espinoza, 67, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Espinoza understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Espinoza meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

*Julieanne Estes*

Ms. Estes, 41, has had ITDM since 1983. Her endocrinologist examined her in 2017 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without

warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. Her endocrinologist certifies that Ms. Estes understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Estes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2017 and certified that she has stable nonproliferative diabetic retinopathy. She holds an operator's license from New Hampshire.

*Burl W. Fant*

Mr. Fant, 55, has had ITDM since 2014. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Fant understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fant meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

*Grant E. Featherly*

Mr. Featherly, 54, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Featherly understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Featherly meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

*Ross G. Fogg, Jr.*

Mr. Fogg, 54, has had ITDM since 2005. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Fogg understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fogg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

*Damon M. Free*

Mr. Free, 49, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Free understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Free meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

*Raymond J. Freeman*

Mr. Freeman, 62, has had ITDM since 2009. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Freeman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Freeman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Texas.

*Bruce A. Freiermuth*

Mr. Freiermuth, 66, has had ITDM since 2014. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Freiermuth understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Freiermuth meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Alvin Frith*

Mr. Frith, 70, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Frith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Frith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Eric T. George*

Mr. George, 41, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. George understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. George meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

*Edward R. Gitz*

Mr. Gitz, 63, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Gitz understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gitz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*William E. Glaster*

Mr. Glaster, 63, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Glaster understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Glaster meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Mexico.

*Gregory C. Habel*

Mr. Habel, 54, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Habel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Habel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

*Kevin O. Hansen*

Mr. Hansen, 62, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Hansen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hansen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

*Richard A. Hanson*

Mr. Hanson, 62, has had ITDM since 2013. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Hanson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hanson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

*John J. Hoeke*

Mr. Hoeke, 59, has had ITDM since 2012. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Hoeke understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hoeke meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

*Howard R. Hudson*

Mr. Hudson, 60, has had ITDM since 2014. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Hudson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hudson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*Michael T. Ilk*

Mr. Ilk, 47, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Ilk understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ilk meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

*Ronald A. Jessop*

Mr. Jessop, 69, has had ITDM since 2006. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Jessop understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Jessop meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Rhode Island.

*Patrick A. Kelly*

Mr. Kelly, 30, has had ITDM since 2001. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Kelly understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kelly meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Carolina.

*Vera M. Kipper*

Ms. Kipper, 60, has had ITDM since 2011. Her endocrinologist examined her in 2017 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. Her endocrinologist certifies that Ms. Kipper understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Kipper meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2016 and certified that she does not have diabetic retinopathy. She holds an operator's license from Missouri.

*William A. Kitchens*

Mr. Kitchens, 51, has had ITDM since 2013. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Kitchens understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kitchens meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Georgia.

*Jerry R. Knight*

Mr. Knight, 56, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Knight understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Knight meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Wyoming.

*Dick R. Kobayashi, Jr.*

Mr. Kobayashi, 42, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Kobayashi understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kobayashi meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Oregon.

*Roger P. Kukowski*

Mr. Kukowski, 56, has had ITDM since 2004. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Kukowski understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kukowski meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

*Robert E. Lay*

Mr. Lay, 70, has had ITDM since 1998. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Lay understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lay meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Washington.

*Gregory N. Lorenzi*

Mr. Lorenzi, 57, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Lorenzi understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lorenzi meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

*Jake P. Mahoney*

Mr. Mahoney, 26, has had ITDM since 2008. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the

assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Mahoney understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mahoney meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

*Ignatius Martin*

Mr. Martin, 59, has had ITDM since 1997. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Martin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Martin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Jersey.

*Ricky L. McCloskey*

Mr. McCloskey, 58, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. McCloskey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McCloskey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

*Carroll L. McCraw*

Mr. McCraw, 70, has had ITDM since 2012. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. McCraw understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McCraw meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from North Carolina.

*Micah L. McDowell*

Mr. McDowell, 55, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. McDowell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McDowell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

*Lonnell K. McKee*

Mr. McKee, 44, has had ITDM since 2000. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. McKee understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McKee meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Missouri.

*Kevin M. McKenna*

Mr. McKenna, 35, has had ITDM since 2008. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. McKenna understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McKenna meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Massachusetts.

*Timothy S. Miller*

Mr. Miller, 59, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Miller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*Sammy Mouzone, Jr.*

Mr. Mouzone, 57, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Mouzone understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Mouzone meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Michigan.

*Timothy J. Mulvihill*

Mr. Mulvihill, 54, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Mulvihill understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mulvihill meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

*Gregory J. Nixon*

Mr. Nixon, 61, has had ITDM since 2005. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Nixon understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nixon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

*Anthony N. Njoroge*

Mr. Njoroge, 40, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Njoroge understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Njoroge meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

*Robert N. Oakliff*

Mr. Oakliff, 66, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Oakliff understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Oakliff meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Connecticut.

*Radame Perez*

Mr. Perez, 64, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Perez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Perez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

*Gordon M. Peterson*

Mr. Peterson, 61, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Peterson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Peterson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from Iowa.

*Larry R. Predmore*

Mr. Predmore, 63, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Predmore understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Predmore meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Eric E. Ray*

Mr. Ray, 42, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Ray understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ray meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Rhode Island.

*Angelo A. Reynoso*

Mr. Reynoso, 52, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in

the last five years. His endocrinologist certifies that Mr. Reynoso understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reynoso meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Jersey.

*Donald V. Rhoten, Jr.*

Mr. Rhoten, 59, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Rhoten understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rhoten meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Maryland.

*William Rosado*

Mr. Rosado, 39, has had ITDM since 1987. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Rosado understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rosado meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative and stable proliferative diabetic retinopathy. He holds a Class B CDL from New York.

*Ryan M. Rosane*

Mr. Rosane, 34, has had ITDM since 2001. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Rosane understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rosane meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Nebraska.

*Solomon Rosenberg*

Mr. Rosenberg, 33, has had ITDM since 1987. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Rosenberg understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rosenberg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

*James M. Roth*

Mr. Roth, 49, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Roth understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Roth meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Indiana.

*Robert J. Schlachter*

Mr. Schlachter, 44, has had ITDM since 1999. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Schlachter understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schlachter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

*D.S. Schneeberger*

Mr. Schneeberger, 29, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Schneeberger understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schneeberger meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

*Robert F. Seiple*

Mr. Seiple, 57, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Seiple understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Seiple meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy.

He holds a Class A CDL from Pennsylvania.

*David M. Sheeran*

Mr. Sheeran, 61, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Sheeran understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sheeran meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

*John F. Smith*

Mr. Smith, 53, has had ITDM since 2009. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Rhode Island.

*Mark E. Smith*

Mr. Smith, 55, has had ITDM since 2007. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

*Harley T. Steck*

Mr. Steck, 64, has had ITDM since 2011. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Steck understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Steck meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Missouri.

*Ross M. Stirling*

Mr. Stirling, 51, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Stirling understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stirling meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Nevada.

*Dennis W. Thompson*

Mr. Thompson, 49, has had ITDM since 2014. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Thompson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thompson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Wisconsin.

*Jose F. Toledo*

Mr. Toledo, 64, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Toledo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Toledo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oregon.

*Wayne A. Toms, Sr.*

Mr. Toms, 67, has had ITDM since 2015. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Toms understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Toms meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Gregory D. Vang*

Mr. Vang, 52, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Vang understands diabetes management and monitoring,

has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vang meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

*Charles H. Wainright*

Mr. Wainright, 49, has had ITDM since 1997. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Wainright understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wainright meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Carolina.

*Wayne G. Warren, Jr.*

Mr. Warren, 35, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Warren understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Warren meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*John G. Weinhofer*

Mr. Weinhofer, 59, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Weinhofer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Weinhofer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Grant E. Whetzel*

Mr. Whetzel, 73, has had ITDM since 2009. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Whetzel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Whetzel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

*Roger W. Yellow Boy*

Mr. Yellow Boy, 47, has had ITDM since 2017. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Yellow Boy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Yellow Boy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

*Richard L. Zelesket*

Mr. Zelesket, 60, has had ITDM since 2016. His endocrinologist examined him in 2017 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the last five years. His endocrinologist certifies that Mr. Zelesket understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Zelesket meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2017 and certified that he does not have diabetic retinopathy. He holds a Class E CDL from Michigan.

## 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 date's 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–2017–0039 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at 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–2017–0039 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: August 3, 2017.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2017–16868 Filed 8–9–17; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2009–0322; FMCSA–2010–0051; FMCSA–2012–0042; FMCSA–2012–0043; FMCSA–2014–0012; FMCSA–2014–0013; FMCSA–2014–0014; FMCSA–2014–0015]**

### 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 149 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 were applicable 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 May 26, 2017, FMCSA published a notice announcing its decision to renew exemptions for 149 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 24434). The public comment period ended on June 26, 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 149 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 May 8, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315,

David G. Stookey (WA) has satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (79 FR 10612; 79 FR 27685).

This driver was included in docket No. FMCSA–2014–0012. The exemption is effective as of May 8, 2016, and will expire on May 8, 2018.

As of May 11, 2016, 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 (77 FR 17111; 77 FR 27841):

John G. Hager, Jr. (NJ)
Charles C. Karver (MN)
Benjamin Kimbrough (KS)
Jeffery J. Lawrie (OH)
Raymond Pittman, Jr. (IL)
Daniel J. Russell (OH)
Donald L. Russell, Jr. (MD)
Robert J. Smith (PA)
Robert J. Socha (NE)
Thomas C. Torbett (MO)

The drivers were included in docket No. FMCSA–2012–0042. Their exemptions are effective as of May 11, 2016, and will expire on May 11, 2018.

As of May 14, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 26 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (79 FR 2785; 79 FR 10612):

Aaron C. Bogle (OH)
Todd L. Brandt (IL)
Dean G. Brekhus (ND)
Angie M. Carrington (IL)
David A. Cavan (MA)
David A. Charles (OH)
James A. Davis (IL)
Samuel J. Desmond (RI)
Mark C. Durler (KS)
John F. Fedorchak, Jr. (PA)
Derek W. Frazier (IA)
Michael G. Haugen (WI)
Timothy S. Hinkhouse (NE)
Gregg W. Isherwood (ME)
James A. Lagunas (AZ)
Douglas R. Lane (NY)
Jonathon W. Luebke (WI)
Brion T. Maguire (PA)
Jacob R. Martin (MO)
John C. May (NE)
Daryl J. Millard (WA)
Slobodan Pavlovich (WA)
Darryl W. Peppers (IN)
Bradley S. Pletcher (PA)
Hank D. Rose, Jr. (NC)
Joshua R. Wiery (OH)

The drivers were included in docket No. FMCSA–2014–0012. Their exemptions are effective as of May 14, 2016, and will expire on May 14, 2018.

As of May 16, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 29 individuals have satisfied the renewal conditions for

obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (79 FR 14579; 79 FR 28590):

Schylor M. Altenhofen (IA)
Don R. Anderson III (IN)
Thomas A. Barnes (MI)
Alvin L. Carpenter (MT)
Richard J. D'Ambrosia (NY)
Jefferey F. Deane (MA)
Keith M. Dickerson (WI)
Carl A. Federighi (CA)
Bradley J. Frazier (IL)
Carl R. Gentry (WA)
Robert M. Hutchison (NY)
Craig A. Keese, Jr. (NY)
Amos L. Lapp (PA)
Edward J. Lulay (IL)
Donald S. Middleton (MO)
Alva D. Moffatt (WA)
John M. Muske (MN)
Stephen R. Newlin (IL)
Antonio Pepiciello (NY)
David R. Petitt (WA)
James K. Popp (MN)
Dustin P. Russell (PA)
Sean L. Shidell (WI)
Randall L. Shultz (MO)
Kenneth R. Soult (OH)
Chad B. Spidell (PA)
Cameron M. Sprinkle (IN)
Douglas E. Stewart (MS)
Thomas L. Williams (MN)

The drivers were included in docket No. FMCSA–2014–0013. Their exemptions are effective as of May 16, 2016, and will expire on May 16, 2018.

As of May 17, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 30 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (75 FR 13647; 75 FR 27616; 77 FR 18302; 77 FR 29446):

Mark S. Boettcher (MN)
Steven C. Boudreau (MA)
Roy L. Brokaw (WI)
Chris D. Chambers (LA)
Charles A. Cinert, Sr. (IL)
Dale J. Cleaver (PA)
James H. Collins (FL)
Bert R. Duncan II (UT)
Lance L. Fuller (MN)
Johnny Gardner, Jr. (SC)
Mark D. Golden (MI)
Nathaniel W. Gorham (IN)
DeVere E. Hansen (UT)
Grant C. Huftalin (IA)
Steven M. Janczak (WI)
Sheldon R. Koehn (KS)
Jason R. Kropp (OK)
James W. McClintock, III (AR)
Adolfo Moreno, Jr. (WA)
John W. Morrison (CA)
Bruce V. Oppegard (MN)
Steven G. Petersen (MN)
Damian J. Porter (NY)
David L. Rice (ME)
Wayne F. Richards (PA)
Gary G. Sironen (MT)
Rodney L. Stoltenberg (IA)
Wade D. Street (MT)
Charles M. Sweat (VA)
Stanley C. Tarvidas (IL)

The drivers were included in one of the following docket Nos: FMCSA–2009–0322; FMCSA–2012–0043. Their exemptions are effective as of May 17, 2016, and will expire on May 17, 2018.

As of May 21, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 52 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (75 FR 14652; 75 FR 28684; 79 FR 18400; 79 FR 29262):

Douglas L. Atkins (GA)
Bradley E. Bradshaw (NC)
Phillip W. Bulen (ID)
Robert L. Buol (IA)
Carlos V. Candelaria (NM)
Suellen M. Civiello (ME)
Michael T. Clements (WI)
Daniel G. Conery (NJ)
John A. Conness (MO)
James R. Crawford (WA)
Alan Curtis (UT)
David P. Dengate (PA)
Alan D. Ekberg (NE)
Richard A. Flieth (ND)
Neil G. Ford (PA)
Alden J. Haskins, Sr. (MD)
James Herrada (NE)
Gary W. Hochstein (MN)
Harold D. Hoggard II (PA)
Terry L. Horn (NC)
Wayne L. Hurley (MD)
Gerald A. Johnson (WI)
Frank J. Katzbeck (IL)
Frank T. Katzele (WI)
Cory M. Kobernick (KY)
Thomas G. Lamberton (WA)
Lee H. Lewis (PA)
James K. Libke (IN)
Gordon E. Lindley (WY)
Edwin J. Ludwig (OH)
Edwin H. Maranville (OR)
Joseph R. Marcelewski (OH)
Douglas J. Murray (NY)
David R. Norton (OH)
Eugene P. OQuendo (MA)
Curtis J. Pitt (OR)
Larry J. Reese (PA)
William O. Ruiz III (AZ)
James P. Rushing, Jr. (VA)
Harold D. Russman (SD)
Hector M. Sanchez (NM)
Scott W. Shindledecker (IN)
Shirliann F. Skroch (NV)
Ross L. Smith, Sr. (NJ)
Thomas G. Sosnoski (FL)
Christopher Starghill (DC)
Richard L. Stark (OH)
Philip E. Stegeman (ID)
Kevin L. Upmann (IL)
Brandon L. Weaver (PA)
Matthew G. Williams (KY)
Michael B. Wilson (OH)

The drivers were included in one of the following docket Nos: FMCSA–2010–0051; FMCSA–2014–0014. Their exemptions are effective as of May 21, 2016, and will expire on May 21, 2018.

As of May 23, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, Derald E. Moenning (NE) has satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (79 FR 22573; 79 FR 35855).

This driver was included in docket No. FMCSA–2014–0015. The exemption is effective as of May 23, 2016, and will expire on May 23, 2018.

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: August 4, 2017.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2017–16855 Filed 8–9–17; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2017–0017]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 36 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in

one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

**DATES:** The exemptions were granted June 6, 2017. The exemptions expire on June 6, 2019.

**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 W64–113, 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. 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 *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

## II. Background

On May 4, 2017, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (82 FR 20962). That notice listed 36 applicants' case histories. The 36 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption 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. Accordingly, FMCSA has evaluated the 36 applications on their merits and made a determination to grant exemptions to each of them.

## III. Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 36 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including age-related macular degeneration, amblyopia, central vision loss, chorioretinal scarring, choroidal neovascular membrane, coats disease, complete loss of vision, degenerated globe, enucleation, exotropia, glaucoma, macular scar, optic atrophy, optic nerve damage, prosthetic eye, retinal detachment, and scarring. In most cases, their eye conditions were not recently developed. Twenty-four of the applicants were either born with their vision impairments or have had them since childhood.

The 12 individuals that sustained their vision conditions as adults have had it for a range of 4 to 36 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 36 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision in careers ranging for 3 to 50 years. In the past three years, one driver was involved in a crash and three drivers were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the May 4, 2017 notice (82 FR 20962).

## IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is

better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

Applying principles from these studies to the past three year record of the 36 applicants, one driver was involved in a crash and three drivers were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least three years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the two year period allowed by 49 U.S.C. 31136(e) and 31315 to the 36 applicants listed in the notice of May 4, 2017 (82 FR 20962).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 36 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

## V. Discussion of Comments

FMCSA received one comment that is outside the scope of this proceeding and will not be addressed in this notice. This one comment was from Mr. Reginald Jackson asking ''why does any moving violations have to stay on a CDL Driver record for three years if no one was injured or lost there [sic] life or the CDL Driver did not receive a citation for careless or reckless driving?'' He also asked ''If the citation must [be] on the drivers record why it cannot [sic] be for one year for a speeding ticket and not three years? [sic]'' Mr. Jackson suggested ''changing the law and shorting the time down to 1 year? [sic] '' He also suggested ''the driver can pay [a] 300 dollar fine and not have anything be paced on his or her mvr [sic] record.''

## IV. Conclusion

Based upon its evaluation of the 36 exemption applications, FMCSA exempts the following drivers from the vision requirement in 49 CFR 391.41(b)(10):

David A. Buchanan (SC)
Brian E. Burrows (TX)
Esta Cadet (FL)
Gary G. Colby (UT)
Herman A. Davis (AL)
Brandon G. Dills (NC)
Jeremy L. Fricke (ND)
Scott J. Geritano (NC)
Jonathen M. Gilligan (NY)
Jeffrey J. Graham (MI)
Dustin L. Hawkins (MO)
Michael S. Higham (IL)
Travis R. Honzel (CA)
Lloyd M. Hoover (PA)
Roy W. Houser, II (NC)
Maurice R. Jones, Jr. (MD)
Robert B. Jordahl (ND)
Damian Klyza (NJ)
John J. Lackey (CA)
Zachary J. McCluskey (PA)
Adam Merges (MN)
Jimmy L. Metcalf (NC)
John R. Miller (PA)
David G. Neff (KY)
Matthew J. Neufer (PA)
Vincent R. Neville (MN)
Willie L. Nez, Jr. (UT)
Kevin B. Patterson (GA)
Stuart W. Penner (KS)
Brock E. Peterson (ND)
Efren J. Soliz (NM)
Anthony J.M. Thornburg (MI)
Eric J. Wickman (MI)
Don S. Williams (AL)
Garfield M. Williams (TX)
James J. Wyles (NC)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with

the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the two year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: August 4, 2017.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2017–16857 Filed 8–9–17; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[FMCSA Docket No. FMCSA–2017–0035]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 42 individuals from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these individuals with ITDM to operate CMVs in interstate commerce.

**DATES:** The exemptions were applicable on July 7, 2017. The exemptions expire on July 7, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

#### I. 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 June 6, 2017, FMCSA published a notice announcing receipt of applications from 42 individuals requesting an exemption from diabetes requirement in 49 CFR 391.41(b)(3) and requested comments from the public (82 FR 26211). The public comment period ended on July 6, 2017, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals 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 proceeding.

#### IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

The Agency's decision regarding these exemption applications is based on the program eligibility criteria and an individualized assessment of information submitted by each applicant.

These 42 applicants have had ITDM over a range of 1 to 25 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the past five years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the June 6, 2017, **Federal Register** notice (82 FR 26211) and will not be repeated in this notice.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

#### V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) each driver must report within two business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) each driver must provide a copy of the ophthalmologist's or optometrist's report to the Medical Examiner at the time of the annual medical examination; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keeping a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

#### VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this

exemption with respect to a person operating under the exemption.

## VII. Conclusion

Based upon its evaluation of the 42 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above:

Shayne T. Anthony (MD)
Steven S. Arrowood (MS)
Melyssia V. Auwerda (CO)
Jerome Barfield (GA)
Grover C. Binkley (TN)
Vincent Bongiovanni (MA)
Robert H. Branyon (SC)
Gary L. Brown (IN)
Douglas R. Carr (CA)
Gary F. Cartwright (WI)
Jeffrey R. Cline (OH)
Cheryl L. Coffman (IN)
Jay B. Cole (TX)
Nicholas B. Cooksey (CA)
Michael Csaplik (IA)
Karl J. Dence (NY)
James R. Diem (PA)
Mark W. Eaves (NY)
Franklin J. Economy (PA)
Ervin L. Elfman, Jr. (KS)
Oliver L. Grigsby (VA)
Jason Hargrove (NC)
Kevin J. Hart (NY)
Thomas R. Holland (MD)
Martin J. Jones (MA)
Robert A. Kurley (PA)
Robert I. Leach (VA)
Mark A. Long (PA)
Micheal D. Lucas (OH)
Dagmar L. Osoria Castaneda (CA)
Roxanne Pierce (ND)
Garry B. Reynolds, Jr. (MI)
Jason R. Roberts (KY)
Ronald H. Shepherd (OH)
Randall D. Shiflett (WV)
Teddy D. Smith (OK)
Jonathan D. Snudden, Jr. (MO)
Maleika A. Swain-Ogilvie (PA)
Ashley D. Waite (VT)
Delbert A. Walker (PA)
Terry L. Watkins (WV)
Timothy Zulla (FL)

In accordance with 49 U.S.C. 31136(e) and 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(e) and 31315.

Issued on: August 4, 2017.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2017–16858 Filed 8–9–17; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[FMCSA Docket No. FMCSA–2017–0033]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 41 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

**DATES:** The exemptions were effective on May 23, 2017. The exemptions expire on May 23, 2019.

**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 W64–113, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

**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 *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

## II. Background

On April 21, 2017, FMCSA published a notice of receipt of Federal diabetes exemption applications from 41 individuals and requested comments from the public (82 FR 18812). The public comment period closed on May 22, 2017, and no comments were received.

FMCSA has evaluated the eligibility of the 41 applicants and determined that granting the exemptions to these individuals 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).

*Diabetes Mellitus and Driving Experience of the Applicants*

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 41 applicants have had ITDM over a range of 1 to 28 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the April 21, 2017, **Federal Register** notice and they will not be repeated in this notice.

**III. Discussion of Comments**

FMCSA received no comments in this proceeding.

**IV. Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

**V. Conditions and Requirements**

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**VI. Conclusion**

Based upon its evaluation of the 41 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(3):

Darryl Bates (IL)
Jacob S. Beach (PA)
Ralph N. Bonnema, Jr. (OH)
Robert L. Brooks (MS)
Broderick J. Burgess (KS)
Jerry L. Carter (IL)
Robert D. Clayton (NV)
Christopher M. Cleland (AL)
Frank L. Creswell, III (TX)
Brian L. Dinger (IA)
Michael E. Fobian (NJ)
Cecil J. Garmon (TN)
Terrance M. Golden (MN)
Arthur V. Hansard (GA)
Delbert L. Harris (MS)
Jon C. Jones (ID)
Rodney W. Kirkland (WA)
David P. Laselle (AK)
Jared L. Lischka (TX)
Mark V. Longo (OH)
Keith A. Mattix (UT)
Ryan J. McClurg (NY)
Michael A. McLaughlin (NJ)
Charles D. Paschall (KY)
Alan Poller (NJ)
George E. Powell (NM)
Kyle B. Rindels (MN)
Larry J. Sobolik (OK)
Kevin J. Story (MD)
Zachary A. Stovall (TX)
Joseph Summers (TX)
Robert J. Tate (VA)
Anthony Terrill (MO)
Danny A. Thomas (PA)
Randy D. Tyson (PA)
Roy T. Varner (PA)
Danny G. Washington (MS)
Clinton M. Westbrook (IL)
Matthew R. Whitney (NE)
Gary W. Wright (VA)
Joseph D. Zimmer (IL)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years 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 before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: August 4, 2017.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2017–16856 Filed 8–9–17; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2017–0022]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 22 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

**DATES:** Comments must be received on or before September 11, 2017.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2017–0022 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 of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are 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 22 individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b) (10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person:

> Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

In July 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (Qualification of Drivers; Vision Waivers, 57 FR 31458, July 16, 1992). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of 49 CFR 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

## II. Qualifications of Applicants

*Eddie S. Bennett*

Mr. Bennett, 58, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2017, his ophthalmologist stated, ''In my medical opinion, Mr. Bennett has sufficient vision to operate a commercial vehicle.'' Mr. Bennett reported that he has driven straight trucks for 29 years, accumulating 348,000 miles. He holds a Class CA CDL from Michigan. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Ray M. Bliss*

Mr. Bliss, 56, has a prosthetic left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2017, his optometrist stated, ''It is my medical opinion that Ray has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Bliss reported that he has driven straight trucks for 34 years, accumulating 442,000 miles. He holds a Class B CDL from Minnesota. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Gary S. Boryk*

Mr. Boryk, 61, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''. . . Mr. Boryk meets the visual requirements for operating a commercial vehicle . . .'' Mr. Boryk reported that he has driven buses for 16 years,

accumulating 960,000 miles. He holds a Class BM CDL from Virginia. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Jonathan E. Burt*

Mr. Burt, 29, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/150, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''Jonathan has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Burt reported that he has driven straight trucks for three years, accumulating 30,000 miles, and tractor-trailer combinations for seven years, accumulating 525,000 miles. He holds a Class A CDL from Vermont. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*David A. Cooper*

Mr. Cooper, 50, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/15, and in his left eye, 20/70. Following an examination in 2017, his optometrist stated, ''The patient, David Cooper, has sufficient vision to operate a commercial vehicle.'' Mr. Cooper reported that he has driven straight trucks for 11 years, accumulating 6,600 miles. He holds an operator's license from West Virginia. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Nicholas M. Deschepper*

Mr. Deschepper, 31, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2017, his optometrist stated, ''My understanding of a CDL license is that it requires 20/30 visual acuity or better of at least one eye with normal color vision and peripheral vision. It is my opinion that Nick passes all of these requirements and is safe to operate with a CDL license.'' Mr. Deschepper reported that he has driven tractor-trailer combinations for eight years, accumulating 720,000 miles. He holds a Class A3 CDL from South Dakota. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Frank J. Devitz*

Mr. Devitz, 34, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''In my opinion, Mr. Devitz has sufficient vision to perform the driving tasks required to operate a commercial vehicle, especially since he has been doing so for so many years.'' Mr. Devitz reported that he has driven tractor-trailer combinations for 12 years, accumulating 780,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*John F. Ferguson, Jr.*

Mr. Ferguson, 55, has a scotoma in his right eye due to a traumatic incident during birth. The visual acuity in his right eye is 20/300, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''In my opinion, John has a sufficient visual acuity and visual field to operate a commercial vehicle.'' Mr. Ferguson reported that he has driven straight trucks for five years, accumulating 390,000 miles. He holds a Class B CDL from Pennsylvania. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Dominick P. Fittipaldi*

Mr. Fittipaldi, 37, has complete loss of vision in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2017, his ophthalmologist stated, ''In my medical opinion, Mr. Fittipaldi has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Fittipaldi reported that he has driven straight trucks for 21 years, accumulating 210,000 miles. He holds an operator's license from Pennsylvania. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Alvin H. Horgdal*

Mr. Horgdal, 68, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/400, and in his left eye, 20/30. Following an examination in 2017, his optometrist stated, ''. . . I feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Horgdal reported that he has driven straight trucks for 26 years, accumulating 1.5 million miles. He holds a Class B CDL from Iowa. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Louis R. LeMonds, Jr.*

Mr. LeMonds, 53, has a phthisis bulbi in his right eye due to a traumatic incident in 2008. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2017, his ophthalmologist stated, ''My medical opinion is that he has sufficient vision to operate a commercial vehicle without difficulty.'' Mr. LeMonds reported that he has driven tractor-trailer combinations for 34 years, accumulating two million miles. He holds a Class A CDL from Washington. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Jonathan Marin*

Mr. Marin, 26, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''Mr. Marin's left eye has sufficient visual acuity, color vision and visual field as required for commercial driving.'' Mr. Marin reported that he has driven straight trucks for three years, accumulating 1,500 miles. He holds an operator's license from New Jersey. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Mark E. McNaughton*

Mr. McNaughton, 53, has had complete loss of vision in his right eye since childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2017, his ophthalmologist stated, ''He has no deficiencies in color vision, and I feel he has sufficient vision to perform driving tasks required for a commercial vehicle.'' Mr. McNaughton reported that he has driven straight trucks for 30 years, accumulating 900,000 miles. He holds a Class B CDL from Iowa. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Louis Neofotistos*

Mr. Neofotistos, 55, has a macular scar in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is counting fingers, and in his left eye, 20/25. Following an examination in 2017, his optometrist stated, ''In my medical opinion, Louis has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Neofotistos reported that he has driven straight trucks for 38 years, accumulating 45,600 miles. He holds a Class BM CDL from

Massachusetts. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Josue M. Rodriguez-Espinoza*

Mr. Rodriguez-Espinoza, 25, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2017, his ophthalmologist stated, ''I feel that Mr. Rodriguez would have no problems performing the tasks required to appropriately operate a commercial vehicle despite the poor vision in his right eye.'' Mr. Rodriguez-Espinoza reported that he has driven straight trucks for eight years, accumulating 80,000 miles. He holds an operator's license from California. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*James R. Rupert*

Mr. Rupert, 54, has had a central retinal vein occlusion in his right eye since 2012. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2017, his ophthalmologist stated, ''In my medical opinion James has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Rupert reported that he has driven straight trucks for 37 years, accumulating 1.33 million miles, and tractor-trailer combinations for 35 years, accumulating 175,000 miles. He holds an operator's license from California. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Christopher J. Schmidt*

Mr. Schmidt, 31, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2017, his ophthalmologist stated, ''In my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Schmidt reported that he has driven straight trucks for four years, accumulating 25,000 miles, and tractor-trailer combinations for four years, accumulating 25,000 miles. He holds a Class ABCD CDL from Wisconsin. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Brandon L. Siebe*

Mr. Siebe, 45, has complete loss of vision in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/15. Following an examination in 2016, his optometrist stated, ''He has a nearsighted left eye that corrects to 20/15, and he has sufficient vision to perform the driving test required to operate a commercial vehicle.'' Mr. Siebe reported that he has driven straight trucks for 19 years, accumulating 285,000 miles. He holds an operator's license from Kentucky. His driving record for the last three years shows one crash and no convictions for moving violations in a CMV.

*Greg C. Stilson*

Mr. Stilson, 54, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/70, and in his left eye, 20/20. Following an examination in 2017, his optometrist stated, ''He is also able to recognize color and in my opinion is safe to operate a commercial vehicle over interstate lines. Even though he is amblyopic OD his peripheral awareness is normal on his right side.'' Mr. Stilson reported that he has driven straight trucks for five years, accumulating 125,000 miles, and tractor-trailer combinations for 32 years, accumulating four million miles. He holds a Class AM CDL from Wyoming. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Paul M. Wooton*

Mr. Wooton, 39, has a macular scar in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2017, his ophthalmologist stated, ''In my opinion, this individual has sufficient vision to perform the driving tasks required to operate commercial vehicles.'' Mr. Wooton reported that he has driven straight trucks for six years, accumulating 270,000 miles, and tractor-trailer combinations for four years, accumulating 420,000 miles. He holds a Class DA CDL from Kentucky. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Willie C. Young*

Mr. Young, 58, has fibrosis in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2017, his optometrist stated, ''It is my opinion that Mr. Willie Young has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Young reported that he has driven tractor-trailer combinations for 17 years, accumulating 1.19 million miles. He holds a Class A CDL from Texas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

*Eloy Zuniga*

Mr. Zuniga, 41, has retinal scarring in his left eye due to a traumatic incident in 1994. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2016, his optometrist stated, ''In my opinion Mr. Zuniga has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Zuniga reported that he has driven tractor-trailer combinations for seven years, accumulating 350,000 miles. He holds a Class A CDL from Texas. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

## 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 and material 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–2017–0022 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the

facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and materials received during the comment period. FMCSA may issue a final determination at 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–2017–0022 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: August 3, 2017.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2017–16861 Filed 8–9–17; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2017–0138]**

### Agency Information Collection Activities: Extension of an Approved Information Collection Request; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval, and invites public comment. FMCSA requests approval to extend an existing ICR titled, ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.'' This ICR allows for ongoing, collaborative and actionable communication between FMCSA and its customers and stakeholders. It also allows feedback to contribute directly to the improvement of program management. The purpose of this notice is to allow 60 days for public comment before FMCSA submits its request to OMB.

**DATES:** We must receive your comments on or before October 10, 2017.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2017–0138 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. 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.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

*Privacy Act:* Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *https://www.gpo.gov/fdsys/pkg/FR-2008-01-17/pdf/E8-785.pdf.*

*Public Participation:* The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard if you submitted your comments by mail or hand delivery, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Mr. Martin Walker, Division Chief, FMCSA, Office of Research. Telephone (202) 385–2364; or email *martin.walker@dot.gov.* Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Mail Stop W63–432, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

*Background:* Executive Order 12862, ''Setting Customer Service Standards,'' directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector (58 FR 48257, Sept. 11, 1993). In order to work continuously to ensure that our programs are effective and meet our customers' needs, FMCSA seeks to extend OMB approval of a generic clearance to collect qualitative feedback from our customers on our service delivery. The surveys covered in this generic clearance provide a way for FMCSA to collect this data directly from our customers.

The proposed future information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient and satisfying experience with FMCSA's programs.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;

• The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;

• The collections are non-controversial and do not raise issues of concern to other Federal agencies;

• Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;

• Personally identifiable information (PII) is collected only to the extent necessary and is not retained;

• Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;

• Information gathered will not be used for the purpose of substantially informing influential policy decisions; and

• Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

*Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*OMB Control Number:* 2126–0049.

*Type of Request:* Extension of a currently-approved information collection.

*Respondents:* State and local agencies, the general public and stakeholders, original equipment manufacturers and suppliers to the commercial motor vehicle (CMV) industry, fleets, owner-operators, state CMV safety agencies, research organizations and contractors, news organizations, safety advocacy groups, and other Federal agencies.

*Estimated Number of Respondents:* 9,270.

*Estimated Time per Response:* Range from 5–30 minutes.

*Expiration Date:* March 31, 2018.

*Frequency of Response:* Generally, on an annual basis.

*Estimated Total Annual Burden:* 2,233.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87 on: August 2, 2017.

**G. Kelly Regal,**

*Associate Administrator, Office of Research and Information Technology.*

[FR Doc. 2017–16873 Filed 8–9–17; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Reports, Forms, and Record Keeping Requirements: Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected burden. The agency did not receive comments on the **Federal Register** notice with a 60-day comment period.

**DATES:** Comments must be submitted on or before September 11, 2017.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

**FOR FURTHER INFORMATION CONTACT:** Mary T. Byrd, Office of Behavioral Safety Research (NPD–320), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., W46–466, Washington, DC 20590. Ms. Byrd's phone number is 202–366–5595 and her email address is *Mary.Byrd@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Psychological Constructs Related to Seat Belt Use (PCRSBU).

*Type of Request:* New information collection requirement.

*Abstract:* Seat belts reduce the risk of death by 45% among drivers and front-seat passenger car occupants and by 60% among drivers and front-seat light truck occupants across all crash types—yet, not everyone uses a seat belt on every trip. According to the latest National Occupant Protection Use Survey (NOPUS), seat belt use in the United States was 90% in 2016. Although a high percentage of people were observed wearing seat belts through NOPUS, among passenger vehicle occupants killed in motor vehicle crashes in 2015, only 52% were wearing a seat belt. Thus, there is still room to save lives by getting more people to wear seat belts. In order to develop programs with potential to reach those who do not wear seat belts, we need to know as much as we can about this group. Currently, we know a lot about the demographic correlates of seat belt use (*e.g.,* age, gender), but we do not know much about other individual-level contributors to nonuse. The purpose of this research is to identify psychological constructs and psychosocial factors associated with the non-use and part-time use of seat belts to inform the development of countermeasures.

The National Highway Traffic Safety Administration (NHTSA) proposes to conduct a nationally representative web-based survey using the Growth for Knowledge (GfK) KnowledgePanel, a probability-based web panel that has

been in existence since 1999, to identify psychological constructs and psychosocial factors associated with the non-use and part-time use of seat belts. The survey would measure self-reported seat belt use, psychosocial factors, and psychological constructs to understand how these factors are related. The proposed survey is titled, ''Psychological Constructs Related to Seat Belt Use'' (PCRSBU).

*Affected Public:* Under this proposed data collection, the potential respondent universe would be U.S. residents aged 16 years or older who have driven or ridden in a motor vehicle within the past year. Survey participants would be recruited from the KnowledgePanel using email invitations to obtain 6,000 completed surveys. Each participant would complete a single survey; there would be no request for additional follow-up information or response.

*Estimated Total Annual Burden:* The total respondent burden for this data collection would be 2,070 hours. NHTSA would contact a maximum of 20,394 KnowledgePanel panelists by email to obtain 6,000 completed interviews. Of the 20,394 panelists contacted, it is estimated that approximately 50% or 10,197 potential respondents would log into the web portal to complete the screener instrument. The estimated burden for the screener is 170 hours (10,197 * 1 minute = 10,197 minutes/60 = 170 hours). Based upon the screening questions as well as the sampling plan, it is estimated 510 respondents would not be eligible and that 3,371 eligible respondents would not be sampled. Based upon a 95% completion rate among the 6,316 sampled respondents, it is anticipated that 6,000 respondents would complete the full survey. The estimated burden for the full survey, which would average 19 minutes in length, is 1,900 hours (6,000 * 19 minutes = 114,000 minutes/60 = 1,900 hours). The estimated burden for this data collection is 170 hours for the screener and 1,900 hours for the full survey for a total of 2,070 hours.

*Comments are invited on the following:*

- 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;
- The accuracy of the agency's estimate of the burden of the proposed information collection;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

**Authority:** 44 U.S.C. Section 3506(c)(2)(A).

Issued in Washington, DC, on August 1, 2017.

**Jeff Michael,**

*Associate Administrator, Research and Program Development.*

[FR Doc. 2017–16599 Filed 8–9–17; 8:45 am]

**BILLING CODE 4910–59–P**

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