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# Contents

Federal Register

Vol. 82, No. 157

Wednesday, August 16, 2017

## Antitrust Division

### NOTICES

Changes under National Cooperative Research and Production Act:  
Open Group, LLC, 38938–38939  
Pistoia Alliance, Inc., 38939

## Census Bureau

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Census Barriers, Attitudes, and Motivators Survey 2020, 38875–38876

## Civil Rights Commission

### NOTICES

Meetings:  
Alabama Advisory Committee, 38875

## Coast Guard

### RULES

Special Local Regulations:  
Islamorada Grand Prix of the Seas, Islamorada, FL, 38823–38825

## Commerce Department

See Census Bureau  
See National Oceanic and Atmospheric Administration  
See Patent and Trademark Office

## Copyright Office, Library of Congress

### PROPOSED RULES

Simplifying Deposit Requirements for Certain Literary Works and Musical Compositions, 38859–38864

## Defense Department

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 38899  
Science and Technology Reinvention Laboratory Personnel Management Demonstration Project; Amendment to Project Plan, 38896–38899

## Energy Department

See Energy Information Administration  
See Federal Energy Regulatory Commission

## Energy Information Administration

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 38899–38901

## Environmental Protection Agency

### RULES

Air Quality State Implementation Plans; Approvals and Promulgations:  
Alabama; VOC Definitions and Particulate Emissions, 38841–38844  
North Carolina; Transportation Conformity, 38838–38841  
South Carolina; Air Pollution Control Standards, 38828–38832  
South Carolina; Standards for Volatile Organic Compounds and Oxides of Nitrogen, 38825–38828

South Dakota; Infrastructure Requirements for SO<sub>2</sub> and 2012 PM<sub>2.5</sub> National Ambient Air Quality Standards, 38832–38834

Vermont; Regional Haze Five-Year Progress Report, 38834–38838

### Pesticide Tolerances:

Prothioconazole, 38844–38846

### Tolerance Exemptions:

1-Triacontanol, 38849–38852

Fatty Acids, Rape-Oil, Triesters with Polyethylene Glycol Ether with Glycerol (3:1), 38846–38849

### PROPOSED RULES

Air Quality State Implementation Plans; Approvals and Promulgations:

Alabama; VOC Definitions and Particulate Emissions, 38865

Georgia; Cross-State Air Pollution Rule, 38866–38874

North Carolina; Transportation Conformity, 38864

South Carolina; Air Pollution Control Standards, 38874

South Carolina; Standards for Volatile Organic

Compounds and Oxides of Nitrogen, 38865–38866

Vermont; Regional Haze Five-Year Progress Report, 38864–38865

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Identification, Listing and Rulemaking Petitions (Revision), 38904–38905

## Federal Aviation Administration

### RULES

Amendment of Class E Airspace:

Vivian, LA, 38822–38823

Wayne, NE, 38821–38822

### PROPOSED RULES

Amendment of Class E Airspace:

Carrabassett, ME, 38857–38859

Scottsboro, AL, 38856–38857

## Federal Bureau of Investigation

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Hate Crime Incident Report, 38939–38940

## Federal Deposit Insurance Corporation

### NOTICES

Terminations of Receivership:

Vantage Point Bank, Horsham, PA, 38905

## Federal Emergency Management Agency

### NOTICES

Meetings:

Board of Visitors for National Fire Academy, 38925–38926

## Federal Energy Regulatory Commission

### NOTICES

Combined Filings, 38902, 38904

Environmental Reviews:

National Fuel Gas Supply Corp., 38901–38902

Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:  
 Rock Falls Wind Farm, LLC, 38903–38904  
 Requests under Blanket Authorizations:  
 Gulf South Pipeline Co., LP, 38903

#### **Federal Motor Carrier Safety Administration**

##### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
 Practices of Household Goods Brokers, 38988–38989

#### **Federal Railroad Administration**

##### **NOTICES**

Safety Advisories:  
 Addressing Electrode-Induced Rail Pitting from Pressure Electric Welding, 38989–38992

#### **Federal Reserve System**

##### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 38906–38907  
 Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 38907

#### **Federal Trade Commission**

##### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 38907–38909

#### **Food and Drug Administration**

##### **NOTICES**

Abbreviated New Drug Applications:  
 Upsher-Smith Laboratories, Inc.; Withdrawal of Approval for ZALEPLON, 38911–38912  
 Determinations that Products were Not Withdrawn from Sale for Reasons of Safety or Effectiveness:  
 CORDARONE (Amiodarone Hydrochloride) Tablets, 200 milligrams, 38910–38911  
 Meetings:  
 Anesthetic and Analgesic Drug Products Advisory Committee, Drug Safety and Risk Management Advisory Committee; Establishment of Public Docket, 38909–38910

#### **Health and Human Services Department**

*See* Food and Drug Administration  
*See* Indian Health Service  
*See* National Institutes of Health  
*See* Substance Abuse and Mental Health Services Administration

##### **NOTICES**

Meetings:  
 Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, 38912–38913  
 Requests for Nominations:  
 Appointment to Tick-Borne Disease Working Group; Amendment, 38912

#### **Homeland Security Department**

*See* Coast Guard  
*See* Federal Emergency Management Agency  
*See* U.S. Customs and Border Protection

##### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
 Generic Clearance for Collection of Qualitative Feedback on Agency Service Delivery, 38927–38928

Terminations:  
 Central American Minors Parole Program, 38926–38927

#### **Indian Health Service**

##### **NOTICES**

Funding Availability:  
 Epidemiology Program for American Indian/Alaska Native Tribes and Urban Indian Communities, 38913–38920

#### **Interior Department**

*See* Land Management Bureau  
*See* National Park Service  
*See* Surface Mining Reclamation and Enforcement Office

#### **International Trade Commission**

##### **NOTICES**

Complaints:  
 Certain Periodontal Laser Devices, Components Thereof, and Advertisements and Claims Regarding Same, 38937–38938  
 Certain Wireless Audio Systems and Components Thereof, 38936–38937  
 Investigations; Determinations, Modifications, and Rulings, etc.:  
 Certain Digital Video Receivers and Hardware and Software Components Thereof, 38934–38936

#### **Justice Department**

*See* Antitrust Division  
*See* Federal Bureau of Investigation  
*See* Justice Programs Office

#### **Justice Programs Office**

##### **NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
 Substantive Revision of Previously Approved Collection Office of Justice Programs Solicitation Template, 38940–38941

#### **Land Management Bureau**

##### **NOTICES**

Public Lands; Temporary Closures:  
 Yellowstone Bridge in Linn County, OR, 38928–38929

#### **Library of Congress**

*See* Copyright Office, Library of Congress

#### **National Aeronautics and Space Administration**

##### **RULES**

Federal Acquisition Regulations:  
 Preproposal/Pre-bid Conference, 38852–38853

#### **National Highway Traffic Safety Administration**

##### **NOTICES**

Petitions for Decisions of Inconsequential Noncompliance:  
 Autocar Industries, LLC, 38995–38999  
 Autocar, LLC, 38999–39001  
 Ride the Ducks International, LLC, 38992–38995

#### **National Institutes of Health**

##### **NOTICES**

Meetings:  
 National Cancer Institute, 38921–38922  
 National Institute of Diabetes and Digestive and Kidney Diseases, 38920–38921

## National Oceanic and Atmospheric Administration

### RULES

Atlantic Highly Migratory Species:

Atlantic Bluefin Tuna Fisheries, 38853–38855

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 38895–38896

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Fishermen's Contingency Fund, 38895

Pacific Island Fisheries:

Marine Conservation Plan for Guam; Western Pacific Sustainable Fisheries Fund, 38876–38877

Takes of Marine Mammals Incidental to Specified Activities:

Conducting Subsea Cable Operations and Maintenance Activities in Arctic Ocean, 38877–38895

## National Park Service

### NOTICES

National Register of Historic Places:

Pending Nominations and Related Actions, 38929

## Nuclear Regulatory Commission

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters, 38941–38942

## Patent and Trademark Office

### NOTICES

Appointments:

Performance Review Board, 38896

## Presidential Documents

### ADMINISTRATIVE ORDERS

Export Control Regulations; Continuation of National Emergency (Notice of August 15, 2017), 39003–39005

## Securities and Exchange Commission

### NOTICES

Self-Regulatory Organizations; Proposed Rule Changes:

Bats BYX Exchange, Inc., 38960–38962

Bats EDGA Exchange, Inc., 38972–38973

Miami International Securities Exchange, LLC, 38942–38960, 38964–38972

NASDAQ PHLX, LLC, 38962–38964, 38979–38981

NYSE Arca, Inc., 38973–38979

## Small Business Administration

### NOTICES

Meetings:

Advisory Committee on Veterans Business Affairs, 38982

Interagency Task Force on Veterans Small Business Development, 38982

## Social Security Administration

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 38982–38984

## State Department

### NOTICES

Culturally Significant Objects Imported for Exhibition:

Art and China after 1989—Theater of the World, 38984–38985

## Substance Abuse and Mental Health Services Administration

### NOTICES

Meetings:

Interdepartmental Serious Mental Illness Coordinating Committee, 38922

## Surface Mining Reclamation and Enforcement Office

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting; Coal Reclamation Fee Report, 38933–38934

Abandoned Mine Reclamation Funds, 38931

Certification of Blasters in Federal Program States and on Indian Lands, 38930–38931

Permanent Program Performance Standards—Surface and Underground Mining Activities, 38932

Subsidence Insurance Program Grants, 38930

Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans, 38932–38933

## Surface Transportation Board

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Applications for Land-Use-Exemption Permits, 38986–38987

Demurrage Liability Disclosure Requirements, 38985–38986

Lease and Operation Exemptions Containing Interchange Commitments:

Cleveland Commercial Railroad Co., LLC; Norfolk Southern Railway Co., 38985

## Trade Representative, Office of United States

### NOTICES

Request for Comments:

2017 Special 301 Out-of-Cycle Review of Notorious Markets, 38987–38988

## Transportation Department

See Federal Aviation Administration

See Federal Motor Carrier Safety Administration

See Federal Railroad Administration

See National Highway Traffic Safety Administration

## U.S. Customs and Border Protection

### NOTICES

Automated Commercial Environments:

Sole CBP-Authorized Electronic Data Interchange System for Processing Duty Deferral Entry and Entry Summary Filings, 38924

Test Program Regarding Electronic Foreign Trade Zone Admission Applications and Transition of Test from Automated Commercial System to Automated Commercial Environment; Extension and Clarification, 38923–38924

## Veterans Affairs Department

### NOTICES

Meetings:

National Academic Affiliations Council, 39001–39002

**Separate Parts In This Issue****Part II**Presidential Documents, 39003–39005

---

**Reader Aids**

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

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**CFR PARTS AFFECTED IN THIS ISSUE**

---

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

**3 CFR****Administrative Orders:**

## Notices:

Notice of August 15,  
2017 .....39005

**14 CFR**

71 (2 documents) .....38821,  
38822

**Proposed Rules:**

71 (2 documents) .....38856,  
38857

**33 CFR**

100 .....38823

**37 CFR****Proposed Rules:**

202 .....38859

**40 CFR**

52 (6 documents) .....38825,  
38828, 38832, 38834, 38838,  
38841

180 (3 documents) .....38844,  
38846, 38849

**Proposed Rules:**

52 (6 documents) .....38864,  
38865, 38866, 38874

**48 CFR**

1852 .....38852

**50 CFR**

635 .....38853

# Rules and Regulations

Federal Register

Vol. 82, No. 157

Wednesday, August 16, 2017

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2017-0287; Airspace Docket No. 17-ACE-6]

#### Amendment of Class E Airspace; Wayne, NE

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace extending up to 700 feet above the surface at Wayne Municipal Airport, Wayne, NE, to accommodate new standard instrument approach procedures for instrument flight rules (IFR) operations at the airport. This action is necessary due to the decommissioning of the Wayne non-directional radio beacon (NDB) serving the airport, and cancellation of the NDB approach. This action enhances the safety and management of IFR operations at the airport. The geographic coordinates of the airport also are updated to be in concert with the FAA's aeronautical database

**DATES:** Effective 0901 UTC, October 12, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](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](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:** Walter Tweedy, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5900.

#### 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 modify Class E airspace extending up to and including 700 feet above the surface area at Wayne Municipal Airport, Wayne, NE., in support of the instrument approach procedures for IFR operations at the airport. The geographic coordinates of the airport also will be updated to be in concert with the FAA's aeronautical database.

##### History

The FAA published in the **Federal Register** (82 FR 22924, May 19, 2017) Docket No. FAA-2017-0287 a notice of proposed rulemaking (NPRM) to modify Class E airspace extending upward from 700 feet above the surface at Wayne Municipal Airport, Wayne, NE. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11A, dated August 3, 2016,

and effective September 15, 2016, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

#### Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

#### The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius (reduced from a 7.5-mile radius) of Wayne Municipal Airport, Wayne, NE. Airspace redesign of standard instrument approach procedures is necessary for IFR operations at the airport due to the decommissioning of the Wayne NDB, and cancellation of the NDB approach. The geographic coordinates of the airport also are updated to be in concert with the FAA's aeronautical database. This action enhances the safety and management of the standard instrument approach procedures for IFR operations at the airport.

#### Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, 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

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

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

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

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

■ 1. The authority citation for 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.*

\* \* \* \* \*

##### ACE NE E5 Wayne, NE [Amended]

Wayne Municipal Airport, NE  
(Lat. 42°14'30" N., long. 96°58'56" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Wayne Municipal Airport.

Issued in Fort Worth, Texas on August 9, 2017.

**Walter Tweedy,**

*Acting Manager, Operations Support Group,  
ATO Central Service Center.*

[FR Doc. 2017–17253 Filed 8–15–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2017–0298; Airspace  
Docket No. 17–ASW–7]

#### Amendment of Class E Airspace; Vivian, LA

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace extending upward from 700 feet above the surface at Vivian Airport, Vivian, LA. This action was necessary due to the decommissioning of the Vivian non-directional radio beacon (NDB), cancellation of the NDB approach and removal of the reference to the Shreveport collocated VHF omnidirectional radio range tactical air navigation (VORTAC). This action enhances the safety and management of standard instrument approach procedures for instrument flight rules (IFR) operations at the airport.

**DATES:** Effective 0901 UTC, October 12, 2017. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](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](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:** Walter Tweedy, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5900.

**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 amends Class E airspace extending upward from 700 feet above the surface at Vivian Airport, Vivian, LA, in support of IFR operations at the airport.

#### History

The FAA published in the **Federal Register** (82 FR 22093, May 12, 2017), Docket No. FAA–2017–0298 a notice of proposed rulemaking (NPRM) to modify Class E airspace extending upward from 700 feet above the surface at Vivian Airport, Vivian, LA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

#### Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

#### The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Vivian Airport. The segment within 1.4 miles each side of the 298° radial of the Shreveport VORTAC extending from the 6.3-mile radius to 7.5 miles northwest of the airport is removed due to the

decommissioning of the Vivian NDB, and cancellation of the NDB approach. The VOR approach was previously redesigned to use the Vivian NDB when the Shreveport VORTAC was changed to the Belcher VORTAC, but was never noted in the airspace description. This action enhances the safety and management of the standard instrument approach procedures for IFR operations at the airport.

### Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, 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, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### Environmental Review

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

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

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

■ 1. The authority citation for 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.*

\* \* \* \* \*

#### **ASW LA E5 Vivian, LA [Amended]**

Vivian Airport, LA  
(Lat. 32°51'41" N., long. 94°00'37" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Vivian Airport.

Issued in Fort Worth, Texas on August 9, 2017.

**Walter Tweedy,**

*Acting Manager, Operations Support Group,  
ATO Central Service Center.*

[FR Doc. 2017–17254 Filed 8–15–17; 8:45 am]

**BILLING CODE 4910–13–P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 100**

**[Docket Number USCG–2017–0556]**

**RIN 1625–AA08**

#### **Special Local Regulation, Islamorada Grand Prix of the Seas, Islamorada, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a special local regulation on the waters of the Atlantic Ocean in the vicinity of Islamorada, FL during the Islamorada Grand Prix of the Seas high-speed boat race. Approximately 70 high-speed boats and personal watercraft are expected to participate in the race, in addition to spectators. The special local regulation is necessary to ensure the safety of race participants, participant vessels, spectators, and the general public on navigable waters of the United States during the event. The special local regulation will establish two regulated areas: a race area and buffer zone; and a spectator area. This special local regulation prohibits non-participant persons and vessels from entering, transiting through, anchoring in, or remaining within the race area or

buffer zone and prohibits vessels from transiting in excess of wake speed within the spectator area unless authorized by the Captain of the Port Key West or a designated representative.

**DATES:** This rule is effective from daily from 8 a.m. to 5 p.m. on August 19, 2017 through August 20, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2017–0556 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Scott Ledee, Waterways Management Division Chief, Sector Key West, FL, U.S. Coast Guard; telephone (305) 292–8768, email [SKWWaterways@uscg.mil](mailto:SKWWaterways@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Table of Abbreviations**

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

##### **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a Notice of Proposed Rulemaking (NPRM) with respect to this rule because insufficient time remains to publish an NPRM and to receive public comments, as the Islamorada Grand Prix event will occur before the rulemaking process would be completed. Because of the dangers associated with high-speed races in the marine environment, the special local regulation is necessary to provide for the safety of event participants, spectators, the general public, and vessels transiting the event area. For those reasons, it would be impracticable to publish an NPRM.

For the reason discussed above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this

rule effective less than 30 days after publication in the **Federal Register**.

### III. Legal Authority and Need for Rule

The legal basis for this rule is the Coast Guard's authority to establish special local regulations is 33 U.S.C. 1233. The purpose of the rule is to ensure safety of life on the navigable waters of the United States during the Islamorada Grand Prix of the Seas high-speed race event.

### IV. Discussion of the Rule

This rule establishes a special local regulation that will encompass certain waters in the vicinity of Islamorada, Florida, during the Islamorada Grand Prix of the Seas high-speed boat race. The special local regulation will be enforced daily from 8 a.m. to 5 p.m. on August 19, 2017 through August 20, 2017. The special local regulation will establish the following regulated areas: (1) A race area and buffer zone; and (2) a spectator area. Within the race area and buffer zone, non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area without obtaining permission from the COTP Key West or a designated representative. Within the spectator area, all persons and vessels are prohibited from traveling in excess of wake speed without obtaining permission from the COTP Key West or a designated representative.

Persons and vessels may request authorization to enter, transit through, anchor in, remain within, or transit in excess of wake speed within the regulated area by contacting the COTP Key West by telephone at ((305) 292-8772 or a designated representative via VHF radio on channel 16. If authorization is granted by the COTP Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative. The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene designated representatives.

### V. Regulatory Analyses

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

#### A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process."

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See the OMB Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

The economic impact of this rule is not significant for the following reasons: (1) The special local regulation will be enforced for only nine hours daily, from August 19, 2017 through August 20, 2017; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the race area or buffer zone without authorization from the COTP Key West or a designated representative, vessel traffic will be able to safely transit around the regulated areas; (3) persons and vessels would still be able to enter, transit through, anchor in, or remain within the race area and buffer zone or transit in excess of wake speed in the spectator zone if authorized by the COTP Key West or a designated representative; and (4) the Coast Guard will provide advance notice of the special local regulation to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene designated representatives.

#### B. Impact on Small Entities

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

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

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

#### E. Unfunded Mandates Reform Act

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

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation that will prohibit non-participant persons and vessels from entering, transiting through, anchoring in, or remaining within a limited race area and will also prohibit persons and vessels from transiting at more than wake speed within a limited spectator area during a two day race event lasting nine hours daily. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated

under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

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

#### List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

#### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

■ 2. Add a temporary § 100.T07–0556 to read as follows:

#### § 100.T07–0556 Special Local Regulations; Islamorada Grand Prix of the Seas; Islamorada, FL

(a) *Location*. The following regulated areas are established as a special local regulation. All coordinates are North American Datum 1983.

(1) *Race Area and Buffer Zone*. All waters in the vicinity of Islamorada, FL encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 24°56.300' N., 080°34.750' W.; thence west to Point 2 in position 24°55.750' N., 080°35.570' W.; thence south to Point 3 in position 24°55.153' N., 080°35.306' W.; thence east to Point 4 in position 24°55.643' N., 080°34.464' W.; thence north back to the point of origin in position 24°56.300' N., 080°34.750' W.

(2) *Spectator Area*. All waters in the vicinity of Islamorada excluding the regulated area, encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 24°56.17' N., 080°35.08' W.; thence west to Point 2 in position 24°56.02' N., 080°35.30' W.; thence south to Point 3 in position 24°55.96' N., 080°35.26' W.; thence east to Point 4 in position 24°56.11' N., 080°35.04' W.; thence north back to the point of origin in position 24°56.17' N., 080°35.08' W.

(b) *Definition*. The term “designated representative” means Coast Guard Patrol Commanders, including Coast

Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the Captain of the Port Key West in the enforcement of the regulated areas.

(c) *Regulations*. (1) All non-participant persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the race area and buffer zone unless authorized by the Captain of the Port Key West or a designated representative.

(2) All persons and vessels are prohibited from transiting in excess of wake speed in the spectator area, unless authorized by the Captain of the Port Key West or a designated representative.

(3) Persons and vessels desiring to enter, transit through, anchor in, remain within or transit in excess of wake speed within any of the regulated areas may contact the Captain of the Port Key West by telephone at (305) 292–8772, or a designated representative via VHF–FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative.

(4) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene designated representatives.

(d) *Enforcement Period*. This rule will be enforced daily from 8 a.m. to 5 p.m. on August 19, 2017 through August 20, 2017.

Dated: August 10, 2017.

**J.A. Janszen,**

*Captain, U.S. Coast Guard, Captain of the Port Key West.*

[FR Doc. 2017–17238 Filed 8–15–17; 8:45 am]

**BILLING CODE 9110–04–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA–R04–OAR–2017–0388; FRL–9966–22–Region 4]

#### Air Plan Approval; SC: Standards for Volatile Organic Compounds and Oxides of Nitrogen

**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) that revise several miscellaneous rules for control standards for process industries. Specifically, changes are made to standards for volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>). 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: October 1, 2007, June 17, 2013, and January 20, 2016. These actions are being taken pursuant to the Clean Air Act (CAA or Act).

**DATES:** This direct final rule is effective October 16, 2017 without further notice, unless EPA receives adverse comment by September 15, 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-2017-0388 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Mr. Akers can be reached via telephone at (404) 562-9089 or via electronic mail at [akers.brad@epa.gov](mailto:akers.brad@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. What action is EPA taking?**

On October 1, 2007, June 17, 2013, and January 20, 2016, SC DHEC submitted SIP revisions to EPA for approval to make administrative and clarifying amendments and correct typographical errors. These SIP submittals make changes to several air quality rules in the South Carolina Code of Regulations Annotated (S.C. Code Ann. Regs.). The changes EPA is approving into the SIP in this action modify portions of Regulation 61-62.5—“Air Pollution Control Standards” at Standard No. 5—“Volatile Organic Compounds,” and Regulation 61-62.5, Standard No. 5.2—“Control of Oxides of Nitrogen (NO<sub>x</sub>).”

At this time, EPA is not acting on changes in the October 1, 2007, submittal to Regulation 61-62.1, Section II—“Permit Requirements” or Regulation 61-62.5, Standard No. 4—“Emissions from Process Industries.” EPA is also not acting on the changes included in the June 17, 2013, submittal to the following regulations: Regulation 61-62.1, Section I—“Definitions”; Regulation 61-62.1, Section II—“Permit Requirements”; Regulation 61-62.1, Section IV—“Source Tests”; Regulation 61-62.3—“Air Pollution Episodes”; or Regulation 61-62.5, Standard No. 4—“Emissions from Process Industries.” Finally, 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. 7.1—“Nonattainment New Source Review”; or Regulation 61-62.6—“Control of Fugitive Particulate Matter.”

**II. Analysis of South Carolina’s Submittals**

**A. Regulation 61-62.5, Standard No. 5—“Volatile Organic Compounds”**

South Carolina is amending its standards for controlling VOCs at Regulation 61-62.5, Standard No. 5—“Volatile Organic Compounds.” The June 17, 2013, submittal revises the VOC regulation to make several administrative edits only, including formatting for consistency and correcting typographical errors in Section I, Part A and Part G and Section II, Part Q.<sup>1</sup> The January 20, 2016, submittal also revises the VOC regulation to make further administrative edits only, including

formatting for consistency in Section II, Part A and Part B. EPA has reviewed the changes made to South Carolina’s VOC regulation and is approving them into the SIP pursuant to CAA section 110.

**B. Regulation 61-62.5, Standard No. 5.2—“Control of Oxides of Nitrogen (NO<sub>x</sub>)”**

South Carolina is amending its standards for controlling NO<sub>x</sub> at Regulation 61-62.5, Standard No. 5.2—“Control of Oxides of Nitrogen (NO<sub>x</sub>).” The October 1, 2007, submittal makes the following changes to the NO<sub>x</sub> regulation at Section I—“Applicability,” and Section III—“Standard Requirements for New Sources”: (1) Clarifies applicability at paragraph I.a. by adding the state effective date of the regulation; (2) modifies the number of hours of operation for testing and maintenance for exempted emergency generators at subparagraph I.b.2.; (3) clarifies the exemption of combustion control devices at subparagraph I.b.4.; and (4) adds clarifying language to Section III at Table 1, “NO<sub>x</sub> Control Standards.”

CAA section 110(l) provides that EPA shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the CAA. Subparagraph I.B.2. extends the testing and maintenance operation threshold for exempted emergency generators from 250 hours to 500 hours per year. SC DHEC submitted supplemental information in support of its earlier SIP revision submittal in a December 20, 2016, letter to EPA. SC DHEC notes in its letter that it considered CAA section 110(l) in making this change and asserts that the State expects no increase in actual emissions as a result of raising this exemption threshold. SC DHEC explains that the 500 hours per year threshold is commonly used to determine the potential to emit for title V and other major source applicability determinations, consistent with EPA guidance.<sup>2</sup> These sources are still restricted to use in emergency conditions. Additionally, SC DHEC points to applicable federal requirements for emergency generators at 40 CFR 63, subpart ZZZZ and 40 CFR 60 at subparts IIII and JJJJ, which restrict non-emergency use of these sources to 100 hours per year. SC DHEC also

<sup>1</sup> Regulation 61-62.5, Standard No. 5, Section II, Part A is approved into the SIP, last revised May 7, 2002 (67 FR 30594). However, the entry for “Part A” at 40 CFR 52.2120(c) was inadvertently removed from the table of SIP-approved regulations. In this action, EPA is adding that entry back into the table.

<sup>2</sup> Seitz, John S. “Calculating Potential to Emit (PTE) for Emergency Generators.” Memorandum to Program Directors in EPA Regional Offices. Office of Air Quality Planning and Standards. Research Triangle Park, NC. September 6, 1995.

clarifies that peak shaving and other types of activities are not considered emergency activities, and so would not qualify for the exemption under paragraph II.B. Therefore, this change to subparagraph I.b.2. is not expected to result in any increase in emissions that would affect the State's ability to attain or maintain state or Federal standards or reasonable further progress.

The change at subparagraph I.b.4. clarifies the exemption for devices functioning solely as combustion control devices. The additional language specifies that these devices are not automatically excluded from the exemption if waste heat is recovered from them. This additional language is aimed at encouraging process efficiency and will not interfere with attainment or maintenance of any Federal or state standard or reasonable further progress.

EPA has reviewed the October 1, 2007, SIP submittal, and is approving the aforementioned changes to Regulation 61–62.5, Standard No. 5.2, pursuant to CAA section 110(a)(2)(A) and 110(l).

### III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of South Carolina Regulation 61–62.5, Standard No. 5—“Volatile Organic Compounds,” effective November 27, 2015, which makes ministerial changes for consistency and Regulation 61–62.5, Standard No. 5.2—“Control of Oxides of Nitrogen (NO<sub>x</sub>),” effective May 25, 2007, which makes ministerial changes for consistency and modifies applicability for NO<sub>x</sub> 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 to the SIP compilation.<sup>3</sup> EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and/or at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### IV. Final Action

EPA is approving the aforementioned changes to the South Carolina SIP, submitted on October 1, 2007, June 17, 2013, and January 20, 2016, because they are consistent with the CAA and Federal regulations. 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 16, 2017 without further notice unless the Agency receives adverse comments by September 15, 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 16, 2017 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, 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 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 South Carolina portion of the bi-state Charlotte Area. 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

<sup>3</sup> 62 FR 27968 (May 22, 1997).

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 16, 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, Volatile organic compounds.

Dated: August 3, 2017.  
**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 under “Regulation No. 62.5” by:
  - a. Under “*Standard No. 5*”:
    - i. Revising the entry “Section I”;
    - ii. Under “Section I” revising the entries “Part A” and “Part G”;
    - iii. Revising the entry “Section II”;
    - iv. Adding under “Section II” the entry “Part A”; and
    - v. Revising under “Section II” the entries “Part B” and “Part Q”.
  - b. Revising the entry “*Standard No. 5.2*”.

The revisions and additions 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
Regulation No. 62.5 ...	Air Pollution Control Standards .....	.....	.....	.....
<i>Standard No. 5</i> .....	Volatile Organic Compounds .....	.....	.....	.....
Section I .....	General Provisions .....	4/26/2013	8/16/2017	[Insert citation of publication].
Part A .....	Definitions .....	4/26/2013	8/16/2017	[Insert citation of publication].
Part G .....	Equivalency Calculations .....	4/26/2013	8/16/2017	[Insert citation of publication].
Section II .....	Provisions for Specific Sources .....	11/27/2015	8/16/2017	[Insert citation of publication].
Part A .....	Surface Coating of Cans .....	11/27/2015	8/16/2017	[Insert citation of publication].
Part B .....	Surface Coating of Coils .....	11/27/2015	8/16/2017	[Insert citation of publication].
Part Q .....	Manufacture of Synthesized Pharmaceutical Products.	4/26/2013	8/16/2017	[Insert citation of publication].
<i>Standard No. 5.2</i> .....	Control of Oxides of Nitrogen (NO <sub>x</sub> ) .....	5/25/2007	8/16/2017	[Insert citation of publication].

\* \* \* \* \*  
 [FR Doc. 2017–17242 Filed 8–15–17; 8:45 am]  
 BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R04–OAR–2017–0385; FRL–9966–20–Region 4]

**Air Plan Approval; SC: Multiple Revisions to Air Pollution Control Standards**

**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 miscellaneous rules covering air pollution control standards. 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: October 1, 2007, July 18, 2011, June 17, 2013, August 8, 2014, August 12, 2015, July 27, 2016, and November 4, 2016. These actions are being taken pursuant to the Clean Air Act (CAA or Act).

**DATES:** This direct final rule is effective October 16, 2017 without further notice, unless EPA receives adverse comment by September 15, 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-2017-0385 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:** Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Mr. Wong can be reached via telephone at (404) 562-8726 or via electronic mail at [wong.richard@epa.gov](mailto:wong.richard@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On October 1, 2007, July 18, 2011, June 17, 2013, August 8, 2014, August 12, 2015, July 27, 2016, and November 4, 2016, SC DHEC submitted SIP revisions to EPA for approval that involve changes to South Carolina's SIP regulations to make administrative and clarifying amendments, revise regulations, and correct typographical errors. These SIP submittals make

changes to several air quality rules in South Carolina Code of Regulations Annotated (S.C. Code Ann. Regs.). The changes EPA is approving into the SIP in this action modify portions of Regulation 61-62.5, Standard No. 1—*Emissions From Fuel Burning Operations* and Regulation 61-62.5, Standard No. 4—*Emissions From Process Industries*. EPA is not acting on other revisions that are included in these submittals. EPA will act on those changes in separate actions.

##### **II. Analysis of South Carolina's Submittals**

###### *A. Regulation 61-62.5, Standard No. 1—Emissions From Fuel Burning Operations*

South Carolina is amending multiple sections at Regulation 61-62.5, Standard No. 1—*Emissions from Fuel Burning Operations*. The July 18, 2011, submittal revises subparagraph C of Section I—*Visible Emissions* by excluding natural gas fired units from maintaining an information log to determine periods of startup and shutdown. The August 12, 2015, submittal further revises the subparagraph adding propane fired units to the log keeping exception and corrects typographical errors in the Standard.

CAA section 110(l) provides that EPA shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the CAA. SC DHEC considered CAA section 110(l) in making these changes and explains in a letter dated December 30, 2016, that the state expects no increase in actual emissions as a result of exempting units burning only natural gas and propane fuels from maintaining logs because there are no opacity concerns with these type of fuels during startup, shutdown, or normal operations. Because natural gas and propane contain relatively minor amounts of the constituents (particulate matter and sulfur) that could result in visible emissions, this change to subparagraph C will not result in any increase in emissions and will not affect the State's ability to attain or maintain state or federal standards or reasonable further progress.

The August 8, 2014, submittal makes the following changes: (1) Clarifies sulfur dioxide maximum allowable discharge limits at Section III—*Sulfur Dioxide Emissions* and (2) makes administrative and clarifying edits throughout Standard No. 1. The revision in Section III—*Sulfur Dioxide Emissions*

streamlines the requirement by setting a maximum sulfur dioxide (SO<sub>2</sub>) limit of 2.3 pounds per million British thermal units (lb/MMBtu) from fuel burning operations. The current approved Standard sets two SO<sub>2</sub> limits, 2.3 lb/MMBtu or 3.5 lb/MMBtu across various classification categories. Therefore, this revision would streamline the rule to the lower of the two limits allowed for such sources. Lastly, this submittal makes administrative and clarifying edits in Section I—*Visible Emissions*, Section III—*Sulfur Dioxide Emissions*, Section IV—*Opacity Monitoring Requirements*, and Section VI—*Periodic Testing*.

The November 4, 2016, submittal makes typographical corrections under Section IV—*Opacity Reporting Requirements*. EPA has reviewed the aforementioned changes to South Carolina's Regulation 61-62.5, Standard No. 1 and is approving the changes into the SIP pursuant to CAA section 110.

###### *B. Regulation 61-62.5, Standard No. 4—Emissions From Process Industries*

South Carolina is amending multiple sections at Regulation 61-62.5, Standard No. 4—*Emissions from Process Industries*. The October 1, 2007, submittal removes Section IV—*Portland Cement Manufacturing* from the SIP. This rule contains particulate matter (PM) emission limits for cement kilns with a production rate of up to 120 tons per hour and it establishes a 20 percent allowable stack opacity limit for certain components of Portland cement plants. SC DHEC states that there are no Portland cement plants operating at 120 tons per hour or less in the State because it is not economically feasible. SC DHEC asserts that removing this rule would not create a relaxation as there are no applicable sources subject to this regulation. Additionally, should such a source start operation, it would be subject to more stringent PM emissions limits in New Source Performance Standards (NSPS) subpart F (*Standards of Performance for Portland Cement Plants*).

The July 18, 2011, submittal amends Section V—*Cotton Gins* by removing established specific emission limits based on production rate (output) of bales of cotton per hour and replacing that with specific, measurable performance requirements and operating standards. SC DHEC considered CAA section 110(l) in making this change. SC DEHC explains that the rule development is based on best management practices outlined in the USDA's *Cotton Ginners Handbook*, staff experience with effective emission reduction techniques, the review of



other state regulations on cotton gins, and several discussions with the affected industry. The new rule assures a greater degree of control of these emissions than that which would result from the existing process weight rate curve and also allows the state to more effectively determine compliance. The revised rule requires enforceable control of emissions from specific point sources in the ginning process rather than an allowable emission rate, and it establishes requirements to minimize fugitive emissions from various sources at cotton ginning facilities. The revised rule also sets applicable requirements for good housekeeping practices in the gin yard, weekly monitoring of control efficiency, recordkeeping, and reporting. The revised regulation will provide for improved emissions control through practicably enforceable control of emissions, use of state of the art pollution control devices, and minimization of fugitive emissions. The June 17, 2013, submittal makes a subsequent typographical correction to Section V.

The August 8, 2014, submittal makes the following changes: (1) Removes a PM emissions limit at Section III—*Kraft Pulp and Paper Manufacturing*; (2) revises the frequency required for reporting excess emissions at Section XI—*Total Reduced Sulfur Emissions of Kraft Pulp Mills*; (3) removes periodic testing requirement for Total Reduced Sulfur (TRS) at Section XII—*Periodic Testing*; and (4) makes administrative and clarifying edits throughout Standard No. 4. At Section III, the submittal removes the table column “Maximum Allowable Emissions of PM in pounds/equivalent Ton of Air Dried, Unbleached Pulp Produced” and retains the “Maximum Allowable Stack Opacity.” SC DEHC asserts that this will not result in a relaxation of emission limits because the subject sources are covered under more stringent PM limits under the National Emission Standards for Hazardous Air Pollutants (NESHAP) (subpart S—*National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry*). Additionally, the word “opacity” replaces “rate of emissions.”

At Section XI, the August 8, 2014, submittal revises the required excess emissions reporting frequency in subparagraph D.3. from quarterly to semi-annual. SC DHEC considered CAA sections 110(l) and 193 in making the revision and asserts changing reporting from quarterly to semi-annual will not affect the level of emissions or compromise the national ambient air quality standards. SC DHEC cites to several Federal and state regulations

that address excess emissions reporting, including NSPS subpart BB *Standards of Performance for Kraft Pulp Mills*; South Carolina Regulation 61–62.5, Standard No. 4 Section XI(D)(3) *Total Reduced Sulfur (TRS) Emissions of Kraft Pulp Mills*; South Carolina Regulations 61–62.1, Section II(J)(2) *Permit Requirements*; and South Carolina Regulation 61–62.70 *Title V Operating Permit Program*.

At Section XII, the August 8, 2014, submittal removes the periodic testing requirement for TRS at Kraft pulp mills.<sup>1</sup> SC DHEC states that most sources are required to test under NSPS or NESHAP rules. The few sources that are not required to test have enough historical test data to develop an approvable operating range which can be handled during the permitting process. Additionally, the S.C. Pollution Control Act (48–1–50, Powers of the Department) makes provision for the SC DHEC to ask for a source test and permits are often drafted with language allowing the SC DEHC to ask for source tests. Therefore, the requirements will be no less stringent than what is allowed through current regulatory and permitting authority to review testing requirements.

Lastly, the August 8, 2014, submittal makes minor typographical, renumbering, and clarifying edits to Standard No. 4 in Section II—*Sulfuric Acid Manufacturing*, Section V—*Cotton Gins*, Section XI—*Total Reduced Sulfur Emissions of Kraft Pulp Mills*, and Section XII—*Periodic Testing*.

The July 27, 2016, submittal revises Section VIII—*Other Manufacturing* by excluding Kraft Pulp and Paper Manufacturing facilities. This Section sets PM emission for source categories not specified elsewhere in Standard No. 4. The revision to exclude Kraft Pulp and Paper Manufacturing facilities aligns with the August 8, 2014, revision, as previously discussed in this notice. The submittal also makes minor typographical, renumbering, and clarifying edits to Section XII—*Periodic Testing*.

EPA has reviewed the aforementioned changes to South Carolina’s Regulation 61–62.5, Standard No. 4 and is approving the revisions into the SIP pursuant to CAA section 110.

### III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In

<sup>1</sup> SC DHEC’s July 18, 2011, submittal makes changes to TRS in Section XII. The August 8, 2014, submittal, if approved, would supersede the 2011 revision.

accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of South Carolina Regulation 61–62.5, Standard No. 1—*Emissions From Fuel Burning Operations*, effective September 23, 2016, which makes administrative and clarifying revisions for consistency, removes log reporting requirements, revises monitoring requirements, and Regulation 61–62.5, Standard No. 4—*Emissions From Process Industries*, effective June 24, 2016, which makes administrative and clarifying revisions for consistency, removes specific emission rates, and reporting requirements. 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.<sup>2</sup> EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and/or at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### IV. Final Action

EPA is approving the aforementioned changes to the South Carolina SIP, submitted on October 1, 2007, July 18, 2011, June 17, 2013, August 8, 2014, August 12, 2015, July 27, 2016, and November 4, 2016 because they are consistent with the CAA and federal regulations. 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 16, 2017 without further notice unless the Agency receives adverse comments by September 15, 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

<sup>2</sup> 62 FR 27968 (May 22, 1997).

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 16, 2017 and no further action will be taken on the proposed rule.

Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## V. Statutory and Executive Order Reviews

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

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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 South Carolina portion of the bi-state Charlotte Area. 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 16, 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, Carbon monoxide, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 4, 2017.

**A. 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:
  - a. Revising the entries under Regulation No. 62.5, *Standard No. 1*, for "Section I," "Section III," and "Section VI,"
  - b. Revising the entries under Regulation No. 62.5, *Standard No. 4*, for "Section II," "Section III," "Section IV," "Section V," "Section VIII," "Section XI," and "Section XII" 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. 1	Emissions from Fuel Burning Operations.			
Section I	Visible Emissions	9/23/2016	8/16/2017	[Insert Federal Register citation].
* * * * *				
Section III	Sulfur Dioxide Emissions	9/23/2016	8/16/2017	[Insert Federal Register citation].
* * * * *				
Section VI	Periodic Testing	9/23/2016	8/16/2017	[Insert Federal Register citation].
* * * * *				
Standard No. 4	Emissions From Process Industries.			
* * * * *				
Section II	Sulfuric Acid Manufacturing	6/24/2016	8/16/2017	[Insert Federal Register citation].
Section III	Kraft Pulp and Paper Manufacturing Plants.	6/24/2016	8/16/2017	[Insert Federal Register citation].
Section IV	Portland Cement Manufacturing	6/24/2016	8/16/2017	[Insert Federal Register citation].
Section V	Cotton Gins	6/24/2016	8/16/2017	[Insert Federal Register citation].
* * * * *				
Section VIII	Other Manufacturing	6/24/2016	8/16/2017	[Insert Federal Register citation].
* * * * *				
Section XI	Total Reduced Sulfur Emissions of Kraft Pulp Mills.	6/24/2016	8/16/2017	[Insert Federal Register citation].
Section XII	Periodic Testing	6/24/2016	8/16/2017	[Insert Federal Register citation].
* * * * *				

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 [FR Doc. 2017-17226 Filed 8-15-17; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**  
**40 CFR Part 52**  
**[EPA-R08-OAR-2016-0709, FRL-9966-05-Region 8]**  
**Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> National Ambient Air Quality Standards; South Dakota**  
**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving elements of State Implementation Plan (SIP) revisions from the State of South Dakota to demonstrate the State meets infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for sulfur dioxide (SO<sub>2</sub>) on June 2, 2010 and fine particulate matter (PM<sub>2.5</sub>) on December 14, 2012.  
**DATES:** This rule is effective on September 15, 2017.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2016-0709. 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., 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 <http://www.regulations.gov> or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.  
**FOR FURTHER INFORMATION CONTACT:** Abby Fulton, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6563, [fulton.abby@epa.gov](mailto:fulton.abby@epa.gov).

**SUPPLEMENTARY INFORMATION:**  
**I. Background**  
 Infrastructure requirements for SIPs are set forth in section 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy. The elements that are the subject of this action are described in detail in our notice of proposed rulemaking published on June 6, 2017 (82 FR 26007).  
 In our proposed rule, the EPA proposed to approve and take no action on some infrastructure elements for the 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS from the State's certifications.<sup>1</sup> In this rulemaking, we are taking final action to approve infrastructure elements from the State's certifications.  
**II. Response to Comments**  
 No comments were received on our June 6, 2017 notice of proposed rulemaking.  
<sup>1</sup> "Where an air agency determines that the provisions in or referred to by its existing EPA approved SIP are adequate with respect to a given infrastructure SIP element (or subelement) even in light of the promulgation of a new or revised NAAQS, the air agency may make a SIP submission in the form of a certification." EPA's "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)," September 13, 2013, at 7.

**III. Final Action**

For reasons expressed in the proposed rule, the EPA is taking final action to approve infrastructure elements from the State’s certifications as shown in Table 1. Elements we are taking no action on are reflected in Table 2.

A comprehensive summary of infrastructure elements and new rules being approved into the South Dakota SIP through this final rule action are provided in Table 1 and Table 2.

**TABLE 1—LIST OF SOUTH DAKOTA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS APPROVING**

Approval
<i>December 20, 2013 submittal</i> —2010 SO <sub>2</sub> NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).
<i>January 25, 2016 submittal</i> —2012 PM <sub>2.5</sub> NAAQS: (A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M).

**TABLE 2—LIST OF SOUTH DAKOTA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS TAKING NO ACTION ON**

No action (Revision to be made in separate rulemaking action.)
<i>December 20, 2013 submittal</i> —2010 SO <sub>2</sub> NAAQS: (D)(i)(I) prongs 1 and 2.
<i>January 25, 2016 submittal</i> —2012 PM <sub>2.5</sub> NAAQS: (D)(i)(I) prongs 1 and 2.

**IV. Statutory and Executive Orders Review**

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide 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 and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 16, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: July 28, 2017.

**Debra H. Thomas,**

*Acting Regional Administrator, Region 8.*

40 CFR part 52 is amended to read 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 QQ—South Dakota**

- 2. Section 52.2170 is amended in the table in paragraph (e) by adding an entry for “XX. Section 110(a)(2) Infrastructure Requirements for the 2010 SO<sub>2</sub> and 2012 PM<sub>2.5</sub> NAAQS” to read as follows:

**§ 52.2170 Identification of plan.**

\* \* \* \* \*  
(e) \* \* \*

Rule title	State effective date	EPA effective date	Final rule citation, date	Comments
XX. Section 110(a)(2) Infrastructure Requirements for the 2010 SO <sub>2</sub> and 2012 PM <sub>2.5</sub> NAAQS.	Submitted: 12/20/2013 and 01/25/2016.	8/16/2017	[Insert <b>Federal Register</b> page number where the document begins].	Excluding 110(D)(i)(I), interstate transport for the 2010 SO <sub>2</sub> and 2012 PM <sub>2.5</sub> NAAQS which will be acted on separately.

[FR Doc. 2017-17221 Filed 8-15-17; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R01-OAR-2016-0626; FRL-9966-37-Region 1]

**Air Plan Approval; Vermont; Regional Haze Five-Year Progress Report**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving Vermont’s regional haze progress report, submitted on February 29, 2016 as a revision to its State Implementation Plan (SIP). Vermont’s SIP revision addresses requirements of the Clean Air Act (CAA) and EPA’s rules that require states to submit periodic reports describing the progress toward reasonable progress goals (RPGs) established for regional haze and a determination of adequacy of the State’s existing regional haze SIP. EPA is approving Vermont’s progress report on the basis that it addresses the progress report and adequacy determination requirements for the first implementation period covering through 2018.

**DATES:** This direct final rule will be effective October 16, 2017, unless EPA receives adverse comments by September 15, 2017. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2016-0626 at <http://www.regulations.gov>, or via email to [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov). For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket.

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Anne K. McWilliams, Air Quality Planning Unit, U.S. Environmental Protection Agency, New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05-2), Boston, MA 02109-3912, telephone (617) 918-1697, facsimile (617) 918-0697, email [mcwilliams.anne@epa.gov](mailto:mcwilliams.anne@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

**Table of Contents**

- I. Background
- II. EPA’s Evaluation of Vermont’s SIP Revision
  - A. Regional Haze Progress Report
  - B. Determination of Adequacy of Existing Regional Haze Plan
- III. Final Action
- IV. Statutory and Executive Order Reviews

**I. Background**

States are required to submit a progress report in the form of a SIP revision that evaluates progress towards the RPGs for each mandatory Class I Federal area (Class I area)<sup>1</sup> within the

<sup>1</sup> Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks

state and each Class I area outside of the state which may be affected by emissions from within the state. See 40 CFR 51.308(g). States are also required to submit, at the same time as the progress report, a determination of the adequacy of the State’s existing SIP. See 40 CFR 51.308(h). The first progress report is due five years after submittal of the initial regional haze SIP. On August 26, 2009, the Vermont Department of Environmental Conservation (VT DEC) submitted the State’s first regional haze SIP in accordance with the requirements of 40 CFR 51.308.<sup>2</sup>

On February 29, 2016, VT DEC submitted a revision to the Vermont SIP detailing the progress made in the first planning period toward implementation of the Long Term Strategy (LTS) outlined in the Vermont’s 2009 regional haze SIP submittal, the visibility improvement measured at the State’s one Class I area, and a determination of the adequacy of the State’s existing regional haze SIP. EPA is approving Vermont’s February 29, 2016 SIP revision on the basis that it satisfies the requirements of 40 CFR 51.308(g) and (h).

**II. EPA’s Evaluation of Vermont’s SIP Revision**

On February 29, 2016, Vermont submitted its “Regional Haze Five-Year Progress Report” (Progress Report) to EPA as a SIP revision.

Vermont is home to one Class I area, the Lye Brook Wilderness Area (Lye Brook). During the regional haze planning process, an area-of-influence modeling analysis based on back trajectories was used to assess Vermont’s contribution to visibility impairment at Lye Brook and other Class I areas in other states.<sup>3</sup> Based on

that were in existence on August 7, 1977 (42 U.S.C. 7472(a)). Listed at 40 CFR part 81, subpart D.

<sup>2</sup> On May 22, 2012, EPA approved Vermont’s August 26, 2009 regional haze SIP to address the first implementation period for regional haze. See 77 FR 30212.

<sup>3</sup> *Contributions to Regional Haze in the Northeast and Mid-Atlantic United States*, August 2006 [http://www.nescaum.org/documents/contributions-to-regional-haze-in-the-northeast-and-mid-atlantic-united-states/mane-vu\\_haze\\_contribution\\_assessment-2006-0831.pdf](http://www.nescaum.org/documents/contributions-to-regional-haze-in-the-northeast-and-mid-atlantic-united-states/mane-vu_haze_contribution_assessment-2006-0831.pdf).

this analysis, it was determined that Vermont does not influence visibility impairment at any Class I area, including Lye Brook. In the 2009 Vermont regional haze SIP, however, the State agreed to pursue the coordinated course of action agreed to by the Mid-Atlantic/Northeast Visibility Union (MANE-VU)<sup>4</sup> to assure reasonable progress toward preventing any future, and remedying any existing, impairment of visibility in the Class I areas within the MANE-VU region. These strategies are commonly referred to as the MANE-VU “Ask.” The MANE-VU “Ask” includes: a timely implementation of best available retrofit technology (BART) requirements; a 90 percent or more reduction in sulfur dioxide (SO<sub>2</sub>) emissions at 167 electrical generating units (EGUs) “stacks” identified by MANE-VU (or comparable alternative measures); a lower sulfur fuel oil strategy (with limits specified for each State); and continued evaluation of other control measures.<sup>5</sup> Vermont is not home to any BART sources or targeted EGUs. However, Vermont has adopted a lower sulfur fuel oil strategy which is discussed in greater detail below.

#### A. Regional Haze Progress Report

This section includes EPA’s analysis of Vermont’s Progress Report SIP submittal, and an explanation of the basis of our approval.

In its Progress Report, Vermont describes its implementation of the MANE-VU “Ask” for the sulfur content of fuel oil. Vermont adopted the low-sulfur fuel oil strategy on September 28, 2011 in Vermont’s Air Pollution Control Regulations (VT APCR) Section 5–221(1) to take effect in two phases. The first phase began on July 1, 2014, lowering the allowable concentration of sulfur in No. 2 and lighter distillate fuels to 0.05% (500 parts per million

(ppm)) by weight. The second phase, to take effect on July 1, 2018, further lowers the sulfur limit for No. 2 and lighter distillate oils to 0.0015% (15 ppm) by weight, the sulfur limit for No. 4 residual oil to 0.25% (2,500 ppm) by weight, and the sulfur limit for No. 5 and No. 6 residual oils, heavier residual oils, and used oils to 0.5% (5,000 ppm) by weight. EPA has approved Vermont’s Section 5–221(1) into the Vermont SIP. See 77 FR 30213 (May 22, 2012).

Vermont’s Progress Report also includes the status of SO<sub>2</sub> emission reductions from states that affect Class I areas in MANE-VU relative to the MANE-VU “Ask.”<sup>6</sup> Vermont consulted with states in the eastern United States that affect visibility at the Lye Brook Class I area, outlining how the states could meet the MANE-VU “Ask” and help achieve reasonable progress for the Class I area in Vermont and other MANE-VU States. These emission reductions were included in the modeling that predicted progress toward meeting the RPGs for Lye Brook. EPA finds that Vermont’s summary of the status of the implementation of measures in its Progress Report adequately addresses the applicable provisions under 40 CFR 51.308(g).

During the development of the regional haze SIP for the first planning period, MANE-VU and Vermont determined that SO<sub>2</sub> was the greatest contributor to anthropogenic visibility impairment at the State’s Class I area. Therefore, the bulk of visibility improvement achieved in the first planning period was expected to result from reductions in SO<sub>2</sub> emissions from sources inside and outside of the State. In its Progress Report SIP Table 7.3, Vermont presents data from statewide emissions inventories developed for the years 2002, 2008, 2011, and projected inventories for 2018 for SO<sub>2</sub>, Oxides of Nitrogen (NO<sub>x</sub>), Fine Particulate Matter (PM<sub>2.5</sub>) and Volatile Organic Compounds (VOC).<sup>7,8</sup> Vermont’s emissions inventories include the

following source sectors: point, area/nonpoint, on-road, and non-road. The Progress Report highlights that the total SO<sub>2</sub> emissions from all sectors decreased from 7,293 tons per year (tpy) in 2002 to 3,450 tpy in 2011, *i.e.*, approximately a 53% reduction. The annual SO<sub>2</sub> emissions projection for 2018 is 3,493 tpy. VT DEC demonstrated that by 2011, Vermont had already achieved the SO<sub>2</sub> emission reductions expected during the first regional haze planning period.

EPA finds that Vermont has adequately addressed the provision under 40 CFR 51.308(g). Vermont has detailed the SO<sub>2</sub> reductions from the 2002 regional haze baseline by using the most recently available year of data at the time of the development of Vermont’s Progress Report, which is 2011.

The provisions under 40 CFR 51.308(g) also require that states with Class I areas within their borders provide information on current visibility conditions and the difference between current visibility conditions and baseline visibility conditions expressed in terms of five-year averages of these annual values.

Vermont is home to one Class I area, the Lye Brook Wilderness Area. From 1992 to 2012, VT DEC operated an Interagency Monitoring of Protected Visual Environments (IMPROVE) program monitor on Mt. Equinox (LYBR1), near the Lye Brook Wilderness Area. In 2012, a second IMPROVE site was established on Mt. Snow in Dover, Vermont (LYEB1) due to the planned discontinuation of the Mt. Equinox site. Monitors at both sites collected data concurrently for a period of nine months. On the 20% best and worst days, the two sites were found to have a nearly one-to-one relationship. In the Progress Report, VT DEC provides the data in deciviews (dv)<sup>9</sup> for the baseline 2000–2004 five-year average visibility, the most recent 2010–2014 five-year average visibility, the 2018 RPG from Vermont’s 2009 regional haze SIP, and the calculated visibility improvement.<sup>10</sup> See Table 1.

<sup>9</sup> The deciview is a measure for tracking progress in improving visibility. Each deciview change is an incremental change in visibility perceived by the human eye. The preamble to the Regional Haze Rule provides additional details about the deciview (64 FR 35714 (July 1, 1999)).

<sup>10</sup> 2000–2011 data from LYBR1 site and 2012–2014 data from LYEB1 site.

<sup>3</sup> *Contributions to Regional Haze in the Northeast and Mid-Atlantic United States*, August 2006 [http://www.nescaum.org/documents/contributions-to-regional-haze-in-the-northeast-and-mid-atlantic-united-states/mane-vu\\_haze\\_contribution\\_assessment-2006-0831.pdf](http://www.nescaum.org/documents/contributions-to-regional-haze-in-the-northeast-and-mid-atlantic-united-states/mane-vu_haze_contribution_assessment-2006-0831.pdf).

<sup>4</sup> MANE-VU is a collaborative effort of State governments, Tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the Northeastern United States. Member State and Tribal governments include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, and Vermont.

<sup>5</sup> The MANE-VU “Ask” was structured around the finding that SO<sub>2</sub> emissions were the dominant visibility impairing pollutant at the Northeastern Class I areas and electrical generating units comprised the largest SO<sub>2</sub> emission sector. See “Regional Haze and Visibility in the Northeast and Mid-Atlantic States,” January 31, 2001.

<sup>6</sup> Memorandum from NESCAUM to MANE-VU “Overview of State and Federal Actions Relative to MANE-VU Asks” dated March 28, 2013 <http://www.nescaum.org/documents/summary-memo-mane-vu-asks-20130328-final.pdf>.

<sup>7</sup> The 2002, 2008, and 2011 inventories are all based on the respective EPA’s National Emission

TABLE 1—OBSERVED VISIBILITY VS. ESTABLISHED VISIBILITY GOALS (IN DECIVIEWS) FOR LYE BROOK WILDERNESS AREA

	Baseline 2000–2004 5-year average visibility (dv)	Most recent 2010–2014 5-year average visibility (dv)	Visibility improvement (dv)	2018 reason- able progress goal (dv)	Meets 2018 progress goal?
20% Most Impaired Days .....	24.4	18.5	5.9	20.9	Yes.
20% Least Impaired Days .....	6.4	5.1	1.3	5.5	Yes.

The baseline visibility for Lye Brook was 24.4 dv on the 20% most impaired days and 6.4 dv on the least impaired days. The most recent five-year average visibility data (2010–2014) demonstrates that the State has already achieved and surpassed the 2018 RPG for the 20% most impaired days (18.5 dv vs. RPG of 20.9 dv) and ensured no visibility degradation for the 20% least impaired days for the first planning period (5.1 dv vs. RPG of 5.5 dv).

EPA finds that Vermont provided the required information regarding visibility conditions to meet the applicable requirements under 40 CFR 51.308(g), specifically providing baseline visibility conditions (2000–2004), current conditions based on the most recently available IMPROVE monitoring data (2010–2014), and a comparison with the RPGs.

As discussed above, Vermont’s Progress Report SIP Table 7.3 presents data from statewide emissions inventories developed for the years 2002, 2008, 2011, and projected inventories for 2018 for SO<sub>2</sub>, NO<sub>x</sub>, PM<sub>2.5</sub> and VOC. From 2002 through 2011, Vermont’s overall area/nonpoint (the largest SO<sub>2</sub> sector) emissions were reduced from 5,386 to 2,927 tons of SO<sub>2</sub>, below the 2018 projection of 2,990 tons SO<sub>2</sub>. For NO<sub>x</sub>, from 2002 to 2011, the State achieved an overall 35% reduction from 30,231 tons to 19,644 tons. VT DEC is estimating that the state will achieve an additional 8,000 tpy NO<sub>x</sub> reduction, mostly from fleet turnover in the on-road mobile sector, which would result in an emissions level on par with the approximately 11,000 tons of NO<sub>x</sub> projected for 2018 in Vermont’s regional haze SIP. VT DEC indicates that based on the 2011 emissions data, the State has already reduced VOC emissions below the level projected for 2018 (42% reduction by 2011 vs. the projected 19% reduction by 2018). Finally, VT DEC notes that PM<sub>2.5</sub> emissions have increased from 2002 (11,446 tons) to 2008 (14,355 tons) and then decreased in 2011 (13,406 tons). VT DEC notes that this fluctuation is most likely attributable, in part, to increased residential wood burning, as well as to

changes in the emission reporting methodology for estimating fugitive dust emissions. The Vermont projection for PM<sub>2.5</sub> emissions in 2018 is 7,932 tons.

EPA finds that Vermont has adequately addressed the applicable provisions under 40 CFR 51.308(g). VT DEC compared the most recently updated emission inventory data available at the time of the development of the Progress Report with the baseline emissions from its regional haze SIP. The Progress Report appropriately details the 2011 SO<sub>2</sub>, NO<sub>x</sub>, PM<sub>2.5</sub>, and VOC reductions achieved, by sector, thus far in the regional haze planning period.

In its Progress Report, Vermont states that sulfates continue to be the biggest single contributor to regional haze at Lye Brook. Vermont’s emissions were not found to be impacting any Class I area. VT DEC focused its analysis on addressing large SO<sub>2</sub> emissions from point sources outside of the state. The State did not find any significant changes in NO<sub>x</sub> and PM<sub>2.5</sub> which might impede or limit progress during the first planning period. In addition, VT DEC cited the 2013 Northeast States for Coordinated Air Use Management (NESCAUM) report, discussed below, which indicates that all of the MANE–VU Class I areas are on track to meet the 2018 visibility goals established by the states in their regional haze SIPs.<sup>11</sup>

EPA finds that VT DEC has adequately addressed the applicable provisions under 40 CFR 51.308(g). The emissions from Vermont were not found to impact any Class I area. The State also adequately demonstrated that there are no significant changes in emissions of SO<sub>2</sub>, PM<sub>2.5</sub>, or NO<sub>x</sub> from contributing states which have impeded progress in reducing emissions and improving visibility in Vermont’s Class I area, Lye Brook.

In its Progress Report, VT DEC states that it believes that the elements and strategies relied on in its original 2009 regional haze SIP are sufficient to enable

<sup>11</sup> NESCAUM for MANE–VU, “Tracking Visibility Progress 2004–2011,” revised May 24, 2013. <http://www.nescaum.org/documents/manevu-trends-2004-2011-report-final-20130430.pdf/view>.

Vermont to meet all established RPGs. To support this conclusion, VT DEC notes that 2013 SO<sub>2</sub> emissions from all EGUs in the entire MANE–VU region are already less than the 2018 projection (315,675 tons vs. 365,024 tons).<sup>12</sup> In addition, Vermont discusses visibility data from *Tracking Visibility Progress, 2004–2011*, prepared by NESCAUM, which updated the progress at MANE–VU Class I areas during the five-year period ending in 2014. The data included information for the Vermont Class I area, between 2000 and 2014, in the context of short- and long-term visibility goals. The report indicates that visibility impairment on the best and worst days from 2000 to 2014 has improved at Lye Brook. Vermont notes the NESCAUM report indicates that all the MANE–VU Class I states continue to be on track to meet their 2018 RPGs for improved visibility and that further progress may occur through recently adopted or proposed regulatory programs. Based upon the NESCAUM report and visibility data, Vermont states in its Progress Report that visibility improvement at Lye Brook has occurred for the most impaired days and no degradation of visibility has occurred for the least impaired days. Therefore, Vermont finds that Lye Brook is on track to meet the RPGs for 2018 based on observed visibility improvement.

EPA finds that Vermont has adequately addressed the applicable provisions under 40 CFR 51.308(g). EPA views this requirement as an assessment that should evaluate emissions and visibility trends and other readily available information. In its Progress Report, Vermont described the improving visibility trends using data from the IMPROVE network and the downward emissions trends in key pollutants in the State and the MANE–VU region. With a focus on SO<sub>2</sub> emissions from upwind EGUs, Vermont determined that the State’s regional

<sup>12</sup> Mid-Atlantic Air Management Association (MARAMA) Regional Emission Trends Analysis for MANE–VU States: Technical Support Document, Revision 3, March 22, 2013. See the docket for this rulemaking.



haze SIP is sufficient for the Class I area within the state to meet its RPGs.

Vermont's visibility monitoring strategy relies upon participation in the IMPROVE network. As discussed above, the Mt. Equinox (LYBR1) IMPROVE monitor near Lye Brook was replaced by a second IMPROVE site established on Mt. Snow in Dover, Vermont (LYEB1). On the 20% best and worst days, the two sites were found to have a nearly one-to-one relationship. VT DEC finds that the Mt. Snow IMPROVE monitor is an appropriate replacement for the discontinued Mt. Equinox monitor and that there is no indication of a need for additional monitoring sites or equipment.

EPA finds that Vermont has adequately addressed the applicable provisions under 40 CFR 51.308(g) by reviewing and detailing any changes to the state's visibility monitoring strategy.

#### *B. Determination of Adequacy of Existing Regional Haze Plan*

In its Progress Report SIP, Vermont submitted a negative declaration to EPA regarding the need for additional actions or emission reductions in Vermont beyond those already in place and those to be implemented by 2018 according to Vermont's regional haze SIP.

In its Progress Report SIP, Vermont determined that the existing regional haze SIP requires no further substantive revision at this time to achieve the RPGs for the Class I area within the state. The basis for the State's negative declaration is the finding that visibility has improved at all Class I areas in the MANE-VU region. In addition, even though Vermont sources were not found to impact visibility in any Class I area, the SO<sub>2</sub> emissions from the state's sources have decreased. While NO<sub>x</sub> emissions are still greater than the level previously projected for 2018, additional substantial NO<sub>x</sub> emission reductions are expected from the mobile sector over the next several years. Finally, Vermont expects the downward trend in SO<sub>2</sub> emissions from EGUs in the other MANE-VU states to continue through 2018.

EPA concludes that Vermont has adequately addressed the provisions under 40 CFR 51.308(h) because the visibility and emission trends indicate that the Lye Brook Wilderness Area has met its RPGs for 2018.

### **III. Final Action**

EPA is approving Vermont's regional haze Five-Year Progress Report SIP revision, submitted by VT DEC on February 29, 2016, as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and (h).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment 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 relevant adverse comments be filed. This rule will be effective October 16, 2017 without further notice unless the Agency receives relevant adverse comments by September 15, 2017.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 16, 2017 and no further action will be taken on the proposed rule. 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. Statutory and Executive Order Reviews**

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 16, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 24, 2017.  
**Deborah A. Szaro**,  
*Acting Regional Administrator, EPA New England.*  
 Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart UU—Vermont**

■ 2. In § 52.2370, the table in paragraph (e) is amended by adding the entry “Vermont Regional Haze Five-Year Progress Report” at the end of the table to read as follows:

**§ 52.2370 Identification of plan.**

\* \* \* \* \*  
 (e) \* \* \*

**VERMONT NON-REGULATORY**

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Explanation
* Vermont Regional Haze Five-Year Progress Report.	* Statewide	* Submitted 2/29/2016	* 8/16/2017, [insert <b>Federal Register</b> citation].	*

[FR Doc. 2017-17247 Filed 8-15-17; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R04-OAR-2017-0454; FRL-9966-41-Region 4]

**Air Plan Approval: North Carolina; Transportation Conformity**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a portion of a revision to the North Carolina State Implementation plan (SIP) submitted by the State of North Carolina on March 24, 2006, for the purpose of clarifying the State's transportation conformity rules consistent with Federal requirements.

**DATES:** This direct final rule is effective October 16, 2017 without further notice, unless EPA receives adverse comment by September 15, 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-2017-0454 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:**

Nacosta Ward, 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. The telephone number is (404) 562-9140. Ms. Ward can also be reached via

electronic mail at [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background and Purpose**

*A. Call to States for Conformity SIP Revisions*

In the Clean Air Act (CAA or Act), Congress recognized that actions taken by federal agencies could affect a State, Tribal, or local agency's ability to attain and maintain the national ambient air quality standards (NAAQS). Congress added section 176(c) (42 U.S.C. 7506) to the CAA to ensure federal agencies' proposed actions conform to the applicable SIP, Tribal Implementation Plan (TIP), or Federal Implementation Plan (FIP) for attaining and maintaining the NAAQS. That section requires federal entities to find that the emissions from the federal action will conform with the purposes of the SIP, TIP, or FIP or not otherwise interfere with the State's or Tribe's ability to attain and maintain the NAAQS.

The CAA Amendments of 1990 clarified and strengthened the provisions in section 176(c). Because certain provisions of section 176(c) apply only to highway and mass transit funding and approvals actions, EPA published two sets of regulations to implement section 176(c). The Transportation Conformity Regulations, (40 CFR part 51, subpart T, and 40 CFR part 93, subpart A) first published on

November 24, 1993 (58 FR 62188), address federal actions related to highway and mass transit funding and approval actions. The conformity regulations have been revised numerous times since then.

When promulgated in 1993, the Federal Transportation Conformity Rule at 40 CFR 51.395 mandated that the transportation conformity SIP revisions incorporate several provisions of the rule in verbatim form, except insofar as needed to give effect to a stated intent in the revision to establish criteria and procedures more stringent than the requirements stated in these sections.

#### B. What is transportation conformity?

Transportation conformity is required under section 176(c) of the CAA to ensure that federally-supported highway projects, transit projects, and other activities are consistent with (“conform to”) the purpose of the SIP.

Transportation conformity currently applies to areas that are designated nonattainment, as well as those areas redesignated to attainment after 1990 (maintenance areas), with plans developed under section 175A of the Act for the following transportation related pollutants: Ozone, particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>), carbon monoxide, and nitrogen dioxide. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS. The transportation conformity regulation is found in 40 CFR part 93, subpart A and provisions related to attainment SIPs are found in 40 CFR 51.390.

#### C. Prior Approval of North Carolina Conformity SIP Revisions

EPA has approved several revisions to the North Carolina SIP to incorporate transportation conformity requirements consistent with the Federal regulations. Initially, on December 27, 2002, EPA approved North Carolina’s SIP revision to address consultation requirements and procedures which included memoranda of agreements for areas in North Carolina. See 67 FR 78983. On September 15, 2003, EPA approved the Mecklenburg-Union Metropolitan Planning Organization interagency transportation conformity memorandum of agreement. See 68 FR 53883. EPA also approved an update to North Carolina’s transportation conformity requirements on December 26, 2013, to establish transportation conformity criteria and procedures related to interagency consultation, conflict resolution, public participation, and

enforceability of certain transportation related control measures and mitigation measures. See 78 FR 78272.

#### II. Analysis of State’s Submittal

On March 24, 2006, the North Carolina Department of Environment and Natural Resources (now the North Carolina Department of Environmental Quality) submitted a SIP revision to EPA to clarify the applicability of the State’s transportation conformity rules. In this direct final rulemaking EPA is taking action to approve changes to regulation 15A NCAC Subchapter 2D, Section .2001, *Purpose, Scope and Applicability*. EPA has taken, will take, or, for various reasons, will not take separate action on all other revisions submitted on March 24, 2006.<sup>1</sup>

The State explained in its submission that North Carolina’s rule, as previously written, could be read in two ways. One way is that transportation conformity rules apply to areas identified as nonattainment or maintenance areas by EPA in the Code of Federal Regulations (CFR) or to areas listed in the rule. North Carolina explained the second way that their rule could be read is that transportation conformity rules apply only to areas identified as nonattainment or maintenance areas by the CFR and also identified in the rule. North Carolina explained that the State’s intent is to apply transportation conformity rules to areas identified as nonattainment or maintenance areas by EPA in the CFR or to areas listed in the rule. North Carolina also updated its rule to clarify a vague statement in their previous rule that read that transportation conformity rules apply to areas “not in compliance with the primary standard.” The State replaced this language with a more specific reference to ozone and PM<sub>2.5</sub> standards.

EPA has reviewed North Carolina’s transportation conformity rule changes to ensure consistency with Federal transportation conformity requirements at 40 CFR part 93, subpart A. North Carolina’s clarification that transportation conformity requirements apply to areas identified as nonattainment or maintenance areas by

<sup>1</sup> On July 18, 2017, EPA took direct final action on 15A NCAC 2D Sections .0101, .0103, .0810, .1902, .1903 and 15A NCAC 2Q Sections .0103, .0105, .0304, .0305, and .0808. See 82 FR 32767. EPA will be taking separate action on 15A NCAC 2D Section.1904 and 2Q Sections .0101 and .0301. EPA did not take action on 15A NCAC 2D Section .1201, because this rule pertains to incinerators and addresses emission guidelines under CAA sections 111(d) and 129 and 40 CFR part 60 and is not a part of the federally-approved SIP. Regulation 15A NCAC 2D Section .1401 was withdrawn by NCDEQ on June 5, 2017. Regulation 15A NCAC 2Q Sections .0508 and 0523 were not acted on because these are title V rules and are not a part of the SIP.

EPA in the CFR or to areas listed in the rule is consistent with the Federal transportation conformity requirements in that it does not require a change to the State’s rules in order for the requirements to apply. Pursuant to CAA section 176(c) transportation conformity requirements are applicable in relevant nonattainment and maintenance areas without a rule change by the State to be in effect. Thus, EPA is taking direct final action to approve the aforementioned change to North Carolina’s transportation conformity provisions as found at 15A NCAC 2D Section .2001. Additionally, EPA is proposing to approve North Carolina’s change in section (d) of 15A NCAC 2D Section .2001 to clarify the vague statement that transportation conformity requirements apply to areas “not in compliance with the primary standard” by being more specific in identifying the applicable primary standards of PM<sub>2.5</sub> and ozone. This change is consistent with Federal requirements that transportation conformity requirements do not apply in all areas “not in compliance with the primary standard” but only in nonattainment and maintenance areas for transportation-related pollutants.<sup>2</sup>

#### III. Incorporation by Reference

In this rule, EPA is taking direct final action 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 finalizing the incorporation by reference of 15A NCAC Subchapter 2D, Section .2001, *Purpose, Scope and Applicability*, effective November 10, 2005, which incorporates by reference the Federal Transportation Conformity Rule that was restructured and amended on March 14, 2012 (77 FR 14979). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>3</sup> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 4 Office (please contact the person identified in

<sup>2</sup> Transportation conformity requirements do not apply in areas designated nonattainment (or considered as maintenance areas) for lead or sulfur dioxide, although these are primary standards.

<sup>3</sup> 62 FR 27968 (May 22, 1997).

the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### IV. Final Action

Pursuant to section 110 of the CAA, EPA is approving the changes to the North Carolina SIP regarding the State's transportation conformity requirements. The approval of North Carolina's conformity SIP changes clarifies the State rules and is consistent with Federal transportation conformity requirements.

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 16, 2017 without further notice unless the Agency receives adverse comments by September 15, 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 16, 2017 and no further action will be taken on the proposed rule.

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, the Agency may adopt as final those provisions of the rule that are not the subject of an adverse comment. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

the CAA. Accordingly, 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 16, 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, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 7, 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 II—North Carolina

- 2. In § 52.1770 (c), Table 1 is amended under Subchapter 2D Air Pollution Control Requirements by revising the entry for "Sect .2001" to read as follows:

§ 52.1770 Identification of plan.

(c) \* \* \*

\* \* \* \* \*

TABLE 1—EPA APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
<b>Subchapter 2D Air Pollution Control Requirements</b>				
<b>Section .2000 Transportation Conformity</b>				
Sect .2001 .....	Purpose, Scope and Applicability.	11/10/2005	8/16/2017, [Insert first page of publication].	
*	*	*	*	*

\* \* \* \* \*

[FR Doc. 2017-17251 Filed 8-15-17; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R04-OAR-2017-0436; FRL-9966-38-Region 4]

**Air Plan Approval; AL; VOC Definitions and Particulate Emissions**

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

**ACTION:** Direct final rule.

**SUMMARY:** On May 19, 2017, the State of Alabama, through the Alabama Department of Environmental Management (ADEM), submitted changes to the Alabama State Implementation Plan (SIP). The Environmental Protection Agency (EPA) is taking direct final action to approve the submission. Specifically, the revision pertains to definitional changes, including the modification of the definition of “volatile organic compounds” (VOCs), correction of a typographical error, and removal of control of particulate emissions and opacity limits. EPA is taking direct final action to approve the SIP revision because the State has demonstrated that these changes are consistent with the Clean Air Act (CAA or Act).

**DATES:** This direct final rule is effective October 16, 2017 without further notice, unless EPA receives adverse comment by September 15, 2017. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0436 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:** Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8726. Mr. Wong can be reached via electronic mail at [wong.richard@epa.gov](mailto:wong.richard@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In this rulemaking, EPA is approving changes to the Alabama SIP, submitted by the State on May 19, 2017. The submission revises ADEM Rule 335-3-1-.02—*Definitions* and Rule 335-3-4-

.08—*Wood Waste Boilers*. This rulemaking revises the definition of VOCs, corrects a typographical error and removes particulate emission and opacity limits for Talladega County.

**II. EPA’s Analysis of Alabama’s SIP Revision**

*A. Rule 335-3-1-.02—Definitions*

Tropospheric ozone, commonly known as smog, occurs when VOCs and nitrogen oxides (NO<sub>x</sub>) react with sunlight in the atmosphere. Because of the harmful health effects of ozone, EPA limits the amount of VOCs and NO<sub>x</sub> that can be released into the atmosphere. VOCs are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate) that participate in atmospheric photochemical reactions. Different VOCs have different levels of reactivity; they do not react at the same speed or form ozone to the same extent.

EPA determines whether a given carbon compound has “negligible” reactivity by comparing the compound’s reactivity to the reactivity of ethane. It has been EPA’s policy that compounds of carbon with negligible reactivity need not be regulated to reduce ozone. *See* 42 FR 35314, July 8, 1977. EPA lists these compounds in its regulations at 40 CFR 51.100(s) and excludes them from the definition of VOC. The chemicals on this list are often called “negligibly reactive.” EPA may periodically revise the list of negligibly reactive compounds to add or delete compounds.

On November 29, 2004,<sup>1</sup> and August 1, 2016,<sup>2</sup> EPA issued final rules revising the definition of VOCs by adding new compounds (tertiary butyl acetate (or t-Butyl acetate) and 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxyl) ethane) to the list of those that considered to be negligibly reactive compounds, and on February 25, 2016 (81 FR 9339), EPA issued a final rule removing recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for t-Butyl acetate. The State's May 19, 2017, SIP revision adds these compounds to the list of negligibly reactive compounds under ADEM Rule 335-3-1-.02 subpart (gggg). The SIP revision also removes the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements requirement for t-Butyl acetate. Additionally, the submittal makes a typographical correction under subpart (gggg)(iii). EPA proposes to approve these revisions because they are consistent with the definition of VOC at 40 CFR 51.100(s).

The State's addition of exemptions from the definition of VOCs and removal of recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements for t-butyl acetate are approvable under section 110(l) because it reflects changes to Federal regulations based on findings that the exempted compounds are negligibly reactive. The typographical error correction makes ministerial changes for consistency.

#### *B. Rule 335-3-4-.08—Wood Waste Boilers*

Rule 335-3-4-.08—*Wood Waste Boilers* was adopted into the Alabama SIP on April 23, 1974 (39 FR 14338), to provide emission limits based on available control technologies and included a 0.30 grain per dry standard cubic foot (gr/dscf) emissions limit for boilers burning a combination of wood waste and fossil fuels. On November 24, 1981 (46 FR 57484), EPA finalized a SIP revision allowing pulp mills to operate boilers that burn only wood waste in Talladega County. This change allowed a particulate matter emissions concentration of 0.45 gr/dscf when burning wood waste alone (but total emissions would remain the same provided boilers operate on a reduced

rate). On July 11, 1986 (51 FR 25198), EPA approved a revision adding a new paragraph 3 at Rule 335-3-4-.08 that relaxed the allowable emission limit to 0.60 gr/dscf for wood waste boiler sources that operate up to 300 million British thermal unit per hour and tightened allowable emissions for other types of sources in Talladega County. Compliance with the emission limit was determined by an annual stack test. Additionally, an opacity limit of 76 percent was established and would be measured by a transmissometer.

The May 19, 2017, SIP revision removes paragraph 3, applicable only to sources in Talladega County, because the type of source no longer exists in the County or anywhere else in the State. Moreover, if such a source were to begin operating in the future, it would be subject to more stringent requirements under Rule 335-3-4-.08 paragraph 2.

EPA believes that these changes to the regulatory portion of the SIP are consistent with section 110 of the CAA and meet the regulatory requirements pertaining to SIPs. Pursuant to CAA section 110(l), the Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA section 171), or any other applicable requirement of the Act. The State's removal of emissions and opacity requirements for Talladega County is an approvable change under section 110(l) because, should these sources start operating, they would fall under more stringent rules in the SIP.

#### **III. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Rule 335-3-1-.02—*Definitions* and Rule 335-3-4-.08—*Wood Waste Boilers*, effective June 9, 2017. 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.<sup>3</sup> EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and/or at the EPA

<sup>3</sup> 62 FR 27968 (May 22, 1997).

Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **IV. Final Action**

EPA is taking direct final action to approve portions of Alabama's May 19, 2017, submission submitted by the State of Alabama through ADEM. The submission revises Rule 335-3-1-.02—*Definitions* and Rule 335-3-4-.08—*Wood Waste Boilers*.

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 16, 2017 without further notice unless the Agency receives adverse comments by September 15, 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 16, 2017 and no further action will be taken on the proposed rule.

#### **V. Statutory and Executive Order Reviews**

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

<sup>1</sup> In EPA's November 29, 2004, final rulemaking, the Agency adds tertiary butyl acetate to the list of excluded compounds from the definition of VOCs. See 69 FR 69298.

<sup>2</sup> In EPA's August 1, 2016, final rulemaking, the Agency adds 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxyl) ethane to the list of excluded compounds from the definition of VOCs. See 81 FR 20330.

- 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 16, 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, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 7, 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 B—Alabama**

- 2. Section 52.50(c) is amended by revising the entries for “Section 335–3–1–.02” and “Section 335–3–4–.08” to read as follows:

**§ 52.50 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA APPROVED ALABAMA REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date	Explanation
<b>Chapter No. 335–3–1 General Provision</b>				
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Section 335–3–1–.02	Definitions	6/9/2017	8/16/2017; [Insert citation of publication].	
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<b>Chapter 335–3–4 Control of Particulate Emissions</b>				
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Section 335–3–4–.08	Wood Waste Boilers	6/9/2017	8/16/2017; [Insert citation of publication].	
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 [FR Doc. 2017-17231 Filed 8-15-17; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2016-0286; FRL-9964-40]

### Prothioconazole; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of

prothioconazole in or on Sunflower subgroup 20B at 0.2 parts per million (ppm). Bayer CropScience requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective August 16, 2017. Objections and requests for hearings must be received on or before October 16, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2016-0286, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

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

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or

pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at [http://www.ecfr.gov/cgi-bin/text-id?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-id?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl).

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2016-0286 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 16, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2016-0286, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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

##### II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July 20, 2016 (81 FR 47150) (FRL-9948-45), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announced the filing of a pesticide petition (PP 6E8469) by Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. This petition requested that 40 CFR 180.626 be amended by establishing tolerances for residues of prothioconazole in or on imported commodities in the sunflower subgroup 20B at 0.2 ppm. This document referenced a summary of a petition prepared by Bayer CropScience, the registrant, which are available in the docket, <http://www.regulations.gov>. No comments were received in response to the notice of filing.

##### III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data



and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for prothioconazole including exposure resulting from the tolerance established by this action.

#### A. Risk Assessment

In the **Federal Register** of November 10, 2016 (81 FR 78917) (FRL-9953-71), EPA established tolerances for residues of prothioconazole in or on cotton, gin byproducts at 4.0 ppm and the cottonseed subgroup 20C at 0.4 ppm. Because much of the safety assessment of prothioconazole for the current action remains the same, EPA is relying in part upon the findings made in the November 10, 2016 final rule in support of this action.

A summary of the toxicological profile and endpoints used for human risk assessment is discussed in Units III.A. and III.B. of the November 10, 2016 final rule.

In evaluating dietary exposure for this action, EPA considered exposure under the petitioned-for tolerances as well as all existing prothioconazole tolerances in 40 CFR 180.626. The residue data used for the acute and chronic dietary exposure assessments have not changed since the assessment supporting the November 10, 2016 final rule, except to incorporate the recommended tolerance on commodities associated with Sunflower subgroup 20B, for which the Agency assumed tolerance-level residues and 100 percent crop treated. For a summary of how EPA assessed these dietary exposures, see Unit III.C.1 of the November 10, 2016 final rule.

In addition, because the requested sunflower subgroup tolerance is not accompanied by a corresponding request for a U.S. registration for use of prothioconazole on the commodities in the sunflower subgroup, the drinking water and residential exposure assessments remain the same. A summary of EPA's assessment of drinking water exposure and residential exposure is discussed in Units III.C.2. and III.C.3.

A summary of EPA's conclusions about the cumulative effects of prothioconazole can be found in Unit III.C.4. of the November 10, 2016 final rule; however, since the November 10, 2016 final rule was published, the Agency has updated its dietary exposure and risk analysis for the common triazole metabolites 1,2,4-triazole (T), triazolylalanine (TA), triazolylacetic acid (TAA), and triazolylpyruvic acid (TP). The update was completed in association with registration requests for several triazole fungicides and includes,

inter alia, the potential exposure to the common triazole metabolites resulting from the use of prothioconazole on commodities in the sunflower subgroup 20B. That analysis concluded that risk estimates were below the Agency's level of concern for all population groups. This assessment may be found on <http://www.regulations.gov> by searching for the following title and docket number: "*Common Triazole Metabolites: Updated Dietary (Food + Water) Exposure and Risk Assessment to Address the New Section 3 Registrations For Use of Difenconazole on Rice and Cotton.*" (located in docket ID number EPA-HQ-OPP-2016-0254).

Because there have been no changes to the potential for prenatal and postnatal toxicity or in the completeness of data with respect to toxicity and exposure, EPA has determined that reliable data show the safety of infants and children would be adequately protected if the additional tenfold (10x) margin of safety required under section 408(b)(2)(C) ("FQPA safety factor") were reduced to 1x. A summary of EPA's rationale for this determination is discussed in Unit III.D. of the November 10, 2016 final rule.

#### B. Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population-adjusted dose (aPAD) and chronic population-adjusted dose (cPAD). Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate points of departure to ensure that an adequate margin of exposure exists.

Using the exposure assumptions discussed above and in the November 10, 2016 final rule, EPA assessed acute and chronic dietary exposure from food and drinking water and concluded that the new tolerances on sunflower subgroup 20B do not change the risk estimates from the November 10, 2016 final rule. The acute dietary exposure utilized 40% of the aPAD for females 13-49 years old at the 95th percentile. The chronic dietary exposure utilized 32% of the cPAD for the U.S. population, and 77% for all infants (<1 year), the most highly exposed population subgroup.

Because there are no existing or proposed residential uses for prothioconazole, there are no exposures expected via the residential exposure pathway. Therefore, all aggregate risk estimates are expected to be equivalent to dietary (food and drinking water) risk estimates mentioned above.

Therefore, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to prothioconazole residues.

For a detailed discussion of the aggregate risk assessments and determination of safety for these tolerances, please refer both to the November 10, 2016 final rule and its supporting documents, available at <http://www.regulations.gov> in docket ID number EPA-HQ-OPP-2015-0722, and to the risk assessment for this current action "*Prothioconazole: Human Health Risk Assessment for the Petition for a Tolerance Without U.S. Registration for Residues in/on sunflower subgroup 20B.*" in docket ID number EPA-HQ-OPP-2016-0286.

#### IV. Other Considerations

##### A. Analytical Enforcement Methodology

Adequate liquid chromatography with tandem mass spectrometry (LC/MS/MS) methods are available for enforcing prothioconazole tolerances in crop and livestock commodities. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-350; telephone number: (410) 305-2905; email address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

##### B. International Residue Limits

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

There is currently a Codex MRL for sunflower/safflower established at 0.05 ppm. The U.S. EPA is establishing a tolerance on sunflower at 0.2 ppm to harmonize with a major trading partner, Canada, in order to have a harmonized North America MRL for the Sunflower subgroup 20B. A tolerance cannot be established at the lower Codex MRL



because it would present a trade irritant for sunflower commodities coming into the United States.

**V. Conclusion**

Therefore, a tolerance is established for residues of prothioconazole, in or on sunflower subgroup 20B at 0.2 parts ppm.

**VI. Statutory and Executive Order Reviews**

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined

that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

**VII. Congressional Review Act**

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

**List of Subjects in 40 CFR Part 180**

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

Dated: July 26, 2017.

**Michael Goodis,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

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

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

■ 2. In § 180.626, add alphabetically the entry “Sunflower subgroup 20B” to the table in paragraph (a)(1), and add footnote 1 to the table to read as follows:

**§ 180.626 Prothioconazole; tolerances for residues.**

- (a) \* \* \*
- (1) \* \* \*

Commodity	Parts per million
* * * * *	*
Sunflower subgroup 20B <sup>1</sup> .....	0.2
* * * * *	*

<sup>1</sup> There are no U.S. registrations allowing use of prothioconazole on the commodities in the Sunflower subgroup 20B as of August 16, 2017.

\* \* \* \* \*  
 [FR Doc. 2017–17336 Filed 8–15–17; 8:45 am]  
**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA–HQ–OPP–2017–0108; FRL–9964–53]

**Fatty Acids, Rape-Oil, Triesters With Polyethylene Glycol Ether With Glycerol (3:1); Tolerance Exemption**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of fatty acids, rape-oil, triesters with polyethylene glycol ether with glycerol (3:1) (CAS Reg. No. 688045–21–8) when used as an inert ingredient in a pesticide chemical formulation. Seppic, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of fatty acids, rape-oil, triesters with polyethylene glycol ether with glycerol (3:1) on food or feed commodities.

**DATES:** This regulation is effective August 16, 2017. Objections and requests for hearings must be received on or before October 16, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0108, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301

Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:**

Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [RDPRNotices@epa.gov](mailto:RDPRNotices@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at [http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl).

*C. Can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2017-0108 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be

received by the Hearing Clerk on or before October 16, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2017-0108, by one of the following methods.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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

**II. Background and Statutory Findings**

In the **Federal Register** of June 8, 2017 (82 FR 26641) (FRL-9961-14), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN-11003) filed by SEPPIC INC., 30 TWO Bridges Road, Suite 210, Fairfield, New Jersey 07004. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of fatty acids, rape-oil, triesters with polyethylene glycol ether with glycerol (3:1) (CAS Reg. No. 688045-21-8). That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments. Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable

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

**III. Risk Assessment and Statutory Findings**

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). fatty acids, rape-oil, triesters

with polyethylene glycol ether with glycerol (3:1) conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's minimum number average MW of 1800 amu is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, fatty acids, rape-oil, triesters with polyethylene glycol ether with glycerol (3:1) meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to fatty acids, rape-oil, triesters with polyethylene glycol ether with glycerol (3:1).

#### IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that fatty acids, rape-oil, triesters with polyethylene glycol ether with glycerol (3:1) could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The minimum number average MW of fatty acids, rape-oil, triesters with polyethylene glycol ether with glycerol (3:1) is 1800 amu. Generally, a

polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since fatty acids, rape-oil, triesters with polyethylene glycol ether with glycerol (3:1) conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

#### V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

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

EPA has not found fatty acids, rape-oil, triesters with polyethylene glycol ether with glycerol (3:1) to share a common mechanism of toxicity with any other substances, and fatty acids, rape-oil, triesters with polyethylene glycol ether with glycerol (3:1) does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fatty acids, rape-oil, triesters with polyethylene glycol ether with glycerol (3:1) does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at <http://www.epa.gov/pesticides/cumulative>.

#### VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of fatty acids, rape-oil, triesters with polyethylene glycol ether with glycerol (3:1), EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

#### VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of fatty acids, rape-oil, triesters with polyethylene glycol ether with glycerol (3:1).

##### A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

##### B. International Residue Limits

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

The Codex has not established a MRL for fatty acids, rape-oil, triesters with polyethylene glycol ether with glycerol (3:1).

#### VIII. Conclusion

Accordingly, EPA finds that exempting residues of fatty acids, rape-oil, triesters with polyethylene glycol ether with glycerol (3:1) from the requirement of a tolerance will be safe.

#### IX. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning

Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency

has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

**X. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and

other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

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

Dated: July 18, 2017.

**Donna S. Davis,**  
*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

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

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

■ 2. In § 180.960, alphabetically add the polymers in the table to read as follows:

**§ 180.960 Polymers; exemptions from the requirement of a tolerance.**

\* \* \* \* \*

Polymer	CAS No.
* * * * *	* * * * *
Fatty acids, rape-oil, triesters with polyethylene glycol ether with glycerol (3:1); minimum number average molecular weight (in amu), 1800 .....	688045–21–8
* * * * *	* * * * *

[FR Doc. 2017–17337 Filed 8–15–17; 8:45 am]  
**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA–HQ–OPP–2016–0259; FRL–9964–94]

**1-Triacontanol; Exemption From the Requirement of a Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of the biochemical pesticide 1-triacontanol (TA) in or on all food commodities when used in accordance with label directions and good agricultural practices. CH Biotech R&D, Co., LTD submitted a petition to

EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of TA in or on all food commodities when used in accordance with label directions and good agricultural practices.

**DATES:** This regulation is effective August 16, 2017. Objections and requests for hearings must be received on or before October 16, 2017, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0259, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency

Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Robert McNally, Biopesticides, and Pollution Prevention Division (BPPD) (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: [BPPDFRNotices@epa.gov](mailto:BPPDFRNotices@epa.gov).

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at [http://www.ecfr.gov/cgi-bin/text-id?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-id?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl).

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2016-0259 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 16, 2017. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2016-0259, by one of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online

instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail*: OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.

- *Hand Delivery*: To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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

## II. Background and Statutory Findings

In the *Federal Register* of August 29, 2016 (81 FR 59165) (FRL-9950-22), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 6F8459) by CH Biotech R&D Co., LTD C/O Spring Trading Company, 203 Dogwood Trail, Magnolia, TX 77354. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of 1-triacontanol. That document referenced a summary of the petition prepared by the petitioner James Yowell of Spring Trading Company, which is available in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will

result to infants and children from aggregate exposure to the pesticide chemical residue. . . ." Additionally, FFDCA section 408(b)(2)(D) requires that the Agency consider "available information concerning the cumulative effects of a particular pesticide's residues" and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

## III. Toxicological Profile

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability, and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

### A. Overview of 1-Triacontanol

1-Triacontanol (TA), a long chain fatty alcohol (LCOH- C30), naturally occurs in plant, and insect waxes and constitutes a regular part of the human diet. As a pesticide, TA functions as a plant growth regulator. It promotes germination, root, stem and leaf growth, and flowering, as well as improving the seed, thus increasing plant production and quality. In terms of the mechanism of action, TA can be absorbed through the plant's stem and leaf, and may promote plant growth, increase accumulation of dry matter, improve the permeability of cell membrane, increase chlorophyll content, improve photosynthetic intensity, and increase activity of amylase, oxidase and peroxidase. With regard to its presence in insect wax, TA constitutes the majority of long chain fatty alcohols found in beeswax, naturally secreted through the bee's abdomen. In addition to the dietary consumption of TA from foods, humans are already exposed to 1-triacontanol because of its use in cosmetics, toiletries, surface lubricants, and pharmaceutical preparations; products that are broadly used across the consumer products industry with highest per person consumer exposures resulting from use in personal care products. For the pharmaceutical industry, there are overall health benefits such as anti-inflammatory and

cholesterol lowering properties from the use of TA (Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for 1-Triacontanol EPA-HQ-OPP-2016-0259).

An aggregate risk assessment for TA for dietary (food and drinking water) exposures was not conducted as no toxicological endpoints have been identified in the toxicity database. EPA has determined under the FFDCA that there is reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to TA.

There are no human health or environmental risks of concern associated with this assessment. Therefore, EPA has no objection to the registration of the proposed manufacturing use product, associated end use product, and an exemption from a food tolerance.

For a summary of the data upon which EPA relied, please refer to the document entitled, "Federal Food, Drug, and Cosmetic Act (FFDCA) Considerations for 1-Triacontanol" (June 13, 2017), available in the docket for this action.

#### *B. Biochemical Pesticide Toxicology Data Requirements*

All applicable toxicology data requirements supporting the petition to establish an exemption from the requirement of a tolerance for the use of TA as an active ingredient in or on food commodities, when used in accordance with label direction and good agricultural practices, have been fulfilled. Based on the submitted data and the results of studies using comparable long chain fatty alcohols, there are no human health risks of concern associated with TA and there is sufficient information to justify an exemption from the requirement of a tolerance for this compound on all food commodities. Acute studies on TA show that this long chain fatty alcohol is Toxicology Category IV for: Acute oral toxicity, Acute dermal toxicity, Acute eye irritation, and Primary dermal irritation. TA is not a dermal sensitizer. Waivers were granted for subchronic toxicology studies including the 90-day Oral study, Developmental toxicity study, and Genetic toxicity testing based on existing scientific literature for structurally similar long chain fatty alcohols that demonstrate that fatty alcohols rapidly and readily become degradable and pose no risks to human health or to the environment.

#### **IV. Aggregate Exposures**

In examining aggregate exposure, FFDCA section 408 directs EPA to

consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

#### *A. Dietary Exposure*

An aggregate risk assessment for TA for dietary (food and drinking water) exposures was not conducted as no toxicological endpoints have been identified in the toxicity database.

#### *B. Other Non-Occupational Exposure*

Other non-occupational exposure to 1-triacontanol from pesticidal use is not expected to occur as the TA biodegrades rapidly and the product is applied at low application rates of 500 part per millions (ppm) three to four times per season. There are no residential uses for TA that would result in non-occupational exposure.

#### **V. Cumulative Effects From Substances With a Common Mechanism of Toxicity**

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

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

#### **VI. Determination of Safety for U.S. Population, Infants and Children**

FFDCA section 408(b)(2)(C) provides that, in considering the establishment of a tolerance or tolerance exemption for a pesticide chemical residue, EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In

addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure, unless EPA determines that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor. In applying this provision, EPA either retains the default value of 10X, or uses a different additional or no safety factor when reliable data are available to support a different additional or no safety factor.

As part of its qualitative assessment, EPA evaluated the available toxicity and exposure data on TA and considered its validity, completeness, and reliability, as well as the relationship of this information to human risk. EPA considers the toxicity database to be complete and has identified no residual uncertainty with regard to prenatal and postnatal toxicity or exposure. No hazard was identified based on the available studies; therefore, EPA concludes that there are no threshold effects of concern to infants, children, or adults from TA. As a result, EPA concludes that no additional margin of exposure (safety) is necessary.

#### **VII. Other Considerations**

##### *A. Analytical Enforcement Methodology*

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

##### *B. International Residue Limits*

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

EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for 1-triacontanol.

### VIII. Conclusions

Based on its assessment of 1-triacontanol, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to 1-triacontanol. Therefore, an exemption is established for residues of 1-triacontanol on all food commodities when used in accordance with label directions and good agricultural practices.

### IX. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States

or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

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

### X. Congressional Review Act

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

### List of Subjects in 40 CFR Part 180

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

Dated: July 31, 2017.

**Richard P. Keigwin, Jr.,**  
*Director, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

### PART 180—[AMENDED]

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

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

■ 2. Add § 180.1345 to subpart D to read as follows:

#### § 180.1345 1-Triacontanol; exemption from the requirement of a tolerance.

Residues of the biochemical pesticide 1-Triacontanol are exempt from the requirement of a tolerance in or on all food commodities.

[FR Doc. 2017-17338 Filed 8-15-17; 8:45 am]

**BILLING CODE 6560-50-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 1852

RIN 2700-AE42

### NASA FAR Supplement: Preproposal/Pre-Bid Conference (2017-N023)

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** NASA is issuing a direct final rule to amend the NASA FAR Supplement (NFS) to remove reference to the NASA Acquisition Information System (NAIS) electronic posting system and revise titles to agency directives.

**DATES:** This direct final rule is effective October 16, 2017. Comments due on or before September 15, 2017. If adverse comments are received, NASA will publish a timely withdrawal of the rule in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Manuel Quinones, NASA, Office of Procurement, telephone 202.358.2143.

### SUPPLEMENTARY INFORMATION:

#### I. Background

During a recent quality review of the NFS to validate the accuracy and relevancy of its policy, guidance, and procedures, we discovered (1) an outdated reference to the NASA Acquisition Information System (NAIS) for posting agency business opportunities and (2) superseded titles to NASA directives. NASA posts all business opportunities through the Governmentwide Point of Entry (GPE) via the Internet at <http://www.fedbizopps.gov> and agency directives are periodically reviewed and updated. This rule amends NFS 1852.215-77 and 1852.245-82 to remove the reference to the NAIS electronic posting system and update titles to NASA policy directives respectively.

NASA has not published a proposed rule in the **Federal Register** to make these nonsubstantive changes because they affect only the internal operating procedures of the Government and have no significant cost or administrative or cost impact on contractors or offerors. NASA does not anticipate opposition to the changes or significant adverse comments. However, if the Agency receives a significant adverse comment, it will withdraw this direct final rule by publishing a notice in the **Federal Register**. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including



challenges to the rule’s underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

**II. Publication of This Final Rule for Public Comment Is Not Required by Statute**

Publication of proposed regulations”, 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This direct final rule is not required to be published for public comment because it makes nonsubstantive changes to Agency regulations. It merely removes from the NASA FAR Supplement a reference to the NASA Acquisition Information System (NAIS) posting system and updates titles to agency-level directives.

**III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**IV. Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant NFS revision within the meaning of FAR 1.501–1 and 41 U.S.C. 1707 and therefore does not require publication for public comment.

**V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Part 1852**

Government Procurement.

**Manuel Quinones,**  
*NASA FAR Supplement Manager.*

Accordingly, 48 CFR part 1852 is amended as follows:

**PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 1. The authority citation for part 1852 continues to read as follows:

**Authority:** 51 U.S.C. 20113(a) and 48 CFR chapter 1.

**1852.215–77 [Amended]**

■ 2. Amend section 1852.215–77 by removing from paragraph (e) last sentence, the words “using the NAIS Electronic Posting System”.

**1852.245–82 [Amended]**

■ 3. Amend section 1852.245–82 by—

■ a. Revising the title and date of the clause;

■ b. Removing in paragraph (a)(1) “NPD 8800.14, Policy for Real Property Management” and adding “NPD 8800.14, Policy for Real Estate Management” in its place; and

■ c. Removing in paragraph (a)(2) “NPD 8831.2, Facility Maintenance Management” and adding “NPD 8831.2, Facilities Maintenance and Operations Management” in its place.

The revision reads as follows:

**1852.245–82 Occupancy management requirements.**

\* \* \* \* \*

**Occupancy Management Requirements (September 15, 2017)**

\* \* \* \* \*

[FR Doc. 2017–16962 Filed 8–15–17; 8:45 am]

**BILLING CODE 7510–13–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

[Docket No. 150121066–5717–02]

RIN 0648–XF606

**Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason quota transfer.

**SUMMARY:** NMFS is transferring 30 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the Harpoon category. With this transfer, the adjusted Harpoon category quota for the 2017 fishing season is 68.6 mt. The 2017 Harpoon category fishery is open until November 15, 2017, or until the Harpoon category quota is reached, whichever comes first. The action is based on consideration of the regulatory determination criteria regarding inseason adjustments, and applies to Atlantic tunas Harpoon category (commercial) permitted vessels.

**DATES:** Effective August 11, 2017 through November 15, 2017.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin or Brad McHale, 978–281–9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006), as amended by Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014). NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a



reasonable opportunity to harvest the ICCAT-recommended quota.

The base quotas for the Harpoon category and Reserve category are 38.6 mt and 24.8 mt, respectively. See § 635.27(a). To date for 2017, NMFS has published two actions that have adjusted the available 2017 Reserve category quota, which currently is 78 mt (82 FR 12296, March 2, 2017, and 82 FR 12747, March 7, 2017). The 2017 Harpoon category fishery opened June 1 and is open through November 15, 2017, or until the Harpoon category quota is reached, whichever comes first.

#### Quota Transfer

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria provided under § 635.27(a)(8). NMFS has considered the relevant determination criteria and their applicability to the Harpoon category fishery. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by Harpoon category fishermen and provided by BFT dealers continue to provide valuable data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the Harpoon category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the Harpoon category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). As of August 7, 2017, the Harpoon category has landed 35.0 mt. Commercial-size BFT are currently readily available to vessels fishing under the Harpoon category quota. Without a quota transfer at this time, Harpoon category participants would have to stop BFT fishing activities with very short notice, while commercial-sized BFT remain available in the areas Harpoon category permitted vessels operate. Transferring 30 mt of BFT quota from the Reserve category would result in a total of 68.6 mt being available for the Harpoon category for the 2017 Harpoon category fishing season.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the Harpoon category) to harvest the additional amount of BFT before the end of the

fishing year (§ 635.27(a)(8)(iii)), NMFS considered Harpoon category landings over the last several years. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS anticipates that the Harpoon category could harvest the transferred 30.0 mt prior to the end of the Harpoon category season, subject to weather conditions and BFT availability. NMFS may transfer unused Harpoon category quota to other quota categories, as appropriate. NMFS also anticipates that some underharvest of the 2016 adjusted U.S. BFT quota will be carried forward to 2017 and placed in the Reserve category, in accordance with the regulations. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds, consider the expected increases in available 2017 quota later in the year, and provide a reasonable opportunity to harvest the full U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2017 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2017 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that.

This transfer would be consistent with the current quotas, which were established and analyzed in the 2015 BFT quota final rule (80 FR 52198, August 28, 2015), and with objectives of the 2006 Consolidated HMS FMP and amendments. (§ 635.27(a)(8)(v) and (vi)). Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and Amendment 7, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)).

Based on the considerations above, NMFS is transferring 30.0 mt of the available 78 mt of Reserve category quota to the Harpoon category. Therefore, NMFS adjusts the Harpoon category quota to 68.6 mt for the 2017 Harpoon category fishing season (*i.e.*, through November 15, 2017, or until the

Harpoon category quota is reached, whichever comes first), and adjusts the Reserve category quota to 48.0 mt.

#### Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Harpoon category vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing [hmspermits.noaa.gov](http://hmspermits.noaa.gov) or by using the HMS Catch Reporting App. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional action (*i.e.*, quota and/or daily retention limit adjustment, or closure) is necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access [hmspermits.noaa.gov](http://hmspermits.noaa.gov), for updates on quota monitoring and inseason adjustments.

#### Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer for the remainder of 2017 is impracticable and contrary to the public interest as such a delay would likely result in closure of the Harpoon fishery when the base quota is met and the need to re-open the fishery, with attendant administrative costs and costs to the fishery. The delay would preclude the fishery from harvesting BFT that are available on the fishing grounds and that might otherwise become unavailable during a delay. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there also is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under § 635.27(a)(9), and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 10, 2017.

**Emily H. Menashes,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017-17266 Filed 8-11-17; 4:15 pm]

**BILLING CODE 3510-22-P**

# Proposed Rules

Federal Register

Vol. 82, No. 157

Wednesday, August 16, 2017

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2017-0557; Airspace Docket No. 17-ASO-15]

#### Proposed Amendment of Class E Airspace, Scottsboro, AL

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Scottsboro, AL, by updating the airport name to Highland Medical Center Heliport, (formerly Jackson County Hospital), and updating the geographic coordinates of the heliport to coincide with the FAA's aeronautical database.

**DATES:** Comments must be received on or before October 2, 2017.

**ADDRESSES:** Send comments on this proposal to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg., Ground Floor, Rm. W12-140, Washington, DC 20590; Telephone: 1-(800)-647-5527, or (202)-366-9826. You must identify the Docket No. FAA-2017-0557; Airspace Docket No. 17-ASO-15, at the beginning of your comments. You may also submit and review received 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 on line at [http://www.faa.gov/air\\_traffic/publications/](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](http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html).

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

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

#### SUPPLEMENTARY INFORMATION:

##### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Highland Medical Center Heliport, Scottsboro AL, to support IFR operations at the heliport.

##### Comments Invited

Interested persons are invited to comment on this rule 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.

You may also submit comments through the Internet at <http://www.regulations.gov>.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2017-0557; Airspace Docket No. 17-ASO-15." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at [http://www.faa.gov/air\\_traffic/publications/airspace\\_amendments/](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 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 between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

##### Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this 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 considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet or more above the surface within a 6-mile radius of Highland Medical Center Heliport, Scottsboro, AL, by recognizing the heliport's name change, (formerly Jackson County Hospital), and adjusting the geographic coordinates of the heliport to coincide with the FAAs aeronautical database.

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 designation listed in this document will be published subsequently in the Order.

### Regulatory Notices and Analyses

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

### Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

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

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

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

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

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration 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.*

\* \* \* \* \*

### ASO AL E5 Scottsboro, AL [Amended]

Scottsboro Municipal—World Field Airport, AL

(Lat. 34°41'19" N., long. 86°00'21" W.)  
Highland Medical Center Heliport, Point in Space Coordinates

(Lat. 34°39'45" N., long. 86°02'48" W.)  
That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Scottsboro Municipal—World Field Airport, and within 4 miles each side of the 037° bearing from Scottsboro Municipal—World Field Airport extending from the 6.5-mile radius to 10.9 miles northeast of the airport, and within 4 miles each side of the 218° bearing from Scottsboro Municipal—World Field Airport extending from the 6.5-mile radius to 11 miles Southwest of the airport; and that airspace within a 6-mile radius of the point in space (lat. 34°39'45" N., long. 86°02'48" W.) serving Highland Medical Center Heliport.

Issued in College Park, Georgia, on August 8, 2017.

**Ryan W. Almasy,**

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

[FR Doc. 2017-17256 Filed 8-15-17; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2017-0610; Airspace Docket No. 17-ANE-3]

### Proposed Amendment of Class E Airspace, Carrabassett, ME

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Carrabassett, ME, due to the new arrival procedure established for Sugarloaf Regional Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport. This action also would update the geographic coordinates of the airport.

**DATES:** Comments must be received on or before October 2, 2017.

**ADDRESSES:** Send comments on this proposal to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg Ground Floor, Rm. W12-140, Washington, DC 20590; Telephone: 1-(800)-647-5527, or (202)-366-9826. You must identify the Docket No. FAA-2016-0610; Airspace Docket No. 17-ANE-3, at the beginning of your comments. You may also submit and review received 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 on line at [http://www.faa.gov/air\\_traffic/publications/](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](http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html).

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

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

### SUPPLEMENTARY INFORMATION:

#### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator.

Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Sugarloaf Regional Airport, Carrabassett, ME, to support IFR operations at the airport.

#### Comments Invited

Interested persons are invited to comment on this rule 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. You may also submit comments through the Internet at <http://www.regulations.gov>.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2017-0610; Airspace Docket No. 17-ANE-3." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at [http://www.faa.gov/air\\_traffic/publications/airspace\\_amendments/](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 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 between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

#### Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this 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 considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to amend Class E airspace extending upward from 700 feet or more above the surface within the 7-mile radius of Sugarloaf Regional Airport, Carrabassett, ME. A 14.3-mile extension to the north would be created extending from the 7-mile radius of the airport for the new RNAV-(GPS-A) approach for the airport, and for continued safety and management of IFR operations. The geographic coordinates of the airport also would be adjusted to coincide with the FAA's aeronautical database.

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 designation listed in this document will be published subsequently in the Order.

#### Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation

as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

#### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

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

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

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

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

#### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration 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.*

\* \* \* \* \*

#### ANE ME E5 Carrabassett, ME [Amended]

Sugarloaf Regional Airport  
(Lat. 45°05'08" N., long. 70°12'59" W.)  
Point in Space Coordinates  
(Lat. 45°06'26" N., long. 70°12'30" W.)

That airspace extending upward from 700 feet above the surface of the earth within a 6-mile radius of the Point in Space Coordinates (lat. 45°06'26" N., long. 70°12'30" W.) serving the Sugarloaf Regional Airport, and within a 7-mile radius of the airport, and within 1 mile each side of the 346° bearing from the airport, extending from the 7-mile radius to 14.3-miles north of the airport.

Issued in College Park, Georgia, on August 8, 2017.

**Ryan W. Almasy,**

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

[FR Doc. 2017-17257 Filed 8-15-17; 8:45 am]

**BILLING CODE 4910-13-P**

## LIBRARY OF CONGRESS

### U.S. Copyright Office

#### 37 CFR Part 202

[Docket No. 2017-9]

#### Simplifying Deposit Requirements for Certain Literary Works and Musical Compositions

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States Copyright Office is proposing to amend the regulations governing the deposit requirements for certain types of literary works and musical compositions. Specifically, the proposed rule will apply to certain types of “literary monographs,” which are defined, in part, as literary works published in one volume or a finite number of separate volumes. The proposed rule also applies to musical compositions that are published in the United States in print formats—that is, compositions published as “copies” rather than solely as phonorecords, as referenced in the Copyright Act. Under the current regulations, two copies of the best edition are generally needed to register these types of works and to comply with the mandatory deposit requirement. Under the proposed rule, copyright owners will be able to satisfy both requirements for literary monographs by submitting one copy of the best edition of the work, although the Office will retain the right to demand a second copy under the mandatory deposit provision should the Library need it. Copyright owners will also be able to satisfy both requirements for certain musical compositions by submitting one copy of the best edition. As part of these changes, the proposed rule also clarifies the deposit requirements for musical compositions published *both* in print and phonorecord formats. For musical works (*i.e.*, musical compositions) published in both formats, the Office will require the submission of the print version for purposes of copyright registration. If the musical composition is published only as a phonorecord, the applicant should submit the phonorecord. All of these changes will

improve the efficiency of registration and mandatory deposit for both the Office and copyright owners alike, ensuring that the Office has an adequate registration record and continuing to make these works available to the Library of Congress when needed for use in its collections or other disposition. The Office invites public comment on this proposal.

**DATES:** Comments on the proposed rule must be made in writing and must be received by the Copyright Office no later than October 2, 2017.

**ADDRESSES:** For reasons of government efficiency, the Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the Copyright Office Web site at <https://copyright.gov/rulemaking/singlecopy/>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the Internet, please contact the Office using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, by email at [rkas@loc.gov](mailto:rkas@loc.gov); Erik Bertin, Deputy Director of Registration Policy and Practice, by email at [ebertin@loc.gov](mailto:ebertin@loc.gov); or Cindy Abramson, Assistant General Counsel, by email at [ciab@loc.gov](mailto:ciab@loc.gov). All can be reached by telephone by calling 202-707-8040.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under section 407 of the Copyright Act, when a work is published in the United States, the copyright owner or the owner of the exclusive right of publication is generally required to deposit two complete copies of the best edition of that work with the U.S. Copyright Office within three months after publication. 17 U.S.C. 407. “The ‘best edition’ of a work” is defined as “the edition, published in the United States at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.” 17 U.S.C. 101. The Act provides that copies deposited with the Office under section 407 are “for the use or disposition of the Library of Congress.” 17 U.S.C. 407(b). This is known as the “mandatory deposit” requirement.

Separately, the Copyright Act’s provision governing copyright

registration, section 408, specifies that, in the case of published works, an application for registration must be accompanied by “two complete copies or phonorecords of the best edition.” 17 U.S.C. 408(b)(2). To avoid duplication of deposits, section 408 specifies that copies or phonorecords deposited under section 407 “may be used to satisfy the deposit provisions” of section 408 if they “are accompanied by the prescribed application and fee.” 17 U.S.C. 408(b).

Because the same copies can potentially be used for both registration and mandatory deposit, the deposit requirements set forth in sections 407 and 408 are generally the same. *Compare* 17 U.S.C. 407(a)(1)–(2) (requiring two complete copies of the best edition of the work for purposes of mandatory deposit) *with* 17 U.S.C. 408(b)(2) (requiring two complete copies of the best edition for the purpose of registering a published work).

Sections 407 and 408 both give the Register of Copyrights (the “Register”) broad authority to issue regulations concerning the specific nature of the copies that must be deposited, including the ability to exempt works from these statutory requirements. As relevant here, section 408 gives the Register authority to “require or permit, for particular classes [of works], . . . the deposit of only one copy . . . where two would normally be required” for copyright registration. 17 U.S.C. 408(c)(1). Similarly, section 407 gives the Register authority to issue regulations that “require [the] deposit of only one copy” for the purpose of mandatory deposit. 17 U.S.C. 407(c).

The legislative history confirms that Congress intended the Register to exercise this authority when needed to improve efficiencies within the Copyright Office. In explaining the Register’s authority under section 407, Congress expressed the desire “to make the deposit requirements as flexible as possible, so that there will be no obligation to make deposits where it serves no purpose, so that only one copy or phonorecord may be deposited where two are not needed, and so that reasonable adjustments can be made to meet practical needs in special cases.” H.R. Rep. No. 94-1476, at 151 (1976). Similarly, the legislative history for section 408 explains that the “[d]eposit of one copy . . . rather than two would probably be justifiable . . . in any case where the Library of Congress has no need for the deposit” or where the copies “are bulky, unwieldy . . . or otherwise impractical to file and retain as records identifying the work registered.” *Id.* at 154.

The Office has exercised this authority on many occasions. It created exceptions allowing applicants to deposit one copy for purposes of mandatory deposit for some works. See 37 CFR 202.19(d)(2)(i)–(ii), (v)–(vi) (covering three-dimensional cartographic representations of area, such as globes; published motion pictures; musical compositions where the only publication took place by rental, lease, or lending; and published multi-media kits). The Office also created corresponding exceptions to the deposit requirements for registration. See 37 CFR 202.20(c)(2)(i)(A)–(K). The proposed rule will expand the exception that currently applies to registration deposits of musical compositions, and create a new exception for “literary monographs.” In both cases, one copy of the best edition of the work will satisfy the deposit requirement for registration and mandatory deposit. As noted below, however, the rule excludes legal publications and also allows a second copy to be demanded by the Copyright Office on behalf of the Library under mandatory deposit provisions.

### Literary Monographs

For purposes of registration and mandatory deposit, a “literary monograph” will be defined, in part, as “a literary work published in one volume or a finite number of volumes.” Examples of works that fit within this category include fiction, nonfiction, poetry, short stories, memoirs, manuscripts, textbooks, and other types of nondramatic literary works.

The rule draws a distinction between “monographs” and “serials,” which are defined elsewhere in the regulations as “work[s] issued or intended to be issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely.” 37 CFR 202.3(b)(1)(v). Examples of works that may qualify as a serial include periodicals, newspapers, newsletters, and annuals. These types of works are typically published in successive issues and they are usually distributed on an established schedule. Each issue is published under the same continuing title, and they generally bear numerical or chronological designations that distinguish one issue from the next.

By contrast, most monographs are published as a single volume, rather than a series of successive issues. Some monographs are published in separate volumes with each volume bearing the same title and successive numerical designations (as in the case of a multi-volume encyclopedia). But typically the entire work is published in a limited

number of volumes that, taken together, constitute the work as a whole.

The proposed rule will allow copyright owners to register a published monograph and satisfy the mandatory deposit requirement by submitting one complete copy of the best edition of that work. There are several reasons for creating this exception.

The Library of Congress’s need for copies of works submitted through copyright registration has diminished over time. In many cases, the Library receives additional copies of published monographs through programs such as the Cataloging In Publication (“CIP”) program—a program that is entirely separate from the mandatory deposit and copyright registration deposit provisions of the Copyright Act. The CIP program creates a uniform cataloging record for the benefit of the nation’s libraries. Publishers that participate in the program submit an application to the Library before they publish their works. The Library then creates an appropriate bibliographic record and sends that information to the publisher. The publisher prints this information on the copyright page when the work is published, and distributes this same information in electronic form to libraries, vendors, and other interested parties. In exchange, the publisher then sends a complimentary copy of the published work to the CIP program. A member of the Library’s staff confirms that the CIP record matches the published work, and if necessary, the electronic cataloging record is updated to reflect the actual content of the published work. All copies submitted through the CIP program are made available to the Library for use in its collections. Because “CIP copies” are submitted soon after a work is published, they often enter the Library’s collections before the Copyright Office has examined any additional copies that have been submitted for purposes of registration or mandatory deposit.<sup>1</sup>

In addition, the Library recently revised its acquisition policies and practices for published monographs. Previously, when the Library selected a work for its collections from the copies received through copyright registration or mandatory deposit, it would often take both copies and permanently retain them in the Library’s collections. In 2013, Library Services<sup>2</sup> estimated that

<sup>1</sup> See generally Library of Congress, *Cataloging in Publication Program*, <https://www.loc.gov/publish/cip/> (last visited Jun. 12, 2017).

<sup>2</sup> Library Services is one of the main components of the Library of Congress, and is the entity that is principally responsible for developing and maintaining the Library of Congress’s collections.

the Library had at least 1,950,000 “second copies” in its permanent collections, and predicted that the Library could achieve substantial savings in its long-term storage and preservation costs by reducing the number of additional service copies in its collections.

Accordingly, under the revised policy, when the Library selects a work, it still takes both copies that were deposited with the Copyright Office, but (with some exceptions)<sup>3</sup> it only keeps one for itself, and delivers the other one to the Library’s Surplus Books program,<sup>4</sup> Duplicate Materials Exchange Program,<sup>5</sup> or other similar programs for donation or exchange to eligible organizations and institutions. And if it turns out that the Library previously received a copy through the CIP Program, *both* copies received from the Office are sent to Surplus Books or another program.<sup>6</sup> Finally, if the Library does not select a work for the Library’s collections, the Copyright Office sends one copy to Surplus Books, and sends the second copy to the Office’s storage facility.<sup>7</sup> Thus, as things stand now, at least one copy of every published monograph sent to the Copyright Office is treated as surplus.

The deposit of unneeded material imposes significant burdens both on copyright owners and the Copyright Office. Copyright owners have to bear costs involved in producing extra copies of each work, and shipping both copies to the Office. Cumulatively, these costs

See Library of Congress, *About the Library*, <https://www.loc.gov/about/>.

<sup>3</sup> The Library’s single-copy retention policy does not apply to legal publications, reference works, or publications about certain topics: United States history (including genealogy and heraldry), commerce and finance, political institutions and public administration, and libraries and information science.

<sup>4</sup> Surplus books that are not needed for the Library’s own collections are made available to educational institutions, governmental agencies, and non-profit organizations or institutions located within the United States. See generally Library of Congress, *Library of Congress Surplus Books Program*, <https://www.loc.gov/acq/surplus.html> (last visited July 31, 2017).

<sup>5</sup> The Library of Congress exchanges library materials with approximately 4,000 partners around the world through its Duplicate Materials Exchange Program. See generally Library of Congress, *Exchange of Library Materials*, <https://www.loc.gov/acq/exchange.html> (last visited July 31, 2017).

<sup>6</sup> In addition, this policy has been applied retroactively to monographs held within the general collections. In cases where the Library received two copies from the Office and a third copy from the CIP program or another source, Library Services will remove the second and third copies from the shelves and offer them to another institution through the Surplus Books program or another program.

<sup>7</sup> Published works stored in this facility are kept for up to 20 years unless the applicant requests full-term retention under § 202.23 of the regulations.

may discourage copyright owners from routinely registering their works.

From the Office's perspective, literary monographs are significantly larger than the physical copies received by the other divisions within the Registration Program. They are heavy, unwieldy, and often include multi-volume sets of books. To distribute these materials to the staff, the copies must be strapped together, which doubles the size and weight of each submission. Sometimes the Literary Division does not have enough space to store the copies that it has on hand. The bulky nature of these physical copies also slows down the examination of each work. On average, the copies must be moved at least eight times or more during the examination process, which increases the risk that they may be damaged, misplaced, mismatched, or lost. Requiring two copies limits the amount of work that the examiner may keep at his or her desk at any given time. It also increases the amount of time that the examiners need to examine the claim, prepare the copies for dispatch, and retrieve his or her next assignment.

Reducing the number of unneeded copies required will reduce this volume and significantly increase the amount of space available for storing incoming physical copies. This should increase productivity within the Literary Division and reduce the likelihood that copies may be lost or misplaced. For copyright owners, the proposed rule will reduce the cost of seeking a registration and complying with mandatory deposit by lowering the incremental cost of producing and delivering physical copies to the Office.

Although, generally speaking, the provision of a single copy of a literary monograph will be sufficient to meet the Library's collection needs, in certain cases, the Library may need an additional copy—for example, if the original is in high demand by Congress, the Congressional Research Service, the Supreme Court, or researchers from the general public. The rule expressly carves out one category of works that are consistently in high demand—legal publications, which are defined in the rule as works “published in one volume or a finite number of volumes that contain legislative enactments, judicial decisions, or other edicts of government.” These types of works are collected either by the Library of Congress's Serials and Government Publications division (which is part of Library Services) or the Law Library.<sup>8</sup> At

<sup>8</sup> The Law Library is a component of the Library of Congress that is separate from Library Services, and it is a primary source of legal materials for the

the present time, these divisions still have an active need for the two copies received through copyright registration for their respective collections.

With respect to other categories of works, if the Library determines that it does need a second copy, the proposed rule entitles it to demand the additional copy under the mandatory deposit provision.<sup>9</sup> The copyright owner, however, will not be required to proactively deposit a second copy in order to be in compliance with either the mandatory deposit or registration deposit rules. And, a single copy will be deemed to satisfy mandatory deposit unless the Office issues a demand for an additional copy.

To be clear, the Library anticipates that it will often have a need for second copies for certain reference works, such as dictionaries, encyclopedias, gazetteers, bibliographies, and almanacs as well as publications about the following topics: United States history (including genealogy and heraldry),<sup>10</sup> commerce and finance,<sup>11</sup> political institutions and public administration,<sup>12</sup> and libraries and information science.<sup>13</sup> Thus, although the proposed rule does not specifically require the proactive deposit of two copies of such works for registration or mandatory deposit purposes, principally because of the difficulty of crafting a rule *ex ante* defining these additional categories of works, it is

U.S. Supreme Court. See Library of Congress, *About the Library*, <https://www.loc.gov/about/>; Library of Congress, *Law Librarian's Welcome*, <http://www.loc.gov/law/about/welcome.php>.

<sup>9</sup> Although the Library's single-copy retention policy does not apply to certain other categories of works, see n.3 *supra*, in many of those cases the Library already receives a second copy through the CIP program or other sources. In cases where the Library does need an additional copy, either because it was not received via the CIP program or otherwise, the Office will issue a demand to the publisher pursuant to the mandatory deposit provision.

<sup>10</sup> This includes, but is not limited to, works where the Library of Congress CIP data, as printed on the verso of the book's title page, indicates a Library of Congress Subject Heading of heraldry, genealogy, United States local history, United States history or has a Library of Congress Classification of GR, CS, F below 1000, or E.

<sup>11</sup> This includes, but is not limited to, works where the Library of Congress CIP data indicates a Library of Congress Subject Heading of Commerce, Finance, or Public Finance or has a Library of Congress Classification of HF, HG, or HJ.

<sup>12</sup> This includes, but is not limited to, works where the Library of Congress CIP data indicates a Library of Congress Subject Heading of Political Institutions and Public Administration (North America) or Political Institutions and Public Administration (United States) or has a Library of Congress Classification of JJ or JK.

<sup>13</sup> This includes works where the Library of Congress CIP data indicates a Library of Congress Subject Heading of Libraries, Books, Information Resources or Bibliography or has a Library of Congress Classification of Z.

anticipated that many works falling within these categories will be subject to a later demand as part of the mandatory deposit process. Accordingly, publishers may nevertheless decide to submit two copies of works that might fall within these categories as part of the registration process if they wish to avoid the burden of subsequent production.

Moreover, the proposed rule creates a new exception only for “literary” monographs, meaning nondramatic literary works that predominantly contain textual material. 37 CFR 202.3(b)(1)(i). Monographs that predominantly contain photographs, artwork, or other pictorial or graphic content would not be eligible for this exception. To register these types of works and to satisfy the mandatory deposit requirement, applicants would be required to submit two complete copies of the best edition, even if the applicant is seeking to register both the visual and textual aspects of the work. The Office is limiting this exception to literary monographs at this time, because they routinely account for the largest number of physical deposits received in the Literary Division. By contrast, pictorial or graphic monographs represent a relatively small portion of the claims received in the Visual Arts Division, and thus, have less impact on the division's workflow.

#### Musical Compositions Published in Print Formats

The proposed rule also simplifies and rationalizes the deposit requirements for musical compositions published in print formats (*i.e.*, as sheet music, musical scores or the like). Put another way using the Copyright Act's specific language, the proposed rule applies to compositions published in “copies” (including cases where a composition is published both in copies and in phonorecords).<sup>14</sup> The proposed rule does not apply to compositions published only in phonorecords, or to unpublished musical compositions. Nor does the proposed rule apply to those seeking to register their copyright in a

<sup>14</sup> The Copyright Act draws a distinction between “copies” and “phonorecords.” “Copies” are defined as “material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” 17 U.S.C. 101. A “phonorecord” is a “material object[] in which sounds . . . are fixed . . . and from which the sounds can be perceived, reproduced, or otherwise communicated either directly or with the aid of a machine or device.” *Id.* The definition includes “a cassette tape, an LP vinyl disc, a compact disc, or other means of fixing sounds.” Copyright Office, *U.S. Copyright Office Definitions*, <https://www.copyright.gov/help/faq/definitions.html>.



*sound recording*, as opposed to the *musical composition*.<sup>15</sup>

Under the current regulation, copyright owners generally are required to submit two copies of compositions published in print formats for purposes of mandatory deposit and copyright registration. There are narrow exceptions permitting the deposit of one copy rather than two where publication only took place by rental, lease, or lending. 37 CFR 202.19(d)(2)(v), 202.20(c)(2)(i)(E). These exceptions are intended to cover “musical compositions published by rental of scores for performances,” because “only a limited number of [these] copies are available for distribution.” 43 FR 763, 764 (Jan. 4, 1978).

In the past, when the Office received a musical composition in print format it would send both copies to the Library. Since March 2017, however, the Library of Congress’s Music Division (which is a component of Library Services) has requested only one copy, and the Office has retained the second copy in its storage facility.<sup>16</sup> Given this change in the Music Division’s acquisition practice, the Office believes it is appropriate to expand the current exceptions for musical compositions. Under the proposed rule, applicants will be allowed to deposit a single copy of *any* musical composition that has been published in copies or in both copies and phonorecords. In other words, the exceptions will no longer be limited to musical compositions published solely by rental, lease, or lending.

The proposed rule makes one further clarification with respect to musical compositions. In cases where a musical composition was published in *both* copies and phonorecords, the proposed rule specifies that the copyright owner should submit a *copy* of the work—*i.e.*, in print format—rather than a phonorecord. (For *unpublished* musical compositions, the applicant may submit either a copy or a phonorecord for

purposes of copyright registration. See 37 CFR 202.20(c)(i).) There are three reasons for this change.

First, the proposed rule harmonizes the deposit requirements for registration and mandatory deposit. In general, the Office has designed its regulations so that deposits submitted as part of copyright registration will also satisfy mandatory deposit requirements where those requirements apply. But the current regulations governing musical compositions depart from that approach. On the one hand, the mandatory deposit statute and implementing regulations require the submission of complete *copies* (not phonorecords) of the best edition of published musical compositions. 17 U.S.C. 407(a) (requiring deposit of two *copies* of the best edition of all works except sound recordings); 37 CFR 202.19(d)(1)(i), (2)(v).<sup>17</sup> On the other hand, the registration deposit regulations currently state that applicants may register a musical composition by submitting one complete *copy or phonorecord* of the best edition without further qualification. See *id.* § 202.20(c)(1)(iii), (c)(2)(i)(E) (emphasis added). This means that when a musical composition is published both as copies and as phonorecords, a copyright owner might submit phonorecords for purposes of registration, and unwittingly fail to satisfy the mandatory deposit requirement. The proposed rule fixes this discrepancy.

Second, when a musical composition has been published in both copies and phonorecords, the Office considers the copies to be the best representation of the work. Visually perceptible formats typically contain a clear and precise representation of the music and lyrics that constitute the work. When a preexisting musical composition is published in a phonorecord, the sound recording is a separate work that recasts, transforms, or adapts the music and lyrics embodied in that recording. See 17 U.S.C. 101 (definition of “derivative work”). And in cases where the music and sound recording are created simultaneously, it may be difficult to identify the author or co-authors of the music and sound recording or the respective owners or co-owners of each work. (To be clear, when a musical

composition is published *solely* in a phonorecord, the phonorecord constitutes the only representation of the work. In such cases, the copyright owner may submit the phonorecord for purposes of registration. There is no need to transcribe or notate the work in a visually perceptible form. See 42 FR at 59304.)

Third, the statute and the regulations indicate that copies should be given preference over phonorecords in cases where a musical composition has been published in both print and audio form. As mentioned above, copyright owners are required to submit the “best edition” of their works for purposes of mandatory deposit. “The ‘best edition’ of a work” is defined, in part, as the edition “that the Library of Congress determines to be most suitable for its purposes.” 17 U.S.C. 101. Section 407(a)(2) of the statute and § 202.19(a) of the regulations state that phonorecords are subject to mandatory deposit. But this requirement only applies to the copyright owner of the sound recording or the owner of the exclusive right to publish that recording. 17 U.S.C. 407(a)(2); 37 CFR 202.19(c)(4). It does not apply to the owner of the musical composition that may be embodied in that recording. 37 CFR 202.19(c)(4).

The Library’s preference for copies rather than phonorecords of musical compositions is also reflected in the Best Edition Statement, which is set forth in Appendix B to Part 202 of the regulations. Section VI of this statement contains a hierarchical list of the preferred formats for musical compositions. All of the formats listed in this section are visually perceptible formats. See 37 CFR p. 202, app. B, secs. VI.A–C. Thus, allowing applicants to submit phonorecords in cases where a musical composition has been published in both visual and audio form is inconsistent with the Library’s stated preferences. See 37 CFR p. 202, app. B, sec. b. (“In judging quality, the Library of Congress will adhere to the criteria set forth [in the Best Edition Statement] in all but exceptional circumstances.”).

### Retention of Copyright Registration Deposits

The proposed rule does not change current practices regarding what works the Office retains in its possession. Under these practices, when applicants submit a physical copy of a published literary monograph or a published musical composition, the Office will not retain a copy of that work in most

<sup>15</sup> When registering a sound recording, the applicant should submit a phonorecord that contains a complete copy of the work. 37 CFR 202.20(c)(1)(i)–(iv), 202.20(c)(2)(viii)(D). The proposed rule also makes a technical change to the deposit requirement for musical compositions and sound recordings fixed or published in machine-readable form. Specifically, the rule directs applicants to submit “a reproduction of the entire work on a phonorecord,” rather than an “audiocassette.” 37 CFR 202.20(c)(2)(viii)(C)–(D).

<sup>16</sup> The Music Division collects musical compositions that are published in print formats, but it does not collect works that have been published in phonorecords. The Library’s Motion Picture Broadcasting and Recorded Sound division collects phonorecords, but it does not collect musical compositions that have been published in printed form.

<sup>17</sup> Musical works compositions published *only* as phonorecords are not subject to mandatory deposit at all. See 42 FR 59302, 59304 (Nov. 16, 1977) (explaining that under section 407 “the mandatory deposit requirements extend only to ‘copies’ of all types of works except sound recordings, and to ‘phonorecords’ of sound recordings; they do not apply to ‘phonorecords’ of literary, dramatic, or musical works”).

cases.<sup>18</sup> After a work is registered, the Office will offer the copy to Library Services,<sup>19</sup> and will generally retain the copy in its storage facility only if the copy has not been selected by Library for inclusion in its collections.<sup>20</sup> If applicants want to ensure that the Office does retain a precise record of the particular published work that was submitted for registration, they should consider one of the following options.

First, the applicant may request full-term retention. To do so, the applicant must submit a written request together with an additional copy of the work and the appropriate fee for this service.<sup>21</sup> See 37 CFR 202.23(b)(2), (c)(2), (e)(1). If the request is approved, the Office will retain the copy in its storage facility for 75 years from the date of publication.<sup>22</sup> See *id.* at § 202.23(g).

<sup>18</sup> By contrast, when an applicant submits an unpublished work, the Office will retain the copy for the entire term of the copyright.

<sup>19</sup> See 17 U.S.C. 704(b) (“In the case of published works, all copies, phonorecords, and identifying material deposited are available to the Library of Congress for its collections, or for exchange or transfer to any other library.”). In exceptional cases, the Office may retain a registered work for a limited time if the applicant requested special handling and notified the Office that the registration is needed for pending or prospective litigation. If the Office refuses registration, or if the claim is closed because the applicant failed to respond to the examiner, the copy will be sent to the Office’s storage facility. Under current record retention policies, claims that have been closed or refused are retained for up to 30 years.

<sup>20</sup> The Office’s regulations provide that the Office will make a certified copy of a registered work if it is needed for litigation or other legitimate purposes, provided that the Office has retained a copy of that work. 37 CFR 201.2(d)(2). The Office cannot issue a certified copy of a work that has been transferred to the Library or another institution. See U.S. Copyright Office, Compendium of U.S. Copyright Office Practices secs. 2405.3, 2409.5 (3d ed. 2014). But the Office has no institutional memory of any case where a party has requested a certified copy of a published monograph or a musical composition in print format. This makes sense because, in infringement cases involving published works, the work alleged to have been copied has been made publicly available, and the fact that the work was registered is not typically a disputed issue.

<sup>21</sup> Requests for full term retention may only be granted “if at least one copy . . . is in the custody of the Copyright Office” at the time of the request. 37 CFR 202.23(c)(2). Thus, to ensure that the Office has such a copy, the applicant must submit a complete request with the registration application. If the applicant submits two copies without requesting full-term retention or paying the appropriate fee, the second copy will be sent to Library Services before the claim has been assigned to a member of the Registration Program.

<sup>22</sup> The Office is planning to initiate a separate rulemaking that will extend the full-term retention period to 95 years to better correspond with the extended term established by the Copyright Term Extension Act for published works. See Public Law 105–298, 112 Stat. 2827 (1998); accord 17 U.S.C. 302(a), (c) (ensuring copyright “endures for a term consisting of the life of the author and 70 years after the author’s death” for works created after Jan. 1, 1978, and that “copyright endures for a term of 95 years from the year of . . . first publication” for

Second, if an International Standard Book Number (“ISBN”) or International Standard Music Number (“ISMN”) number has been assigned to the work, the applicant is encouraged to include that information in the online application. If this number is provided in the appropriate field, it will appear on the certificate of registration, and in the case of an ISBN, it will also appear in the online public record for that work, and will serve as evidence of the work submitted for examination and registration. Note, however, that the examiner will not review the ISBN or ISMN to determine if it matches the number appearing on the copy. Therefore, applicants should confirm that this number has been entered correctly. See U.S. Copyright Office, Compendium of U.S. Copyright Office Practices sec. 612.6(C) (3d ed. 2014).

Third, in addition to submitting a physical copy when it is required,<sup>23</sup> the applicant may also upload a digital copy of the work to the electronic registration system. When doing so, the applicant should add a note in the “Note Copyright Office” field stating that the digital copy has been submitted for archival purposes and that a physical copy will be sent separately. The examiner will examine the claim when the physical deposit arrives and will only check any electronic upload to determine whether it represents the same work.

#### List of Subjects in 37 CFR Part 202

Copyright, Preregistration and Registration of Claims to Copyright.

#### Proposed Regulations

In consideration of the foregoing, the U.S. Copyright Office is proposing to amend 37 CFR part 202 as follows:

#### PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority citation for part 202 continues to read as follows:

**Authority:** 17 U.S.C. 408(f), 702.

■ 2. Amend § 202.19 as follows:

- a. Add paragraph (b)(5).
- b. Revise paragraph (d)(2)(v) by removing the words “in copies only,” and adding in its place “solely in copies,” and by removing the words “if

anonymous, pseudonymous, and works made for hire).

<sup>23</sup> See 37 CFR 202.20(b) (stating that “if a work is first published in both hard copy, *i.e.*, in a physically tangible format, and also in an electronic format, the current Library of Congress Best Edition Statement requirements pertaining to the hard copy format apply” for purposes of copyright registration).

the only publication of copies in the United States took place by rental, lease, or lending.”.

■ c. Add paragraph (d)(2)(ix).

The revision and addition read as follows:

#### § 202.19 Deposit of published copies or phonorecords for the Library of Congress.

\* \* \* \* \*

(b) \* \* \*

(5) The term *literary monograph* means a literary work published in one volume or a finite number of volumes. This category does not include serials, nor does it include legal publications that are published in one volume or a finite number of volumes that contain legislative enactments, judicial decisions, or other edicts of government.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ix) In the case of published literary monographs, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section, unless the Copyright Office issues a demand for a second copy pursuant to 17 U.S.C. 407(d).

\* \* \* \* \*

■ 3. Amend § 202.20 as follows:

- a. Revise paragraph (b)(3).
- b. Remove paragraph (b)(4).
- c. Redesignate paragraph (b)(5) as paragraph (b)(4).
- d. In paragraphs (c)(2)(i)(A) through (D), remove the semi-colon and add a period in its place at the end of each sentence.
- e. Revise paragraph (c)(2)(i)(E).
- f. In paragraphs (c)(2)(i)(F) through (I), remove the semi-colon and add a period in its place at the end of the sentence.
- g. In paragraph (c)(2)(i)(J) remove “; and” and add a period in its place at the end of the sentence.
- h. Add paragraph (c)(2)(i)(L).
- i. In paragraphs (c)(2)(viii)(A) through (D) remove the semi-colon and add a period in its place at the end of the sentence.
- j. In paragraphs (c)(2)(viii)(C) and (D) remove “an audiocassette or other” and add in its place “a”.

The revision and additions read as follows:

#### § 202.20 Deposit of copies and phonorecords for copyright registration.

\* \* \* \* \*

(b) \* \* \*

(3) The terms *secure test* and *literary monograph* have the meanings set forth in §§ 202.13(b) and 202.19(b)(5).

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) \* \* \*

(E) Musical compositions published solely in copies or in both copies and phonorecords, provided that one complete copy (rather than a phonorecord) is deposited;

(L) Published literary monographs.

\* \* \* \* \*

Dated: August 10, 2017.

**Sarang V. Damle,**

*General Counsel and Associate Register of Copyrights.*

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**BILLING CODE 1410-30-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2017-0454; FRL-9966-40-Region 4]

#### Air Plan Approval; North Carolina; Transportation Conformity

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve the portion of a revision to the North Carolina State Implementation plan submitted by the State of North Carolina on March 24, 2006, for the purpose of clarifying the State's transportation conformity rules consistent with Federal requirements.

**DATES:** Comments must be received on or before September 15, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0454 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:

Nacosta Ward, 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. The telephone number is (404) 562-9140. Ms. Ward can also be reached via electronic mail at [ward.nacosta@epa.gov](mailto:ward.nacosta@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: August 7, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017-17250 Filed 8-15-17; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2016-0626; FRL-9966-36-Region 1]

#### Air Plan Approval; Vermont; Regional Haze Five-Year Progress Report

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve Vermont's regional haze progress report, submitted on February 29, 2016 as a revision to its State Implementation Plan (SIP). Vermont's SIP revision addresses requirements of the Clean Air Act (CAA) and EPA's rules that require states to submit periodic reports

describing the progress toward reasonable progress goals (RPGs) established for regional haze and a determination of adequacy of the State's existing regional haze SIP. EPA is proposing to approve Vermont's progress report on the basis that it addresses the progress report and adequacy determination requirements for the first implementation period covering through 2018.

**DATES:** Written comments must be received on or before September 15, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R01-OAR-2016-0626 at <http://www.regulations.gov>, or via email to [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov). For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Anne K. McWilliams, Air Quality Planning Unit, U.S. Environmental Protection Agency, New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05-2), Boston, MA 02109-3912, telephone (617) 918-1697, facsimile (617) 918-0697, email [mcwilliams.anne@epa.gov](mailto:mcwilliams.anne@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State'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. 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. Any parties interested in commenting on this action should 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.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: July 24, 2017.

**Deborah A. Szaro,**

*Acting Regional Administrator, EPA New England.*

[FR Doc. 2017-17246 Filed 8-15-17; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2017-0436; FRL-9966-35-Region 4]

#### Air Plan Approval; AL; VOC Definitions and Particulate Emissions

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

**ACTION:** Proposed rule.

**SUMMARY:** On May 19, 2017, the State of Alabama, through the Alabama Department of Environmental Management, submitted changes to the Alabama State Implementation Plan (SIP). The Environmental Protection Agency (EPA) is proposing to approve the submission that modifies the State's air quality regulations as incorporated into the SIP. Specifically, the revision pertains to definitional changes, including the modification of the definition of "volatile organic compounds," correcting a typographical error, and removing control of particulate emissions and opacity limits.

**DATES:** Written comments must be received on or before September 15, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0436 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:

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

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this issue of the **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: August 7, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017-17233 Filed 8-15-17; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2017-0388; FRL-9966-21-Region 4]

#### Air Plan Approval; SC: Standards for Volatile Organic Compounds and Oxides of Nitrogen

**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) that revise several miscellaneous rules for control standards for process industries. Specifically, changes are made to standards for volatile organic compounds and oxides of nitrogen. 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: October 1, 2007, June 17, 2013, 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 15, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0388 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** D. Brad Akers, Air Regulatory Management

Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Akers can be reached via telephone at (404) 562–9089 or via electronic mail at [akers.brad@epa.gov](mailto:akers.brad@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: August 3, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017–17245 Filed 8–15–17; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R04–OAR–2017–0452; FRL–9966–43–Region 4]

**Air Plan Approval; Georgia; Cross-State Air Pollution Rule**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of a revision to the Georgia State Implementation Plan (SIP) concerning the Cross-State Air Pollution Rule (CSAPR) and the Clean Air Interstate Rule (CAIR) that was submitted by Georgia on July 26, 2017. Under CSAPR, large electricity generating units (EGUs) in Georgia 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<sub>x</sub>), one of CSAPR's two federal trading programs for annual emissions of sulfur dioxide (SO<sub>2</sub>), and one of

CSAPR's two federal trading programs for ozone season emissions of NO<sub>x</sub>. This action would approve the State's regulations requiring large Georgia EGUs to participate in new CSAPR state trading programs for annual NO<sub>x</sub>, annual SO<sub>2</sub>, and ozone season NO<sub>x</sub> emissions integrated with the CSAPR federal trading programs, replacing the corresponding FIP requirements. EPA is proposing to approve the portions of the SIP revision concerning these CSAPR state trading programs because these portions of the 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 SIP revision would automatically eliminate Georgia's units' obligations under the corresponding CSAPR FIPs addressing interstate transport requirements for the 1997 Annual Fine Particulate Matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS), the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 1997 8-hour Ozone NAAQS. Approval of these portions of the SIP revision would satisfy Georgia's good neighbor obligation for the 1997 Annual PM<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 1997 8-hour Ozone NAAQS. In addition, approval of this revision would remove from Georgia's SIP those state trading program rules adopted to comply with CAIR.

**DATES:** Comments must be received on or before September 15, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2017–0452 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](mailto:bailey.ashten@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Summary**

EPA is proposing to approve the portions of the July 26, 2017, revision to the Georgia SIP concerning CSAPR<sup>1</sup> trading programs for annual emissions of NO<sub>x</sub> and SO<sub>2</sub> and ozone season emissions of NO<sub>x</sub>. Large EGUs in Georgia are subject to CSAPR FIPs that require the units to participate in the federal CSAPR NO<sub>x</sub> Annual Trading Program, the federal CSAPR SO<sub>2</sub> Group 2 Trading Program, and the federal CSAPR NO<sub>x</sub> Ozone Season Group 1 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 SIP revision proposed for approval would incorporate into Georgia's SIP state trading program regulations for annual NO<sub>x</sub> and SO<sub>2</sub> and ozone season NO<sub>x</sub> emissions that would replace EPA's federal trading program regulations for those emissions from Georgia units.<sup>2</sup> EPA is proposing to approve these portions of the 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 SIP revision would automatically eliminate the obligations of large EGUs in Georgia to participate

<sup>1</sup> 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).

<sup>2</sup> Under Georgia's 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.

in CSAPR's federal trading programs for annual NO<sub>x</sub>, annual SO<sub>2</sub> and ozone season NO<sub>x</sub> emissions under the corresponding CSAPR FIPs. EPA proposes to find that approval of these portions of the SIP revision would satisfy Georgia'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<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 1997 8-hour Ozone NAAQS in any other state.

The Phase 2 SO<sub>2</sub> budget established for Georgia in the CSAPR rulemaking has been remanded to EPA for reconsideration.<sup>3</sup> If EPA finalizes approval of the portions of the SIP revision as proposed, Georgia will have fulfilled its obligations to provide a SIP that addresses the interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual PM<sub>2.5</sub> NAAQS and the 2006 24-hour PM<sub>2.5</sub> 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 SIP revision would eliminate Georgia units' obligations to participate in the federal CSAPR NO<sub>x</sub> Annual Trading Program and the federal CSAPR SO<sub>2</sub> Group 2 Trading Program. Elimination of Georgia units' obligations to participate in the federal trading programs would include elimination of the federally-established Phase 2 budgets capping allocations of CSAPR NO<sub>x</sub> Annual allowances and CSAPR SO<sub>2</sub> Group 2 allowances to Georgia units under those federal trading programs. As approval of these portions of the SIP revision would eliminate Georgia's remanded federally-established Phase 2 SO<sub>2</sub> budget and eliminate EPA's authority to subject units in Georgia to a FIP, it is EPA's opinion that finalization of approval of this SIP action would address the judicial remand of Georgia's federally-established Phase 2 SO<sub>2</sub> budget.<sup>4</sup>

In addition, approval of the portions of the SIP revision identified above would remove Georgia's state trading programs provisions adopted to implement CAIR. EPA is proposing

approval of this removal because CAIR is no longer in effect and has been replaced by CSAPR. As a result, the removal of CAIR is consistent with the CAA.

At this time, EPA is not acting on the portions of the submittal related to Georgia's Regional Haze SIP under the Clean Air Act or the visibility transport (prong 4) infrastructure SIP.

Section II provides background information on CAIR. Section III of this document 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 Georgia's SIP submittal, and Section VI sets forth EPA's proposed action on the submittal. Section VII addresses statutory and Executive Order reviews.

## II. Background on CAIR

To help reduce interstate transport of ozone and PM<sub>2.5</sub> pollution in the eastern half of the United States, EPA finalized CAIR in May 2005.<sup>5</sup> CAIR addressed both the 1997 Ozone and PM<sub>2.5</sub> NAAQS and required 28 states, including Georgia, and the District of Columbia to limit emissions of NO<sub>x</sub> and SO<sub>2</sub>. For CAIR, EPA developed three separate cap and trade programs that could be used to achieve the required reductions: the CAIR NO<sub>x</sub> ozone season trading program, the CAIR NO<sub>x</sub> annual trading program, and the CAIR SO<sub>2</sub> trading program. Georgia was subject to CAIR requirements only with respect to annual NO<sub>x</sub> and SO<sub>2</sub> emissions.

On December 23, 2008, CAIR was remanded to EPA by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008), modified on rehearing, 550 F.3d 1176. This ruling allowed CAIR to remain in effect until a new interstate transport rule consistent with the Court's opinion was developed. While EPA worked on developing a new rule to address the interstate transport of air pollution, the CAIR program continued as planned with the NO<sub>x</sub> annual and ozone season programs beginning in 2009 and the SO<sub>2</sub> annual program beginning in 2010.

In response to the remand of CAIR, EPA promulgated CSAPR on July 6,

2011.<sup>6</sup> Along with provisions discussed more fully in the following section, the rule contained provisions that would sunset CAIR-related obligations on a schedule coordinated with the implementation of CSAPR compliance requirements. CSAPR was to become effective January 1, 2012; however, the timing of CSAPR's implementation was impacted by a number of court actions. On December 30, 2011, the D.C. Circuit stayed CSAPR prior to its implementation, and EPA was ordered to continue administering CAIR on an interim basis.<sup>7</sup> In a subsequent decision on the merits, the Court vacated CSAPR based on a subset of petitioners' claims.<sup>8</sup> However, on April 29, 2014, the U.S. Supreme Court reversed that decision and remanded the case to the D.C. Circuit for further proceedings.<sup>9</sup> Throughout the initial round of D.C. Circuit proceedings and the ensuing Supreme Court proceedings, the stay on CSAPR remained in place, and EPA continued to implement CAIR.

Following the April 2014 Supreme Court decision, EPA filed a motion asking the D.C. Circuit to lift the stay in order to allow CSAPR to replace CAIR in an equitable and orderly manner while further D.C. Circuit proceedings were held to resolve remaining claims from petitioners. Additionally, EPA's motion requested to toll, by three years, all CSAPR compliance deadlines that had not passed as of the approval date of the stay. On October 23, 2014, the D.C. Circuit granted EPA's request, and on December 3, 2014 (79 FR 71663), in an interim final rule, EPA set the updated effective date of CSAPR as January 1, 2015, and tolled the implementation of CSAPR Phase 1 to 2015 and CSAPR Phase 2 to 2017. In accordance with the interim final rule, the sunset date for CAIR was December 31, 2014, and EPA began implementing CSAPR on January 1, 2015.<sup>10</sup>

## III. Background on CSAPR and CSAPR-Related SIP Revisions

As discussed above, 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 by the 2016 CSAPR

<sup>3</sup> *EME Homer City Generation, L.P. v. EPA (EME Homer City II)*, 795 F.3d 118, 138 (D.C. Cir. 2015).

<sup>4</sup> Although the court in *EME Homer City II* remanded Georgia's Phase 2 SO<sub>2</sub> budget because it determined that the budget may be too stringent, nothing in the court's decision affects Georgia'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).

<sup>5</sup> 70 FR 25172 (May 12, 2005).

<sup>6</sup> See 76 FR 48208 (August 8, 2011).

<sup>7</sup> Order of December 30, 2011, in *EME Homer City Generation, L.P. v. EPA*, D.C. Cir. No. 11-1302.

<sup>8</sup> *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), cert. granted 133 U.S. 2857 (2013).

<sup>9</sup> *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584, 1600-01 (2014).

<sup>10</sup> See 40 CFR 51.123(ff) (sunsetting CAIR requirements related to NO<sub>x</sub>); 40 CFR 51.124(s) (sunsetting CAIR requirements related to SO<sub>2</sub>).

Update<sup>11</sup>), CSAPR requires 27 Eastern states to limit their statewide emissions of SO<sub>2</sub> and/or NO<sub>x</sub> in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four NAAQS: The 1997 Annual PM<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> 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<sub>2</sub>, annual NO<sub>x</sub>, and/or ozone season NO<sub>x</sub> 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<sub>x</sub> emissions, two geographically separate programs for annual SO<sub>2</sub> emissions, and two geographically separate programs for ozone-season NO<sub>x</sub> emissions. CSAPR also establishes FIP requirements applicable to the large EGUs in each covered state.<sup>12</sup> 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, provided that the SIP revisions meet all relevant criteria.<sup>13</sup> 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<sub>x</sub> emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller EGUs.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> 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

<sup>11</sup> See 81 FR 74504 (October 26, 2016). The CSAPR Update was promulgated to address interstate pollution with respect to the 2008 8-hour Ozone NAAQS and to address a judicial remand of certain original CSAPR ozone season NO<sub>x</sub> budgets promulgated with respect to the 1997 8-hour Ozone NAAQS. See 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 ozone NAAQS, so that starting in 2017, CSAPR includes two geographically separate trading programs for ozone season NO<sub>x</sub> emissions covering EGUs in a total of 23 states. See 40 CFR 52.38(b)(1)–(2).

<sup>12</sup> States are required to submit good neighbor SIPs within three years (or less, if the Administrator so prescribes) after a NAAQS is promulgated. CAA section 110(a)(1) and (2). Where EPA finds that a state fails to submit a required SIP or disapproves a SIP, EPA is obligated to promulgate a FIP addressing the deficiency. CAA section 110(c). EPA found that Georgia failed to make timely submissions required to address the good neighbor provision with respect to the 1997 Annual PM<sub>2.5</sub> and 8-hour Ozone NAAQS (70 FR 21147, April 25, 2005), and the 2008 8-hour Ozone NAAQS (80 FR 39961, June 13, 2015). In addition, EPA disapproved Georgia's SIP revision submitted to address the good neighbor provision with respect to the 2006 24-hour PM<sub>2.5</sub> NAAQS. 76 FR 43159 (July 20, 2011). Accordingly, as a part of CSAPR and the CSAPR Update, EPA promulgated FIPs applicable to sources in Georgia addressing the good neighbor provision with respect to the 1997 annual PM<sub>2.5</sub>, 1997 8-hour Ozone NAAQS, and the 2006 24-hour PM<sub>2.5</sub> NAAQS. As discussed below, when EPA finalized the CSAPR Update, EPA determined that Georgia did not interfere with nonattainment or maintenance for the 2008 8-hour Ozone NAAQS.

<sup>13</sup> 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.

<sup>14</sup> States covered by both the CSAPR Update and the NO<sub>x</sub> SIP Call have the additional option to expand applicability under the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program to include non-EGUs that would have participated in the former NO<sub>x</sub> Budget Trading Program.

<sup>15</sup> 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).

<sup>16</sup> 40 CFR 52.38(a)(4), (b)(4), (b)(8); 52.39(e), (h).

<sup>17</sup> 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).

<sup>18</sup> 40 CFR 52.38(a)(6), (b)(10)(i); 52.39(j).

<sup>19</sup> 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).



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.<sup>20</sup>

On July 28, 2015, the 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<sub>2</sub> trading budget for Georgia.<sup>21</sup> However, Georgia 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<sub>2</sub> budget equal to the state's remanded Phase 2 SO<sub>2</sub> emission budget.<sup>22</sup> EPA notes that nothing in the Court's decision affects Georgia'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 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.<sup>23</sup> 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<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

- *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.<sup>27</sup> 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<sub>x</sub> Ozone Season Group 2 Trading Program only, additional allowances may be allocated if the state elects to expand applicability to non-EGUs that would have been subject to the NO<sub>x</sub> Budget Trading Program established for compliance with the NO<sub>x</sub> SIP Call.<sup>28</sup>

- *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.<sup>29</sup> 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.

<sup>20</sup> 40 CFR 52.38(a)(7), (b)(11)(i); 52.39(k).

<sup>21</sup> *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<sub>2</sub> budgets for Alabama, South Carolina, and Texas. The court also remanded Phase 2 ozone-season NO<sub>x</sub> budgets for eleven states, which did not include Georgia.

<sup>22</sup> *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<sub>2</sub> 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. The EPA also communicated orally with officials in Alabama, Georgia, South Carolina, and Texas in advance of the memo.

<sup>23</sup> 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).

<sup>24</sup> 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](https://www.epa.gov/sites/production/files/2017-05/documents/csapr_allowance_allocations_final_rule_tsd.pdf).

<sup>25</sup> 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).

<sup>26</sup> *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).

<sup>27</sup> 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).

<sup>28</sup> 40 CFR 52.38(b)(8)(iii)(A), (b)(9)(iii)(A).

<sup>29</sup> 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).



Units	Year of the control period	Deadline for submission to EPA of allocations or auction results
<b>CSAPR NO<sub>x</sub> Annual, CSAPR NO<sub>x</sub> Ozone Season Group 1, CSAPR SO<sub>2</sub> Group 1, and CSAPR SO<sub>2</sub> Group 2 Trading Programs:</b>		
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.
<b>CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program:</b>		
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.

- *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.<sup>30</sup>

- *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.<sup>31</sup> 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.<sup>32</sup>

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP revision seeking to expand applicability under the CSAPR NO<sub>x</sub> Ozone Season Group 1 or CSAPR NO<sub>x</sub> 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.<sup>33</sup> In addition or alternatively, applicability under the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program may be expanded to non-EGUs that would have been subject to the NO<sub>x</sub> Budget Trading Program established for compliance with the NO<sub>x</sub> SIP Call.<sup>34</sup>

- *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.<sup>35</sup>

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.<sup>36</sup>

- *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.<sup>37</sup>

- *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.<sup>38</sup>

### V. Georgia’s SIP Submittal and EPA’s Analysis

#### A. Georgia’s SIP Submittal as It Relates to CSAPR

In the CSAPR rulemaking, EPA determined that air pollution transported from EGUs in Georgia would unlawfully affect other states’ ability to attain or maintain the 1997 8-hour Ozone NAAQS, the 1997 Annual PM<sub>2.5</sub> NAAQS, and the 2006 24-hour PM<sub>2.5</sub> NAAQS, and included Georgia in the CSAPR ozone season NO<sub>x</sub> trading program and the annual SO<sub>2</sub> and NO<sub>x</sub> trading programs.<sup>39</sup> In the CSAPR Update rulemaking, EPA determined that Georgia was not linked to any identified downwind nonattainment or maintenance receptors for the 2008 8-hour Ozone NAAQS.<sup>40</sup> Georgia’s units meeting the CSAPR applicability criteria are consequently currently subject to CSAPR FIPs that require participation in

<sup>30</sup> 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).

<sup>31</sup> 40 CFR 52.38(a)(4), (a)(5), (b)(4), (b)(5), (b)(8), (b)(9); 52.39(e), (f), (h), (i).

<sup>32</sup> 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).

<sup>33</sup> 40 CFR 52.38(b)(4)(i), (b)(5)(i), (b)(8)(i), (b)(9)(i).

<sup>34</sup> 40 CFR 52.38(b)(8)(ii), (b)(9)(ii).

<sup>35</sup> 40 CFR 52.38(b)(4), (b)(5), (b)(8), (b)(9).

<sup>36</sup> 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).

<sup>37</sup> 40 CFR 52.38(a)(5)(iii), (b)(5)(iv), (b)(9)(v); 52.39(f)(3), (i)(3).

<sup>38</sup> 40 CFR 52.38(a)(5)(iv), (b)(5)(v), (b)(9)(vi); 52.39(f)(4), (i)(4).

<sup>39</sup> 76 FR 48208, 48213 (August 8, 2011).

<sup>40</sup> 81 FR 74504, 74506 (October 26, 2016). EPA also determined in the CSAPR Update rulemaking that Georgia had no further transport obligation under CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Ozone NAAQS beyond the ozone season NO<sub>x</sub> emission reduction requirements established in the original CSAPR rulemaking. *Id.* at 74525.

the CSAPR NO<sub>x</sub> Annual Trading Program, the CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program, and the CSAPR SO<sub>2</sub> Group 2 Trading Program.<sup>41</sup>

Georgia's July 26, 2017, SIP revision incorporates into the SIP CSAPR state trading program regulations that would replace the CSAPR federal trading program regulations with regard to Georgia units' SO<sub>2</sub> and NO<sub>x</sub> emissions. The SIP submittal includes revisions to two Georgia rules: Rule 391-3-1-.02(12), "Clean Air Interstate Rule NO<sub>x</sub> Annual Trading Program," is replaced by "Cross State Air Pollution Rule NO<sub>x</sub> Annual Trading Program;" and Rule 391-3-1-.02(13), "Clean Air Interstate Rule SO<sub>2</sub> Annual Trading Program," is replaced by "Cross State Air Pollution Rule SO<sub>2</sub> Annual Trading Program." In addition, the submittal adds Rule 391-3-1-.02(14), "Cross State Air Pollution Rule NO<sub>x</sub> Ozone Season Trading Program." In general, each rule in Georgia's CSAPR state trading program rule is designed to replace the corresponding federal trading program regulations. For example, Georgia Rule 391-3-1-.02(12), Cross State Air Pollution Rule NO<sub>x</sub> 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 rules for each Georgia CSAPR state trading program are set forth as full regulatory text—notably the rules identifying the trading budgets, NUSA, Indian country NUSA, and the definition of "Permitting Authority"—but most of the rules incorporate the corresponding federal trading program section or sections by reference.

With regard to substance, the rules for each Georgia CSAPR state trading program differ from the corresponding CSAPR federal trading program regulations in two main ways. First, the term permitting authority is defined as the Georgia Environmental Protection Division of the Georgia Department of Natural Resources for units in Georgia only. Second, the Georgia rules omit some federal trading program provisions not applicable to Georgia'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 Georgia rules adopt the Phase 2 annual NO<sub>x</sub> and SO<sub>2</sub> budgets and the Group 1 ozone season NO<sub>x</sub> budgets found at 40 CFR 97.410(a)(2)(iv),

97.710(a)(2)(iv), and 97.510(a)(4)(iv), respectively. Accordingly, EPA will evaluate the approvability of the Georgia SIP submission consistent with these budgets.

At this time, EPA is proposing to take action on the portions of Georgia's SIP submission designed to replace the federal CSAPR NO<sub>x</sub> Annual Trading Program, the federal CSAPR SO<sub>2</sub> Group 2 Trading Program, and the federal CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program with regard to Georgia units.<sup>42</sup>

#### *B. EPA's Analysis of Georgia's SIP Submittal as It Relates to CSAPR*

As described in section V.A above, at this time EPA is proposing to take action on the portions of Georgia's SIP submittal designed to replace the federal CSAPR NO<sub>x</sub> Annual Trading Program, the federal CSAPR SO<sub>2</sub> Group 2 Trading Program, and the federal CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program<sup>43</sup> for Georgia units.<sup>44</sup> The analysis discussed in this section addresses only the portions of Georgia's SIP submittal related to CSAPR on which EPA is taking action at this time. For simplicity, throughout this section EPA refers to the portions of the submittal on which EPA is proposing to take action as "the submittal" or "the SIP revision" without repeating the qualification that at this time EPA is analyzing and proposing to act on only portions of the SIP submittal.

#### 1. Timeliness and Completeness of SIP Submittal

Georgia submitted its SIP revision to EPA on July 26, 2017, and EPA has determined that the submittal complies with the applicable minimum completeness criteria in section 2.1 of appendix V to 40 CFR part 51. The SIP submission deadline specified in 40 CFR 52.38(a)(5)(vi) and (b)(5)(vii) and 52.39(i)(6) is defined with reference to certain separate CSAPR deadlines for submission of state-determined

<sup>42</sup> In addition and as discussed above, the EPA is also proposing to take action on the portions of the SIP submittal related to removal of CAIR.

<sup>43</sup> Georgia's rules incorporate the provisions of, and, if approved, would replace the federal CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program. *See* 40 CFR 52.38(b)(5). Following the CSAPR Update, Georgia is the only state whose units participate in this trading program; units in other states participate in the CSAPR NO<sub>x</sub> Ozone Season Group 2 Trading Program. *See* 40 CFR 52.38(b)(2)(i); CSAPR Update, 81 FR at 74509. As a result, Georgia units will be unable to trade allowances with units in other states. *See* CSAPR Update, 81 FR at 74509. EPA notes that federal regulations provide an option for Georgia to join the Group 2 trading program. 40 CFR 52.38(b)(6); CSAPR Update, 81 FR at 74509.

<sup>44</sup> The other portions of the state submittal will be addressed in separate actions.

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 Georgia 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.<sup>45</sup>

#### 2. Complete, Substantively Identical Trading Program Provisions

As discussed above, the Georgia SIP revision adopts state budgets identical to the Phase 2 budgets for Georgia under the federal trading programs and adopts almost all of the provisions of the federal CSAPR NO<sub>x</sub> Annual Trading Program, CSAPR SO<sub>2</sub> Group 2 Trading Program, and CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program, including the default allocation provisions. Under the State's rules, EPA will administer the programs and will retain the authority to allocate and record allowances.

With a few exceptions, the Georgia rules comprising Georgia's CSAPR state trading program for annual NO<sub>x</sub> emissions either incorporate by reference or adopt full-text replacements for all of the provisions of 40 CFR 97.401 through 97.435; the Georgia rules comprising Georgia's CSAPR state trading program for SO<sub>2</sub> emissions either incorporate by reference or adopt full-text replacements for all of the provisions of 40 CFR 97.701 through 97.735; and the Georgia rules comprising Georgia's CSAPR state trading program for NO<sub>x</sub> ozone season emissions either incorporate by reference or adopt full-text replacements for all of the provisions of 40 CFR 97.501 through 97.535.

The first exception is that paragraphs 391-3-1-.02(12)(a), 391-3-1-.02(13)(a), and 391-3-1-.02(14)(a) of the Georgia rules substitute "Environmental Protection Division of the Georgia Department of Natural Resources" for the term "permitting authority" for units located within the state of Georgia. This substitution properly retains the definition in 40 CFR 97.402<sup>46</sup> for units

<sup>45</sup> *See* 40 CFR 52.38(a)(5)(vi), (b)(5)(vii); 52.39(i)(6).

<sup>46</sup> As clarified in a letter from Georgia dated July 21, 2017, there is a typographical error such that each of Georgia's three CSAPR rules references 40 CFR 97.402, instead of referencing 40 CFR 97.702 in 391-3-1-.02(13)(a) and 40 CFR 97.502 in paragraph 391-3-1-.02(14)(a). *See* July 21, 2017

<sup>41</sup> 40 CFR 52.38(a)(2), (b)(2); 52.39(c); 52.584(a), (b); 52.585.

outside of the State's jurisdiction. This modification of the federal trading program rules merely provides clarity to Georgia sources, and these substitutions do not substantively change the provisions of CSAPR's federal trading program regulations. As a result, this change is permitted under 40 CFR 52.38(a)(5), 52.38(b)(5) and 52.39(i).

The second exception is that paragraphs 391-3-1-.02(12), 391-3-1-.02(13), and 391-3-1-.02(14) of the Georgia rules omit the provisions of 40 CFR 97.410(a) and (b), 97.710(a) and (b), and 97.510(a) and (b), setting forth the amounts of the Phase 1 emissions budgets, NUSAs, and variability limits for Georgia 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 Georgia Phase 1 emissions budget, NUSA, and variability limit amounts is appropriate because Georgia'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 Georgia units participate does not undermine the completeness of the state trading programs. Georgia's rules include full-text replacement provisions for the remaining provisions of 40 CFR 97.410, 97.710, and 97.510 that are relevant to trading programs applicable only to Georgia units during Phase 2 of CSAPR.

The third exception is that Georgia Rules 391-3-1-.02(12), 391-3-1-.02(13), and 391-3-1-.02(14) omit 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), 97.721(j), 97.511(b)(2), 97.511(c)(5)(iii), 97.512(b), 97.521(h), and 97.521(j) concerning EPA's administration of Indian country NUSAs. Omission of these provisions from Georgia's state trading program rules is required, as discussed in section V.B.4 below.

None of the omissions undermine the completeness of Georgia's state trading programs, and EPA has preliminarily

Letter from Karen Hayes (Director, Air Protection Division, Georgia EPD) to V. Anne Heard (Acting Regional Administrator, EPA Region 4), available in the docket to this action. EPA views this typographical error as non-substantive because the underlying definition for the term "permitting authority" is the same for all three trading programs. Compare, e.g., 40 CFR 97.402 (Permitting authority means "permitting authority" as defined in 40 CFR 70.2 and 71.2) with 40 CFR 97.502 (Permitting authority means "permitting authority" as defined in 40 CFR 70.2 and 71.2). Regardless, Georgia has committed to fixing this error in the future.

determined that Georgia's SIP revision makes no substantive changes to the provisions of the federal trading program regulations. Thus, Georgia's SIP revision meets the condition under 40 CFR 52.38(a)(5), 52.39(i), and 52.38(b)(5) 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, 97.702 through 97.735, and 97.502 through 97.535, 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"

The Georgia rules do not make any substitutions for the term "State."

### 4. Exclusion of Provisions Addressing Units in Indian Country

Georgia Rules 391-3-1-.02(12)(b), 391-3-1-.02(13)(b), and 391-3-1-.02(14)(b) incorporate by reference the applicability provisions of the federal trading program rules at 40 CFR 97.402, 97.702, and 97.502, respectively. There is no Indian country (as defined for purposes of CSAPR) within Georgia's borders, so the applicability provisions of the Georgia rules necessarily do not extend to any units in Indian country. In addition, as required under 40 CFR 52.38(a)(5)(iv), 52.39(i)(4) and 52.38(b)(5)(v), Georgia's 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), 97.721(h), 97.721(j), 97.511(b)(2), 97.511(c)(5)(iii), 97.512(b), 97.521(h) and 40 CFR 97.521(j)). Georgia's SIP revision therefore meets the conditions under 52.38(a)(5)(iv), 52.39(i)(4) and 52.38(b)(5)(v) 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.

### C. Georgia's SIP Submittal as It Relates to CAIR, and EPA's Analysis

In addition, Georgia's July 26, 2017, submittal seeks to remove state trading program rules adopted to comply with the CAIR from Georgia's SIP at 391-3-1-.02(12), "Clean Air Interstate Rule NO<sub>x</sub> Annual Trading Program," and Rule 391-3-1-.02(13), "Clean Air Interstate Rule SO<sub>2</sub> Annual Trading

Program," because the CAIR program has been replaced by CSAPR.<sup>47</sup>

In this action, EPA proposes to approve the removal of these CAIR-related provisions from Georgia's SIP. As explained above, the D.C. Circuit remanded CAIR to EPA in 2008; however, the Court left CAIR in place while EPA worked to develop a new interstate transport rule. CSAPR was promulgated to respond to the Court's concerns and to replace CAIR. The implementation of CSAPR was delayed for several years beyond its originally expected implementation timeframe of 2012, and therefore, the sunset of CAIR was also deferred. CAIR was implemented through the 2014 compliance periods and was replaced by CSAPR on January 1, 2015. EPA promulgated regulations to sunset the CAIR program and it is no longer in effect.<sup>48</sup> EPA therefore proposes to approve the removal of Georgia's SIP provisions related to CAIR.

### VI. 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 Georgia Rules for Air Quality Control, Rule 391-3-1-.02(12), Rule 391-3-1-.02(13), and Rule 391-3-1-.02(14), state effective on July 20, 2017, comprising Georgia's Cross State Air Pollution Rule NO<sub>x</sub> Annual Trading Program, Georgia's Cross State Air Pollution Rule SO<sub>2</sub> Annual Trading Program, and Georgia's Cross State Air Pollution Rule NO<sub>x</sub> Ozone Season Trading Program, respectively. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://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).

### VII. EPA's Proposed Action on Georgia's Submittal

EPA is proposing to approve the portions of Georgia's July 26, 2017, SIP submittal concerning the establishment for Georgia units of CSAPR state trading programs for annual NO<sub>x</sub>, annual SO<sub>2</sub> emissions and ozone season NO<sub>x</sub> emissions. The proposed revision would revise Georgia Rules for Air Quality Control to include CSAPR as follows:

<sup>47</sup> As discussed above in section V.A., the State seeks to replace these provisions with state rules related to CSAPR.

<sup>48</sup> 40 CFR 51.123(ff) (requirements related to NO<sub>x</sub>); 40 CFR 51.124(s) (requirements related to SO<sub>2</sub>).

391-3-1-.02(12) will be revised to include Georgia's "Cross State Air Pollution Rule NO<sub>x</sub> Annual Trading Program;" 391-3-1-.02(13) will be revised to include Georgia's "Cross State Air Pollution Rule SO<sub>2</sub> Annual Trading Program;" and 391-3-1-.02(14) will be added to include "Georgia's Cross State Air Pollution Rule NO<sub>x</sub> Ozone Season Trading Program." These Georgia CSAPR state trading programs would be integrated with the federal CSAPR NO<sub>x</sub> Annual Trading Program, the federal CSAPR SO<sub>2</sub> Group 2 Trading Program, and the federal CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program, respectively, and would be substantively identical to the federal trading programs.<sup>49</sup> If EPA approves these portions of the SIP revision, Georgia units would generally be required to meet requirements under Georgia'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 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 Georgia units to participate in the federal CSAPR NO<sub>x</sub> Annual Trading Program, the federal CSAPR SO<sub>2</sub> Group 2 Trading Program, and the federal CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program in order to address Georgia's obligations under CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual PM<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 1997 8-hour Ozone NAAQS in the absence of SIP provisions addressing those requirements. Approval of the portions of Georgia's SIP submittal adopting CSAPR state trading program rules for annual NO<sub>x</sub>, annual SO<sub>2</sub>, and ozone season NO<sub>x</sub> substantively identical to the corresponding CSAPR federal trading program regulations (or differing only with respect to the allowance allocation methodology) would satisfy Georgia'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<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 1997 8-hour Ozone 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).<sup>50</sup> Approval of the portions of Georgia's SIP submittal establishing CSAPR state trading program rules for annual NO<sub>x</sub>, annual SO<sub>2</sub>, and ozone season NO<sub>x</sub> emissions therefore would result in automatic termination of the obligations of Georgia units to participate in the federal CSAPR NO<sub>x</sub> Annual Trading Program, the federal CSAPR SO<sub>2</sub> Group 2 Trading Program, and the federal CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program.

As noted in section III above, the Phase 2 SO<sub>2</sub> budget established for Georgia in the CSAPR rulemaking has been remanded to EPA for reconsideration. If EPA finalizes approval of these portions of the SIP revision as proposed, Georgia will have fulfilled its obligations to provide a SIP that addresses the interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual PM<sub>2.5</sub> NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 1997 8-hour Ozone 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 Georgia units' obligations to participate in the federal CSAPR NO<sub>x</sub> Annual Trading Program, the federal CSAPR SO<sub>2</sub> Group 2 Trading Program, and the federal CSAPR NO<sub>x</sub> Ozone Season Group 1 Trading Program. Elimination of Georgia units' obligations to participate in the federal trading programs would include elimination of the federally-established Phase 2 budgets capping allocations of CSAPR NO<sub>x</sub> Annual allowances, CSAPR SO<sub>2</sub> Group 2 allowances, and CSAPR NO<sub>x</sub> Ozone Season Group 1 allowances to Georgia units under those federal trading programs. As approval of these portions of the SIP revision would

eliminate Georgia's remanded federally-established Phase 2 SO<sub>2</sub> budget and eliminate EPA's authority to subject units in Georgia to a FIP, it is EPA's opinion that finalization of approval of this SIP action would address the judicial remand of Georgia's federally-established Phase 2 SO<sub>2</sub> budget.

In addition, EPA is proposing to approve the portions of Georgia's July 26, 2017, SIP revision removing Georgia's state trading provisions adopted to implement CAIR: Georgia Rules for Air Quality control at provisions 391-3-1-.02(12), "Clean Air Interstate Rule NO<sub>x</sub> Annual Trading Program" and 391-3-1-.02(13) "Clean Air Interstate Rule SO<sub>2</sub> Annual Trading Program." If EPA finalizes approval of the proposed SIP revision, these CAIR provisions will be removed from the SIP. As explained above, CAIR was implemented through the 2014 compliance periods and was replaced by CSAPR on January 1, 2015. EPA has promulgated regulations to sunset the CAIR program and it is no longer in effect.<sup>51</sup> EPA therefore proposes to approve the removal of Georgia's SIP provisions related to CAIR.

#### VIII. 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

<sup>49</sup> As previously discussed in sections IV and V.B.2, under Georgia's regulations, the State will retain EPA's default allowance allocation methodology and EPA will remain the implementing authority for administration of the trading program.

<sup>50</sup> 40 CFR 52.38(a)(6), (b)(10), 52.39(j); *see also* 52.584(a)(1), 52.584(b)(1); 52.585(a).

<sup>51</sup> 40 CFR 51.123(ff) (requirements related to NO<sub>x</sub>); 40 CFR 51.124(s) (requirements related to SO<sub>2</sub>).

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, 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: August 7, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017-17227 Filed 8-15-17; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2017-0385; FRL-9966-19-Region 4]

#### Air Plan Approval; SC: Multiple Revisions to Air Pollution Control Standards

**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 revise several miscellaneous rules covering air pollution control standards. 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: October 1, 2007, July 18, 2011, June 17, 2013, August 8, 2014, August 12, 2015, July 27, 2016, and November 4, 2016. These actions are being proposed pursuant to the Clean Air Act.

**DATES:** Written comments must be received on or before September 15, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0385 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:

Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. Mr. Wong can be reached via telephone at (404) 562-8726 or via electronic mail at [wong.richard@epa.gov](mailto:wong.richard@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this issue of the **Federal Register**, EPA is approving the State's implementation plan revisions as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: August 4, 2017.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 2017-17228 Filed 8-15-17; 8:45 am]

**BILLING CODE 6560-50-P**

# Notices

Federal Register

Vol. 82, No. 157

Wednesday, August 16, 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.

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Alabama Advisory Committee for Orientation and To Discuss Civil Rights Topics in the State

**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 that the Alabama Advisory Committee (Committee) will hold a meeting on Tuesday, August 29, 2017, at 2:00 p.m. CST for the purpose of orientation and a discussion on civil rights topics affecting the state.

**DATES:** The meeting will be held on Tuesday, August 29, 2017, at 2:00 p.m. CST.

*Public Call Information:* Dial: (877) 419-6591, Conference ID: 7443916.

**FOR FURTHER INFORMATION CONTACT:** David Barreras, DFO, at [dbarreras@usccr.gov](mailto:dbarreras@usccr.gov) or (312) 353-8311.

**SUPPLEMENTARY INFORMATION:** Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: (877) 419-6591, conference ID: 7443916. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. 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 also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353-8324, or emailed to Carolyn Allen at [callen@usccr.gov](mailto:callen@usccr.gov). Persons who desire additional information may contact the Midwestern Regional Office at (312) 353-8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via [www.facadatabase.gov](http://www.facadatabase.gov) under the Commission on Civil Rights, Alabama Advisory Committee link (<http://www.facadatabase.gov/committee/committee.aspx?cid=233&aid=17>). Persons interested in the work of this Committee are directed to the Commission's Web site, <http://www.usccr.gov>, or may contact the Midwestern Regional Office at the above email or street address.

### Agenda

Welcome and Roll Call  
Orientation  
Civil Rights Topics in Arkansas  
Future Plans and Actions  
Public Comment  
Adjournment

Dated: August 10, 2017.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2017-17282 Filed 8-15-17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Census Bureau

### Proposed Information Collection; Comment Request; Census Barriers, Attitudes, and Motivators Survey (CBAMS) 2020

**AGENCY:** U.S. Census Bureau, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, under the provisions of the Paperwork Reduction Act.

**DATES:** To ensure consideration, written comments must be submitted on or before 30 days from publishing.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at [PRAComments@doc.gov](mailto:PRAComments@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information and instructions should be directed to Gina Walejko at 301-763-1643 or by email to [gina.k.walejko@census.gov](mailto:gina.k.walejko@census.gov) or by contacting Monica Vines at 301-763-8813 or by email to [monica.j.vines@census.gov](mailto:monica.j.vines@census.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Abstract

The U.S. Census Bureau plans to request clearance to conduct the Census Barriers, Attitudes, and Motivators Survey (CBAMS) to measure public knowledge, awareness, and perceptions about the decennial census as well as behaviors and attitudes related to participating in the decennial census. This research will complement previous iterations of surveys designed to gauge public knowledge, attitudes, and behavior regarding the decennial censuses, as well as inform the strategic direction of the Census Bureau's 2020 Census Integrated Partnership and Communications (IPC) Program. While results are integral to designing the 2020 IPC, they will also be used to better understand the Census Bureau's

audiences, to communicate with the public regarding other data collections, and to improve our communications and outreach materials (e.g., data products, Web sites, etc.).

Once every ten years, the Census Bureau conducts an enumeration of the United States, Puerto Rico, and U. S. territories populations and housing. It is an extremely complex undertaking that requires the participation of every household in the country, reaching people from the most remote Alaskan villages to the most crowded inner cities. The role of the IPC is to increase public awareness and motivate people to self-respond to the census promptly.

The Census Bureau developed the 2010 Census Integrated Communications Campaign (ICC) in an effort to build on the success of the Census 2000 Partnership and Marketing Program. The ICC was multi-targeted, multi-media, and multi-lingual, using traditional media like television, radio, print, and out-of-home, as well as new media, such as blogs, social media, and other online efforts, and non-traditional media like food trucks, ethnic stores, and restaurants.

The Census Bureau is planning a 2020 Census that will provide more ways to self-respond—paper, Internet, and telephone. To support this goal, the IPC will create a communications campaign with messages and media plans developed for specific audience segments with unique response behaviors, attitudes, and demographics. Targeted messages and the selection of the unique channels that these specific audiences consume will almost guarantee the visibility this campaign needs among target audiences. These audience segments will be developed using 2010 Census and American Community Survey (ACS) participation data as well as measures of knowledge, attitudes, barriers, and motivators to 2010 decennial participation documented in past CBAMS surveys. However, the environmental landscape has shifted since the Census 2010, and the Census Bureau is facing new challenges. CBAMS 2020, in conjunction with the analysis of other data sources, will measure current barriers to census data collection including:

- Distrust in federal, state and local government entities,
- Concerns about privacy and confidentiality,
- Lack of census familiarity and knowledge, and
- Limits of Internet penetration and use.

The immediate purpose of CBAMS 2020 is to inform message development

and media planning for the IPC with the ultimate goal of increasing self-response, though results will inform across the board improvements in customer communications where possible. Although collected data will not be used to produce official Census Bureau estimates, the Census Bureau will publish a report detailing results and explaining by whom this data will be used. This report will in no way identify individuals.

#### *Method of Collection*

CBAMS 2020 will be administered to a sample of addresses. First, a pre-notification letter will notify addresses of the data collection. Later mailings will give addresses a choice of filling out the survey online or via a mailed paper questionnaire. Non-responding households will be mailed reminders, and flagged-Hispanic households will receive a two-sided letter in both English and Spanish. This protocol provides no follow-up to nonrespondents in person or by phone. CBAMS 2020 will test the use of \$2, \$5, and \$10 gifts provided to sample members to increase the response rate. All participants will receive a monetary incentive, but the dollar amount will vary. CBAMS 2020 survey will focus on the following topic areas:

- Awareness and familiarity with the decennial census;
- Likelihood to participate in the decennial census;
- Attitudinal, personal, and community motivators related to decennial census participation;
- Barriers to decennial census participation;
- Internet use and skills;
- Knowledge related to the decennial census;
- Trust in federal, state and local government entities;
- Civic participation;
- Media use; and
- Sociodemographic characteristics.

For more information, please contact Gina Walejko at 301-763-1643 or by email to [gina.k.walejko@census.gov](mailto:gina.k.walejko@census.gov) or by contacting Monica Vines at 301-763-8813 or by email to [monica.j.vines@census.gov](mailto:monica.j.vines@census.gov).

#### **II. Data**

*Office of Management and Budget (OMB) Control Number:* 0607-0978.

*Form Number:* N/A.

*Type of Review:* Nonsubstantive change request.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 35,000.

*Estimated Time per Response:* 25 minutes.

*Estimated Total Annual Burden*

*Hours:* Approximately 14,600 hours.

*Estimated Total Annual Cost:* There is no cost to the respondents other than their time.

*Confidentiality:* Yes, Title 13 U.S.C. Section 9 confidentiality applies to the information the respondent provides.

*Legal Authority:* Title 13 U.S.C. Section 182.

#### **III. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Written comments and recommendations on this collection should be sent within 30 days of publication of this notice to [PRAComments@doc.gov](mailto:PRAComments@doc.gov).

**Sheleen Dumas,**

*Departmental PRA Lead, Office of the Chief Information Officer.*

[FR Doc. 2017-17304 Filed 8-15-17; 8:45 am]

**BILLING CODE 3510-07-P**

#### **DEPARTMENT OF COMMERCE**

##### **National Oceanic and Atmospheric Administration**

**RIN 0648-XF516**

##### **Pacific Island Fisheries; Marine Conservation Plan for Guam; Western Pacific Sustainable Fisheries Fund**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of agency decision.

**SUMMARY:** NMFS announces approval of a Marine Conservation Plan (MCP) for Guam.

**DATES:** This agency decision is valid from August 4, 2017, through August 3, 2020.



**ADDRESSES:** You may obtain a copy of the MCP, identified by NOAA–NMFS–2017–0075, from the Federal e-Rulemaking Portal, <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0075>, or from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, [www.wpcouncil.org](http://www.wpcouncil.org).

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown, Sustainable Fisheries, NMFS Pacific Islands Regional Office, 808–725–5171.

**SUPPLEMENTARY INFORMATION:** Section 204(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary), and in consultation with the Council, to negotiate and enter into a Pacific Insular Area fishery agreement (PIAFA). A PIAFA would allow foreign fishing within the U.S. Exclusive Economic Zone (EEZ) adjacent to American Samoa, Guam, or the Northern Mariana Islands. The Governor of the Pacific Insular Area to which the PIAFA applies must request the PIAFA. The Secretary of State may negotiate and enter the PIAFA after consultation with, and concurrence of, the applicable Governor.

Before entering into a PIAFA, the applicable Governor, with concurrence of the Council, must develop and submit to the Secretary a 3-year MCP providing details on uses for any funds collected by the Secretary under the PIAFA. NMFS is the designee of the Secretary for MCP review and approval. The Magnuson-Stevens Act requires payments received under a PIAFA to be deposited into the United States Treasury and then conveyed to the Treasury of the Pacific Insular Area for which funds were collected.

In the case of violations by foreign fishing vessels in the EEZ around any Pacific Insular Area, amounts received by the Secretary attributable to fines and penalties imposed under the Magnuson-Stevens Act, including sums collected from the forfeiture and disposition or sale of property seized subject to its authority, shall be deposited into the Treasury of the Pacific Insular Area adjacent to the EEZ in which the violation occurred, after direct costs of the enforcement action are subtracted. The Pacific Insular Area government may use funds deposited into the Treasury of the Pacific Insular Area for fisheries enforcement and for implementation of an MCP.

Federal regulations at 50 CFR 665.819 authorize NMFS to specify catch limits

for of longline-caught bigeye tuna for U.S. territories. NMFS may also authorize each territory to allocate a portion of that limit to U.S. longline fishing vessels that are permitted to fish under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP). Payments collected under specified fishing agreements are deposited into the Western Pacific Sustainable Fisheries Fund, and any funds attributable to a particular territory may be used only for implementation of that territory's MCP.

An MCP must be consistent with the Council's fishery ecosystem plans, must identify conservation and management objectives (including criteria for determining when such objectives have been met), and must prioritize planned marine conservation projects.

The Council reviewed and concurred with the Guam MCP in June 2017. On July 14, 2017, the Governor of Guam submitted the Guam MCP to NMFS for review and approval. The following describes the objectives of the MCP. Please refer to the MCP for planned projects and activities designed to meet each objective, the evaluative criteria, and priority rankings. The MCP contains six conservation and management objectives, listed below.

1. Fisheries resource assessment, research and monitoring;
2. Effective surveillance and enforcement mechanisms;
3. Promote ecosystems approach to fisheries management, climate change adaptation and mitigation, and regional cooperation;
4. Public participation, education and outreach, and local capacity building;
5. Domestic fisheries development; and
6. Recognizing the importance of island cultures and traditional fishing practices and community-based management.

This notice announces that NMFS has reviewed the MCP, and has determined that it satisfies the requirements of the Magnuson-Stevens Act. Accordingly, NMFS has approved the MCP for the 3-year period from August 4, 2017, through August 3, 2020. This MCP supersedes the MCP previously approved for the period August 4, 2014, through August 3, 2017 (79 FR 47095, August 12, 2014).

Dated: August 11, 2017.

**Emily H. Menashes,**  
*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648–XF341

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Conducting Subsea Cable Operations and Maintenance Activities in the Arctic Ocean

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of an incidental harassment authorization (IHA).

**SUMMARY:** In accordance with regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an IHA to Quintillion Subsea Operations, LLC (Quintillion) to take, by harassment, small numbers of 13 species of marine mammals incidental to conducting subsea cable-laying and maintenance activities in the Beaufort, Bering, and Chukchi seas, during the open-water season of 2017.

**DATES:** This authorization is valid from July 1, 2017, through November 15, 2017.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

#### SUPPLEMENTARY INFORMATION:

##### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.



NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

#### National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

NMFS prepared the Final Environmental Assessment for the Issuance of an Incidental Harassment Authorization for the Take of Marine Mammals by Harassment Incidental to the Alaska Phase of the Quintillion Subsea Project in the U.S. Arctic Ocean (2016 EA) and issued a Finding of No Significant Impact (FONSI) for the issuance of an IHA to Quintillion in 2016. After reviewing and considering (1) Quintillion’s 2017 IHA application, (2) the 2016 EA and FONSI, and (3) the 2016 Quintillion monitoring report, NMFS determined the issuance of an IHA to Quintillion for its 2017 activities falls within the scope of the analysis in the 2016 EA. NMFS determined issuance of another IHA to Quintillion would not result in significant adverse effects, individually or cumulatively, on the human environment. As such, NMFS determined the issuance of an IHA to Quintillion does not require the preparation of a Supplemental Environmental Assessment.

NMFS’ 2016 EA is available at [www.nmfs.noaa.gov/pr/permits/incidental/research](http://www.nmfs.noaa.gov/pr/permits/incidental/research).

#### Summary of Request

On November 18, 2016, Quintillion submitted an IHA application and marine mammal mitigation and

monitoring plan (4MP) for the taking of marine mammal species incidental to conducting subsea cable-laying and operation and maintenance (O&M) activities in the Beaufort, Bering, and Chukchi seas. After receiving NMFS’ comments on the initial application, Quintillion made revisions to its IHA application on December 20, 2016, and January 23, 2017. NMFS determined that the application and the 4MP were adequate and complete on February 13, 2017.

The request continues work conducted in the 2016 open-water season, which was covered under a previous IHA (81 FR 40274; June 21, 2016). Noise generated from cable-laying and associated maintenance and repair activities could impact marine mammals in the vicinity of the activities. Take, by Level B harassment, of individuals of 13 species of marine mammals is authorized from the specified Description of Proposed Activity.

#### Overview

In 2016, Quintillion installed substantial portions of a subsea fiber-optic cable network along the northern and western coasts of Alaska to provide high-speed internet connectivity to six rural Alaska communities. In 2017, Quintillion plans to complete the cable installation work that includes a 76-kilometer (km) (47-mile (mi)) Oliktok branch, system testing, branching unit (BU) burial, and operations and maintenance of any areas that do not meet testing requirements.

#### Dates and Duration

The proposed subsea cable installation, maintenance, and repair activities for the 2017 open water season are planned between July 1 and November 15. All associated activities, including mobilization, cable lay, and demobilization of survey and support crews, will occur between the above dates. Pre-trenching operations at the Oliktok branch will begin as soon as the cable vessels can access open water, but not before the IHA is issued.

#### Specified Geographic Region

The proposed cable-laying activities in the 2017 open-water season would be conducted between the Horizontal Directionally Drilled (HDD) pile and the Oliktok BU in coastal Beaufort Sea, as shown in Figure 1–2 of the IHA application.

Operations, maintenance, and repair activities could occur anywhere along the subsea cable lines within the Bering, Chukchi, and Beaufort seas. All areas along the subsea cable lines were

considered in the 2016 EA. The existence and location of any potential faults in the system is unknown at this time. If a fault is found, a section of the cable would be retrieved, repaired, and laid back down. Several BUs, located at the junction of the mainline and a branching route, were not buried in 2016. They will be buried in 2017, with protective concrete mattresses placed over them.

#### Detailed Description of Specific Activities

Quintillion intends to complete the 76-km (47-mi) Oliktok segment in summer 2017 using a variety of cable-laying equipment, depending on water depth. The branch line will be addressed in three sections:

*Section 1:* An approximately 6.0-km (3.7-mi) very shallow nearshore segment (from the HDD exit to approximately Kilometer Point (KP) 6.5) where trenching will occur using a construction barge equipped with a vibro plow. The barge will winch itself along the route using moored anchors. A pontoon barge that will be positioned in place with a small river tug will first place the moored anchors. The moorings will be placed with a derrick operating from the deck of the barge. The pontoon barge will also be used to retrieve the mooring after the cable is laid. Dominant noise will emanate from the river tug maneuvering the barges. The tug will not pull anchors along this section.

*Section 2:* An approximately 12.5-km (7.8-mi) transition section (KP 6.5 to KP 16) where the work will be conducted from the construction barge again using a vibro plow. Here the barge will winch along anchor lines as within Section 1, but the anchors will be placed and pulled by a midsize anchor-handling tug, which will produce the dominant noise along this section.

*Section 3:* An approximately 60-km (37-mi) offshore section (KP 16 to KP 76) where the cable will be laid by the cable-ship *Ile de Batz* using a sea plow that both cuts a trench and lays the cable.

Prior to cable-laying, seafloor sediment along the 60-km route segment will be loosened by making multiple passes of the route with the sea plow (sans the cable), set to varied depths. The dominant noise will be from the ship’s drive propeller and thrusters while pulling the plow.

In addition to the activities described above, Quintillion plans to conduct an O&M program in 2017, whereby the cable system is tested for faults and repaired as needed (using the *Ile de Batz*). Repair operations would involve

retrieving, reinstalling, and then potentially reburying cable. The amount of cable that would need to be retrieved is dependent on water depth and could involve several kilometers for each fault repair. If required, the cable would then be reburied using a remote operated vehicle (ROV) equipped with a jetting tool. BUs will be buried after the Oliktok branch cable is laid, or before if ice delays the *Ile de Batz* access to the branch. O&M activities may also include testing of equipment, including the sea plow, prior to pre-trenching to ensure performance standards will be met.

Detailed description of each project component is provided in the **Federal Register** notice for the proposed IHA (82 FR 22099; May 12, 2017).

### Comments and Responses

A notice of NMFS' proposal to issue an IHA to Quintillion was published in the **Federal Register** on May 12, 2017 (82 FR 22099). That notice described, in detail, Quintillion's activity, the marine mammal species and subsistence activities that may be affected by the proposed subsea cable-laying project, and the anticipated effects on marine mammals and subsistence activities. During the 30-day public comment period, NMFS received comment letters from the Marine Mammal Commission (Commission) and the North Slope Borough (NSB). Specific comments and responses are provided below.

*Comment 1:* The Commission states that the method used to estimate the numbers of takes during the proposed activities, which summed fractions of takes for each species across project days, does not account for and negates the intent of NMFS's 24-hour reset policy. The Commission further states that it understands NMFS has developed criteria associated with rounding and that the Commission looks forward to reviewing those criteria and resolving this matter in the near future.

*Response:* While for certain projects NMFS has rounded to the whole number for daily takes, the circumstance for projects like this one when the objective of take estimation is to provide more accurate assessments for potential impacts to marine mammals for the entire project, rounding in the middle of a calculation would introduce large errors into the process. In addition, while NMFS uses a 24-hour reset for its take calculation to ensure that individual animals are not counted as a take more than once per day, that fact does not make the calculation of take across the entire activity period inherently incorrect. There is no need for daily (24-hour)

rounding in this case because there is no daily limit of takes, so long as total authorized takes of marine mammal are not exceeded. In short, the calculation of predicted take is not an exact science and there are arguments for taking different mathematical approaches in different situations, and for making qualitative adjustments in other situations. NMFS also looks forward to discussing this issue with the Commission in the near future.

*Comment 2:* The NSB requests that NMFS require Quintillion to develop and employ a more comprehensive monitoring plan than was required in 2016, which includes monitoring of bowhead whales in the far-field. The NSB states that during Quintillion's 2016 cable-laying operation, although whaling activities in Kaktovik and Nuiqsut were successful and did not appear to have been impacted by any industrial activities, Barrow whalers had to travel considerable distances to the east and northeast to locate and harvest whales. NSB states that several whalers expressed concerns that Quintillion's operations may have impacted the behavior and distribution of bowhead whales when they arrived near Barrow.

*Response:* In reviewing and assessing Quintillion's 2017 marine mammal mitigation and monitoring plan for its potential impacts to subsistence use of marine mammal species, NMFS convened an independent peer-review panel (Panel) to review Quintillion's monitoring plan. The peer-review panel included one member from the NSB. The Quintillion's 2017 operations is much less in scope than its cable-laying operations in 2016, which may have had larger impacts to marine mammal species.

The Panel considered whether conducting far-field monitoring would provide valuable information on marine mammal distribution relative to Quintillion's 2017 operations. The Panel discussed two types of PAM to achieve this monitoring goal: Fixed passive acoustic moorings that archive data for later analysis, and real-time passive acoustic monitoring (PAM). Completion of the cable-laying activities will be at a fixed location, offshore of Oliktok Point. Long-term acoustic moorings in the vicinity of the Oliktok branch could provide information on noise and marine mammal presence before, during, and after Quintillion's operations. These data would need to be analyzed after the moorings were recovered. Hence, there would be a considerable lag between when the operations occurred and when results from PAM mooring data were available,

and these results would not be useful for mitigation purposes during the whaling season. The Panel inquired about, but is not aware of, any plans by other researchers to collect this type of data near Oliktok Point in 2017. From a logistical perspective, it is unlikely that Quintillion would be able to place moorings far enough in advance of the commencement of their operations or recover them long enough after completion for these data to be useful. Therefore, the Panel does not recommend that Quintillion invest in long-term PAM near Oliktok Point.

Alternatively, Quintillion could deploy buoys in whaling areas for real-time PAM to serve as an alert system for detecting anthropogenic noise. However, this type of monitoring is expensive: buoys must be deployed and recovered, and the buoys operate via satellite link (or cell phone link if close to shore with coverage) to send summaries of noise levels on an hourly or daily basis, depending on what the user wants. The Panel did not consider real-time PAM to be a cost-effective option and does not recommend Quintillion incorporate it into their 2017 4MP.

One panel member recommended that Quintillion stage PSOs on vessels stationed at a distance from the primary noise sources associated with either cable-laying or O&M activities to conduct far-field monitoring. However, a different panel member did not support this recommendation due to concerns about an increase in the acoustic footprint when more vessels operate in the general area. Given these reservations about the reliability of the data collected by Quintillion's vessel-based PSOs, this panel member did not think additional monitoring by vessel-based or aerial PSOs hired by Quintillion would be valuable. In general, the ability to detect changes in bowhead whale distribution due to Quintillion's efforts using data collected by a dedicated aerial survey focused on Quintillion's activities will depend upon the whales' density, the amount of survey effort achieved, and the magnitude of the whales' change in distribution. The lower the whale density, survey coverage, or magnitude of deflection, the more difficult it would be to identify changes in whale distribution.

Based on the peer-review panel's recommendation and NMFS assessment, we do not consider requiring far-field monitoring during Quintillion's subsea cable-laying and maintenance operations would improve mitigation and monitoring effectiveness. Nevertheless, Quintillion is required to implement

rigorous measures to communicate with subsistence users to prevent any unmitigatable adverse impacts it may have on subsistence activities during its subsea cable-laying and maintenance operations in the 2017 open-water season (see below).

*Comment 3:* The NSB requests that NMFS require Quintillion to make the data it collected in 2016 and the data it will collect in 2017 publicly available.

*Response:* Quintillion is required to make the marine mammal and underwater acoustic data it collected in 2016 and the data it will collect in 2017 publicly available. All PSO observation data from the 2016 operations were included in the 90-day reports. All PSO observation data from the 2017 operations will be provided in the 2017 90-day reports. Additionally, Quintillion states that it has provided vessel location data for all vessels during the 2016 whale hunt to the North Slope Borough upon request.

*Comment 4:* The NSB requests that NMFS require Quintillion to cease operations on August 25, 2017, until the fall hunts in Kaktovik, Nuiqsut, and Barrow are complete.

*Response:* The fall hunts typically end around November 15. Requiring Quintillion to cease operations between August 25 and November 15 would only allow Quintillion to perform its subsea cable-laying and maintenance between July 1 and August 24. This measure would be impracticable for the company to perform its cable-laying and maintenance work during the 2017 open water season. In addition, the 2017 Quintillion operations are focused on installation of the fiber optic cable from Oliktok Point to a location 76 km north of the point. Neither past nor current Open Water Season Conflict Avoidance Agreements (CAAs) have identified this as an area where season shutdowns have been requested.

To ensure that Quintillion's proposed cable-laying and maintenance work will have no unmitigatable impacts on subsistence use of marine mammals, Quintillion is required to implement effective communication with the subsistence community during its operations. In addition, from August 31 to October 31, transiting vessels in the Chukchi Sea or Beaufort Sea by Quintillion vessels will remain at least 20 miles offshore of the coast of Alaska from Icy Cape in the Chukchi Sea to Pitt Point on the east side of Smith Bay in the Beaufort Sea, unless ice conditions or an emergency that threatens the safety of the vessel or crew prevents compliance with this requirement. Therefore, NMFS believes that Quintillion is able to achieve mitigable

measures for subsistence use of marine mammals without ceasing its operations between August 25 and the end of fall hunting season.

*Comment 5:* The NSB requests that NMFS require Quintillion to enter into the Open Water Season Conflict Avoidance Agreement (CAA) with the Alaska Eskimo Whaling Commission (AEWC).

*Response:* Under sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*), an IHA or LOA would be granted to U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if NMFS finds that the taking of marine mammals will have a negligible impact on the species or stock(s) and will not have an unmitigatable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. In other words, no marine mammal take authorizations may be issued if NMFS has reason to believe that the proposed cable-laying and maintenance activities would not have an unmitigatable adverse impact on the availability of marine mammal species or stock(s) for Alaskan native subsistence uses. Although Federal laws do not require consultation with the native coastal communities until after Quintillion's operational plan have been finalized, permitted, and authorized, pre-permitting consultations between the Quintillion and the Alaskan coastal native communities are considered by NMFS when the agency makes a determination whether such activities would have an unmitigatable adverse impact on the availability of marine mammal species or stock(s) for subsistence uses. For the proposed subsea cable-laying and maintenance operations, Quintillion has conducted Plan of Cooperation (POC) meetings for its proposed operations in the Arctic Ocean in Anchorage and in the communities and villages of Utqiagvik, Kotzebue, Point Hope, and Wainwright.

Quintillion has not signed the 2017 CAA with AEWC. The CAA is only applicable to activities related to oil and gas exploration in the Arctic. In addition, Quintillion states that it met with AEWC and the Barrow Whaling Captains Association (BWCA) on multiple occasions, and while the CAA was discussed, neither organization has requested participation in the CAA.

NMFS has scrutinized all of the documents submitted by Quintillion (e.g., IHA application, Plan of Cooperation and marine mammal

monitoring and mitigation plan) and the recommendations by the peer-review panel and concluded that harassment of marine mammals incidental to Quintillion's activities will not have an unmitigatable adverse impact on the availability of marine mammals for taking for subsistence uses. This finding was based in large part on NMFS' definition of "unmitigatable adverse impact", the proposed mitigation and monitoring measures, the scope of activities proposed to be conducted, including time of year, location and presence of marine mammals in the project area, and Quintillion's Plan of Cooperation. In addition, based on the 90-day report from Quintillion's 2016 cable-laying activity, there is no observed effects to overall marine mammal in the project area. Many of the mitigation and monitoring measures are summarized in Response to Comment 4 above and are listed below in "Mitigation" section. Therefore, NMFS does not believe that signing a CAA is warranted.

#### Description of Marine Mammals in the Area of Specified Activities

We have reviewed the Quintillion's species information, which summarizes available information regarding status and trends, distribution and habitat preferences, behavior and life history, and auditory capabilities of the potentially affected species, for accuracy and completeness and refer the reader to Sections 3 and 4 of the applications, as well as to NMFS's Stock Assessment Reports (SAR; [www.nmfs.noaa.gov/pr/sars/](http://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/](http://www.nmfs.noaa.gov/pr/species/mammals/)), in the National Marine Mammal Laboratory's (NMML) Aerial Surveys of Arctic Marine Mammals (ASAMM) Web site (<https://www.afsc.noaa.gov/nmml/cetacean/bwasp/>). Table 1 lists all species with expected potential for occurrence in the U.S. Beaufort, Bering, and Chukchi seas 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. Species that could potentially occur in the proposed project areas but are not expected to have reasonable potential to be harassed by the subsea cable-laying and maintenance activities are described briefly but omitted from further analysis. These include extralimital species, which are species that do not normally occur in a given

area but for which there are one or more occurrence records that are considered beyond the normal range of the species. For status of species, we provide information regarding U.S. regulatory status under the MMPA and ESA.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock.

Fifteen marine mammal species (with 18 managed stocks) are considered to have the potential to co-occur with the proposed survey activities. However, polar bear and walrus are managed by the U.S. Fish and Wildlife Service and are not considered further in this document. All managed stocks in this region are assessed in NMFS's U.S. Alaska SAR (Muto *et al.*, 2016). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2015 SAR (Muto *et al.*, 2016) and draft 2016 SARs (available online at: [www.nmfs.noaa.gov/pr/sars/draft.htm](http://www.nmfs.noaa.gov/pr/sars/draft.htm)).

TABLE 1—MARINE MAMMAL SPECIES WITHIN THE QUINTILLION CABLE-LAYING AND MAINTENANCE PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) <sup>1</sup>	Stock abundance (CV, N <sub>min</sub> , most recent abundance survey) <sup>2</sup>	PBR	Annual M/SI <sup>3</sup>
<b>Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)</b>						
Family Eschrichtiidae: Gray whale .....	<i>Eschrichtius robustus</i> ...	Eastern North Pacific ...	N	20,900	624	132
Family Balaenidae: Bowhead whale .....	<i>Balaena mysticetus</i> .....	Western Arctic .....	Y	16,892	161	44
Family Balaenopteridae (rorquals): Fin whale .....	<i>Balaenoptera physalus</i>	Northeast Pacific .....	Y	NA	NA	0.6
Minke whale .....	<i>B. acutorostrata</i> .....	Alaska .....	N	NA	NA	0
Humpback whale ....	<i>Megaptera novaeangliae</i> .	Central North Pacific ....	Y	10,103	83	24
		Western North Pacific ..	Y	1,107	3.0	2.6
<b>Superfamily Odontoceti (toothed whales, dolphins, and porpoises)</b>						
Family Delphinidae: Beluga whale .....	<i>Delphinapterus leucas</i> ..	Beaufort Sea .....	N	39,258	649	166
		Eastern Chukchi Sea ...	N	3,710	NA	57.4
		Eastern Bering Sea .....	N	19,186	NA	181
Killer whale .....	<i>Orcinus orca</i> .....	Eastern North Pacific Alaska Resident.	N	2,347	24	1
Family Phocoenidae (porpoises): Harbor porpoise .....	<i>Phocoena phocoena</i> ....	Bering Sea .....	N	48,215	NA	0.4
<b>Order Carnivora—Superfamily Pinnipedia</b>						
Family Otariidae (eared seals and sea lions): Steller sea lion .....	<i>Eumetopias jubatus</i> .....	Western U.S. .....	Y	50,983	306	201
Family Phocidae (earless seals): Ringed seal .....	<i>Phoca hispida</i> .....	Alaska .....	Y	NA	NA	1,062
Spotted seal .....	<i>Phoca largha</i> .....	Alaska .....	N	460,268	11,730	5,267
Bearded seal .....	<i>Erigathus barbatus</i> .....	Alaska .....	Y	NA	NA	443
Ribbon seal .....	<i>Histriophoca fasciata</i> ....	Alaska .....	N	184,000	9,785	3.8

<sup>1</sup> 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.

<sup>2</sup> NMFS marine mammal stock assessment reports online at: [www.nmfs.noaa.gov/pr/sars/](http://www.nmfs.noaa.gov/pr/sars/). CV is coefficient of variation; N<sub>min</sub> is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

<sup>3</sup> 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.

### 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 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 Hz and 35 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. Thirteen marine mammal species (eight cetacean and five pinniped (one otariid and four phocid) species) have the reasonable potential to co-occur with the proposed cable-laying and maintenance activities. Please refer to Table 1. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.*, all mysticete species), two are classified as mid-frequency cetaceans (*i.e.*, all delphinid), and one is classified as high-frequency cetaceans (*i.e.*, harbor porpoise).

### 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 includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The “Negligible Impact Analysis and Determination” section considers the content of this section, the “Estimated Take by Incidental Harassment” section, and the “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.

The Quintillion subsea cable-laying and maintenance activities 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—an increase in the auditory threshold after exposure to noise (Finneran, 2015). 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 threshold shift just after exposure is the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.*, the threshold returns to the pre-exposure value), it is a temporary threshold shift (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 threshold shift (TS). An animal can experience temporary threshold shift (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 decibels (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.

The following physiological mechanisms are thought to play a role in inducing auditory TS: Effects to sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.*, 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all can affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS, along with the recovery time. For intermittent sounds, less TS could occur than compared to a continuous exposure with the same energy (some recovery could occur between intermittent exposures depending on the duty cycle between sounds) (Kryter *et al.*, 1966; Ward, 1997). For example, one short but loud

(higher) sound pressure level (SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, prolonged exposure to sounds strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). In the case of Quintillion's subsea cable-laying operation, NMFS does not expect that animals would experience levels high enough or durations long enough to result in TS given that the noise levels from the operation are very low.

For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran, 2015). 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; Finneran, 2015).

Lucke *et al.* (2009) found a TS of a harbor porpoise after exposing it to airgun noise with a received SPL at 200.2 dB (peak-to-peak) re: 1 micropascal ( $\mu\text{Pa}$ ), which corresponds to a sound exposure level of 164.5 dB re:  $1 \mu\text{Pa}^2 \text{ s}$  after integrating exposure. NMFS currently uses the root-mean-square (rms) of received SPL at 180 dB and 190 dB re:  $1 \mu\text{Pa}$  as the threshold above which PTS could occur for cetaceans and pinnipeds, respectively. Because the airgun noise is a broadband impulse, one cannot directly determine the equivalent of 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:  $1 \mu\text{Pa}$ , and the received levels associated with PTS (Level A harassment) would be higher. This is still above NMFS' current 180 dB rms re:  $1 \mu\text{Pa}$  threshold for injury. However, NMFS recognizes that TTS of harbor porpoises is lower than other cetacean species empirically tested (Finneran, 2015).

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 a 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.

**Masking.** In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that 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 which the animals utilize. Therefore, since noises generated from anchor handling, pre-trenching, and DP thrusters are 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.*, 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 3 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. All anthropogenic noise sources, such as those from vessel traffic and cable-laying while operating anchor handling, contribute to the elevated ambient noise levels, thus increasing potential for or severity of masking.

**Behavioral Disturbance.** Finally, exposure of marine mammals 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  $1 \mu\text{Pa}$  (rms) to predict the onset of behavioral harassment from impulse noises (such as impact pile driving), and 120 dB re  $1 \mu\text{Pa}$  (rms) for continuous noises (such as operating DP thrusters). No impulse noise within the hearing range of marine mammals is expected from the Quintillion subsea cable-laying operation. For the Quintillion subsea cable-laying operation, only the 120 dB re  $1 \mu\text{Pa}$  (rms) threshold is considered because only continuous noise sources would be generated.

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.

### Effects on Marine Mammal Habitat

Project activities that could potentially impact marine mammal habitats include physical and acoustical impacts to prey resources associated with cable-laying, maintenance, and repair activities. Regarding the former, however, acoustical injury from thruster noise is unlikely. Previous noise studies (*e.g.*, Davis *et al.*, 1998, Christian *et al.*, 2004) with cod, crab, and schooling fish found little or no injury to adults, larvae, or eggs when exposed to impulsive noises exceeding 220 dB. Continuous noise levels from ship thrusters are generally below 180 dB, and do not create great enough pressures to cause tissue or organ injury. Nedwell *et al.* (2003) measured noise associated with cable trenching operations offshore of Wales, and found that levels (178 dB at source) did not exceed those where significant avoidance reactions of fish would occur.

Cable burial operations involve the use of plows or jets to cut trenches in the seafloor sediment. Cable plows are generally used where the substrate is cohesive enough to be “cut” and laid alongside the trench long enough for the cable to be laid at depth. In less cohesive substrates, where the sediment would immediately settle back into the trench before the cable could be laid, jetting is used to scour a more lasting furrow. The objective of both is to excavate a temporary trench of sufficient depth to fully bury the cable (usually 1.5 to 2 m (4.9 to 6.6 ft)). The plow blade is 0.2 m (0.7 ft) wide producing a trench of approximately the same width. Jetted trenches are somewhat wider depending on the sediment type.

Potential impacts to marine mammal habitat and prey include: (1) Crushing of benthic and epibenthic invertebrates with the plow blade, plow skid, or ROV track; (2) dislodgement of benthic invertebrates onto the surface where they may die; and (3) and the settlement of suspended sediments away from the trench where they may clog gills or feeding structures of sessile invertebrates or smother sensitive species (BERR 2008). However, the footprint of cable trenching is generally restricted to a 2- to 3-m (7- to 10-ft) width (BERR, 2008), and the displaced wedge or berm is expected to naturally backfill into the trench. Jetting results in more suspension of sediments, which may take days to settle during which currents may transport it well away (up to several kilometers) from the source. Suspended sand particles generally settle within about 20 m (66 ft).

BERR (2008) critically reviewed the effect of offshore wind farm construction, including laying of power and communication cables, on the environment. Based on a rating of 1 to 10, they concluded that sediment disturbance from plow operations rated the lowest at 1, with jetting rating from 2 to 4, depending on substrate. As a comparison, dredging rated the highest relative sediment disturbance.

However, with the exception of the 76-km (47-mi) Oliktok branch, all cable planned for burial was buried in 2016, and any BU burial or O&M activities conducted in 2017 will just be re-disturbing areas previously disturbed.

### Estimated Take

This section provides an estimate of the number of incidental takes authorized under 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 operating sea plow and anchor handling associated with cable-laying and maintenance and repair activities. Based on the nature of the activity, Level A harassment is neither anticipated nor 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  $\mu$ Pa (rms) for continuous (*e.g.* vibratory pile-driving, drilling) and above 160 dB re 1  $\mu$ Pa (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 noise (noise from sea plow and anchor handling), therefore the 120 dB re 1  $\mu$ Pa (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).

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 2 summarizes the current NMFS marine mammal take criteria.

TABLE 2—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 ( $L_{pk}$ ) has a reference value of 1  $\mu$ Pa, and cumulative sound exposure level ( $L_E$ ) has a reference value of 1  $\mu$ Pa<sup>2</sup>s. 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.

The predominant noise source during previous cable-lay operations at other locations has been the cavitation noise produced by thrusters during dynamic positioning of the vessel (Tetra Tech 2013). Cavitation is the random collapsing of bubbles produced by the blades. However, Illingworth & Rodkin (I&R 2016) conducted sound source verification (SSV) measurements of the *Ile de Brehat* while operating near Nome at the beginning of the 2016 field season and found that the primary noise source emanated from the drive propellers while towing the sea plow. Resistant seafloor sediments resulted in a need to increase power (resulting in increased cavitation) as compared to cable-lay operations at other locations.

I&R (2016) determined that the distance to the NMFS Level B harassment threshold 120 dB re 1  $\mu$ Pa (rms) for continuous noise was 5.35 km (3.32 mi) when the *Ile de Brehat* was pulling the sea plow. It is assumed that the same measurements apply for the sister ship *Ile de Batz* that will pull the sea plow during cable-lay operations in the offshore segment of the Oliktok branch.

In addition to sea plow operations (which includes pre-trenching), cavitation noise potentially exceeding

the NMFS Level B harassment threshold of 120 dB re 1  $\mu$ Pa (rms) for continuous noise is expected during anchor-handling operations.

Results from past measurements of cavitation noise associated with anchor handling have varied greatly with distances to the 120-dB isopleth ranging from a few kilometers to over 25 km (16 mi), depending on the size of both the tug and the anchor, and the amount of power needed to retrieve the anchor. Source levels for large (45 to 83 m (148 to 272 ft) in length) anchor-handling tugs during anchor-pulling operations have been measured at between 181 and 207 dB re 1  $\mu$ Pa (rms) (Laurinolli *et al.* 2005, Austin *et al.* 2013, LGL/JASCO/Greeneridge 2014). However, smaller (<35 m [ $<115$  ft]) tugs produce underwater noise levels <180 dB re 1  $\mu$ Pa (rms) when pulling (Richardson *et al.* 1995, Blackwell and Greene 2003). Blackwell and Greene (2003) measured the underwater noise levels from a tug maneuvering a large barge near the Port of Anchorage and recorded maximum sound pressure levels equating to 163.8 dB re 1  $\mu$ Pa (rms) at 1-m source when the tug was pushing the barge, which increased to 178.9 dB re 1  $\mu$ Pa (rms) when thrusters were additionally operated during docking maneuvers. Quintillion intends to use the 27-m (88-ft) *Dana Cruz* and the 29-m (95-ft) *Daniel Foss* tugs to handle anchors. In the absence of sound source data for these smaller tugs it is assumed that each would have a source level of 178.9

dB re 1  $\mu$ Pa (rms) based on Blackwell and Greene (2003), which would imply a radius to threshold of about 8.45 km (5.25 mi) based on a 15 Log (R) spreading model.

During O&M activities (including burying BUs) the primary noise source will be the vessel (*Ile de Batz*) thrusters when using dynamic positioning to remain on station. There will be noise associated with the ROV propulsion and jetting, but these are expected to be subordinate to thruster noises. Various acoustical investigations of thruster noise in the Atlantic Ocean have modeled distances to the 120-dB isopleth with results ranging between 1.4 and 4.5 km (0.8 and 2.7 mi) (Samsung 2009, Deepwater Wind 2013, Tetra Tech 2013) for water depths similar to those where Quintillion will be operating in the Chukchi and Beaufort seas. However, Hartin *et al.* (2011) physically measured dynamic positioning noise from the 104-m (341-ft) *Fugro Synergy* operating in the Chukchi Sea while it was using thrusters (2,500 kW) more powerful than those used on the *Ile de Brehat* (1,500 kW). Measured dominant frequencies were 110 Hz to 140 Hz, and the measured (90th percentile) radius to the 120-dB isopleth was 2.3 km (1.4 mi). Because this radius is a measured value from Alaska Arctic waters, it likely is a better approximation of expected sound levels associated with thruster operation during O&M activities.



Other acoustical sources include the echo sounders, transceivers, sonar, and transponders that will be used to continually reference the water depth and the position of the plow and ROV that operate behind the vessel. Based on actual field measurements or manufacturer-provided values, some of this equipment produces noise levels exceeding the vessel thrusters. However, this equipment is impulsive, producing pulses every 1 to 3 seconds (sec), and the sound energy is focused downward in very narrow conical beams. There is very little horizontal propagation of the noise levels. Measured distances to the

160-dB isopleth for echo sounders and acoustical beacons ranged between 26 and 44 m (85 and 144 ft) (Ireland *et al.*, 2007, Reider *et al.*, 2013). I&R (2016) attempted to measure echo sounder and transponder sound levels associated with the *Ile de Brehat*, but could not detect them, even at a very close range to the ship. They assumed that this was due to the downward focus and lack of horizontal spread of the sound beam.

As mentioned earlier, Quintillion’s 2017 activities will include installing cable on the remaining approximately 76 km (47 mi) of the Oliktok branch cable. Quintillion will then test the system to identify any faults. Until

testing is complete, it is not possible to know how much retrieval and reburial of cable will be necessary during O&M activity in 2017. To account for this uncertainty, the acoustical footprint (total ensonified area) for purposes of this application was determined by conservatively assuming that cavitation noise would occur along all remaining 76 km (47 mi) of carry-over cable-lay operations (Oliktok branch), and 100 km (62 mi) of potential O&M work in either the Bering or Chukchi seas. Table 3 lists the area ensonified by underwater sound exceeding 120 dB re 1 µPa (rms) associated with each activity.

TABLE 3—ESTIMATED DISTANCE TO THE LEVEL B HARASSMENT THRESHOLD (120 DB) FOR EACH OF QUINTILLION’S 2017 CABLE-LAY ACTIVITIES AND THE LENGTH OF ROUTE OVER WHICH THESE ACTIVITIES WOULD OCCUR

Operation	Season	Water body	Distance to 120-dB (km)	Route length (km)	Ensonified area (km <sup>2</sup> )
Sea plow (pre-trenching & cable-laying by <i>Ile de Batz</i> ).	Summer .....	Beaufort .....	5.35	187	2,001
Anchor handling (in association of cable-laying by barges).	Summer .....	Beaufort .....	8.45	16	270
ROV (O&M) .....	Fall .....	Bering & Chukchi .....	2.30	100	460

It is assumed that the pre-trenching and cable-laying work in the Beaufort Sea will occur only in the summer (July and August) with a collective zone of influence (ZOI) of 2,271 km<sup>2</sup>. It is assumed that the remaining O&M activities in the Bering and Chukchi seas (ZOI of 460 km<sup>2</sup>) would occur in the fall, although some burying of BUs and equipment testing might occur in the summer if the Oliktok area is not yet free of ice when the *Ile de Batz* arrives.

For Level A harassment zones, calculations were performed using NMFS optional spreadsheet (NMFS 2016) for mobile source: non-impulse source with input from various sources listed above. The results show that distances to the PTS isopleths for the five hearing groups from various sources ranged from 0 to 4 m. Due to such a small impact zones, NMFS considers it highly unlikely that Level A takes would occur for this project.

*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.

Density estimates for bowhead, gray, and beluga whales were derived from aerial survey data collected in the Chukchi and Beaufort seas during the 2011 to 2016 Aerial Surveys of Arctic Marine Mammals (ASAMM) program (Clarke *et al.*, 2012, 2013, 2014, 2015, NMFS Unpubl. Data). The proposed

cable routes cross ASAMM survey blocks 3, 11, and 12 in the Beaufort Sea, and blocks 13, 14, 18, 21, and 22 in the Chukchi Sea. Only data collected in these blocks were used to estimate densities for bowhead and gray whales. Beluga densities were derived from ASAMM data collected for depth zones between 36 and 50 m (118 and 164 ft) within the Chukchi Sea between longitudes 157 ° and 169 °W., and the depth zones between 21 and 200 m (68.9 and 656.2 ft) in the Beaufort Sea between longitudes 154 ° and 157 °W. These depth zones reflect the depths where most of the cable-lay will occur. Harbor porpoise densities (Chukchi Sea only) are from Hartin *et al.* (2013), and ringed seal densities from Aerts *et al.* (2014; Chukchi Sea) and Moulton and Lawson (2002; Beaufort Sea). Spotted and bearded seal densities in the Chukchi Sea are also from Aerts *et al.* (2014). Spotted seal density in Beaufort Sea is based on Green and Negri (2005) and Green *et al.* (2006, 2007) surveys during barging activity between West Dock and Cape Simpson, and corrected using observations by Hauser *et al.* (2008) and Lomac-McNair *et al.* (2014) in areas closer to Oliktok (see below). Bearded seal density is estimated as 5 percent of ringed seals, based on studies by Stirling *et al.* (1982) and Clarke *et al.* (2013, 2014).

Too few sightings have been made in the Chukchi and Beaufort seas for all

other marine mammal species to develop credible density estimates.

The density estimates for the seven species are presented in Table 4 (Chukchi and Bering seas) and Table 5 (Beaufort Sea) below. The specific parameters used in deriving these estimates are provided in the discussions that follow.

TABLE 4—MARINE MAMMAL DENSITIES (#/KM<sup>2</sup>) IN THE CHUKCHI AND BERING SEAS

Species	Summer	Fall
Bowhead whale .....	0.0035	0.0481
Gray whale .....	0.0760	0.0241
Beluga whale .....	0.0015	0.0090
Harbor porpoise .....	0.0022	0.0021
Ringed seal .....	0.0645	0.0380
Spotted seal .....	0.0645	0.0380
Bearded seal .....	0.0630	0.0440

TABLE 5—MARINE MAMMAL DENSITIES (#/KM<sup>2</sup>) IN THE BEAUFORT SEA

Species	Summer	Fall
Bowhead whale .....	0.1239	0.1285
Gray whale .....	0.0097	0.0034
Beluga whale .....	0.0778	0.0316
Ringed seal .....	0.3547	0.2510
Spotted seal .....	0.1171	0.0837
Bearded seal .....	0.0177	0.0125

*Bowhead Whale:* The summer density estimate for bowhead whales was

derived from June, July, and August aerial survey data collected in the Chukchi and Beaufort seas during the 2011 to 2016 ASAMM program (Clarke *et al.*, 2012, 2013, 2014, 2015, NMFS Unpubl. Data). Fall data were collected during September and October. Data only from the survey blocks that will be crossed by the proposed cable route were used in the calculations, and included blocks 3, 11, and 12 in the Beaufort Sea and 13, 14, 18, 21, and 22 in the Chukchi Sea. ASAMM surveys did not extend more than about 25 km (15.5 mi) south of Point Hope, and there are no other systematic survey data for bowhead whales south of the point. During these three years, a total of 478 bowhead whales were recorded in the three Beaufort Sea blocks during 23,955 km (14,885 mi) of summer survey effort (0.0200/km), and 684 whales during 33,056 km (20,054 mi) of fall effort (0.0207/km). In the five Chukchi Sea survey blocks, 23 bowheads were recorded during 41,373 km (25,708 mi) of summer effort (0.0006/km), and 302 during 39,015 km (24,243 mi) of fall survey (0.0077/km). Applying an effective strip half-width (ESW) of 1.15 (Ferguson and Clarke 2013), and a 0.07 correction factor for whales missed during the surveys, results in corrected densities of 0.1239 (Beaufort summer), 0.1285 (Beaufort fall), 0.0035 (Chukchi summer), and 0.0481 (Chukchi fall) whales per km<sup>2</sup> (Table 4 and Table 5).

**Gray Whale:** Gray whale density estimates were derived from the same ASAMM transect data used to determine bowhead whale densities. During the four years of aerial survey, 39 gray whales were recorded in the three Beaufort Sea blocks during 23,955 km (14,885 mi) of summer survey effort (0.0016/km), and 19 gray whales during 33,056 km (20,054 mi) of fall effort (0.0006/km). In the five Chukchi Sea survey blocks, 529 gray whales were recorded during 41,373 km (25,708 mi) of summer effort (0.0128/km), and 158 during 39,015 km (24,243 mi) of fall survey (0.0040/km). Applying an effective strip half-width (ESW) of 1.201 (Ferguson and Clarke 2013), and a correction factor of 0.07, results in corrected densities of 0.0097 (Beaufort summer), 0.0034 (Beaufort fall), 0.0760 (Chukchi summer), and 0.0241 (Chukchi fall) whales per km<sup>2</sup> (Table 4 and Table 5).

**Beluga Whale:** Beluga whale density estimates were derived from the ASAMM transect data collected from 2011 to 2016 (Clarke *et al.*, 2012, 2013, 2014, 2015, 2016, NMFS Unpubl. Data). During summer aerial surveys (June–August), there were 376 beluga whale observed along 6,786 km (4,217 mi) of

transect in waters between 21 to 200 m (13 to 124 ft) deep and between longitudes 154 °W and 157 °W. This equates to 0.0554 whales/km of trackline and a corrected density of 0.0778 whales per km<sup>2</sup>, assuming an ESW of 0.614 km and a 0.58 correction factor. Fall density estimates (September–October) for this region were based on 239 beluga whales seen along 10,632 km (6,606 mi) of transect. This equates to 0.0225 whales/km of trackline and a corrected density of 0.0316 whales per km<sup>2</sup>, assuming an ESW of 0.614 km and a 0.58 correction factor.

During summer aerial surveys (June–August), there were 40 beluga whale observed along 38,347 km (23,828 mi) of transect in waters less than 36 to 50 m (22 to 31 ft) deep and between longitudes 157 °W and 169 °W. This equates to 0.0010 whales/km of trackline and a corrected density of 0.0015 whales per km<sup>2</sup>, assuming an ESW of 0.614 km and a 0.58 correction factor. Calculated fall beluga densities for the same region was based on 237 beluga whales seen during 36,816 km (22,876 mi) of transect. This equates to 0.0064 whales/km and a corrected density of 0.0090 whales per km<sup>2</sup>, again assuming an ESW of 0.614 km and a 0.58 correction factor.

**Harbor Porpoise:** Although harbor porpoise are known to occur in low numbers in the Chukchi Sea (Aerts *et al.*, 2014), no harbor porpoise were positively identified during Chukchi Offshore Monitoring in Drilling Area (COMIDA) and ASAMM aerial surveys conducted in the Chukchi Sea from 2006 to 2013 (Clarke *et al.* 2011, 2012, 2013, 2014). A few small unidentified cetaceans that were observed may have been harbor porpoise. Hartin *et al.* (2013) conducted vessel-based surveys in the Chukchi Sea while monitoring oil and gas activities between 2006 and 2010 and recorded several harbor porpoises throughout the summer and early fall. Vessel-based surveys may be more conducive to sighting these small, cryptic porpoise than the aerial-based COMIDA/ASAMM surveys. The Hartin *et al.* (2013) three-year average summer densities (0.0022/km<sup>2</sup>) and fall densities (0.0021/km<sup>2</sup>) were very similar, and are included in Table 4.

**Ringed and Spotted Seals:** Aerts *et al.* (2014) conducted a marine mammal monitoring program in the northeastern Chukchi Sea in association with oil and gas exploration activities between 2008 and 2013. For sightings of either ringed or spotted seals, the highest summer density was 0.127 seals/km<sup>2</sup> (2008) and the highest fall density was 0.076 seals/km<sup>2</sup> (2013). Where seals could be

identified to species, they found the ratio of ringed to spotted seals to be 2:1. However, monitoring the cable-lay activity in 2016 showed a nearly 1:1 ratio for ringed and spotted seals in all Bering and Chukchi seas, with the exception of Kotzebue where high numbers of spotted seals were observed. Kotzebue is a fall concentration for feeding spotted seals. Because the cable-lay work at Kotzebue is complete, and any 2017 work there is either unlikely or would be brief, Kotzebue nearshore densities are not taken into special account in the overall estimated spotted seal density for the Bering and Chukchi seas. The 1:1 ratio observed in 2016 is taken into consideration by splitting the above Aerts *et al.* (2014) densities equally for each species: 0.064 seals/km<sup>2</sup> for summer and 0.038 seals/km<sup>2</sup> for fall. These are the densities used in the exposure calculations (Table 4) to represent ringed and spotted seal densities for both the northern Bering and Chukchi seas.

Moulton and Lawson (2002) conducted summer shipboard-based surveys for pinnipeds along the nearshore Alaska Beaufort Sea coast, while the Kingsley (1986) conducted surveys here along the ice margin representing fall conditions. The ringed seal results from these surveys were used in the exposure estimates (Table 4). Neither survey provided a good estimate of spotted seal densities. Green and Negri (2005) and Green *et al.* (2006, 2007) recorded pinnipeds during barging activity between West Dock and Cape Simpson, and found high numbers of ringed seal in Harrison Bay, and peaks in spotted seal numbers off the Colville River delta where a haulout site is located. Approximately 5 percent of all phocid sightings recorded by Green and Negri (2005) and Green *et al.* (2006, 2007) were spotted seals, which provide an estimate of the proportion of ringed seals versus spotted seals in the Colville River delta and Harrison Bay, both areas relatively close to the proposed Oliktok branch line. However, monitoring conducted nearer to Oliktok Point by Hauser *et al.* (2008) and Lomac-McNair *et al.* (2014) indicated that spotted seals are more commonly observed in waters nearest shore than ringed seals. While only a small portion of the Oliktok branch that remains to be installed occurs in waters within 5 km (3 mi) of shore, much of the work within 5 km (3 mi) will take more days of activity to complete than offshore work and, hence, could result in a disproportionately higher number of spotted seal sightings than existing survey data might predict. Therefore, as

a conservative measure, the ringed seal density data from Moulton and Lawson (2002) and Kingsley (1986) is applied to both species, especially given the 2016 results indicate that outside Kotzebue, observers were reporting a nearly 3:1 ratio of both species.

**Bearded Seal:** The most representative estimates of summer and fall density of bearded seals in the northern Bering and Chukchi seas come from Aerts et al. (2014) monitoring program that ran from 2008 to 2013 in the northeastern Chukchi Sea. During this period the highest summer estimate was 0.063 seals/km<sup>2</sup> (2013) and the highest fall estimate was 0.044 seals/km<sup>2</sup> (2010). These are the values that were used in developing exposure estimates for this species for the northern Bering and Chukchi seas cable-lay areas (Table 4).

There are no accurate density estimates for bearded seals in the Beaufort Sea based on survey data. However, Stirling et al. (1982) noted that the proportion of eastern Beaufort Sea bearded seals is 5 percent that of ringed seals. Further, Clarke et al. (2013,

2014) recorded 82 bearded seals in both the Chukchi and Beaufort Seas during the 2012 and 2013 ASAMM surveys, which represented 5.1 percent of all their ringed seal and small unidentified pinniped sightings (1,586). Bengtson et al. (2005) noted a similar ratio (6 percent) during spring surveys of ice seals in the Chukchi Sea. Therefore, the density values in Table 3 were determined by multiplying ringed seal density from Moulton and Lawson (2002) and Kingsley (1986) by 5 percent.

**Take Calculation and Estimation**

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

As stated earlier in the document, ensonified distances to Level A harassment from various sources ranged from 0 to 4 m for all marine mammal hearing groups. It's highly unlikely that an animal will reach to this close distance to the vessel. Therefore, we consider there is no concern for level A take.

The estimated potential harassment take of local marine mammals by the

project was determined by multiplying the seasonal animal densities in Table 4 and Table 5 with the maximum seasonal area that would be ensonified by the estimated operational underwater noise greater than 120 dB re 1 μPa (rms) during each activity by each season (shown in Table 3). The resulting exposure calculations are provided in Table 6.

For marine mammals for which reliable density estimates do not exist in the project area (i.e., humpback whale, fin whale, minke whale, killer whale, harbor porpoise, Steller sea lion, and ribbon seal) due to low abundance, potential exposures are based on recorded observations of these species in the recent past as discussed earlier in this document (Hashagen et al., 2009; Green and Negri, 2005; Green et al., 2007) and from Quintillion's Marine Mammal Monitoring Report during its 2016 subsea cable-laying operations (Quintillion 2017). The take numbers for harbor porpoise are adjusted upwards to account for group size.

TABLE 6—ESTIMATED AND REQUESTED TAKES OF MARINE MAMMAL BY LEVEL B HARASSMENT

Species	Beaufort summer exposures	Chukchi & Bering fall exposure	Total requested take	Abundance	Percentage of stock
Bowhead whale .....	292	22	314	16,892	1.87
Gray whale .....	23	11	34	20,990	0.16
Beluga whale (Beaufort Sea) .....	184	4	188	39,258	0.48
Beluga whale (E. Chukchi Sea) .....	184	4	188	3,710	5.07
Beluga whale (E. Bering Sea) .....	184	4	188	19,186	0.98
Harbor porpoise .....	0	15	15	48,215	0.03
Ringed seal .....	838	17	855	170,000	0.50
Spotted seal .....	279	17	296	460,268	0.06
Bearded seal .....	42	20	62	299,174	0.02
Humpback whale .....	0	60	60	10,103	0.59
Fin whale .....	0	15	15	5,700	0.26
Minke whale .....	0	15	15	2,020	0.74
Killer whale .....	0	5	5	2,347	1.07
Ribbon seal .....	0	5	5	18,400	0.21
Steller sea lion .....	0	8	8	50,983	0.02

**Effects of Specified Activities on Subsistence Uses of Marine Mammals**

The availability of the affected marine mammal stocks or species for subsistence uses may be impacted by this activity. The subsistence uses that may be affected and the potential impacts of the activity on those uses are described below. Measures included in this IHA to reduce the impacts of the activity on subsistence uses are described in the Mitigation section. Last, the information from this section and the Mitigation section is analyzed to determine whether the necessary findings may be made in the

**Unmitigable Adverse Impact Analysis and Determination section.**

Underwater noise generated from the Quintillion's proposed cable-laying and O&M activities could affect subsistence uses of marine mammals by causing the animals to avoid the hunting areas and making the animals more difficult to approach by the hunters.

The cable-lay activities that might occur in 2017 as a result of repair work could occur within the marine subsistence areas used by the villages of Nome, Wales, Kotzebue, Little Diomede, Kivalina, Point Hope, Wainwright, Barrow, and Nuiqsut. Subsistence use varies considerably by season and location. Seven of the villages hunt

bowhead whales (Suydam and George 2004). The small villages of Wales, Little Diomedes, and Kivalina take a bowhead whale about once every five years. Point Hope and Nuiqsut each harvest three to four whales annually, and Wainwright five to six. Harvest from Barrow is by far the highest with about 25 whales taken each year and generally split between spring and fall hunts. Point Hope and Wainwright harvest occurs largely during the spring hunt, and Nuiqsut's during the fall. Nuiqsut whalers base from Cross Island, 70 km (44 mi) east of Oliktok.

Beluga are also annually harvested by the villages noted above. Beluga harvest is most important to Point Hope. For

example, the village harvested 84 beluga whales during the spring of 2012, and averaged 31 whales a year from 1987 to 2006 (Frost and Suydam, 2010). Beluga whales are also important to Wainwright villages. They harvested 34 beluga whales in 2012, and averaged 11 annually from 1987 to 2006 (Frost and Suydam, 2010). All the other villages (Nome, Kotzebue, Wales, Kivalina, Little Diomedea, and Barrow) averaged less than 10 whales per year (Frost and Suydam, 2010).

All villages use seals to one degree or another as well. Ringed seal harvest mostly occurs in the winter and spring when they are hauled out on ice near leads or at breathing holes. Bearded seals are taken from boats during the early summer as they migrate northward in the Chukchi Sea and eastward in the Beaufort Sea.

Bearded seals are a staple for villages like Kotzebue and Kivalina that have limited access to bowhead and beluga whales (Georgette and Loon, 1993). Thetis Island, located just off the Colville River delta, is an important base from which villagers from Nuiqsut hunt bearded seals each summer after ice breakup.

Spotted seals are an important summer resource for Wainwright and Nuiqsut, but other villages will avoid them because the meat is less appealing than other available marine mammals.

The proposed cable-lay activity will occur in the summer after the spring bowhead and beluga whale hunts have ended, and will avoid the ice period when ringed seals are harvested. The Oliktok branch will pass within 4 km (2 mi) of Thetis Island, but the actual laying of cable along that branch near the island should occur after the bearded seal hunt is over.

Quintillion states that it will work closely with the AEWG, the Alaska Beluga Whale Committee (ABWC), the Ice Seal Committee (ISC), and the NSB to minimize any effects cable-lay activities might have on subsistence harvest (see below).

### 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. 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, as well as subsistence uses. 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*

The primary purpose of these mitigation measures is to detect marine mammals and avoid vessel interactions during the pre- and post-cable-laying and O&M activities. Due to the nature of the activities, the vessel will not be able to engage in direction alteration during cable-laying operations. However, since the cable-laying vessel will be moving at a slow speed of 600 meter/hour (0.37 mile per hour or 0.32 knot) during cable-laying operations, it is highly unlikely that the cable vessel would have physical interaction with marine mammals. For Quintillion's proposed subsea cable-laying project, NMFS is requiring Quintillion to implement the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of its planned activities.

(a) Vessel Movement Mitigation during Pre- and Post-cable-laying Activities:

When the cable-lay fleet is traveling in Alaskan waters to and from the project area (before and after completion

of cable-laying or O&M operations), the fleet vessels would:

- Not approach concentrations or groups of whales (an aggregation of 6 or more whales) within 1.6 km (1 mi) by all vessels under the direction of Quintillion;
- Take reasonable precautions to avoid potential interaction with any bowhead whales observed within 1.6 km (1 mi) of a vessel; and
- Reduce speed to less than 5 knots when visibility drops, to avoid the likelihood of collision with whales. The normal vessel travel speeds when laying cable is well less than 5 knots.

### *Mitigation for Subsistence Uses of Marine Mammals or Plan of Cooperation*

Regulations at 50 CFR 216.104(a)(12) further require IHA applicants conducting activities that take place in Arctic waters to provide a Plan of Cooperation or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes. A plan must include the following:

- A statement that the applicant has notified and provided the affected subsistence community with a draft plan of cooperation;
- A schedule for meeting with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding any aspects of either the operation or the plan of cooperation;
- A description of what measures the applicant has taken and/or will take to ensure that proposed activities will not interfere with subsistence whaling or sealing; and
- What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation.

Quintillion has prepared a Plan of Cooperation (POC), which was developed by identifying and evaluating any potential effects the proposed cable-laying operation might have on seasonal abundance that is relied upon for subsistence use.

Specifically, the vessels that Quintillion will use will participate in the Automatic Identification System (AIS) vessel-tracking system allowing the vessel to be tracked and located in real time via the Marine Exchange of Alaska (MEA). Quintillion will sponsor memberships in the MEA such that local subsistence groups can monitor Quintillion vessel movements.

In addition, Quintillion will distribute a daily activity report by email to all interested parties. Daily reports will include vessel activity, location, subsistence information, and any potential hazards.

Quintillion project vessels will monitor local marine VHF channels as requested for local traffic and will use log books to assist in the standardization of record keeping.

A copy of the POC can be viewed on the Internet at: [www.nmfs.noaa.gov/pr/permits/incidental/research.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm).

In addition, Quintillion shall monitor the positions of all of its vessels and will schedule timing and location of cable-laying segments to avoid any areas where subsistence activity is normally planned.

For vessels transiting to and from Quintillion's project area, Quintillion shall implement the following measures:

(A) Vessels transiting in the Beaufort Sea east of Bullen Point to the Canadian border shall remain at least 5 miles offshore during transit along the coast, provided ice and sea conditions allow. During transit in the Chukchi Sea, vessels shall remain as far offshore as weather and ice conditions allow, and at all times at least 5 miles offshore.

(B) From August 31 to October 31, transiting vessels in the Chukchi Sea or Beaufort Sea shall remain at least 20 miles offshore of the coast of Alaska from Icy Cape in the Chukchi Sea to Pitt Point on the east side of Smith Bay in the Beaufort Sea, unless ice conditions or an emergency that threatens the safety of the vessel or crew prevents compliance with this requirement. This condition shall not apply to vessels actively engaged in transit to or from a coastal community to conduct crew changes or logistical support operations.

(C) Vessels shall be operated at speeds necessary to ensure no physical contact with whales occurs, and to make any other potential conflicts with bowheads or whalers unlikely. Vessel speeds shall be less than 10 knots when within 1.6 kilometers (1 mile) of feeding whales or whale aggregations (6 or more whales in a group).

(D) If any vessel inadvertently approaches within 1.6 kilometers (1 mile) of observed bowhead whales, except when providing emergency assistance to whalers or in other emergency situations, the vessel operator will take reasonable precautions to avoid potential interaction with the bowhead whales by taking one or more of the following actions, as appropriate:

- Reducing vessel speed to less than 5 knots within 900 feet of the whale(s);

- Steering around the whale(s) if possible;
- Operating the vessel(s) in such a way as to avoid separating members of a group of whales from other members of the group;
- Operating the vessel(s) to avoid causing a whale to make multiple changes in direction; and
- Checking the waters immediately adjacent to the vessel(s) to ensure that no whales will be injured when the propellers are engaged.

(E) Quintillion shall complete operations in time to ensure that vessels associated with the project complete transit through the Bering Strait to a point south of 59 degrees North latitude no later than November 15, 2017. Any vessel that encounters weather or ice that will prevent compliance with this date shall coordinate its transit through the Bering Strait to a point south of 59 degrees North latitude with local subsistence communities.

(F) Quintillion vessels shall, weather and ice permitting, transit east of St. Lawrence Island and no closer than 10 miles from the shore of St. Lawrence Island.

Based on our evaluation of the applicant's measures, NMFS has 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, and on the availability of such species or stock for subsistence uses.

#### 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).

- Mitigation and monitoring effectiveness.

#### Monitoring Measures

Monitoring will provide information on the numbers of marine mammals affected by the subsea cable-laying and O&M operation and facilitate real-time mitigation to prevent injury of marine mammals by vessel traffic. These goals will be accomplished in the Bering, Chukchi, and Beaufort seas during 2017 by conducting vessel-based monitoring to document marine mammal presence and distribution in the vicinity of the operation area.

Visual monitoring by protected species observers (PSO) during subsea cable-laying and O&M operations, and periods when the operation is not occurring, will provide information on the numbers of marine mammals potentially affected by the activity. Vessel-based PSOs onboard the vessels will record the numbers and species of marine mammals observed in the area and any observable reaction of marine mammals to the cable-laying operation in the Bering, Chukchi, and Beaufort seas.

#### Vessel-Based Protected Species Observers

Vessel-based visual monitoring for marine mammals shall be conducted by NMFS-approved PSOs throughout the period of subsea cable-laying and O&M activities. PSOs shall be stationed

aboard the cable-laying vessel throughout the duration of the subsea cable-laying and O&M operations.

A sufficient number of PSOs would be required onboard each survey vessel to meet the following criteria:

- 100 percent monitoring coverage during all periods of cable-laying and O&M operations in daylight;
- Maximum of 4 consecutive hours on watch per PSO; and
- Maximum of 12 hours of watch time per day per PSO.

PSO teams will consist of Inupiat observers and experienced field biologists. Each vessel will have an experienced field crew leader to supervise the PSO team. The total number of PSOs may decrease later in the season as the duration of daylight decreases.

#### (1) PSOs Qualification and Training

Lead PSOs and most PSOs will be individuals with experience as observers during marine mammal monitoring projects in Alaska or other offshore areas in recent years. New or inexperienced PSOs must be paired with an experienced PSO or experienced field biologist so that the quality of marine mammal observations and data recording is kept consistent.

Resumes for candidate PSOs will be provided to NMFS for review and acceptance of their qualifications. Inupiat observers would be experienced in the region and familiar with the marine mammals of the area. All observers will complete an observer training course designed to familiarize individuals with monitoring and data collection procedures.

#### (2) Establishing Zone of Influence

A PSO would establish a ZOI where the received level is 120 dB during Quintillion's subsea cable-laying and O&M operations and conduct marine mammal monitoring during the operation. The measured 120 dB ZOI is 5.35 km from the cable-laying vessel.

#### (3) Marine Mammal Observation Protocol

PSOs shall watch for marine mammals from the best available vantage point on the survey vessels, typically the bridge. PSOs shall scan systematically with the unaided eye and 7 x 50 reticle binoculars, and night-vision and infra-red equipment when needed. Personnel on the bridge shall assist the marine mammal observer(s) in watching for marine mammals; however, bridge crew observations will not be used in lieu of PSO observation efforts.

Monitoring shall consist of recording of the following information:

1. The species, group size, age/size/sex categories (if determinable), the general behavioral activity, heading (if consistent), bearing and distance from vessel, sighting cue, behavioral pace, and apparent reaction of all marine mammals seen near the vessel (e.g., none, avoidance, approach, paralleling, etc.);
2. The time, location, heading, speed, and activity of the vessel, along with sea state, visibility, cloud cover and sun glare at (I) any time a marine mammal is sighted, (II) at the start and end of each watch, and (III) during a watch (whenever there is a change in one or more variable);

3. The identification of all vessels that are visible within 5 km of the vessel from which observation is conducted whenever a marine mammal is sighted and the time observed;

4. Any identifiable marine mammal behavioral response (sighting data should be collected in a manner that will not detract from the PSO's ability to detect marine mammals);

5. Any adjustments made to operating procedures; and

6. Visibility during observation periods so that total estimates of take can be corrected accordingly.

Distances to nearby marine mammals will be estimated with binoculars (7 x 50 binoculars) containing a reticle to measure the vertical angle of the line of sight to the animal relative to the horizon. Observers may use a laser rangefinder to test and improve their abilities for visually estimating distances to objects in the water. Quintillion shall use the best available technology to improve detection capability during periods of fog and other types of inclement weather. Such technology might include night-vision goggles or binoculars as well as other instruments that incorporate infrared technology.

PSOs shall understand the importance of classifying marine mammals as "unknown" or "unidentified" if they cannot identify the animals to species with confidence. In those cases, they shall note any information that might aid in the identification of the marine mammal sighted. For example, for an unidentified mysticete whale, the observers should record whether the animal had a dorsal fin. Additional details about unidentified marine mammal sightings, such as "blow only," "mysticete with (or without) a dorsal fin," "seal splash," etc., shall be recorded.

(4) Monitoring Measures That Support Impact Analyses

Quintillion shall evaluate whether the angle of the vessel relative to the recording location has any effect on the received levels for its 2016 SSV tests, and work with the National Marine Mammal Laboratory (NMML) to compare the SSV received levels with the levels obtained by the mooring-based PAM data to determine whether the results from the SSV testing need to be corrected based on the bearing of the recording equipment to the ship. The results will be included in the 2017 monitoring report.

Quintillion will contribute \$20,000 to the University of Alaska, Fairbanks for their bowhead whale feeding study in the eastern Chukchi Sea or western Beaufort Sea during the open water season.

Quintillion shall undertake efforts to further evaluate potential impacts of the 2016 activities on bowhead whales and, subsequently, whaling efforts, if being requested.

Quintillion shall make the marine mammal and underwater acoustic data it collected in 2016 and the data it will collect in 2017 publicly available.

#### (5) Passive Acoustics Monitoring

Quintillion shall conduct sound source verification on the vibro plow that would be used for cable-laying in the Beaufort Sea.

#### Reporting Measures

A draft marine mammal monitoring report will be submitted to the Director, Office of Protected Resources, NMFS, within 90 days after the end of Quintillion's subsea cable-laying and O&M operations in the Bering, Chukchi, and Beaufort seas. The report will describe in detail:

1. Summaries of monitoring effort (e.g., total hours, total distances, and marine mammal distribution through the project period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

2. Summaries that represent an initial level of interpretation of the efficacy, measurements, and observations;

3. Analyses of the effects of various factors influencing detectability of marine mammals (e.g., sea state, number of observers, and fog/glare);

4. Species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;

5. Estimates of uncertainty in all take estimates, with uncertainty expressed

by the presentation of confidence limits, a minimum-maximum, posterior probability distribution, or another applicable method, with the exact approach to be selected based on the sampling method and data available; and

6. A clear comparison of authorized takes and the level of actual estimated takes.

Quintillion shall provide NMFS with a draft monitoring report within 90 days of the conclusion of the subsea cable-laying and O&M activities or within 90 days of the expiration of the IHA, whichever comes first. The draft report shall be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the report prior to acceptance by NMFS. The draft report will be considered the final report for this activity under this Authorization if NMFS has not provided comments and recommendations within 90 days of receipt of the draft report.

#### *Notification of Injured or Dead Marine Mammals*

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as a serious injury, or mortality (*e.g.*, ship-strike, gear interaction, and/or entanglement), Quintillion will immediately cease the specified activities and immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators. The report would include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Quintillion to determine the necessary measures to minimize the likelihood of further prohibited take and ensure MMPA

compliance. Quintillion would not be able to resume its activities until notified by NMFS via letter, email, or telephone.

In the event that Quintillion discovers a dead marine mammal, and the lead PSO determines that the cause of the 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), Quintillion would immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Quintillion to determine whether modifications in the activities would be appropriate.

In the event that Quintillion discovers a dead marine mammal, and the lead PSO determines that the 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), Quintillion would report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline, within 24 hours of the discovery. Quintillion would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Quintillion can continue its operations under such a case.

#### *Monitoring Plan Peer Review*

The MMPA requires that monitoring plans be independently peer reviewed "where the proposed activity may affect the availability of a species or stock for taking for subsistence uses" (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Regarding this requirement, NMFS' implementing regulations state, "Upon receipt of a complete monitoring plan, and at its discretion, [NMFS] will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan" (50 CFR 216.108(d)).

NMFS convened an independent peer review panel to review Quintillion's 4MP for the proposed subsea cable-laying and O&M operations in the Bering, Chukchi, and Beaufort seas. The panel met via web conference in late March 2017, and provided comments to NMFS in April 2017. The full panel

report can be viewed on the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.html>.

NMFS provided the panel with Quintillion's IHA application and monitoring plan and asked the panel to answer the following questions:

1. Will the applicant's stated objectives effectively further the understanding of the impacts of their activities on marine mammals and otherwise accomplish the goals stated above? If not, how should the objectives be modified to better accomplish the goals above?

2. Can the applicant achieve the stated objectives based on the methods described in the plan?

3. Are there technical modifications to the proposed monitoring techniques and methodologies proposed by the applicant that should be considered to better accomplish their stated objectives?

4. Are there techniques not proposed by the applicant (*i.e.*, additional monitoring techniques or methodologies) that should be considered for inclusion in the applicant's monitoring program to better accomplish their stated objectives?

5. What is the best way for an applicant to present their data and results (formatting, metrics, graphics, etc.) in the required reports that are to be submitted to NMFS (*i.e.*, 90-day report and comprehensive report)?

The peer-review panel report contains recommendations that the panel members felt were applicable to the Quintillion's monitoring plans. Specifically, the panel recommended the following:

(1) When marine mammals are sighted within the Level B harassment zone, Quintillion should reduce, where possible, all sound sources that have the potential to exceed the threshold for Level B harassment. These may include reducing speed or temporarily stopping winch operations, reducing underwater ploughing speed, temporarily stopping jetting, stopping or reducing beacon pinging rate and other subordinate noise sources to decrease the project's overall acoustic footprint;

(2) Quintillion continue to work with subsistence organizations, such as the Alaska Eskimo Whaling Commission (AEWC), and the Arctic Waterways Safety Committee (AWSC) to identify local contacts in each community that Quintillion can regularly communicate with to inform the communities and accept feedback about their ongoing operations;

(3) Quintillion evaluate whether the angle of the vessel relative to the recording location has any effect on the



received levels for its 2016 SSV tests, and work with the National Marine Mammal Laboratory (NMML) to compare the SSV received levels with the levels obtained by the mooring-based PAM data to determine whether the results from the SSV testing need to be corrected based on the bearing of the recording equipment to the ship;

(4) Because it is unlikely Quintillion will be able to minimize disturbance to marine mammals and is not proposing to conduct pre-activity, post-activity, or far-field monitoring, Quintillion should contribute to existing or ongoing studies to identify, quantify, or forecast bowhead whale prey and its associated distribution in the eastern Chukchi Sea or western Beaufort Sea during the open water season;

(5) Quintillion undertake efforts to further evaluate potential impacts of the 2016 activities on bowhead whales and, subsequently, whaling efforts. If data warrant a thorough evaluation, Quintillion could contribute financially to analysis efforts; and

(6) Quintillion stated in its IHA application that it would forego additional SSV testing on the vibro plow, instead of using SSV tests conducted on similar equipment near France in 2014 as a proxy. If so, Quintillion should provide additional details to NMFS and the Panel to justify why conducting an SSV on the vibro plow in the Arctic is not warranted. Specifically, how might factors such as difference in the substrate type, depth of the ocean bottom, sound speed profile, and plow speed and operation mode affect the sound radiation and propagation from the vibro plow when operating off France compared to in the Beaufort Sea.

NMFS discussed the peer review panel report and the list of recommendations with Quintillion. For the aforementioned monitoring measures, NMFS requires and Quintillion agrees to implement the following:

(1) Continue to work with subsistence organizations, such as the Alaska Eskimo Whaling Commission (AEWC), and the Arctic Waterways Safety Committee (AWSC) to identify local contacts in each community that Quintillion can regularly communicate with to inform the communities and accept feedback about their ongoing operations;

(2) Contribute \$20,000 to the University of Alaska, Fairbanks for their bowhead whale feeding study in the eastern Chukchi Sea or western Beaufort Sea during the open water season; and

(3) Conduct sound source verification on the vibro plow that would be used for cable-laying in the Beaufort Sea.

Regarding whether the angle of the vessel relative to the recording location has any effect on the received levels for its 2016 SSV tests, Quintillion's contractor Illingworth and Rodkin has already examined these questions regarding the 2016 data. The results will be included in the 2017 monitoring report. For SSV tests planned in 2017, acoustic recordings from all angles will be examined and the results will be included in the 2017 monitoring report.

Regarding the recommendation that require Quintillion to undertake efforts to further evaluate potential impacts of the 2016 activities on bowhead whales and subsequently, whaling efforts, Quintillion states that it will continue to support scientific evaluations of the potential impact of 2016 activities on bowhead whales and, consequently, whaling efforts, by providing vessel and observation data and other in-kind support as appropriate.

However, regarding the recommendation that requires Quintillion to reduce vessel speed or temporarily stopping winch operation, reduce underwater ploughing speed, or temporarily stop jetting, these measures are not feasible during cable-laying activities as they would cause safety concerns or affecting the cable-laying and maintenance operations. Therefore, this measure is not included in the IHA issued to Quintillion.

#### **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 6, given that the anticipated effects of Quintillion's subsea cable-laying and O&M operations on marine mammals (taking into account the prescribed mitigation) are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described separately in the analysis below.

No injuries or mortalities are anticipated to occur as a result of Quintillion's subsea cable-laying and O&M operations, and none are authorized. Additionally, animals in the area are not expected to incur hearing impairment (*i.e.*, TTS or PTS) or non-auditory physiological effects. The takes that are anticipated and authorized are expected to be limited to short-term Level B behavioral harassment in the form of brief startling reaction and/or temporary vacating the area.

Any effects on marine mammals are generally expected to be restricted to avoidance of a limited area around Quintillion's proposed activities and short-term changes in behavior, falling within the MMPA definition of "Level B harassment." Mitigation measures, such as controlled vessel speed and dedicated marine mammal observers, will ensure that takes are within the level being analyzed. In all cases, the effects are expected to be short-term, with no lasting biological consequence.

Of the 13 marine mammal species likely to occur in the proposed cable-laying area, bowhead, humpback, fin whales, ringed and bearded seals, and Steller sea lion are listed as endangered or threatened under the ESA. These species are also designated as "depleted" under the MMPA. However, the levels of potential impacts to these species are expected to be minor and brief in the form of short-term changes in behavior, as with other species discussed above. The behavioral



disturbances caused by exposure to elevated noise levels from cable-laying and maintenance activities are not expected to affect the population level of these species. None of the other species that may occur in the project area are listed as threatened or endangered under the ESA or designated as depleted under the MMPA.

The project area of the Quintillion's proposed activities is within areas that have been identified as biologically important areas (BIAs) for feeding for the gray and bowhead whales and for reproduction for gray whale during the summer and fall months (Clarke *et al.*, 2015). In addition, the coastal Beaufort Sea also serves as a migratory corridor during bowhead whale spring migration, as well as for their feeding and breeding activities. Additionally, the coastal area of Chukchi and Beaufort seas also serve as BIAs for beluga whales for their feeding and migration. However, the Quintillion's proposed cable-laying and O&M operations would briefly transit through the area in a slow speed (600 meters per hour). As discussed earlier, the Level B behavioral harassment on marine mammals from the proposed activity is expected to be brief startling reaction and temporary vacating of the area. There are no long-term or biologically significant impacts to marine mammals expected from the proposed subsea cable-laying activity.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- No injury or hearing impairment is anticipated or authorized;
- Only Level B behavioral disturbances by exposed marine mammals are likely;
- The levels and duration of marine mammals exposure to noises are low and brief; and
- Only a small fraction of marine mammal populations is expected to be affected.

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 marine mammal 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, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The requested takes represent less than 5.07 percent of all populations or stocks potentially impacted (see Table 6 in this document). These take estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment. The numbers of marine mammals estimated to be taken are small proportions of the total populations of the affected species or stocks.

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 Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an "unmitigable adverse impact" on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 as: "an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

As discussed earlier in this document, Quintillion worked with the cable-landing communities, tribal/subsistence organizations, and co-management

groups to develop mutually agreed monitoring and mitigation measures. These measures rely strongly on effective communication between operations and communities to ensure that Quintillion's proposed subsea cable-laying and O&M operations will not have unmitigable adverse impact to subsistence use of marine mammals in the affected areas. In addition, the issued IHA requires Quintillion to implement time and area limitations and vessel speed restrictions when passing through certain subsistence areas and/or encountering bowhead whales.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the prescribed mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from Quintillion's proposed activities.

### Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Alaska Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

Within the project area, the bowhead, humpback, and fin whales are listed as endangered and the ringed and bearded seals and Steller sea lion are listed as threatened under the ESA. NMFS' Permits and Conservation Division has initiated consultation with staff in NMFS' Alaska Region Protected Resources Division under section 7 of the ESA on the issuance of an IHA to Quintillion under section 101(a)(5)(D) of the MMPA for this activity. In June 2017, NMFS finished conducting its section 7 consultation and issued a Biological Opinion concluding that the issuance of the IHA associated with Quintillion's subsea cable-laying and maintenance work in the Bering, Chukchi, and Beaufort seas during the 2017 open-water season is not likely to jeopardize the continued existence of the endangered bowhead, humpback, and fin whales, and Steller sea lion. No critical habitat has been designated for

these species, therefore none will be affected.

#### Authorization

As a result of these determinations, NMFS has issued an IHA to Quintillion for the take of marine mammals, by Level B harassment, incidental to conducting subsea cable-laying operations and maintenance work in the Bering, Chukchi, and Beaufort seas during the 2017 open-water season, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 10, 2017.

**Donna S. Wieting,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 2017-17305 Filed 8-15-17; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Fishermen's Contingency Fund

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before October 16, 2017.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at [pracomments@doc.gov](mailto:pracomments@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instruments and instructions should be directed to Paul Marx, Chief, Financial Services Division, NOAA National Marine Fisheries Service, (301) 427-8752 or [paul.marx@noaa.gov](mailto:paul.marx@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

This request is for extension of a currently approved information

collection. United States (U.S.) commercial fishermen may file claims for compensation for losses of, or damage to, fishing gear or vessels, plus 50 percent of resulting economic losses, attributable to oil and gas activities on the U.S. Outer Continental Shelf. To obtain compensation, applicants must comply with requirements set forth in 50 CFR part 296.

The requirements include a "report" within 15 days of the date the vessel first returns to port after the casualty incident to gain a presumption of eligible causation, and an "application" within 90 days of when the applicant first became aware of the loss and/or damage.

The report is NOAA Form 88-166 and it requests identifying information such as: Respondent's name; address; social security number; and casualty location. The information in the report is usually completed by NOAA during a telephone call with the respondent.

The application is NOAA Form 88-164 and it requires the respondent to provide information on the property and economic losses and/or damages including type of damage; purchase date and price of lost/damaged gear; and income from recent fishing trips. It also includes an affidavit by which the applicant attests to the truthfulness of the claim.

##### II. Method of Collection

Respondents may telephone NOAA and provide the information for the report verbally or submit a paper or electronic report. Respondents have a choice of either electronic or paper forms for the application.

##### III. Data

*OMB Control Number:* 0648-0082.

*Form Number:* NOAA Forms 88-164, 88-166.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households; business or other for-profit organizations.

*Estimated Number of Respondents:* 20.

*Estimated Time per Response:* 15 minutes for a report and 7 hours, 45 minutes for an application.

*Estimated Total Annual Burden Hours:* 160.

*Estimated Total Annual Cost to Public:* \$500 in recordkeeping/filing costs.

##### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 11, 2017.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2017-17296 Filed 8-15-17; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Socioeconomics of Users and Non Users of Grays Reef National Marine Sanctuary.

*OMB Control Number:* 0648-0625.

*Form Number(s):* None.

*Type of Request:* Regular (reinstatement with changes of a previously approved information collection).

*Number of Respondents:* 1,440.

*Average Hours per Response:* 30 minutes.

*Burden Hours:* 293.

*Needs and Uses:* This request is for a reinstatement, with changes, of a previous information collection.

NOAA, through its National Ocean Service, Office of National Marine Sanctuaries, is replicating a study done in 2010-2011 on users and non-users of Gray's Reef National Marine Sanctuary (GRNMS) off the coast of Georgia. The study will support analysis of its current regulations to support management plan revision, which could include changes in regulations. The study will collect

information to assess recreational uses of GRNMS and surrounding areas off the coast of Georgia, demographic profiles, and attitudes on GRNMS current regulations, especially the research only area, which displaced recreational fishing. In addition, user perceptions of the conditions of GRNMS natural resources/environment will be obtained.

*Affected Public:* Individuals or households; business or other for-profit organizations.

*Frequency:* One time.

*Respondent's Obligation:* Voluntary.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA\_Submission@omb.eop.gov* or fax to (202) 395-5806.

Dated: August 11, 2017.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2017-17295 Filed 8-15-17; 8:45 am]

**BILLING CODE 3510-NK-P**

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

[Docket No. PTO-C-2017-0031]

#### Performance Review Board (PRB)

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice.

**SUMMARY:** In conformance with the Civil Service Reform Act of 1978, the United States Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

**ADDRESSES:** Director, Human Capital Management, Office of Human Resources, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

**FOR FURTHER INFORMATION CONTACT:** Anne Mendez at (571) 272-6173.

**SUPPLEMENTARY INFORMATION:** The membership of the United States Patent and Trademark Office Performance Review Board is as follows:

Anthony P. Scardino, Chair, Acting Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office

Frederick W. Steckler, Vice Chair, Chief Administrative Officer, United States Patent and Trademark Office

Andrew H. Hirshfeld, Commissioner for Patents, United States Patent and Trademark Office

Mary Boney Denison, Commissioner for Trademarks, United States Patent and Trademark Office

Anthony P. Scardino, Chief Financial Officer, United States Patent and Trademark Office

John B. Owens II, Chief Information Officer, United States Patent and Trademark Office

Sarah T. Harris, General Counsel, United States Patent and Trademark Office

Shira Perlmutter, Chief Policy Officer and Director for International Affairs, United States Patent and Trademark Office

#### Alternates

Sharon R. Marsh, Deputy Commissioner for Trademark Examination Policy, United States Patent and Trademark Office

Andrew I. Faile, Deputy Commissioner for Patent Operations, United States Patent and Trademark Office

Dated: August 10, 2017.

**Joseph D. Matal,**

*Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2017-17321 Filed 8-15-17; 8:45 am]

**BILLING CODE 3510-16-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Science and Technology Reinvention Laboratory (STRL) Personnel Management Demonstration Project, Department of the Air Force, Air Force Research Laboratory (AFRL)

**AGENCY:** Assistant Secretary of Defense for Research and Engineering, DoD.

**ACTION:** Notice of amendment to AFRL's demonstration project plan.

**SUMMARY:** AFRL will implement a flexible term appointment and a flexible extended temporary promotion authority for its Scientific and Professional Positions (ST) and Senior Scientific Technical Manager (SSTM) incumbents. The need for ST and SSTM positions in particular technology areas diminishes as the emerging technology becomes more established over time and a set of trained scientists and engineers are groomed to support the new core technical competency. AFRL needs this

flexibility to better manage its ST and SSTM cadre in order to ensure critical technologies are led by high-caliber ST and SSTM incumbents.

The extended probationary period currently authorized for AFRL Science and Engineering (S&E) provides a longer period to evaluate an individual's ability to adequately contribute to the AFRL mission and coincides with the extensive Research and Development (R&D) process. That same evaluation period is needed for the SSTM cadre.

**DATES:** This notice may be implemented beginning on August 16, 2017.

#### FOR FURTHER INFORMATION CONTACT:

- AFRL: Ms. Rosalyn Jones-Byrd, Personnel Demonstration Project Manager, AFRL, 1864 4th Street, Wright-Patterson Air Force Base, OH 45433-5209; *rosalyn.jones-byrd@us.af.mil*.

- DoD: Dr. Jagadeesh Pamulapati, Direct, Defense Laboratories, 4800 Mark Center Dr., Alexandria, 22350-1100; *jagadeesh.pamulapati.civ@mail.mil*.

#### SUPPLEMENTARY INFORMATION:

##### 1. Background

This notice amends the AFRL's demonstration project plan published in the **Federal Register** on August 30, 2010 (75 FR 53076).

Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, Public Law (Pub. L.) 103-337, as amended by Section 1109 of the NDAA for FY 2000, Public Law 106-65, and Section 1114 of the NDAA for FY 2001, Public Law 106-398, authorizes the Secretary of Defense (SECDEF) to conduct personnel demonstration projects at DoD laboratories designated as STRLs. All STRLs authorized by Section 1105 of the NDAA for FY 2010, Public Law 111-84, as well as any newly-designated STRLs authorized by SECDEF or future legislation, may use the provisions described in this **Federal Register** Notice (FRN). STRLs implementing this flexibility must have an approved personnel management demonstration project plan published in a FRN and shall fulfill any collective bargaining obligations.

AFRL currently has fewer ST allocations than it did in 2014, and has identified and prioritized new or emergent technical focus areas which will replace several of the current allocations as vacancies occur. ST positions within the laboratory are established for individuals to lead research in emerging technology areas and mentor young scientists and engineers to attain competence in the new technology areas. Currently AFRL

fills ST positions permanently as career appointments with a one-year probationary period. These ST positions are typically filled from among current government employees or candidates new to government service.

The SSTM authority was authorized in section 1107 of the NDAA for FY 2014, Pub. L. 113–66 and is newly available to AFRL. These positions are senior professional scientific and technical positions classified above the General Schedule (GS) GS–15 level of the Schedule. Incumbents primarily engage in research and development in the physical, biological, medical, or engineering sciences or another field closely related to the mission of AFRL, and provide technical supervision over such programs. It is anticipated that these SSTM positions will be filled from among current government employees or candidates new to government service.

## 2. Overview

### I. Introduction

#### A. Purpose

This notice provides a new approach to filling ST and SSTM positions within AFRL by allowing a time-limited, renewable appointment or temporary promotion, depending upon candidate source, in order to provide needed flexibility in managing the ST and SSTM cadre. It also provides authority to apply the extended probationary period to SSTM incumbents.

#### B. Required Waivers to Law and Regulation

Waivers and adaptations of certain title 5, U.S. Code (U.S.C.) and title 5, Code of Federal Regulations (CFR) provisions are required only to the extent that these statutory and regulatory provisions limit or are inconsistent with the actions authorized under this demonstration project. Appendix A lists waivers needed to enact authorities described in this FRN and are in addition to those listed in 75 FR 53076. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this FRN.

#### C. Problems With the Present System and Expected Benefit

Given the limited number of ST allocations within the laboratory, it is critical to have the ability to establish new ST positions as needed, and transition technology areas from emerging to established. AFRL currently has ST incumbents who have been in

their position(s) for as long as 18 years, where the need for an ST leader in that technical specialty may no longer exist. With the limited number of ST positions, AFRL does not want to limit movement opportunities for the incumbents or limit the technology area for a given ST position. Current regulations provide no flexibility to remove incumbents other than through adverse action procedures, which prevents the lab from effectively using ST and SSTM employees. Flexible term appointments and extended temporary promotions will provide a mechanism to bring ST and SSTM candidates into AFRL for a limited period and allow for time extensions to accommodate ongoing needs.

### II. Personnel System Changes

#### A. Hiring and Appointment Authorities

##### 1. Description of Hiring Process

(The following replaces the 1st paragraph in Section III. A. 1. of 75 FR 53076)

At this time, AFRL is implementing a streamlined examination process, as demonstrated in other Defense Personnel Management Demonstration Project laboratories. This applies to all positions in AFRL, with the exception of Senior Executive Service (SES), Scientific or Professional (ST), and broadband V positions and any examination process covered by court order. ST positions will be filled in accordance with 5 U.S.C. 3325 and any applicable Air Force guidance using internal and/or external recruitment procedures and may use the flexible term appointment and temporary promotion authorities described in Section III.A.4. SSTM positions will be filled in accordance with provisions in 79 FR 43727 and any AFRL internal operating procedures, and may use the flexible term appointment and temporary promotion authorities described in Section III.A.4. AFRL has authority for the coordination of recruitment and public notices, the administration of the examining process, the certification of candidates, and selection and appointment consistent with merit system principles, to include existing authorities under title 5, U.S.C. and title 5, CFR. The “rule of three” is eliminated, similar to the authorities granted to: (1) Naval Research Laboratory (NRL), 64 FR 33970, June 24, 1999; (2) Naval Sea (NAVSEA) Systems Command Warfare Centers, 62 FR 64050, December 3, 1997; and (3) United States Army Communications-Electronics Command (CECOM), Research, Development and Engineering (RDE) Community, 66 FR

54871, October 30, 2001. When there are no more than 15 qualified applicants and no preference-eligibles, all eligible applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking are required only when the number of qualified candidates exceeds 15, or there is a mix of preference and non-preference applicants. Statutes and regulations covering veterans’ preference are observed in the selection process and when rating and ranking are required.

#### A. Hiring and Appointment Authorities

##### 4. Modified Term Appointments and Flexible Term Appointments

(Change entire section to read:)

AFRL conducts many R&D projects that range from three to six years. The current four-year limitation on term appointments imposes a burden on the Laboratory by forcing the termination of some term employees prior to completion of projects they were hired to support. This disrupts the R&D process and reduces AFRL’s ability to serve its customers. AFRL has the authority to hire S&Es and support personnel on modified term appointments that may be used to fill positions for a period of more than one year but not more than five years when the need for an employee’s services is not permanent. The modified term appointment differs from term employment as described in part 316 of title 5, CFR in that it may be made for a period not to exceed five years, rather than four years. Additionally, the AFRL Commander may extend a modified term appointment one additional year.

##### a. Modified Term Appointments

An employee hired under the modified term appointment authority may be eligible for conversion to career appointment. To be converted, the employee must: (1) Have been selected for the initial term position under competitive procedures, with the announcement specifically stating that the individual(s) selected for a term position(s) may be eligible for conversion to career appointment at a later date; (2) served a minimum of one year of continuous service; and (3) have a current delta Contribution-based Compensation System (CCS) rating greater than –0.3.

##### b. Flexible Term Appointments

AFRL has the authority to hire individuals onto ST and SSTM positions on flexible term appointments. These appointments are used to fill ST and SSTM positions for a period of more than one year but not more than

five years. The flexible term appointment differs from the modified term in that it may be made for a period up to five years and the AFRL Commander/Executive Director may extend the appointment in up to five-year increments. Prior to extending a term appointment, management will make a determination if the work/services continue to be temporary in nature or should be made permanent. Candidates selected from outside the government may be hired using the flexible term appointment authority and may be eligible for conversion to career appointment if services are deemed permanent. To be converted, the employee must: (1) Have been notified in writing at the time of the initial appointment of the possibility for conversion to a permanent ST or SSTM position at a later date; (2) served a minimum of one year of continuous service; and (3) have at least a fully successful or equivalent ST or SSTM performance rating. Additionally, to be eligible for conversion, when positions being filled using the flexible term appointment authority are announced, whether via competitive or merit promotion procedures, the vacancy announcement must contain a statement notifying applicants that the position may be eligible for conversion to a permanent appointment. ST and SSTM employees serving under existing term appointments at the time of publication of this notice will convert to the new flexible term appointment provided they were notified in writing at the time of the initial appointment of the possibility they may be converted at a later date.

**c. Extended Probationary or Trial Period**  
(Change Section III.A.5., to read:)

New employees conducting scientific, engineering or technological activities need time and opportunities to demonstrate adequate contribution for a manager to render a thorough evaluation. The purpose of the extended probationary period or trial period is to allow supervisors an adequate period of time to fully evaluate an SSTM or S&E employee's contribution and conduct. An extended probationary or trial period of three years applies to all newly-hired SSTM and S&E employees

as well as interns, other than those interns hired under the Pathways Programs, who are appointed based on their participation in an academic program leading toward a scientific or engineering degree, and individuals entering the Demonstration Project after a break in service of 30 calendar days or more. Current permanent Federal employees hired into the Demonstration Project are not required to serve a new probationary or trial period but are required to complete a probationary period required from the initial appointment. Probationary periods for employees in other career paths and pay plans, and supervisory probationary periods remain unchanged.

Employees who enter the Demonstration Project with a break in service of less than 30 calendar days are not required to complete an extended probationary or trial period upon reappointment if their previous service was in the same line of work as determined by the employee's demonstration project duties and responsibilities. Upon reappointment, the period of previous employment is counted toward the completion of the probationary period required of the initial appointment.

S&E and SSTM employees serving on modified or flexible term appointments serve a three-year trial period. Upon conversion to career appointment, the period of employment served on a modified or flexible term appointment is counted toward the completion of the extended probationary period.

Aside from extending the time period, all other features of the current probationary or trial period are retained to include the requirements for determining creditable service as described in 5 CFR 315.802(c), and the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee when the employee fails to demonstrate proper conduct, competency, and/or adequate contribution during the extended probationary period. When terminating probationary or trial employees, AFRL provides employees with written notification of the reasons for their separation and provides the effective date of the action.

(Change the heading of Section III.A.6 to:)

**d. Extended Temporary Promotions and Details and Flexible Temporary Promotions**

**1. Extended Temporary Promotions and Details**

Under GS rules, details and temporary promotions to higher graded positions cannot exceed 120 days without being made competitively. AFRL may effect details to higher broadband level positions and temporary promotions to positions (other than SES and ST) of not more than one year with or without competition, with the ability to extend one additional year within a 24-month period. This is similar to the authority granted to the NRL in 64 FR 33970, June 24, 1999.

**2. Flexible Temporary Promotions**

AFRL may effect flexible temporary promotions to ST and SSTM positions for not more than five years, with the ability to extend in five-year increments for candidates who are current federal employees. Prior to extending a temporary promotion, management will make a determination if the work/services continue to be temporary in nature or should be made permanent. If not extended or made permanent, the employee will return to a position in AFRL comparable to the position held before the assignment. Upon termination of temporary promotion, pay will be set in accordance with Section III.B. of 75 FR 53076 and any AFRL internal operating procedures. Candidates may be eligible for conversion to a permanent ST or SSTM position if services are deemed permanent by the AFRL Commander. To be converted, the employee must: (1) Have been notified in writing at the time of the initial action of the possibility for conversion to permanent ST or SSTM position at a later date; (2) served a minimum of one year of continuous service in the temporary position; and (3) have at least a fully successful or equivalent ST or SSTM performance rating.

**Appendix A**

**UNITED STATES CODE AND CODE OF FEDERAL REGULATIONS WAIVED**

Title 5, United States Code	Title 5, Code of Federal Regulations
	Part 315, sections 315.801(a), (b)(1),(c) and (e); and sections 315.802(a) and (b)(1): Related to probationary period. (These sections are waived to allow for extended probationary or trial period of three years for all newly hired S&E and SSTM employees.)

## UNITED STATES CODE AND CODE OF FEDERAL REGULATIONS WAIVED—Continued

Title 5, United States Code	Title 5, Code of Federal Regulations
	Part 316, sections 316.301, 316.303, and 316.304: Term Employment. (These sections are waived to allow flexible term appointments as described in this <b>Federal Register</b> Notice.) Part 335, section 335.102(f); Agency authority to promote, demote, or reassign. (This section is waived to the extent necessary to allow temporary promotions as described in this <b>Federal Register</b> Notice.) Part 330, section 330.707(h): Exceptions to Interagency Career Transition Assistance Plan (ICTAP) selection priority. (This section is waived to the extent necessary to allow conversion to permanent positions without clearing ICTAP.)

Dated: August 11, 2017.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2017–17310 Filed 8–15–17; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID DOD–2016–OS–0033]

#### Proposed Collection; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Policy, DoD.

**ACTION:** 60-Day information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Office of the Under Secretary of Defense for Policy announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by October 16, 2017.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and

Compliance, Regulatory and Advisory Committee Division, 4800 Mark Center Drive, Mailbox #24, Suite 08D09B, Alexandria, VA 22350–1700.

**Instructions:** All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at <http://www.regulations.gov> for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Leadership and Organizational Development Office, 2400 Defense Pentagon, Room 5B683, ATTN: Dr. James Cully, Washington, DC 20301–2400, or call, at 703–695–7386.

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* OUSD—Policy Pulse Survey; OMB Control Number 0704–XXXX.

*Needs and Uses:* The information collection requirement is necessary to obtain and record responses from contractor personnel employed within the Office of the Under Secretary of Defense for Policy and its components. The survey results are analyzed by the Leadership and Organizational Development Office to assess the progress of the current human capital strategy and to address emerging human capital and training issues.

*Affected Public:* Individual or households.

*Annual Burden Hours:* 76.5.

*Number of Respondents:* 153.

*Responses per Respondent:* 2.

*Annual Responses:* 306.

*Average Burden per Response:* 15 minutes.

*Frequency:* On occasion.

Respondents are defense contractors employed by Office of the Under Secretary of Defense for Policy who provide analytic, administrative, and operations services. The survey is administered to all employees of the Office of Secretary of Defense for Policy as required by the Under Secretary of Defense for Policy to assess the effectiveness and progress of the current human capital strategy. If contractors are not permitted to take the survey then the assessment effectively excludes ~20% of the employee population, diminishing the accuracy of the survey and resulting conclusions.

Dated: August 11, 2017.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2017–17332 Filed 8–15–17; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF ENERGY

### Energy Information Administration

#### Agency Information Collection Activities: Information Collection Extension

**AGENCY:** U.S. Energy Information Administration (EIA), Department of Energy (DOE).

**ACTION:** Notice and request for comments.

**SUMMARY:** EIA, pursuant to the Paperwork Reduction Act of 1995, intends to extend (with changes) for three years with the Office of Management and Budget (OMB) Form OE–417 *Electric Emergency Incident and Disturbance Report*, OMB Control Number 1901–0288. Form OE–417 enables the U.S. Department of Energy

(DOE) to monitor emergencies and significant incidents that affect U.S. electric power systems. The information gathered allows DOE to conduct post-incident reviews examining significant interruptions of electric power or threats to the national electric system.

**DATES:** Comments regarding this proposed information collection must be received on or before October 16, 2017. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

**ADDRESSES:** Written comments may be sent to OE-417 Recertification, C/O Matthew Tarduogno, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 or by fax at 202-586-2623, or by email at [OE417@hq.doe.gov](mailto:OE417@hq.doe.gov).

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the information collection instrument and instructions should be directed to Matthew Tarduogno, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, or by phone at 202-586-2892, or by email at [matthew.tardugono@hq.doe.gov](mailto:matthew.tardugono@hq.doe.gov). Additional information may also be found at: <https://www.oe.netl.doe.gov/oe417.aspx>.

**SUPPLEMENTARY INFORMATION:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) OMB No. 1901-0288.

(2) *Information Collection Request Title:* Electric Emergency Incident and Disturbance Report.

(3) *Type of Request:* Renewal.

(4) *Purpose:* The U.S. Department of Energy uses Form OE-417 *Emergency Incident and Disturbance Report* to monitor emergencies and incidents that affect U.S. electric power systems. The information gathered allows DOE to conduct post-incident reviews

examining significant interruptions, or potential interruptions, of electric power or threats to the national electric system. Form OE-417 enables DOE to meet the Department's national security responsibilities and requirements as the lead agency for Emergency Support Function (ESF) #12—Energy under the National Response Framework and the Sector-Specific Agency for energy under Presidential Policy Directive (PPD) 21 and PPD 41. The information may also be shared with other non-regulatory federal agencies assisting in emergency response and recovery operations, or investigating the causes of an incident or disturbance to the national electric system. Public summaries are posted to the DOE Form OE-417 Web site on a monthly basis to keep the public informed.

(4a) *Proposed Changes to Information Collection:* The main proposed change to Form OE-417 is to incorporate questions that are or will be included in the North American Electric Reliability Corporation (NERC) EOP-004 Reliability Standard Event Reporting Form. Currently if an entity submits a Form OE-417 and elects to have it submitted to NERC, the entity does not need to file an EOP-004 Event Reporting Form; however there were some questions on EOP-004 Event Reporting Form that are not covered by Form OE-417. By incorporating these additional questions, and aligning language, entities will only be required to submit Form OE-417. This will reduce the reporting burden for the electric power industry. Additional changes to Form OE-417 clarify and improve the flow of questions.

1. The instructions will include a note that "NERC has determined that, for U.S. NERC reporting entities, the proposed revised Form OE-417 meets NERC's submittal requirements" (*i.e.* Form EOP-004).

2. Alternative methods of filing Form OE-417 are added to allow the use of email submissions; however, online submissions remain the preferred method.

3. Under "Criteria for Filing," three categories of submission will be shown: "Emergency Alert; Normal Report; System Report" to provide better clarity and easy reference.

4. Minor edits were made to the Alert criteria 5 and 6 to align with EOP-004 Reliability Standard terminology.

5. Under "Criteria for Filing" section: 12 new data elements are added to collect the additional information that NERC collects or will collect on under the EOP-004 Reliability Standard. The additional questions are in a new

category of submission called "System Report" and include:

a. Damage or destruction of a Facility within its Reliability Coordinator Area, Balancing Authority Area or Transmission Operator Area that results in action(s) to avoid a Bulk Electric System Emergency;

b. Damage or destruction of its Facility that results from actual or suspected intentional human action;

c. Physical threat to its Facility excluding weather or natural disaster related threats, which has the potential to degrade the normal operation of the Facility. Or suspicious device or activity at its Facility;

d. Physical threat to its Bulk Electric System control center, excluding weather or natural disaster related threats, which has the potential to degrade the normal operation of the control center. OR suspicious device or activity at its Bulk Electric System control center;

e. Bulk Electric System Emergency resulting in voltage deviation on a Facility; a voltage deviation of equal to or greater than 10% of nominal voltage sustained for greater than or equal to 15 continuous minutes;

f. Uncontrolled loss of 200 Megawatts or more of firm system loads for 15 minutes or more from a single incident for entities with previous year's peak demand less than or equal to 3,000 Megawatts;

g. Total generation loss, within one minute of: Greater than or equal to 2,000 Megawatts in the Eastern or Western Interconnection or greater than or equal to 1,400 Megawatts in the ERCOT Interconnection;

h. Complete loss of off-site power (LOOP) affecting a nuclear generating station per the Nuclear Plant Interface Requirements;

i. Unexpected Transmission loss within its area, contrary to design, of three or more Bulk Electric System Facilities caused by a common disturbance (excluding successful automatic reclosing);

j. Unplanned evacuation from its Bulk Electric System control center facility for 30 continuous minutes or more;

k. Complete loss of Interpersonal Communication and Alternative Interpersonal Communication capability affecting its staffed Bulk Electric System control center for 30 continuous minutes or more;

l. Complete loss of monitoring or control capability at its staffed Bulk Electric System control center for 30 continuous minutes or more.

6. Re-labeled line numbers 1 through 20 to line numbers A through T to



prevent confusion between line numbers and alert criteria.

7. Added an Alert status category “system report,” which shall be filed by the later of 24 hours after the recognition of the incident OR by the end of the next business day. This change aligns with the EOP-004 Reliability Standard. 4:00 p.m. local time will be definition for the end of the business day.

8. Under Electric Emergency Incident and Disturbance Report section, lines J, K, L were reorganized into “Cause, Impact, and Action Taken” for clarity and ease of use and additional items were added to align with NERC’s EOP-004 Reliability Standard.

9. The burden per response for completing Form OE-417 is reduced from 2.16 hours to 1.8 hours based on findings from the results from cognitive research conducted by the U.S. Energy Information Administration.

EIA also proposes to amend its data protection policy for information reported on Schedule 2 of Form OE-417. Currently this information is protected from public release to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the DOE regulations, 10 CFR 1004.11 implementing FOIA, and the Trade Secrets Act, 18 U.S.C. 1905. EIA proposes to use the Critical Energy Infrastructure Information (CEII) regulations as set forth by the Federal Energy Regulatory Commission to implement the requirements of the Fixing America’s Surface Transportation (FAST) Act, Public Law 114-94, pursuant to section 215A(d) of the Federal Power Act, as amended, to protect information reported on Schedule 2 in addition to continuing to apply FOIA exemptions and using the Trade Secrets Act. This change will strengthen DOE’s ability to protect information reported on Schedule 2 of Form OE-417 and authorize DOE to withhold company identifiable information from public release.

The new data protection provision for Form OE-417 will be as follows: The information reported on Schedule 1 will be considered “public information” and may be publicly released in company or individually identifiable form.

Information on Schedule 2 of Form OE-417 will not be disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the DOE regulations, 10 CFR 1004.11, implementing the FOIA, the Trade Secrets Act, 18 U.S.C. 1905 and Critical Energy Infrastructure Information regulations as defined by

the Federal Energy Regulatory Commission pursuant to section 215A(d) of the Federal Power Act, as amended.

In accordance with the Federal Energy Administration Act, the DOE provides company-specific protected data to other Federal agencies when requested for official use. The information reported on this form may also be made available, upon request, to another component of DOE; to any Committee of Congress, the U.S. Government Accountability Office, or other Federal agencies authorized by law to receive such information. A court of competent jurisdiction may obtain this information in response to an order. The information may be used for any non-statistical purposes such as administrative, regulatory, law enforcement, or adjudicatory purposes.

The data collected on Form OE-417, Electric Emergency Incident and disturbance Report, will be used by DOE to meet its overall national security and National Response Framework responsibilities.

(5) *Annual Estimated Number of Respondents*: 2,395.

(6) *Annual Estimated Number of Total Responses*: 300.

(7) *Annual Estimated Number of Burden Hours*: 5,315.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden*: \$391,503.

**Statutory Authority:** Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, codified as 15 U.S.C. 772(b) and the DOE Organization Act of 1977, Pub. L. 95-91, codified at 42 U.S.C. 7101 *et seq.* In addition, 15 U.S.C. 772(b); 764(a); 764(b); and 790a, of the Federal Energy Administration Act of 1974 (FEA Act), Pub. L. 93-275, as well as the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601, Pub. L. 93-275.

Issued in Washington, DC, on August 2, 2017.

**Devon Streit,**

*Deputy Assistant Secretary, Infrastructure Security and Energy Restoration, Office of Electricity Delivery & Energy Reliability, U.S. Department of Energy.*

[FR Doc. 2017-17255 Filed 8-15-17; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP17-74-000]

#### National Fuel Gas Supply Corporation; Notice of Schedule for Environmental Review of the Line YM28 & Line FM120 Modernization Project

On March 10, 2017, National Fuel Gas Supply Corporation (National Fuel) filed an application in Docket No. CP17-74-000 requesting an authorization and a Certificate of Public Convenience and Necessity pursuant to Sections 7(b) and 7(c) of the Natural Gas Act to abandon, construct, and operate certain natural gas pipeline facilities. The proposed project is known as the Line YM28 & Line FM120 Modernization Project (Project).

On March 24, 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 September 29, 2017  
90-day Federal Authorization Decision  
Deadline December 28, 2017

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

National Fuel proposes to construct, operate, and abandon various facilities in Cameron, Elk, and McKean Counties, Pennsylvania. According to National Fuel, the Project would enhance the reliability and safety of the National Fuel system, allow for continued transportation services performed by the abandoned facilities, and offer better connectivity for storage and transportation services to National Fuel’s backbone transmission pipeline (Line K).

The Project would consist of the following:

- Approximately 14.4 miles of new 12-inch-diameter pipeline installed within existing rights-of-way in McKean County (designated Line KL);



- approximately 5.8 miles of new 6-inch-diameter pipeline installed via insertion into the existing 12-inch-diameter FM120 pipeline in McKean and Elk Counties;
- abandonment in place of approximately 7.7 miles of the existing Line YM28 in McKean County;
- approximately 12.5 miles of Line FM120 removed from service in McKean, Elk, and Cameron Counties;
- removal and relocation of a meter set to the proposed Line KL; and
- new ancillary facilities including an interconnect in McKean County and miscellaneous valve and piping modifications.

### Background

On May 16, 2017, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Line YM28 & Line FM120 Modernization Project and 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 Alleghany Defense Project and William Belitskus. The primary issues raised by the commenters are improper segmentation of the Project from the Northern Access 2016 Project, cumulative impacts, and impacts from increased shale gas development.

### 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](http://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](http://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.*, CP17-74), 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](mailto: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 9, 2017.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. 2017-17263 Filed 8-15-17; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER17-2259-001.

*Applicants:* Seville Solar One LLC.

*Description:* Tariff Amendment: Amendment to Seville Filing in ER17-2259 to be effective 8/8/2017.

*Filed Date:* 8/8/17.

*Accession Number:* 20170808-5152.

*Comments Due:* 5 p.m. ET 8/29/17.

*Docket Numbers:* ER17-2264-000.

*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* Section 205 (d) Rate Filing: 2017-08-09\_SA 3036 Turtle Creek-ITC Midwest GIA (J449) to be effective 7/26/2017.

*Filed Date:* 8/9/17.

*Accession Number:* 20170809-5031.

*Comments Due:* 5 p.m. ET 8/30/17.

*Docket Numbers:* ER17-2265-000.

*Applicants:* Otter Tail Power

Company, Midcontinent Independent System Operator, Inc.

*Description:* Section 205 (d) Rate Filing: 2017-08-09\_SA 2970 OTP-NSPM Amended FSA (J262 J263) to be effective 10/8/2017.

*Filed Date:* 8/9/17.

*Accession Number:* 20170809-5054.

*Comments Due:* 5 p.m. ET 8/30/17.

*Docket Numbers:* ER17-2266-000.

*Applicants:* ITC Midwest LLC.

*Description:* Section 205 (d) Rate Filing: Filing of a Master Joint Use Agreement for Distribution Underbuild to be effective 10/9/2017.

*Filed Date:* 8/9/17.

*Accession Number:* 20170809-5068.

*Comments Due:* 5 p.m. ET 8/30/17.

*Docket Numbers:* ER17-2267-000.

*Applicants:* PJM Interconnection,

L.L.C.

*Description:* Section 205 (d) Rate Filing: Amendment to Service Agreement No. 3579, Queue Nos. U2-077/W1-001 to be effective 12/31/9998.

*Filed Date:* 8/9/17.

*Accession Number:* 20170809-5079.

*Comments Due:* 5 p.m. ET 8/30/17.

*Docket Numbers:* ER17-2268-000.

*Applicants:* MATEP Limited Partnership.

*Description:* Section 205 (d) Rate Filing: MATEP Rev Tariff re 819 etc to be effective 8/10/2017.

*Filed Date:* 8/9/17.

*Accession Number:* 20170809-5085.

*Comments Due:* 5 p.m. ET 8/30/17.

*Docket Numbers:* ER17-2269-000.

*Applicants:* Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

*Description:* Section 205 (d) Rate Filing: MAIT submits Engineering and Construction Services Agreement No. 4691 to be effective 10/8/2017.

*Filed Date:* 8/9/17.

*Accession Number:* 20170809-5108.

*Comments Due:* 5 p.m. ET 8/30/17.

*Docket Numbers:* ER17-2270-000.

*Applicants:* Stuttgart Solar, LLC.

*Description:* Baseline eTariff Filing: Stuttgart Solar, LLC Application for Market Based Rates to be effective 10/8/2017.

*Filed Date:* 8/9/17.

*Accession Number:* 20170809-5111.

*Comments Due:* 5 p.m. ET 8/30/17.

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 9, 2017.

**Nathaniel J. Davis, Sr.,**

Deputy Secretary.

[FR Doc. 2017-17261 Filed 8-15-17; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. CP17-479-000]

**Gulf South Pipeline Company, LP; Notice of Request Under Blanket Authorization**

Take notice that on August 1, 2017, Gulf South Pipeline Company, LP (Gulf South), located at 9 Greenway Plaza, Suite 2800, Houston, Texas 77046 filed a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA), seeking authorization to abandon by sale to Sundown Energy, Inc. approximately 8.1 miles of 16-inch-diameter Index 301 pipeline all located in Perry County, Mississippi, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Any questions regarding this Application should be directed to Kathy D. Fort, Manager, Certificates and Tariffs, Gulf South Pipeline Company, LP, 610 West 2nd Street, Owensboro, Kentucky 42301, by phone at 270-688-6825 or by email at [kathy.fort@bwpmlp.com](mailto:kathy.fort@bwpmlp.com); or Juan Eligio, Jr., Senior Regulatory Analyst, Gulf South Pipeline Company, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, by phone at 713-479-3480 or by email at [juan.eligio@bwpmlp.com](mailto:juan.eligio@bwpmlp.com).

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site ([www.ferc.gov](http://www.ferc.gov)) under the "e-Filing" link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: August 9, 2017.

**Nathaniel J. Davis, Sr.,***Deputy Secretary.*

[FR Doc. 2017-17264 Filed 8-15-17; 8:45 am]

**BILLING CODE 6717-01-P****DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. ER17-2258-000]

**Rock Falls Wind Farm LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding of Rock Falls Wind Farm LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 29, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: August 9, 2017.

**Nathaniel J. Davis, Sr.,**  
Deputy Secretary.

[FR Doc. 2017-17265 Filed 8-15-17; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

#### Filings Instituting Proceedings

*Docket Number:* PR17-56-000.

*Applicants:* Enbridge Pipelines (East Texas) L.P.

*Description:* Tariff filing per 284.123(b),(e)/: EPET PR17-33-000 Supplemental Information to be effective 8/4/2017 under PR17-56 Filing Type: 980.

*Filed Date:* 8/4/17.

*Accession Number:* 201708045128.

*Comments/Protests Due:* 5 p.m. ET 8/25/17.

*Docket Numbers:* RP17-965-000.

*Applicants:* Northern Natural Gas Company.

*Description:* Petition for a Limited Waiver of Northern Natural Gas Company.

*Filed Date:* 08/07/2017.

*Accession Number:* 20170807-5183.

*Comment Date:* 5:00 p.m. Eastern Time on Monday, August 21, 2017.

*Docket Numbers:* RP17-966-000.

*Applicants:* Equitrans, L.P.

*Description:* Equitrans, L.P. submits tariff filing per 154.204: Negotiated Rate Service Agreement—DFS Name Change to be effective 5/12/2017.

*Filed Date:* 08/08/2017.

*Accession Number:* 20170808-5151.

*Comment Date:* 5:00 p.m. Eastern Time on Monday, August 21, 2017.

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 9, 2017.

**Nathaniel J. Davis, Sr.**

Deputy Secretary

[FR Doc. 2017-17262 Filed 8-15-17; 8:45 am]

**BILLING CODE 6717-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA-HQ-OLEM-2017-0449; FRL-9966-51-OLEM]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Identification, Listing and Rulemaking Petitions (Revision)

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency is planning to submit a revised information collection request (ICR), "Identification, Listing and Rulemaking Petitions (Revision)" (EPA ICR No. 1189.26, OMB Control No. 2050-0053) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection and revision to a single activity contained in an existing approved collection. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before October 16, 2017.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA-HQ-OLEM-2017-0449, online using [www.regulations.gov](http://www.regulations.gov) (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential

Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Kirsten Hillyer, Office of Resource Conservation and Recovery, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., Mail Code 5304-P, Washington, DC 20460; telephone number: (703) 347-0369; email address: [hillyer.kirsten@epa.gov](mailto:hillyer.kirsten@epa.gov).

### SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at [www.regulations.gov](http://www.regulations.gov) or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

**Abstract:** The Resource Conservation and Recovery Act (RCRA) is the public law that creates the framework for the proper management of hazardous and non-hazardous solid waste. The RCRA regulations established by EPA can be found in 40 CFR parts 239 through 282. This ICR (ICR No. 1189.26) is a consolidation of a number of previously approved RCRA ICRs, including the ICR

for the rulemaking titled "Disposal of Coal Combustion Residuals from Electric Utilities" (CCR rule), a rulemaking which was published in the **Federal Register** on April 17, 2015. The CCR rule establishes a comprehensive set of requirements for the disposal of CCR in landfills and surface impoundments, including minimum federal criteria for groundwater monitoring and corrective action, structural stability, design and operation standards, closure and post-closure care standards, and recordkeeping, reporting and internet posting requirements.

In December 2016, the President signed the Water Infrastructure Improvements for the Nation (WIIN) Act. Section 2301 of the WIIN Act amended RCRA Subtitle D and established new statutory provisions for the control of CCR when placed in CCR landfills and surface impoundments. In particular, the WIIN Act provides that states may, but are not required to, develop and submit a permit program (or other system of prior approval) for control of CCR to EPA for approval. Such a program does not have to be identical to the requirements in the CCR rule (40 CFR part 257, subpart D), but must be at least as protective as the federal CCR requirements. In order for a state to receive approval of its CCR permit program, the state must submit to EPA specific materials that would constitute a "complete" CCR permit program application. The information collection includes those activities to develop the necessary CCR permit (or other system of prior approval) program materials for submittal to EPA for approval. EPA is developing a guidance document to provide states with the information needed to apply for CCR program approval.

To enable EPA to implement the new authorities provided by the WIIN Act (that is, to review and make determinations on State programs), EPA is revising ICR No. 1189.26 to account for the new burden and cost estimates associated with the voluntary actions that states may take to obtain CCR permit program approval. In this revision to the ICR, EPA is also making changes to the current burden and cost estimates associated with a separate voluntary state activity. Specifically, EPA is proposing to revise the respondent universe associated with the activity of submitting a solid waste management plan to EPA for approval. The solid waste management plan is the mechanism where a state is able to set out, as part of their overall solid waste program, how the state intends to regulate CCR landfills and surface impoundments. While the burden and

cost associated with this activity is included in the currently approved ICR, EPA is revising the burden and cost estimates to better reflect the actual state response observed since the CCR rule was published in 2015.

The EPA is not making any other substantive revisions to the currently approved ICR. The EPA is only soliciting comments on burden and cost estimates associated with activities relating to state CCR permit programs and state solid waste management plans and will not consider comments on other aspects of the currently approved ICR.

*Form Numbers:* None.

*Respondents/affected entities:* This ICR affects owners and operators of CCR landfills and surface impoundments that dispose or otherwise engage in solid waste management of CCR generated from the combustion of coal at electric utilities and independent power producers. This ICR also affects states that voluntarily elect to seek approval from EPA of their state CCR permit program or solid waste management plan.

*Respondent's obligation to respond:* For the CCR rule portion of the ICR, the recordkeeping, notification, and internet posting requirements are mandatory under 40 CFR part 257, subpart D. The actions that states may take to obtain approval from EPA of either their CCR permit program or solid waste management plan is voluntary.

*Estimated number of respondents:* 494 (total subject to the CCR rule portion of the ICR).

*Frequency of response:* Initially, occasionally, annually, and every five years.

*Total estimated burden:* 354,602 hours (per year) for the CCR rule portion of the ICR. Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* \$63,858,128 (per year) for the CCR rule portion of the ICR, which includes \$41,112,513 annualized capital cost or operation & maintenance costs.

*Changes in Estimates:* There is decrease of 4,355 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. The decrease in burden from the most recently approved ICR is due to adjustments in the respondent universe associated with state solid waste management plan activities. The most recently approved ICR overestimated the number of states that would voluntarily update their overall solid waste program by submitting to EPA a solid waste management plan for CCR for approval. The revision to the burden estimates for the solid waste

management plan activity exceeded the burden estimates associated with the new state CCR permit program approval activity, which resulted in an overall decrease in burden hours.

Dated: August 8, 2017.

**Barnes Johnson,**

*Director, Office of Resource Conservation and Recovery.*

[FR Doc. 2017-17268 Filed 8-15-17; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice to All Interested Parties of the Termination of the Receivership of 10496—Vantage Point Bank, Horsham, Pennsylvania

Notice is Hereby Given that the Federal Deposit Insurance Corporation (FDIC) as Receiver for Vantage Point Bank, Horsham, Pennsylvania ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed Receiver of Vantage Point Bank on February 28, 2014. 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 10, 2017.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2017-17258 Filed 8-15-17; 8:45 am]

**BILLING CODE 6714-01-P**

**FEDERAL RESERVE SYSTEM****Proposed Agency Information Collection Activities; Comment Request**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the mandatory Reporting Requirements Associated with Regulation XX Concentration Limit (FR XX) and Financial Company (as defined) Report of Consolidated Liabilities (FR XX-1) (OMB No. 7100-0363). On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

**DATES:** Comments must be submitted on or before October 16, 2017.

**ADDRESSES:** You may submit comments, identified by *FR XX* or *FR XX-1*, by any of the following methods:

- *Agency Web site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include OMB number in the subject line of the message.

- *FAX:* (202) 452-3819 or (202) 452-3102.

- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons.

Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street

(between 18th and 19th Streets NW.) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395-6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: <http://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrahi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:****Request for Comment on Information Collection Proposal**

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations

received will be analyzed to determine the extent to which the Federal Reserve should modify the proposed revisions prior to giving final approval.

**Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report**

*Report title:* Reporting Requirements Associated with Regulation XX Concentration Limit; Financial Company (as defined) Report of Consolidated Liabilities.

*Agency form number:* FR XX; FR XX-1.

*OMB control number:* 7100-0363.

*Frequency:* Event-generated; annual.

*Respondents:* Insured depository institutions, bank holding companies, foreign banking organizations, savings and loan holding companies, companies that control insured depository institutions, and nonbank financial companies supervised by the Board; U.S. and foreign financial companies that do not otherwise report consolidated financial information to the Board or other appropriate Federal banking agency.

*Estimated number of respondents:* FR XX (Section 251.4(b)): 1; FR XX (Section 251.4(c)): 1; FR XX-1: 43.

*Estimated average hours per response:* FR XX (Section 251.4(b)): 10; FR XX (Section 251.4(c)): 10; FR XX-1: 2.

*Estimated annual burden hours:* FR XX (Section 251.4(b)): 10; FR XX (Section 251.4(c)): 10; FR XX-1: 86 (106 total).

*General Description of Report:* The Board adopted Regulation XX to implement section 14 of the Bank Holding Company Act of 1956 (BHC Act), which was added by section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 14 established a financial sector concentration limit that generally prohibits a financial company from merging or consolidating with, or otherwise acquiring, another company if the resulting company's liabilities upon consummation would exceed 10 percent of the aggregate liabilities of all financial companies. Regulation XX established certain reporting requirements for financial companies. The Board created the FR XX-1 reporting form to collect information required to be submitted by Regulation XX.

*Legal authorization and confidentiality:* This information collection is authorized by section 14 of the Bank Holding Company Act (12 U.S.C. 1852(d)) and Regulation XX (12 CFR part 251). The obligation of financial companies to comply with the consolidated liabilities reporting

requirement is mandatory. Compliance by financial companies with the transactional reporting requirements is required in order to obtain the benefit of Board consent to consummation of the transactions.

Section 251.6 and FR XX-1. As noted, the required reporting of calendar year-end liabilities under section 251.6 of Regulation XX can be satisfied by many financial companies through their continued reporting of consolidated financial information to the Board or other appropriate Federal banking agency through the various reports listed above. The information collected on those forms has been the subject of separate authorization and confidentiality determinations. With regard to the collection of the specific information at issue, calendar year-end liabilities (including as collected on the FR XX-1), such information generally is not considered confidential, but some information, depending on the circumstances, may be the type of confidential commercial and financial information that may be withheld under exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)). As required information, it may be withheld under exemption 4 on a case-by-case basis only if public disclosure could result in substantial competitive harm to the submitting institution. Any request from a submitter for confidential treatment should be accompanied by a detailed justification for confidentiality.

Section 251.4. The information collected under section 251.4 (under both its prior written consent provision for individual transactions and the general consent authority) consists of (1) a description of the acquisition and (2) the change in and resultant aggregate amount of financial company liabilities. The reported liabilities information, in like fashion to the liabilities information reported under section 251.6, generally is not considered confidential but, depending on the circumstances, may be the type of confidential commercial and financial information that may be withheld under exemption 4 of FOIA. The description of the individual acquisitions provided under the prior written consent provisions generally would not be deemed confidential, but that some such information may be of the type that could be withheld under exemption 4 on a case-by-case basis, under the standards enumerated above.

Board of Governors of the Federal Reserve System, August 11, 2017.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2017-17344 Filed 8-15-17; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 11, 2017.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521. Comments can also be sent electronically to

*Comments.applications@phil.frb.org:*

1. *Sharon Mutual Holding Company, and its wholly owned subsidiary Sharon Bancorp, Inc.*, both of Darby, Pennsylvania; to become bank holding companies upon the revocation by Sharon Savings Bank, Darby, Pennsylvania, of its 10(l) election.

Board of Governors of the Federal Reserve System, August 11, 2017.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2017-17317 Filed 8-15-17; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request

**AGENCY:** Federal Trade Commission (“FTC” or “Commission”).

**ACTION:** Notice.

**SUMMARY:** The information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC seeks public comments on its proposal to extend, for three years, the current PRA clearance for information collection requirements contained in its Use of Prenotification Negative Option Plans (“Negative Option Rule” or “Rule”). That clearance expires on November 30, 2017.

**DATES:** Comments must be submitted by October 16, 2017.

**ADDRESSES:** Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write “Negative Option Rule: FTC File No. P064202” on your comment, and file your comment online at <https://ftcpublish.commentworks.com/ftc/NegOptionPRA> by following the instructions on the Web-based form. If you prefer to file your comment on paper, 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 (Annex J), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be addressed to John Andrew Singer, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., CC-9528, Washington, DC 20580, (202) 326-3234.

**SUPPLEMENTARY INFORMATION:** 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 information collection requirements contained in the Negative Option Rule, 16 CFR part 425 (OMB Control Number 3084–0104).

The FTC 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, *e.g.*, permitting electronic submission of responses.

The Negative Option Rule governs the operation of prenotification subscription plans. Under these types of plans, a seller provides a consumer with automatic shipments of merchandise such as when a consumer joins as a member in a seller’s book of the month club, food of the month club, or clothing items of the month club unless the consumer affirmatively notifies the seller they do not want the shipment. The Rule requires that a seller notify a member that they will automatically ship merchandise to the member and bill the member for the merchandise if the subscriber fails to expressly reject the merchandise beforehand within a prescribed time. The Rule protects consumers by: (a) Requiring that promotional materials disclose the terms of membership clearly and conspicuously; and (b) establishing procedures for the administration of such “negative option” plans.

#### Burden Statement

*Estimated annual hours burden:* 9,725 hours.

Based on industry input, staff estimates that approximately 75 existing clubs each require annually about 100 hours to comply with the Rule’s disclosure requirements. Approximately

10 new clubs come into being each year. These figures are an increase from 2014, although industry estimates of the number of existing clubs have fluctuated significantly since the early 2000s.<sup>1</sup> Industry sources also now report to the Commission that, even at this higher figure, a substantial portion of the existing clubs would make these disclosures absent the Rule because they help foster long-term relationships with consumers.

Over the next three years, there will be an average 85 existing firms per year ( $75+85+95 \div 3$ ). Thus, the average annual hours burden for existing firms is expected to be 8,500. The 10 new clubs entering the market per year require approximately 125 hours to comply with the Rule, including start up-time. Thus, the cumulative PRA burden for new clubs is about 1,250 hours (10 clubs  $\times$  125 hours). Combined with the estimated burden for established clubs, the total annual burden is 9,725 hours.

*Estimated annual cost burden:* \$473,750 (solely related to labor costs).

Based on recent data from the Bureau of Labor Statistics,<sup>2</sup> the mean hourly wage for advertising managers is approximately \$57 per hour; compensation for office and administrative support personnel is approximately \$17 per hour. Assuming that managers perform the bulk of the work, and clerical personnel perform associated tasks (*e.g.*, placing advertisements and responding to inquiries about offerings or prices), the total cost to the industry for the Rule’s information collection requirements would be approximately \$473,750 [(80 hours managerial time  $\times$  85 existing clubs  $\times$  \$57 per hour) + (20 hours clerical time  $\times$  85 existing clubs  $\times$  \$17 per hour) + (90 hours managerial time  $\times$  10 new clubs  $\times$  \$57 per hour) + (35 hours clerical time  $\times$  10 new clubs  $\times$  \$17)].

Because the Rule has been in effect since 1974, the vast majority of the negative option clubs have no current start-up costs. For the new clubs that enter the market each year, the costs associated with the Rule’s disclosure requirements, beyond the additional labor costs discussed above, are *de minimis*. Negative option clubs already have access to the ordinary office

equipment necessary to comply with the Rule. Similarly, the Rule imposes few, if any, printing and distribution costs. The required disclosures generally constitute only a small addition to the advertising for negative option plans. Because printing and distribution expenditures are incurred to market the product regardless of the Rule, adding the required disclosures results in marginal incremental expense.

#### Request for Comment

You can file a comment online or on paper. October 16, 2017. Write “Negative Option Rule: FTC File No. P064202” 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 <https://www.ftc.gov/policy/public-comments>. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/NegOptionPRA> by following the instructions on the web based form. If this Notice appears at <https://www.regulations.gov>, you also may file a comment through that Web site.

If you file your comment on paper, write “Negative Option Rule: FTC File No. P064202” 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 C), 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 [www.ftc.gov](http://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

<sup>1</sup> The industry estimates of existing firms subject to the Rule’s disclosure requirements range from 190 (2005), 158 (2008), 45 (2011), 35 (2014) and 75 (2017). Such fluctuations have most likely derived from changes in the national economy and trends in the specific industries subject to the Rule.

<sup>2</sup> Occupational Employment And Wages—May 2016, Table 1, at <https://www.bls.gov/news.release/ocwage.t01.htm>.



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.

Visit the Commission Web site at <https://www.ftc.gov> to read this Notice. 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 16, 2017. You can find more information, including routine uses permitted by the Privacy Act, in the Commission’s privacy policy, at <https://www.ftc.gov/site-information/privacy-policy>.

**David C. Shonka,**

*Acting General Counsel.*

[FR Doc. 2017–17318 Filed 8–15–17; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2017–N–4836]

#### Joint Meeting of the Anesthetic and Analgesic Drug Products Advisory Committee and the Drug Safety and Risk Management 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 Agency) announces a forthcoming public advisory committee meeting of the Anesthetic and Analgesic Drug Products Advisory Committee and the Drug Safety and Risk Management Advisory Committee. The general function of the committees 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 14, 2017, from 8 a.m. to 12:30 p.m.

**ADDRESSES:** Tommy Douglas Conference Center, the Ballroom, 10000 New Hampshire Ave., Silver Spring, MD 20903. Answers to commonly asked questions about FDA Advisory Committee meetings may be accessed at: <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>. Information about the Tommy Douglas Conference Center can be accessed at: <https://www.tommydouglascenter.com/>.

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2017–N–4836. The docket will close on September 13, 2017. Submit either electronic or written comments on this public meeting by September 13, 2017. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 13, 2017. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of September 13, 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.

Comments received on or before August 30, 2017, will be provided to the committees. Comments received after that date will be taken into consideration by the Agency.

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–N–4836 for “Anesthetic and Analgesic Drug Products Advisory Committee and the Drug Safety and Risk Management 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:** Stephanie L. Begansky, 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: [AADPAC@fda.hhs.gov](mailto:AADPAC@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 committees will discuss supplemental new drug application (sNDA) 021306, for BUTRANS (buprenorphine) transdermal system submitted by Purdue Pharma L.P., evaluating BUTRANS in pediatric patients ages 7 through 16 years for management of pain severe enough to require daily, around-the-clock, long-term opioid treatment and for which alternative treatment options are inadequate. The committees will be asked to discuss the findings of the clinical study of BUTRANS conducted in pediatric patients, and whether they support additional labeling.

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 committees. All electronic and written submissions submitted to the docket (see **ADDRESSES**) on or before August 30, 2017, will be provided to the committees. Oral presentations from the public will be scheduled between approximately 10:15 a.m. and 11:15 a.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 22, 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 23, 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 Stephanie L. Begansky 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 11, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2017-17303 Filed 8-15-17; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2017-P-0495]

#### Determination That CORDARONE (Amiodarone Hydrochloride) Tablets, 200 milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) has determined that CORDARONE (amiodarone hydrochloride) tablets, 200 milligrams (mg), were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Forde, Center for Drug

Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6213, Silver Spring, MD 20993-0002, 301-348-3035.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the “listed drug,” which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the “Approved Drug Products with Therapeutic Equivalence Evaluations,” which is known generally as the “Orange Book.” Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug’s NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

CORDARONE (amiodarone hydrochloride) tablets, 200 mg, are the subject of NDA 018972, held by Wyeth Pharmaceuticals, Inc. (a subsidiary of Pfizer, Inc.), and initially approved on December 24, 1985. CORDARONE is indicated for the treatment of the following documented, life-threatening recurrent ventricular arrhythmias when these have not responded to documented adequate doses of other available antiarrhythmics or when alternative agents could not be tolerated: (1) Recurrent ventricular fibrillation and

(2) recurrent hemodynamically unstable ventricular tachycardia.

In correspondence dated February 7, 2017, Pfizer, Inc. notified FDA that CORDARONE (amiodarone hydrochloride) tablets, 200 mg, were being discontinued, and FDA moved the drug product to the “Discontinued Drug Product List” section of the Orange Book.

Lachman Consultant Services, Inc. submitted a citizen petition dated January 25, 2017 (Docket No. FDA-2017-P-0495), under 21 CFR 10.30, requesting that the Agency determine whether CORDARONE (amiodarone hydrochloride) tablets, 200 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that CORDARONE (amiodarone hydrochloride) tablets, 200 mg, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that CORDARONE (amiodarone hydrochloride) tablets, 200 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of CORDARONE (amiodarone hydrochloride) tablets, 200 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list CORDARONE (amiodarone hydrochloride) tablets, 200 mg, in the “Discontinued Drug Product List” section of the Orange Book. The “Discontinued Drug Product List” delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: August 11, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2017-17302 Filed 8-15-17; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2017-N-3966]

#### Upsher-Smith Laboratories, Inc.; Withdrawal of Approval of an Abbreviated New Drug Application for ZALEPLON

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is withdrawing approval of an abbreviated new drug application (ANDA) for ZALEPLON Capsules, 5 milligrams (mg) and 10 mg, held by Upsher-Smith Laboratories, Inc. (Upsher-Smith), 6701 Evenstad Dr., Maple Grove, MN 55369. Upsher-Smith has voluntarily requested that approval of this application be withdrawn, and has waived its opportunity for a hearing.

**DATES:** Effective August 16, 2017.

**FOR FURTHER INFORMATION CONTACT:**

Stefanie Kraus, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6215, Silver Spring, MD 20993-0002, 301-796-9585.

**SUPPLEMENTARY INFORMATION:** On June 6, 2008, FDA approved ANDA 078706 for ZALEPLON Capsules, 5 mg and 10 mg, submitted by Upsher-Smith. According to annual reports Upsher-Smith filed with the Agency, Upsher-Smith stopped distributing these products by April 6, 2010. In a letter dated August 9, 2011, FDA informed Upsher-Smith that it had concerns about the validity of bioequivalence data submitted with ANDA 078706 from studies conducted by a certain contract research organization, establishing bioequivalence of Upsher-Smith’s product to the reference listed drug, SONATA (ZALEPLON) Capsules, 5 mg and 10 mg. In that letter, FDA directed Upsher-Smith to supplement its ANDA with either: (1) New bioequivalence studies or (2) re-assays of the samples from the original bioequivalence studies. Upsher-Smith did not respond to this letter. FDA then sent another letter to Upsher-Smith on August 19,

2016, requesting that Upsher-Smith provide the requested bioequivalence data within 30 calendar days or voluntarily seek withdrawal of ANDA 078706 under section 314.150(d) (21 CFR 314.150(d)).

In a letter dated September 15, 2016, Upsher-Smith informed FDA that it did not intend to submit the requested bioequivalence data and requested that the Agency withdraw approval of ANDA 078706 for ZALEPLON Capsules under section 314.150(d). In that letter, Upsher-Smith also waived any opportunity for a hearing otherwise provided under section 314.150(a).

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(e)) and 314.150(d), approval of ANDA 078706, and all amendments and supplements thereto, is withdrawn (see **DATES**). Distribution of this product in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the FD&C Act (21 U.S.C. 355(a) and 331(d)).

Dated: August 11, 2017.

**Anna K. Abram,**

*Deputy Commissioner for Policy, Planning, Legislation, and Analysis.*

[FR Doc. 2017-17301 Filed 8-15-17; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Solicitation of Nominations for Appointment to the Tick-Borne Disease Working Group; Amendment

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice; amendment.

**SUMMARY:** A notice was published in the **Federal Register** on Monday, July 17, 2017 (Vol. 82, No. 135, pages 32711–32712), to solicit nominations of individuals who are interested in being considered for appointment to the Tick-Borne Disease Working Group (Working Group). The nomination period is scheduled to end close of business on August 16, 2017. The notice is being amended to extend the solicitation period for one week to allow more time for interested individuals to submit nominations.

**DATES:** The solicitation period has been extended. All nominations are due to be submitted on or before August 23, 2017.

**ADDRESSES:** All nominations should be sent to: CAPT Richard Henry; Office of

the Assistant Secretary for Health; Department of Health and Human Services; 330 C Street SW., Suite L100, Washington, DC 20024. Nomination materials, including attachments, also may be submitted electronically to [tickbornedisease@hhs.gov](mailto:tickbornedisease@hhs.gov).

**FOR FURTHER INFORMATION CONTACT:** CAPT Richard Henry, Office of the Assistant Secretary for Health; Department of Health and Human Services; Telephone: (202) 795-7615; Email address: [richard.henry@hhs.gov](mailto:richard.henry@hhs.gov).

Dated: August 10, 2017.

**Donald Wright,**

*Acting Assistant Secretary for Health.*

[FR Doc. 2017-17323 Filed 8-15-17; 8:45 am]

**BILLING CODE 4150-28-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that a meeting is scheduled to be held for the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (Advisory Council). The meeting will be open to the public; a public comment session will be held during the meeting. Pre-registration is required for members of the public who wish to attend the meeting and who wish to participate in the public comment session. Individuals who wish to attend the meeting and/or send in their public comment via email should send an email to [CARB@hhs.gov](mailto:CARB@hhs.gov). Registration information is available on the Web site <http://www.hhs.gov/ash/carb/> and must be completed by September 5, 2017; all in-person attendees must pre-register by this date. Additional information about registering for the meeting and providing public comment can be obtained at <http://www.hhs.gov/ash/carb/> on the Meetings page.

**DATES:** The meeting is scheduled to be held on September 13, 2017, from 9:00 a.m. to 5:00 p.m. ET, and September 14, 2017, from 9:00 a.m. to 3:00 p.m. ET (times are tentative and subject to change). The confirmed times and agenda items for the meeting will be posted on the Web site for the Advisory

Council at <http://www.hhs.gov/ash/carb/> when this information becomes available. Pre-registration for attending the meeting in person is required to be completed no later than September 5, 2017; public attendance at the meeting is limited to the available space.

**ADDRESSES:** U.S. Department of Health and Human Services, Hubert H. Humphrey Building, Great Hall, 200 Independence Avenue SW., Washington, DC 20201.

The meeting can also be accessed through a live webcast on the day of the meeting. For more information, visit <http://www.hhs.gov/ash/carb/>.

**FOR FURTHER INFORMATION CONTACT:** Jomana Musmar, Acting Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services, Room 715H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Phone: (202) 690-5566; email: [CARB@hhs.gov](mailto:CARB@hhs.gov).

**SUPPLEMENTARY INFORMATION:** Under Executive Order 13676, dated September 18, 2014, authority was given to the Secretary of HHS to establish the Advisory Council, in consultation with the Secretaries of Defense and Agriculture. Activities of the Advisory Council are governed by the provisions of Public Law 92-463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of federal advisory committees.

The Advisory Council will provide advice, information, and recommendations to the Secretary of HHS regarding programs and policies intended to support and evaluate the implementation of Executive Order 13676, including the National Strategy for Combating Antibiotic-Resistant Bacteria and the National Action Plan for Combating Antibiotic-Resistant Bacteria. The Advisory Council shall function solely for advisory purposes.

In carrying out its mission, the Advisory Council will provide advice, information, and recommendations to the Secretary regarding programs and policies intended to preserve the effectiveness of antibiotics by optimizing their use; advance research to develop improved methods for combating antibiotic resistance and conducting antibiotic stewardship; strengthen surveillance of antibiotic-resistant bacterial infections; prevent the transmission of antibiotic-resistant bacterial infections; advance the development of rapid point-of-care and agricultural diagnostics; further research

on new treatments for bacterial infections; develop alternatives to antibiotics for agricultural purposes; maximize the dissemination of up-to-date information on the appropriate and proper use of antibiotics to the general public and human and animal healthcare providers; and improve international coordination of efforts to combat antibiotic resistance.

The first day of the public meeting, September 13, 2017, will be dedicated to the topic of Stewardship of Antibiotic Prescription and Use. The three working groups on Incentives for Diagnostics, Therapeutics/Anti-Infectives, and Vaccines, will report their final findings to the full Advisory Council for deliberation on the second day of the public meeting, September 14, 2017, and the Advisory Council will deliberate and vote on the final report presented. Additionally, federal agencies will provide updates on their achievements as stipulated in the goals with corresponding objectives and milestones of the National Action Plan on Combating Antibiotic Resistant Bacteria. The meeting agenda will be posted on the Advisory Council Web site at <http://www.hhs.gov/ash/carb/> when it has been finalized. All agenda items are tentative and subject to change.

Public attendance at the meeting is limited to the available space. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Advisory Council at the address/telephone number listed above at least one week prior to the meeting. For those unable to attend in person, a live webcast will be available. More information on registration and accessing the webcast can be found at <http://www.hhs.gov/ash/carb/>.

Members of the public will have the opportunity to provide comments prior to the Advisory Council meeting by emailing [CARB@hhs.gov](mailto:CARB@hhs.gov). Public comments should be sent in by midnight September 5, 2017, and should be limited to no more than one page. All public comments received prior to September 5, 2017, will be provided to Advisory Council members; comments are limited to two minutes per speaker.

Dated: August 2, 2017.

**Jomana F. Musmar,**

*Acting Designated Federal Officer,  
Presidential Advisory Council on Combating  
Antibiotic-Resistant Bacteria, Committee  
Manager.*

[FR Doc. 2017-17322 Filed 8-15-17; 8:45 am]

**BILLING CODE 4150-44-P**

**DEPARTMENT OF HEALTH AND  
HUMAN SERVICES**

**Indian Health Service**

**Division of Epidemiology and Disease  
Prevention Epidemiology Program for  
American Indian/Alaska Native Tribes  
and Urban Indian Communities**

*Announcement Type:* Competing  
Supplement

*Funding Announcement Number:* HHS-  
2017-IHS-EPI-0001

*Catalog of Federal Domestic Assistance  
Number:* 93.231

**Key Dates**

*Application Deadline Date:* September  
19, 2017

*Review Date:* September 21, 2017

**I. Funding Opportunity Description**

*Statutory Authority*

The Indian Health Service (IHS) Office of Public Health Support, Division of Epidemiology and Disease Prevention (IDEP), is accepting applications for a cooperative agreement for competitive supplemental funds to enhance activities in the Epidemiology Program for American Indian/Alaska Native (AI/AN) Tribes and Urban Indian communities. This program is authorized under: The Public Health Service Act, at 42 U.S.C. 241, 247b(k)(2), 282, 284 and 285t. Funding for this award will be provided by: The Centers for Disease Control and Prevention's (CDC) National Center for Environmental Health (NCEH) and the National Institutes of Health's (NIH) National Institute on Minority Health and Health Disparities (NIMHD). The authorities will be exercised through an Intra-Departmental Delegation of Authority (IDDA) with IHS to create a new funding opportunity for Tribal Epidemiology Centers: This program is described in the Catalog of Federal Domestic Assistance (CFDA) under 93.231.

*Background*

The Tribal Epidemiology Center (TEC) program was authorized by Congress in 1998 as a way to provide public health support to multiple Tribes and Urban Indian communities in each of the IHS Areas. The funding opportunity announcement is open to eligible Tribes, Tribal organizations, Indian organizations, intertribal consortia, and Urban Indian organizations, including currently-funded TECs.

TECs are uniquely positioned within Tribes, Tribal and Urban Indian organizations to conduct disease surveillance, research, prevention and

control of disease, injury, or disability, and to assess the effectiveness of AI/AN public health programs. In addition, they can fill gaps in data needed for Government Performance and Results Act and Healthy People 2020 measures. Some of the existing TECs have already developed innovative strategies to monitor the health status of Tribes and Urban Indian communities, including development of Tribal health registries and use of sophisticated record linkage computer software to correct existing state data sets for racial misclassification. TECs work in partnership with IHS DEDP to provide a more accurate national picture of Indian health status. This program will utilize CDC and NIH funding to further the ongoing work of IHS and the TECs.

The mission of NIMHD is to promote minority health and to lead, coordinate, support, and assess the NIH effort to reduce and ultimately eliminate health disparities.

The NCEH has identified a public health gap in the nation's ability to link environmental hazards and exposure to chronic disease issues, and to provide information to a variety of audiences from a nationwide network of integrated health and environmental data that drives actions to improve health outcomes. The NCEH is seeking, through this announcement, to support the creation of a mechanism by which Tribal data can be submitted to the Environmental Public Health Tracking Network and further explore the application of Tribal data to environmental public health.

*Purpose*

The purpose of this cooperative agreement is to strengthen public health capacity and to fund Tribes, Tribal and Urban Indian organizations, and intertribal consortia in identifying relevant health status indicators and priorities using sound epidemiologic principles. Work-plans submitted in response to this announcement must clearly state the grantee's desired objectives and address at least one of the Recipient Activities under this announcement. Recipient Activities may address one or all of the below two groups of activities:

**A. NIH, NIMHD Activities**

(1) Development and implementation of data collection efforts to identify and document health disparities experienced by AI/AN populations;

(2) Compilation of existing data (e.g., healthcare utilization, vital statistics data) to generate health profiles and document health disparities in AI/AN populations;

(3) Implementation and evaluation of public health awareness campaigns to increase knowledge and attention to significant high priority health issues in AI/AN communities; and

(4) Implementation and evaluation of public health interventions to promote health or address disparities in AI/AN communities.

#### B. CDC, NCEH Activities

(1) Establish data sources to pilot-test Tribal data within the Tracking Network, a Web-based system of environmental health data and information;

(2) Identify and work with Tribal partners to use environmental health data and data outputs relevant to local decision-making and implementing environmental health interventions;

(3) Establish indicators for the priorities identified;

(4) Work with CDC to address confidentiality concerns through methods such as temporal aggregation and suppression;

(5) Work with CDC to develop content for the AI/AN Web pages on the Tracking Network and to establish the data displays for Tribal data, such as maps or charts to visualize Tribal data;

(6) Work with CDC and its partners to explore the application of Tribal data to environmental public health;

(7) Build environmental epidemiology capacity within the TECs;

(8) Provide assistance to fellow TECs regarding Tribal issues with addressing environmental health data gaps; and

(9) Present results from environmental health data assessment and promote pilot project methodology and outcomes to other TECs.

#### Limited Competition Justification

TECs are statutorily authorized as public health authorities for tribes and Urban Indian communities with responsibility for essential public health infrastructure services such as data collection and analysis, evaluation and targeting of services, and provision of technical assistance. [25 U.S.C. 1621(m)] Other organizations do not have capacity to provide this support. Additionally, like state, local and territorial health departments, TECs have statutory public health authorities as described above and perform public health functions for the Tribes in their administrative area. They also derive authority from the Tribes they serve to perform these functions. Unlike their counterparts, they have no (or little) funding from their jurisdictional governments to perform these public functions.

IHS, CDC, and NIH have determined that the TECs provide the most effective approach to strengthen public health capacity and support to support Tribes, Tribal and Urban Indian organizations, and intertribal consortia in identifying relevant health status indicators and priorities using sound epidemiologic principles.

#### II. Award Information

*Type of Award:* Cooperative Agreement.

#### *Estimated Funds Available*

The total amount of funding identified for the current fiscal year (FY) 2017 is approximately \$961,500. A total of \$840,000 will be awarded for NIMHD-funded activities and a total of \$121,500 will be awarded for CDC/NCEH Activities.

Individual award amounts are anticipated to be between \$70,000 and \$191,500 annually. The amount of funding available for competing and continuation awards issued under this announcement are subject to the availability of appropriations and budgetary priorities of the funding agencies and the IHS. The IHS is under no obligation to make awards that are selected for funding under this announcement.

#### *Anticipated Number of Awards*

Approximately 12 awards will be issued under this program announcement.

#### *Project Period*

The project period is for four years and will run consecutively from September 30, 2017 to September 29, 2021.

#### *Cooperative Agreement*

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as a grant. However, the funding agency is required to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for both IHS and the grantee. IHS will be responsible for activities listed under section A and the grantee will be responsible for activities listed under section B as stated:

#### *Substantial Involvement Description for Cooperative Agreement*

##### A. IHS Programmatic Involvement

(1) Provide funded TECs with ongoing consultation and technical assistance to plan, implement, and evaluate each component as described under

Recipient Activities. Consultation and technical assistance may include, but not be limited to, the following areas:

i. Interpretation of current scientific literature related to epidemiology, statistics, surveillance, and other public health issues;

ii. Design and implementation of each program component such as surveillance, epidemiologic analysis, outbreak investigation, development of epidemiologic studies, development of disease control programs, and coordination of activities; and

iii. Overall operational planning and program management.

(2) Conduct routine site visits to TECs and/or coordinate TEC visits to IHS to assess work plans and ensure data security; confirm compliance with applicable laws and regulations; assess program activities; and to mutually resolve problems, as needed.

(3) Provide training in the use of data from the Epidemiology Data Mart (EDM) for the purposes of creating reports for disease surveillance, epidemiologic analysis, and epidemiologic studies. Training can be provided online, or at the request of the grantee onsite.

(4) Coordinate reporting and technical assistance with funding agencies.

#### B. Grantee Cooperative Agreement Award Activities

(1) Develop and deploy a plan of action to accomplish each component as described under Recipient Activities.

(2) Submit all data products to IHS, with a brief description of the methodologies and data sources used to produce the products.

(3) Succinctly and independently address and report on the requirements for each funding stream awarded under Recipient Activities. Specifically:

(i) NIMHD Program Activities must report:

(a) NIMHD support and collaboration must be highlighted in all documents and press releases associated with the activities.

(ii) CDC, NCEH

(a) Provide a work plan to accomplish tasks described under CDC, NCEH Activities.

(b) Quarterly calls with a CDC Project Officer to discuss progress of activities.

(c) Provide a final report that highlights successes and challenges over the previous project year.

#### III. Eligibility Information

##### 1. Eligibility

Only current TEC grantees are eligible to apply for the competing supplemental funding under this announcement and must demonstrate

that they have complied with previous terms and conditions of the TEC program.

Eligible Applicants must be one of the following as defined by 25 U.S.C. 1603:

- A Federally-recognized Indian Tribe as defined by 25 U.S.C. 1603(14); operating an Indian health program operated pursuant to a contract, grant, cooperative agreement, or compact with IHS pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 5301 *et seq.*

- A Tribal organization as defined by 25 U.S.C. 1603(26); operating an Indian health program operated pursuant to a contract, grant, cooperative agreement, or compact with the IHS pursuant to the ISDEAA, 25 U.S.C. 5301 *et seq.*

- An Urban Indian organization as defined by 25 U.S.C. 1603(29); operating a Title V Urban Indian health program that currently has a grant or contract with the IHS under Title V of the Indian Health Care Improvement Act, 25 U.S.C. 1601 *et seq.* [Public Law (Pub. L.) 93–437]. Applicants must provide proof of non-profit status with the application, *e.g.* 501(c)(3).

**Note:** Please refer to Section IV.2 (Application and Submission Information/ Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal resolutions, proof of non-profit status, etc.

## 2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

## 3. Other Requirements

If application budgets exceed the highest dollar amount outlined under the “Estimated Funds Available” section within this funding announcement, the application will be considered ineligible and will not be reviewed for further consideration. If deemed ineligible, IHS will not return the application. The applicant will be notified by email by the Division of Grants Management (DGM) of this decision.

## IV. Application and Submission Information

### 1. Obtaining Application Materials

The application package and detailed instructions for this announcement can be found at: <http://www.Grants.gov> or <http://www.ihs.gov/dgm/funding/>.

Questions regarding the electronic application process may be directed to Mr. Paul Gettys at (301) 443–2114 or (301) 443–5204.

### 2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Table of contents.
- Abstract (one page) summarizing the project.
- Application forms:
  - SF–424, Application for Federal Assistance.
  - SF–424A, Budget Information—Non-Construction Programs.
  - SF–424B, Assurances—Non-Construction Programs.
- Budget Justification and Narrative (must be single-spaced and not exceed 5 pages).
- Project Narrative (must be single-spaced and not exceed 10 pages).
  - Background information on the organization.
  - Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a one-page Timeframe Chart.
- Tribal Resolution(s).
- Letters of Support from organization’s Board of Directors.
- 501(c)(3) Certificate (if applicable).
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required in order to receive IDC).
- Organizational Chart (optional).
- Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

- Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
  - Face sheets from audit reports.
- These can be found on the FAC Web site: <https://harvester.census.gov/facdissem/Main.aspx>.

### Public Policy Requirements

All Federal-wide public policies apply to IHS grants and cooperative agreements with exception of the Discrimination policy.

### Requirements for Project and Budget Narratives

**A. Project Narrative:** This narrative should be a separate Word document that is no longer than 10 pages and must: Be single-spaced, be type written,

have consecutively numbered pages, use black type not smaller than 12 points, and be printed on one side only of standard size 8½” × 11” paper.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation criteria in this announcement) and place all responses and required information in the correct section (noted below), or they will not be considered or scored. These narratives will assist the Objective Review Committee (ORC) in becoming familiar with the applicant’s activities and accomplishments prior to this possible cooperative agreement award. If the narrative exceeds the page limit, only the first 10 pages will be reviewed. The 10-page limit for the narrative does not include the work plan, standard forms, Tribal resolutions, table of contents, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. See below for additional details about what must be included in the narrative.

The page limitations below are for each narrative and budget submitted.

### Part A: Program Information (3 pages)

Section 1: Introduction and need for assistance.

Must include the applicant’s background information, a description of epidemiological service, epidemiological capacity and history of support for such activities. Applicants need to include current public health activities, what program services are currently being provided, and interactions with other public health authorities in the region (state, local, or Tribal).

Section 2: Organizational capabilities.

The applicant must describe staff capabilities or hiring plans for the key personnel with appropriate expertise in epidemiology, health sciences, and program management. The applicant must also demonstrate access to specialized expertise such as a doctoral level epidemiologist and/or a biostatistician. Applicants must include an organizational chart, and provide position descriptions and biographical sketches of key personnel including consultants or contractors. The position description should clearly describe each position and its duties. Resume should indicate that proposed staff is qualified to carry out the project activities.

Section 3: User population.

The number of AI/ANs served must be substantiated by documentation describing IHS user populations, United

States Census Bureau data, clinical catchment data, or any method that is scientifically and epidemiologically valid.

Part B: Program Planning and Evaluation (5 pages)

Section 1: Program Plans.

Applicant must include a work-plan that describes program goals, objectives, activities, timeline, and responsible person for carrying out the objectives/activities. The applicant must specify which activities listed under the Grantee Cooperative Agreement Award Activities are proposed.

Section 2: Program Evaluation.

Applicant must define the criteria to be used to evaluate activities listed in the work-plan under the Grantee Cooperative Agreement Award Activities. They must explain the methodology that will be used to determine if the needs identified for the objectives are being met and if the outcomes identified are being achieved and describe how evaluation findings will be disseminated to stakeholders.

Part C: Program Report (2 pages)

Section 1: Describe your organization's significant program activities and accomplishments over the past five years associated with the goals of this announcement.

Section 2: Describe major activities over the last 24 months.

*Sample: Please identify and summarize recent major health related project activities of the work done during the project period.*

B. Budget Narrative (5 pages)

This narrative must include a line item budget with a narrative justification for all expenditures identifying reasonable allowable, allocable costs necessary to accomplish the goals and objectives as outlined in the project narrative. Budget should match the scope of work described in the project narrative.

3. Submission Dates and Times

Applications must be submitted electronically through *Grants.gov* by 11:59 p.m. Eastern Daylight Time (EDT) on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. *Grants.gov* will notify the applicant via email if the application is rejected. IHS will not acknowledge receipt of applications.

If technical challenges arise and assistance is required with the

electronic application process, contact *Grants.gov* Customer Support via email to [support@grants.gov](mailto:support@grants.gov) or at (800) 518-4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Mr. Gettys ([Paul.Gettys@ihs.gov](mailto:Paul.Gettys@ihs.gov)), DGM Grant Systems Coordinator, by telephone at (301) 443-2114 or (301) 443-5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM Grant Systems Coordinator until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM Grant Systems Coordinator as soon as possible.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one grant/cooperative agreement will be awarded per applicant.

6. Electronic Submission Requirements

All applications must be submitted electronically. Please use the <http://www.Grants.gov> Web site to submit an application electronically and select the "Find Grant Opportunities" link on the homepage. Follow the instructions for submitting an application under the Package tab. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

If the applicant needs to submit a paper application instead of submitting electronically through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Robert Tarwater, Director, DGM, (see Section IV.6 below for additional information). A written waiver request must be sent to [GrantsPolicy@ihs.gov](mailto:GrantsPolicy@ihs.gov) with a copy to [Robert.Tarwater@ihs.gov](mailto:Robert.Tarwater@ihs.gov). The waiver must: (1) be documented in writing (emails are acceptable), before submitting a paper application, and (2) include clear justification for the need to deviate from the required electronic grants submission process.

Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions and the mailing address to submit the application. A copy of the written approval must be submitted along with

the hardcopy of the application that is mailed to DGM. Paper applications that are submitted without a copy of the signed waiver from the Director of the DGM will not be reviewed or considered for funding. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Paper applications must be received by the DGM no later than 5:00 p.m., EDT, on the Application Deadline Date listed in the Key Dates section on page one of this announcement. Late applications will not be accepted for processing or considered for funding. Applicants that do not adhere to the timelines for System for Award Management (SAM) and/or <http://www.Grants.gov> registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in <http://www.Grants.gov> by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
  - If you experience technical challenges while submitting your application electronically, please contact *Grants.gov* Support directly at: [support@grants.gov](mailto:support@grants.gov) or (800) 518-4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).
    - Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
      - Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to fifteen working days.
        - Please use the optional attachment feature in *Grants.gov* to attach additional documentation that may be requested by the DGM.
          - All applicants must comply with any page limitation requirements described in this funding announcement.
            - After electronically submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The DGM will download the application from *Grants.gov* and provide necessary copies to the appropriate agency officials. Neither the DGM nor the DEDP will notify the applicant that the application has been received.



- Email applications will not be accepted under this announcement.

#### Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, you may access it through <http://fedgov.dnb.com/webform>, or to expedite the process, call (866) 705-5711.

All HHS recipients are required by the Federal Funding Accountability and Transparency Act of 2006, as amended ("Transparency Act"), to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

#### System for Award Management (SAM)

Organizations that were not registered with Central Contractor Registration and have not registered with SAM will need to obtain a DUNS number first and then access the SAM online registration through the SAM home page at <https://www.sam.gov> (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2-5 weeks to become active). Completing and submitting the registration takes approximately one hour to complete and SAM registration will take 3-5 business days to process. Registration with the SAM is free of charge. Applicants may register online at <https://www.sam.gov>.

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, can be found on the IHS Grants Management, Grants Policy Web site: <http://www.ihs.gov/dgm/policytopics/>.

#### V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights

assigned to each section are noted in parentheses. The 10 page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See "Multi-year Project Requirements" at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 65 points is required for funding. Points are assigned as follows:

##### 1. Criteria

##### A. Introduction and Need for Assistance (25 points)

(1) Describe the applicant's current public health activities including programs or services currently provided, interactions with other public health authorities in the regions (state, local, or Tribal) and how long it has been operating. Specifically describe current epidemiologic capacity and history of support for such activities.

(2) Provide a physical location of the TEC and area to be served by the proposed program including a map (include the map in the attachments), and specifically describe the office space and how it is going to be paid for.

(3) Describe the applicant's user population. The applicant must demonstrate AI/ANs will be served and must be substantiated by documentation describing IHS user populations, United States Census Bureau data, clinical catchment data, or any method that is scientifically and epidemiologically valid data.

##### B. Project Objective(s), Work Plan and Approach (45 points)

(1) State in measurable and realistic terms the objectives and appropriate activities to achieve each objective for the projects as listed in the Substantial Involvement Description for Cooperative Agreement, B. Grantee Cooperative Agreement Award Activities.

(2) Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

(3) Include a work-plan for each objective that indicates when the objectives and major activities will be accomplished and who will conduct the activities.

##### C. Program Evaluation (10 points)

(1) Define the criteria to be used to evaluate activities listed in the work-plan under the Substantial Involvement Description for Cooperative Agreement, B. Grantee Cooperative Agreement Award Activities.

(2) Explain the methodology that will be used to determine if the needs identified for the objectives are being met and if the outcomes identified are being achieved.

(3) Describe how evaluation findings will be disseminated to stakeholders.

##### D. Organizational Capabilities, Key Personnel and Qualifications (15 points)

(1) Explain both the management and administrative structure of the organization including documentation of current certified financial management systems from the Bureau of Indian Affairs, IHS, or a Certified Public Accountant and an updated organizational chart (include in appendix).

(2) Describe the ability of the organization to manage a program of the proposed scope.

(3) Provide position descriptions and biographical sketches of key personnel, including those of consultants or contractors in the Appendix. Position descriptions should very clearly describe each position and its duties, indicating desired qualification and experience requirements related to the project. Resumes should indicate that the proposed staff is qualified to carry out the project activities. Applicants with expertise in epidemiology will receive priority.

(4) Applicant must at least have two epidemiologists as part of the proposal.

##### E. Categorical Budget and Budget Justification (5 points)

(1) The five points for Categorical Budget only applies to Year 1. Provide a line item budget and budget narrative for Year 1.

(2) Provide a justification by line item in the budget including sufficient cost and other details to facilitate the determination of cost allowance and relevance of these costs to the proposed project. The funds requested should be appropriate and necessary for the scope of the project.

(3) If use of consultants or contractors are proposed or anticipated, provide a detailed budget and scope of work that clearly defines the deliverables or outcomes anticipated.

(4) If the applicant will be hosting a conference, the applicant must include a separate detailed budget justification and narrative for the conference. The



cost categories to be addressed are as follows: (1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration Web site, (4) Audio Visual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, (8) Other (explain in detail and cost breakdown).

(5) Applicant is encouraged to submit a line item budget and budget narrative by category for years 2–5 as an appendix to show the five-year plan of the proposal.

#### Multi-Year Project Requirements

Projects requiring a second, third, fourth, and/or fifth year must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project.

#### Additional Documents Can Be Uploaded as Appendix Items in *Grants.gov*

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.* data tables, key news articles, etc.).

#### 2. Review and Selection

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the ORC based on evaluation criteria in this funding announcement. The ORC could be composed of both Tribal and Federal reviewers appointed by the IHS Program to review and make recommendations on these applications. The technical review process ensures selection of quality projects in a national competition for limited funding. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the ORC. The applicant will be notified via email of this decision by the Grants Management Officer of the DGM. Applicants will be notified by DGM, via email, to outline minor missing components (*i.e.*, budget narratives, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or

before the due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation.

### VI. Award Administration Information

#### 1. Award Notices

The Notice of Award (NoA) is a legally binding document signed by the Grants Management Officer and serves as the official notification of the grant award. The NoA will be initiated by the DGM in our grant system, GrantSolutions (<https://www.grantsolutions.gov>). Each entity that is approved for funding under this announcement will need to request or have a user account in GrantSolutions in order to retrieve their NoA. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

#### Disapproved Applicants

Applicants who received a score less than the recommended funding level for approval, 65, and were deemed to be disapproved by the ORC, will receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorized Organizational Representative that is identified on the face page (SF-424) of the application. The IHS program office will also provide additional contact information as needed to address questions and concerns as well as provide technical assistance if desired.

#### Approved But Unfunded Applicants

Approved but unfunded applicants that met the minimum scoring range and were deemed by the ORC to be “Approved,” but were not funded due to lack of funding, will have their applications held by DGM for a period of one year. If additional funding becomes available during the course of FY 2017 the approved but unfunded application may be re-considered by the awarding program office for possible funding. The applicant will also receive an Executive Summary Statement from the IHS program office within 30 days of the conclusion of the ORC.

**Note:** Any correspondence other than the official NoA signed by an IHS grants management official announcing to the

project director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

#### 2. Administrative Requirements

Cooperative Agreements are administered in accordance with the following regulations and policies:

- A. The criteria as outlined in this program announcement.
- B. Administrative Regulations for Grants:
  - Uniform Administrative Requirements for HHS Awards, located at 45 CFR part 75.
- C. Grants Policy:
  - HHS Grants Policy Statement, Revised 01/07.
- D. Cost Principles:
  - Uniform Administrative Requirements for HHS Awards, “Cost Principles,” located at 45 CFR part 75, subpart E.
- E. Audit Requirements:
  - Uniform Administrative Requirements for HHS Awards, “Audit Requirements,” located at 45 CFR part 75, subpart F.

#### 3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II-27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award’s budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) <https://rates.psc.gov/> and the Department of Interior (Interior Business Center) <https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/indian-tribes>. For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under “Agency Contacts” or the main DGM office at (301) 443–5204.

#### 4. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or

other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports are required to be submitted electronically by attaching them as a "Grant Note" in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in section VII for the systems contact information.

The reporting requirements for this program are noted below.

#### A. Progress Reports

Program progress reports are required annually, within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

#### B. Financial Reports

Federal Financial Report (FFR or SF-425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services, HHS at <https://pms.psc.gov>. It is recommended that the applicant also send a copy of the FFR (SF-425) report to the Grants Management Specialist. Failure to submit timely reports may cause a disruption in timely payments to the organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: The Progress Reports and Federal Financial Report.

#### C. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a

requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a \$25,000 sub-award obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: (1) The project period start date was October 1, 2010 or after; and (2) the primary awardee will have a \$25,000 sub-award obligation dollar threshold during any specific reporting period will be required to address the FSRS reporting.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Policy Web site at: <http://www.ihs.gov/dgm/policytopics/>.

#### D. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Recipients of federal financial assistance (FFA) from HHS must administer their programs in compliance with federal civil rights law. This means that recipients of HHS funds must ensure equal access to their programs without regard to a person's race, color, national origin, disability, age and, in some circumstances, sex and religion. This includes ensuring your programs are accessible to persons with limited English proficiency. HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency. Please see <http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/>.

The HHS Office for Civil Rights (OCR) also provides guidance on complying with civil rights laws enforced by HHS. Please see <http://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html> and <http://www.hhs.gov/civil-rights/index.html>. Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see <http://>

[www.hhs.gov/civil-rights/for-individuals/disability/index.html](http://www.hhs.gov/civil-rights/for-individuals/disability/index.html). Please contact the HHS OCR for more information about obligations and prohibitions under federal civil rights laws at <http://www.hhs.gov/ocr/about-us/contact-us/headquarters-and-regional-addresses/index.html> or call 1-800-368-1019 or TDD 1-800-537-7697. Also note it is an HHS Departmental goal to ensure access to quality, culturally competent care, including long-term services and support, for vulnerable populations. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at: <http://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53>.

Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of his/her exclusion from benefits limited by federal law to individuals eligible for benefits and services from the IHS.

Recipients will be required to sign the HHS-690 Assurance of Compliance form which can be obtained from the following Web site: <http://www.hhs.gov/sites/default/files/forms/hhs-690.pdf>, and send it directly to the: U.S. Department of Health and Human Services, Office of Civil Rights, 200 Independence Ave. SW., Washington, DC 20201.

#### E. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIIS) before making any award in excess of the simplified acquisition threshold (currently \$150,000) over the period of performance. An applicant may review and comment on any information about itself that a federal awarding agency previously entered. IHS will consider any comments by the applicant, in addition to other information in FAPIIS in making a judgment about the applicant's integrity, business ethics, and record of performance under federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, non-federal entities (NFEs) are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive federal

awards (currently active grants, cooperative agreements, and procurement contracts) greater than \$10,000,000 for any period of time during the period of performance of an award/project.

#### Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, effective January 1, 2016, the IHS must require a non-federal entity or an applicant for a federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award.

Submission is required for all applicants and recipients, in writing, to the IHS and to the HHS Office of Inspector General all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. 45 CFR 75.113.

Disclosures must be sent in writing to: U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Robert Tarwater, Director, 5600 Fishers Lane, Mail Stop: 09E70.

Rockville, MD 20857  
(Include "Mandatory Grant Disclosures" in subject line)

Office: (301) 443-5204.

Fax: (301) 594-0899.

Email: [Robert.Tarwater@ihs.gov](mailto:Robert.Tarwater@ihs.gov).

#### AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW., Cohen Building, Room 5527, Washington, DC 20201, URL: <http://oig.hhs.gov/fraud/report-fraud/index.asp>.

(Include "Mandatory Grant Disclosures" in subject line)

Fax: (202) 205-0604 (Include "Mandatory Grant Disclosures" in subject line) or

Email: [MandatoryGranteeDisclosures@oig.hhs.gov](mailto:MandatoryGranteeDisclosures@oig.hhs.gov)

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376 and 31 U.S.C. 3321).

#### VII. Agency Contacts

1. *Questions on the programmatic issues may be directed to:* Lisa C. Neel, MPH, Public Health Advisor, Office of Public Health Support, Division of

Epidemiology & Disease Prevention, Indian Health Service, 5600 Fishers Lane, Mailstop: 09E17B, Rockville, MD 20857, Phone: (301) 443-4305, E-Mail: [Lisa.Neel@ihs.gov](mailto:Lisa.Neel@ihs.gov).

2. *Questions on grants management and fiscal matters may be directed to:* John Hoffman, Senior Grants Management Specialist, IHS Division of Grants Management, 5600 Fishers Lane, Mailstop: 09E70, Rockville, MD 20857, Phone: (301) 443-2116, E-Mail: [John.Hoffman@ihs.gov](mailto:John.Hoffman@ihs.gov).

3. *Questions on systems matters may be directed to:* Paul Gettys, Grant Systems Coordinator, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443-2114; or the DGM main line (301) 443-5204, Fax: (301) 594-0899, E-Mail: [Paul.Gettys@ihs.gov](mailto:Paul.Gettys@ihs.gov).

#### VIII. Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: August 10, 2017.

**Michael D. Weahkee,**

*RADM, Assistant Surgeon General, U.S. Public Health Service, Acting Director, Indian Health Service.*

[FR Doc. 2017-17311 Filed 8-15-17; 8:45 am]

**BILLING CODE 4160-16-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR-17-270: NIDDK Biorepositories Sample Access.

*Date:* September 21, 2017.

*Time:* 1:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-8894, [begumn@niddk.nih.gov](mailto:begumn@niddk.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Multi-Center Clinical Applications (PA-16-160).

*Date:* September 25, 2017.

*Time:* 2:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-8894, [begumn@niddk.nih.gov](mailto:begumn@niddk.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR-17-123: NIDDK Biomarker R01s on Biorepository Samples.

*Date:* September 27, 2017.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-8894, [begumn@niddk.nih.gov](mailto:begumn@niddk.nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR-15-068: NIDDK Multi-Center Clinical Study Implementation Planning Cooperative Agreements (U34).

*Date:* September 28, 2017.

*Time:* 3:30 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892-5452, (301) 594-8894, [begumn@nidk.nih.gov](mailto:begumn@nidk.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 10, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-17280 Filed 8-15-17; 8:45 am]

BILLING CODE 4140-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, NCI Clinical and Translational R21 and Omnibus R03: SEP 3.

*Date:* September 25-26, 2017.

*Time:* 8:00 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin Arlington Gateway, 801 N. Glebe Road, Arlington, VA 22203.

*Contact Person:* Robert Stephen Coyne, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W236, Bethesda, MD 20892-9750, 240-276-5120, [coynes@mail.nih.gov](mailto:coynes@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel, R25 Education.

*Date:* September 27, 2017.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room

7W608, Rockville, MD 20850 (Telephone Conference Call).

*Contact Person:* Robert E. Bird, Ph.D., Scientific Review Officer, Research Program, Review Branch Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W608, Bethesda, MD, 20892-9750, 240-276-6344, [birdr@mail.nih.gov](mailto:birdr@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel, NCI Program Project I.

*Date:* October 12-13, 2017.

*Time:* 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

*Contact Person:* Anita T. Tandle, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W248, Bethesda, MD 20892-9750, 240-276-5007, [tandle@mail.nih.gov](mailto:tandle@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel, SBIR Phase II Bridge Awards.

*Date:* October 12, 2017.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W238, Rockville, MD 20850, (Telephone Conference Call).

*Contact Person:* Jeffrey E. DeClue Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Bethesda, MD 20892-9750, 240-276-6371, [decluej@mail.nih.gov](mailto:decluej@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel, NCI Program Project II (P01).

*Date:* October 17-18, 2017.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville 1750 Rockville Pike Rockville, MD 20852.

*Contact Person:* Sanita Bharti, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W122, Bethesda, MD 20892-9750, 240-276-5909, [sanitab@mail.nih.gov](mailto:sanitab@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel, NCI Program Project III (P01).

*Date:* October 17-18, 2017.

*Time:* 8:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Mukesh Kumar, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W618, Bethesda, MD 20892-9750, 240-276-6611, [sanitab@mail.nih.gov](mailto:sanitab@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Provocative Questions: SEP 4.

*Date:* October 20, 2017.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Hasan Siddiqui, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W240, Bethesda, MD 20892-9750, 240-276-5122, [hasan.siddiqui@nih.gov](mailto:hasan.siddiqui@nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel, NCI Clinical and Translational R21 and Omnibus R03: SEP-1.

*Date:* October 25-26, 2017.

*Time:* 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Byeong-Chel Lee, Ph.D., Scientific Review Officer Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Bethesda, MD 20892-9750 240-276-7755 [byeong-chel.lee@nih.gov](mailto:byeong-chel.lee@nih.gov).

*Name of Committee:* National Cancer Institute Initial Review Group, NCI Clinical and Translational R21 and Omnibus R03: SEP-4.

*Date:* October 25-26, 2017.

*Time:* 6:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20892-9750.

*Contact Person:* Eduardo E. Chufan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W254, Bethesda, MD 20892-9750, 240-276-7975, [chufanee@mail.nih.gov](mailto:chufanee@mail.nih.gov).

*Name of Committee:* National Cancer Institute Special Emphasis Panel, R01 Review Teleconference.

*Date:* October 31, 2017.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W608, Rockville, MD 20850, (Telephone Conference Call).

*Contact Person:* Robert E. Bird, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W608, Bethesda, MD 20892-9750, 240-276-6344, [birdr@mail.nih.gov](mailto:birdr@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer

Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 10, 2017.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017-17279 Filed 8-15-17; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Notice of Meeting for the Interdepartmental Serious Mental Illness Coordinating Committee

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Health and Human Services (Secretary), in accordance with section 6031 of the 21st Century Cures Act, announces the inaugural meeting of the Interdepartmental Serious Mental Illness Coordinating Committee (ISMICC). The ISMICC will meet on August 31, 2017, from 9:00 a.m. to 5:00 p.m., Eastern Time. The meeting will be held at the Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 800, Washington, DC 20201.

The meeting will include information on federal advances related to serious mental illness (SMI) and serious emotional disturbance (SED), including data evaluation, and recommendations for action. Committee members will also discuss workgroups, future meetings, and the Report to Congress.

Members of the public can attend the meeting via telephone or webcast. The meeting can be accessed via webcast at [www.hhs.gov/live](http://www.hhs.gov/live). To obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register at the SAMHSA Advisory Committees Web site at <https://www.samhsa.gov/about-us/advisory-councils/smi-committee> or contact Pamela Foote, Designated Federal Official (see contact information below).

Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written statements should be submitted to the DFO on or before August 24, 2017. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals

interested in making oral presentations are encouraged to notify the DFO on or before August 24, 2017. Two minutes will be allotted for each presentation.

Substantive meeting information and a roster of Committee members is available at the Committee's Web site <https://www.samhsa.gov/about-us/advisory-councils/smi-committee> or by contacting Pamela Foote, DFO.

**Committee Name:** Interdepartmental Serious Mental Illness Coordinating Committee

**Dates/Time/Type:** August 31, 2017/ 9:00 a.m.—5:00 p.m./OPEN

**Place:** Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 800, Washington, DC 20201. Webcast and teleconference (see information above).

**DFO:** Pamela Foote, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, 14E53C, Rockville, MD 20857; telephone: 240-276-1279; email: [pamela.foote@samhsa.hhs.gov](mailto:pamela.foote@samhsa.hhs.gov)

#### SUPPLEMENTARY INFORMATION:

##### I. Background and Authority

The ISMICC was established on March 15, 2017, in accordance with section 6031 of the 21st Century Cures Act, and the Federal Advisory Committee Act, 5 U.S.C. App., as amended, to report to the Secretary, Congress, and any other relevant federal department or agency on advances in serious mental illness (SMI) and serious emotional disturbance (SED), research related to the prevention of, diagnosis of, intervention in, and treatment and recovery of SMIs, SEDs, and advances in access to services and support for adults with SMI or children with SED. In addition, the ISMICC will evaluate the effect federal programs related to serious mental illness have on public health, including public health outcomes such as (A) rates of suicide, suicide attempts, incidence and prevalence of SMIs, SEDs, and substance use disorders, overdose, overdose deaths, emergency hospitalizations, emergency room boarding, preventable emergency room visits, interaction with the criminal justice system, homelessness, and unemployment; (B) increased rates of employment and enrollment in educational and vocational programs; (C) quality of mental and substance use disorders treatment services; or (D) any other criteria as may be determined by the Secretary. Finally, the ISMICC will make specific recommendations for actions that agencies can take to better coordinate the administration of mental health services for adults with SMI or children with SED. Not later than 1 (one) year after the date of enactment of

the 21st Century Cures Act, and 5 (five) years after such date of enactment, the ISMICC shall submit a report to Congress and any other relevant federal department or agency.

##### II. Structure, Membership, and Operation

This ISMICC consists of federal members listed below or their designees, and non-federal public members.

**Federal Membership:** The ISMICC will be composed of the following federal members or their designees: The Secretary of HHS; The Assistant Secretary for Mental Health and Substance Use; The Attorney General; The Secretary of the Department of Veterans Affairs; The Secretary of the Department of Defense; The Secretary of the Department of Housing and Urban Development; The Secretary of the Department of Education; The Secretary of the Department of Labor; The Administrator of the Centers for Medicare and Medicaid Services; and The Commissioner of the Social Security Administration.

**Non-federal Membership:** The ISMICC includes 14 non-federal public members appointed by the Secretary representing, psychologists, psychiatrists, social workers, peer support specialists, and other providers, patients, family of patients, law enforcement, the judiciary, and leading research, advocacy, or service organizations. A roster of Committee members is available at the Committee's Web site: <https://www.samhsa.gov/about-us/advisory-councils/smi-committee>. The term of office of an ISMICC non-federal member is three years, and is subject to reappointment to serve for one or more additional three-year terms. If a vacancy occurs in the ISMICC among the members, the Secretary shall make an appointment to fill such vacancy within 90 days from the date the vacancy occurs. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has been appointed. Initial appointments shall be made in such a manner as to ensure that the terms of the members will not all expire in the same year. The ISMICC is required to meet twice per year.

**Carlos Castillo,**

*Committee Management Officer.*

[FR Doc. 2017-17187 Filed 8-15-17; 8:45 am]

**BILLING CODE 4162-20-P**

**DEPARTMENT OF HOMELAND SECURITY****U.S. Customs and Border Protection****Extension and Clarification of Test Program Regarding Electronic Foreign Trade Zone Admission Applications and Transition of Test From the Automated Commercial System to the Automated Commercial Environment**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** This document announces U.S. Customs and Border Protection's (CBP's) plan to extend a test program for submitting electronic Foreign Trade Zone (FTZ) admission applications to CBP via the Automated Broker Interface (ABI). This notice further announces a clarification regarding the data elements that are required for the submission of an FTZ admission application, as well as the transition of the test program from the Automated Commercial System (ACS) to the Automated Commercial Environment (ACE).

**DATES:** As of September 16, 2017, ACE will be the sole CBP-authorized electronic data interchange (EDI) system for processing electronic FTZ admission applications.

The test will continue until concluded by way of announcement in the **Federal Register**. Comments concerning this notice and any aspect of the prototype may be submitted at any time during the test period.

**ADDRESSES:** Written comments regarding this notice may be submitted via email to Lydia Jackson at [Lydia.A.Jackson@cbp.dhs.gov](mailto:Lydia.A.Jackson@cbp.dhs.gov), or via mail to the Cargo Control Branch, Office of Field Operations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 5.2C, Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** For operational questions, contact Lydia Jackson, Cargo & Conveyance Security, Office of Field Operations, U.S. Customs and Border Protection, via email at [Lydia.A.Jackson@cbp.dhs.gov](mailto:Lydia.A.Jackson@cbp.dhs.gov). For technical questions, contact Tonya Perez, Cargo Systems Program Directorate, Office of Information and Technology, U.S. Customs and Border Protection, via email at [Tonya.M.Perez@cbp.dhs.gov](mailto:Tonya.M.Perez@cbp.dhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background****A. Electronic Foreign Trade Zone Admission Application Test Program: Planned Component of the National Customs Automation Program**

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization (“Customs Modernization Act”), North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, Dec. 8, 1993) (19 U.S.C. 1411). Section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) provides for the testing of NCAP components. See T.D. 95–21, 60 FR 14211 (March 6, 1995).

On August 19, 2005, U.S. Customs and Border Protection (CBP) announced a test regarding the submission of an electronic version of CBP Form 214 (“Application for Foreign-Trade Zone Admission and/or Status Designation”) via the Automated Broker Interface (ABI) to the Automated Commercial System (ACS), which was published in the **Federal Register** (70 FR 48774). The electronic Foreign Trade Zone (FTZ) admission application prototype is currently being tested in ACS in accordance with 19 CFR 101.9(b). The test program initially allowed for electronic FTZ admission applications for merchandise reported to CBP via air, sea, and rail manifest. Since 2006, the option of submitting admission applications for merchandise reported to CBP via truck manifest has been available as well.

The notice described the test program in detail, identified the regulatory provisions suspended for the test, and set forth the test commencement date as no earlier than September 30, 2005, with a test period of approximately 6 months. The test notice also set forth the prototype procedures and listed the required data elements which must be provided to CBP when filing an FTZ admission application. Participants were required to participate in an evaluation of this test to take place at the end of the 6-month period.

Due to low participation in the test program and insufficient data collected, CBP announced on March 26, 2007 in the **Federal Register** (72 FR 14128) that the test should be run again. The new test program was intended to encourage greater participation by the trade and thereby provide more meaningful data to CBP to assess the feasibility of implementing the test program on a permanent basis. A final evaluation was to take place at the end of the test period.

**B. Transition Into the Automated Commercial Environment (ACE)**

ACE, the planned successor to ACS, is an automated and electronic system for processing commercial trade data which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. ABI enables members of the trade community to file electronically required import data with CBP and transfers that data to ACE.

Over the last several years, CBP has tested ACE and provided significant public outreach to ensure that the trade community is fully aware of the transition from ACS to ACE. On October 13, 2015, CBP published an Interim Final Rule in the **Federal Register** (80 FR 61278) that designated ACE as a CBP-authorized electronic data interchange (EDI) system, to be effective November 1, 2015. In the Interim Final Rule, CBP stated that ACS would be phased out and anticipated that ACS would no longer be supported for entry and entry summary filing by the end of February 2016. Filers were encouraged to adjust their business practices so that they would be prepared when ACS was decommissioned.

CBP has developed a staggered transition strategy for decommissioning ACS. The first phase of the transition was announced in a **Federal Register** notice published on February 29, 2016 (81 FR 10264). The second phase was announced in a **Federal Register** notice published on May 16, 2016 (81 FR 30320). The third phase of the transition was announced in a **Federal Register** notice published on May 23, 2016 (81 FR 32339). This notice announces a further transition as CBP is transitioning the FTZ admission application test from ACS to ACE.

**II. Test Modifications and Transition Into ACE**

This test notice announces the transition of the test program from ACS to ACE, a clarification regarding data elements that are required, and the extension of the duration of the test program. Each change is discussed separately below. Except to the extent expressly announced or modified by this document, all aspects, rules, terms, requirements, obligations and conditions announced in previous

notices regarding the test remain in effect.

#### *A. Mandatory Use of ACE for Electronic Filing of FTZ Admission Applications*

This document announces that beginning on September 16, 2017, all test participants must file electronic FTZ admission applications in ACE. All other filers will continue to submit FTZ admission applications to CBP on paper. As of September 16, 2017, ACS is decommissioned for the electronic filing of these applications.

#### *B. Clarification*

This document announces a clarification to the notice published in the **Federal Register** on August 19, 2005. The list of data elements which test participants must provide CBP when filing an electronic FTZ admission application contained in that notice inadvertently failed to include the data element “Zone ID” which replaced the “Zone Number and Location (Address)” requirement on the paper CBP Form 214 (Question 1). This notice clarifies that the list of data elements required for the electronic FTZ admission application must include the “Zone ID”. Test participants have been submitting this data element since the inception of the test program.

Further, this document reminds test participants that they must provide the data elements “Steel Import License Number” and “Kimberley Process Certificate Number” to CBP, as applicable, when filing an electronic FTZ admission application, as required by CSMS message (CSMS #14-000641) dated December 15, 2014. Under 19 CFR 12.145 and 360.101(c), the steel import license number needs to be provided on CBP Form 214 at the time of filing under 19 CFR part 146, in the case of merchandise admitted into an FTZ. The Kimberley Process Certificate must be presented in connection with an importation of rough diamonds into an FTZ and exportation out of an FTZ if demanded by a CBP official according to 31 CFR 592.404 and 592.301. Pursuant to 31 CFR 592.301 Note 3, when making entry of a shipment of rough diamonds via ABI, the customs broker, importer or filer must submit the unique identifying number of the Kimberley Process Certificate accompanying the shipment.

#### *C. Extension of Program*

The test has been running continuously since March 26, 2007. CBP announces in this notice that it is extending the test until a decision is reached to implement the program on a permanent basis and/or to conclude the test. The new test program is intended

to encourage greater participation in the test program by the trade and thereby provide CBP with more meaningful data by which to assess the feasibility of implementing the program on a permanent basis. CBP will inform the public of its decision to conclude the test program, and if the test program was successful, to implement it on a permanent basis, by way of announcement in the **Federal Register**.

Dated: August 10, 2017.

**Todd C. Owen,**

*Executive Assistant Commissioner, Office of Field Operations.*

[FR Doc. 2017-17320 Filed 8-15-17; 8:45 am]

**BILLING CODE 9111-14-P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **U.S. Customs and Border Protection**

#### **Automated Commercial Environment (ACE) Becoming the Sole CBP-Authorized Electronic Data Interchange (EDI) System for Processing Duty Deferral Entry and Entry Summary Filings**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** General notice.

**SUMMARY:** On August 30, 2016, U.S. Customs and Border Protection (CBP) published a notice in the **Federal Register** announcing plans to make the Automated Commercial Environment (ACE) the sole electronic data interchange (EDI) system authorized by the Commissioner of CBP for processing electronic drawback and duty deferral entry and entry summary filings. The date for the changes announced in that notice had been delayed indefinitely. This notice announces the new date for the transition of duty deferral entry and entry summary filings. The transition for processing electronic drawback filings will be announced in the **Federal Register** at a later date.

**DATES:** As of September 16, 2017, ACE will be the sole CBP-authorized EDI system for processing duty deferral entry and entry summary filings, and the Automated Commercial System (ACS) will no longer be a CBP-authorized EDI system for processing these filings.

**FOR FURTHER INFORMATION CONTACT:** Questions related to this notice may be emailed to [ASKACE@cbp.dhs.gov](mailto:ASKACE@cbp.dhs.gov) with the subject line identifier reading “ACS to ACE Duty Deferral Entry and Entry Summary Filings Transition.”

**SUPPLEMENTARY INFORMATION:** On August 30, 2016, U.S. Customs and Border Protection (CBP) published a notice in the **Federal Register** (81 FR 59644) announcing plans to make the Automated Commercial Environment (ACE) the sole electronic data interchange (EDI) system authorized by the Commissioner of CBP for processing electronic drawback and duty deferral entry and entry summary filings, with an effective date of October 1, 2016. The document also announced that, on October 1, 2016, the Automated Commercial System (ACS) would no longer be a CBP-authorized EDI system for purposes of processing these electronic filings. Finally, the notice announced a name change for the ACE filing code for duty deferral and the creation of a new ACE filing code for all electronic drawback filings, replacing the six distinct drawback codes previously filed in ACS. On October 3, 2016, CBP published a notice in the **Federal Register** (81 FR 68023) announcing that the effective date for these changes would be delayed until further notice. Thereafter, on December 12, 2016, CBP published a notice in the **Federal Register** (81 FR 89486) announcing that the new effective date for the transition would be January 14, 2017. On January 17, 2017, CBP published an additional notice in the **Federal Register** (82 FR 4900) delaying the effective date for the transition until further notice. Then, on June 8, 2017, CBP published a notice in the **Federal Register** (82 FR 26698) announcing that the new effective date for the transition would be July 8, 2017. Thereafter, on June 30, 2017, CBP published a notice in the **Federal Register** (82 FR 29910) delaying the effective date for the transition until further notice.

This notice announces that beginning September 16, 2017, ACE will become the sole CBP-authorized EDI system for duty deferral entry and entry summary filings, and ACS will no longer be a CBP-authorized EDI system for purposes of processing these electronic filings. The transition date for processing electronic drawback filings will be announced in a separate **Federal Register** Notice at a later date.

Dated: August 11, 2017.

**Kevin K. McAleenan,**

*Acting Commissioner, U.S. Customs and Border Protection.*

[FR Doc. 2017-17319 Filed 8-15-17; 8:45 am]

**BILLING CODE 9111-14-P**



**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[Docket ID FEMA-2008-0010]

**Board of Visitors for the National Fire Academy****AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Committee management; notice of open federal advisory committee meeting.**SUMMARY:** The Board of Visitors for the National Fire Academy (Board) will meet on August 28–29, 2017, in Emmitsburg, Maryland. The meeting will be open to the public.**DATES:** The meeting will take place on Monday, August 28, 8:00 a.m. to 5:00 p.m. Eastern Daylight Time and on Tuesday, August 29, 8:00 a.m. to 5:00 p.m. Eastern Daylight Time. Please note that the meeting may close early if the Board has completed its business.**ADDRESSES:** The meeting will be held at the National Emergency Training Center, 16825 South Seton Avenue, Building H, Room 300, Emmitsburg, Maryland. Members of the public who wish to obtain details on how to gain access to the facility and directions may contact Ruth MacPhail as listed in the**FOR FURTHER INFORMATION CONTACT** section by close of business August 18, 2017. Photo identification that meets *REAL ID ACT* standards ([https://www.usfa.fema.gov/training/nfa/admissions/campus\\_access.html](https://www.usfa.fema.gov/training/nfa/admissions/campus_access.html)) is required for access. Members of the public may also participate by teleconference and may contact Ruth MacPhail to obtain the call-in number and access code. For information on services for individuals with disabilities or to request special assistance, contact Ruth MacPhail as soon as possible.To facilitate public participation, we are inviting public comment on the issues to be considered by the Board as listed in the **SUPPLEMENTARY****INFORMATION** section. Comments must be submitted in writing no later than August 18, 2017, must be identified by Docket ID FEMA-2008-0010 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* [FEMA-RULES@fema.dhs.gov](mailto:FEMA-RULES@fema.dhs.gov). Include the docket number in the subject line of the message.

- *Mail/Hand Delivery:* Ruth MacPhail, 16825 South Seton Avenue,

Emmitsburg, Maryland 21727, post-marked no later than August 18, 2017.

*Instructions:* All submissions received must include the words “Federal Emergency Management Agency” and the Docket ID for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.*Docket:* For access to the docket to read background documents or comments received by the National Fire Academy Board of Visitors, go to <http://www.regulations.gov>, click on “Advanced Search,” then enter “FEMA-2008-0010” in the “By Docket ID” box, then select “FEMA” under “By Agency,” and then click “Search.”**FOR FURTHER INFORMATION CONTACT:***Alternate Designated Federal Officer:* Kirby E. Kiefer, telephone (301) 447-1181, email [Kirby.Kiefer@fema.dhs.gov](mailto:Kirby.Kiefer@fema.dhs.gov).*Logistical Information:* Ruth MacPhail, telephone (301) 447-1333 and email [Ruth.Macphail@fema.dhs.gov](mailto:Ruth.Macphail@fema.dhs.gov).**SUPPLEMENTARY INFORMATION:** The Board will meet on Monday, August 28, and Tuesday, August 29, 2017. The meeting will be open to the public. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App.**Purpose of the Board**

The purpose of the Board is to review annually the programs of the National Fire Academy (Academy) and advise the Administrator of the Federal Emergency Management Agency (FEMA), through the United States Fire Administrator, on the operation of the Academy and any improvements therein that the Board deems appropriate. In carrying out its responsibilities, the Board examines Academy programs to determine whether these programs further the basic missions that are approved by the Administrator of FEMA, examines the physical plant of the Academy to determine the adequacy of the Academy’s facilities, and examines the funding levels for Academy programs. The Board submits a written annual report through the United States Fire Administrator to the Administrator of FEMA. The report provides detailed comments and recommendations regarding the operation of the Academy.

**Agenda**

On Monday, August 28, 2017, there will be three sessions, with deliberations and voting at the end of each session as necessary. The Board will conduct a swearing in of new Board members and will then select a Chairperson and Vice Chairperson for

Fiscal Year 2018. The Board will also receive annual ethics training and will tour the campus facility.

1. The Board will discuss deferred maintenance and capital improvements on the National Emergency Training Center campus and Fiscal Year 2017 Budget Request/Budget Planning.

2. The Board will deliberate and vote on recommendations on Academy program activities, including:
  - Fire and Emergency Services Higher Education (FESHE) Recognition Program update, a certification program acknowledging that a collegiate emergency services degree meets the minimum standards of excellence established by FESHE development committees and the Academy;

- The National Professional Development Summit Report held on June 14–17, 2017, which brought national training and education audiences together for their annual conference and support initiatives;

- The Managing Officer Program progress report, a multiyear curriculum that introduces emerging emergency services leaders to personal and professional skills in change management, risk reduction, and adaptive leadership;

- Program application selection results;

- The Executive Fire Officer (EFO) Program Symposium held April 21–22–23, 2017, an annual event for alumni which recognizes outstanding applied research completed by present EFO Program participants, recognizes recent EFO Program graduates, provides high-quality presentations offered by private and public sector representatives, facilitates networking between EFO Program graduates, promotes further dialog between EFO Program graduates and U.S. Fire Administrator and National Fire Academy faculty and staff;

- The EFO Program review initiative;
- Curriculum development and revision updates for Academy courses;
- Discussion on the approval process for state-specific courses;
- Online mediated instruction program update;
- Distance learning program update;
- Staffing update.

3. The Board will receive activity reports on the National Fire Incident Reporting System Subcommittee, the Professional Development Initiative Subcommittee, and four EFO Program Subcommittees: Admissions, Curriculum, Delivery and Design, and Evaluations and Outcomes.

On Tuesday, August 29, 2017, the Board will receive updates on U.S. Fire Administration data, research, and response support initiatives and will

conduct classroom visits. The Board will also engage in an annual report writing session. Deliberations or voting may occur as needed during the report writing session.

There will be a 10-minute comment period after each agenda item and each speaker will be given no more than 2 minutes to speak. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact Ruth MacPhail to register as a speaker. Meeting materials will be posted at <https://www.usfa.fema.gov/training/nfa/about/bov.html> by August 14, 2017.

Dated: August 4, 2017.

**Kirby E. Kiefer,**

*Deputy Superintendent, National Fire Academy, United States Fire Administration, Federal Emergency Management Agency.*

[FR Doc. 2017-17299 Filed 8-15-17; 8:45 am]

**BILLING CODE 9111-45-P**

## DEPARTMENT OF HOMELAND SECURITY

[CIS No. 2604-17; DHS Docket No. USCIS-2017-0003]

### Termination of the Central American Minors Parole Program

**AGENCY:** Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** The Department of Homeland Security (DHS) is publishing this notice to notify the public that it will no longer provide special consideration of parole for certain individuals denied refugee status in El Salvador, Guatemala, and Honduras under the Central American Minors (CAM) Parole Program.

**DATES:** Applicable August 16, 2017.

**FOR FURTHER INFORMATION CONTACT:** Maura Nicholson, Deputy Chief, International Operations Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW, Suite 3300, Washington, DC 20529, Telephone 202-272-1892. (This is not a toll-free number.)

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 1, 2014, DHS and the U.S. Department of State (DOS) announced that the U.S. Government would allow certain minors in El Salvador, Guatemala, and Honduras to be considered for refugee status in the United States.<sup>1</sup> This program, known as

the CAM Refugee Program, allows certain parents lawfully present in the United States to request a refugee resettlement interview for unmarried children under 21 years of age, and certain other eligible family members, in Guatemala, El Salvador, or Honduras. The parent in the United States must be lawfully present<sup>2</sup> in order to request that his or her child be provided access to the program and considered for refugee resettlement. In general, under current immigration laws, only lawful permanent residents and U.S. citizens can file family-based immigrant visa petitions. Therefore, many of the qualifying parents under the program are unable to file an immigrant petition for their in-country relatives. INA 204(a); 8 U.S.C. 1154(a). As a result, most of the beneficiaries of the program do not have another process under our immigration laws to enter the United States. On November 15, 2016, the program was expanded to include other qualifying relatives.<sup>3</sup>

Honduras With Parents Lawfully Present in the United States" (Nov. 14, 2014), available at <https://2009-2017.state.gov/j/prm/releases/factsheets/2014/234067.htm>; see also U.S. Citizenship and Immigration Services Web page, "In-Country Refugee/Parole Processing for Minors in Honduras, El Salvador, and Guatemala (Central American Minors—CAM)," available at <https://www.uscis.gov/CAM>.

<sup>2</sup> "Lawful presence" refers to presence in the United States within a period of stay authorized by DHS and during which unlawful presence is not accrued for purposes of potential inadmissibility under INA sec. 212(a)(9)(B)–(C); 8 U.S.C. 1182(a)(9)(B)–(C). Note that an individual may be "lawfully present" in the United States without necessarily having "lawful status" (e.g., an individual granted deferred enforced departure, see 8 CFR 274a.12(a)(11)). See, e.g., *Chaudry v. Holder*, 705 F.3d 289, 292 (7th Cir. 2013) ("[Unlawful presence and unlawful status are distinct concepts . . . It is entirely possible for aliens to be lawfully present (i.e., in a "period of stay authorized by the [Secretary]") even though their lawful status has expired."). Under the program, qualifying parents include individuals who are at least 18 years of age and lawfully present in the United States in the following categories: lawful permanent resident status, temporary protected status, parolee, deferred action, deferred enforced departure, or withholding of removal.

<sup>3</sup> Beginning with the program's inception in December 2014, additional qualifying relatives have been able to gain access along with the qualifying child. Unmarried children of the qualifying child who are under 21 years of age can be included on the qualifying child's refugee application as a derivative beneficiary. The in-country parent of the qualifying child can also qualify for access to the CAM program if the in-country parent is part of the same household and economic unit as the qualifying child and is the legal spouse of the qualifying parent who is lawfully present in the United States. If the in-country parent who is legally married to the qualifying parent has unmarried children under 21 years of age who are not the children of the qualifying parent, these children can be added as derivatives of the in-country parent.

In July 2016, the CAM program expanded to include the following additional categories of

Qualifying children who were denied refugee status under the CAM Refugee Program were considered by U.S. Citizenship and Immigration Services (USCIS), a component of DHS, for parole into the United States on a case-by-case basis under the CAM Parole Program. A qualifying child's accompanying parent, sibling, or child who was also denied refugee status was also considered for parole into the United States on a case-by-case basis under the program. If USCIS found a child to be ineligible for refugee status, the decision notice informed the child of whether he or she had been instead conditionally approved for parole into the United States under the CAM Parole Program.

The Immigration and Nationality Act (INA) confers upon the Secretary of Homeland Security the discretionary authority to parole applicants for admission into the United States "temporarily under such conditions as [DHS] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit," regardless of the individuals' admissibility. INA sec. 212(d)(5)(A); 8 U.S.C. 1182(d)(5)(A); see 8 CFR 212.5(a) and (c) through (e) (discretionary authority for establishing conditions of parole and for terminating parole). Accordingly, parole determinations are made on a case-by-case basis, taking into account each individual's unique circumstances.

In general, if USCIS favorably exercises its discretion to authorize parole, either USCIS or DOS issues

relatives who are able to apply for admission to the United States as refugees when accompanied by a qualifying child: (1) The in-country biological parent of a qualifying child who is not legally married to the qualifying parent in the United States may apply, and the unmarried and under 21 years of age children and/or legal spouse of the in-country parent can also be included as derivatives of the in-country parent; (2) the caregiver of a qualifying child who is related to either the qualifying parent in the United States or the qualifying child may apply, and the unmarried and under 21 years of age children and/or legal spouse of the caregiver can also be included as derivatives of the caregiver; (3) the married and/or 21 years of age or older children of the qualifying parent (who is lawfully present in the United States) may apply, and (4) the unmarried and under 21 years of age children and legal spouse of the married and/or 21 years of age or older child can also be included as derivatives. See Department of State, Central American Minors (CAM) Program, <https://www.state.gov/j/prm/ra/cam/index.htm>. At the time of the program's original announcement and later expansion, these qualifying relatives of the qualifying child could also be considered for parole on a case-by-case basis, if found ineligible for refugee admission and the accompanying qualifying child received a positive decision of refugee status or parole. The various categories of individuals who may be afforded access to the CAM Refugee Program are subject to change in accordance with the priorities of the U.S. Refugee Program.

<sup>1</sup> See DOS fact sheet, "In-Country Refugee/Parole Program for Minors in El Salvador, Guatemala, and

travel documents to enable the applicant to travel to a U.S. port-of-entry and request parole from U.S. Customs and Border Protection (CBP) to join his or her family member. The ultimate determination whether to parole an individual into the United States is made by CBP officers upon the individual's arrival at a U.S. port of entry.

Unlike refugee status, parole does not lead to any immigration status. Parole also does not constitute an admission to the United States. INA secs. 101(a)(13)(B), 212(d)(5)(A); 8 U.S.C. 1101(a)(13)(B), 1182(d)(5)(A). Once an individual is paroled into the United States, the parole allows the individual to stay temporarily in the United States and to apply for employment authorization. See 8 CFR 274a.12(c)(11). The alien may stay in the United States unless and until the parole is terminated. See 8 CFR 212.5(e).

The CAM Parole Program was established based on the Secretary's discretionary parole authority and the broad authority to administer the immigration laws. See INA secs. 103(a), 212(d)(5); 8 U.S.C. 1103(a), 1182(d)(5). DHS is rescinding the discretionary CAM parole policy, which was instituted for "significant public benefit" reasons, of automatically considering parole for all individuals found ineligible for refugee status under the in-country refugee program in Guatemala, Honduras, or El Salvador. This discretionary change in policy does not preclude such individuals from applying for parole consideration independent of the CAM program by filing USCIS Form I-131, Application for Travel Document, consistent with the instructions for that form. Parole will only be issued on a case-by-case basis and only where the applicant demonstrates an urgent humanitarian or a significant public benefit reason for parole and that applicant merits a favorable exercise of discretion. Any alien may request parole to travel to the United States, but an alien does not have a *right* to parole.

As of August 16, 2017, USCIS will no longer consider or authorize parole under the CAM Parole Program. In addition, USCIS will notify individuals who have been conditionally approved for parole under this program and who have not yet traveled that the program has been terminated and their conditional approval for parole has been rescinded. As noted above, such individuals may apply for parole consideration independent of the CAM program by filing USCIS Form I-131, Application for Travel Document,

consistent with the instructions for that form.

Although DHS is terminating the CAM Parole Program, individuals who have been paroled into the United States under the CAM Parole program will maintain parole until the expiration of that period of parole unless there are other grounds for termination of parole under DHS regulations at 8 CFR 212.5(e). CAM parolees already in the United States also may apply for re-parole on Form I-131 before their current parole period expires or apply for any immigration status for which they may be otherwise eligible. They are encouraged to submit any requests for re-parole at least 90 days before expiration of their period for parole. USCIS will consider each request for re-parole based on the merits of each application and may re-parole individuals who demonstrate urgent humanitarian reasons or a significant public benefit.

The termination of the CAM Parole Program does not affect the CAM Refugee Program and its operation.

General information about applying for parole by filing a Form I-131 may be found at <http://www.uscis.gov/humanitarianparole>.

**Elaine C. Duke,**

*Acting Secretary of Homeland Security.*

[FR Doc. 2017-16828 Filed 8-15-17; 11:15 am]

**BILLING CODE 9111-97-P**

## DEPARTMENT OF HOMELAND SECURITY

### Agency Information Collection Activities: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

**AGENCY:** National Protection and Programs Directorate, DHS.

**ACTION:** 30-Day notice and request for comments; Extension, 1670-0027.

**SUMMARY:** As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of the Chief Information Office (OCIO) has submitted a Generic Information Collection Request (ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act (PRA) of 1995. DHS previously published this information collection request (ICR) in

the **Federal Register** on Friday, May 5, 2017, for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** Comments are encouraged and will be accepted until September 15, 2017. This process is conducted in accordance with 5 CFR 1320.1

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to [dhsdeskofficer@omb.eop.gov](mailto:dhsdeskofficer@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** The 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. NPPD is planning to submit this collection to OMB for approval. 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. These collections will allow for ongoing, collaborative and actionable communications between NPPD and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

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 Directorate's services will be unavailable.

NPPD will only submit a collection for approval under this generic clearance if it meets the following conditions: (1) The collections are voluntary; (2) 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; (3) The collections are noncontroversial and do not raise issues of concern to other Federal agencies; (4) 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; (5) Personally identifiable information is collected only to the extent necessary and is not retained; (6) Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the NPPD (if released, NPPD must indicate the qualitative nature of the information); (7) Information gathered will not be used for the purpose of substantially informing influential policy decisions; and (8) 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 will provide useful information, but it will 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 nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior 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 personal 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.

This is an extension of an existing information collection. The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

#### Analysis

*Agency:* National Protection and Programs Directorate, DHS.

*Title:* Agency Information Collection Activities: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*OMB Number:* 1670-0027.

*Frequency:* On occasion.

*Affected Public:* Individuals and Households, Businesses and Organizations, State, local or tribal governments.

*Number of Respondents:* 49,080.

*Estimated Time per Respondent:* 14 minutes.

*Total Burden Hours:* 11,130 hours.

Dated: August 9, 2017.

**David Epperson,**

*Chief Information Officer.*

[FR Doc. 2017-17267 Filed 8-15-17; 8:45 am]

**BILLING CODE 9110-9P-P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLORN01000.L63100000.HD0000.17XL111AF.HAG 17-0096]

#### Closure on Public Lands of Yellowstone Bridge in Linn County, OR

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of closure.

**SUMMARY:** Notice is hereby given that a closure of the Yellowstone Bridge to

motorized vehicles is in effect on public lands administered by the Cascades Field Office, Bureau of Land Management (BLM).

**DATES:** This closure will be in effect up to 2 years beginning August 16, 2017.

**ADDRESSES:** The closure notice and map of the affected area will be posted at the BLM Northwest Oregon District Office, 1717 Fabry Road, Salem, Oregon, 97306, and the project ePlanning Web site: [https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa\\_register.do](https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa_register.do).

**FOR FURTHER INFORMATION CONTACT:** Field Manager, John Huston, Cascades Field Office, BLM Northwest Oregon District Office, 1717 Fabry Road, Salem, OR 97306, telephone (503) 315-5969 or [jhuston@blm.gov](mailto:jhuston@blm.gov).

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1-800-877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question for the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** This closure affects public lands at Yellowstone Creek, Linn County, Oregon.

The public lands affected by this closure are described as follows: BLM road 11-3-27.1, Willamette Meridian, Oregon, T. 11S., R. 3E., Sec. 27 SW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub>.

The temporary closure is necessary to ensure public safety due to findings of bridge instability. The closure is necessary for up to 2 years to develop an engineering remediation plan, and secure funding. Closing of the bridge will not restrict access to public lands as alternate routes are available.

The BLM will position vehicle barriers on each side of the bridge and post closure signs. The closure order is issued under the authority of 43 CFR 8364.1, which allows the BLM to establish closures for the protection of persons, property, and public lands and resources. Violation of any of the terms, conditions, or restrictions contained within this closure order may subject the violator to citation or arrest with a penalty or fine or imprisonment or both as specified by law.

The temporary closure is in conformance with the 2016 Northwestern and Coastal Oregon Record of Decision and Resource Management Plan. The temporary closure has been reviewed under Categorical Exclusion DOI-BLM-ORWA-N010-2017-0012, which can be viewed at the project ePlanning page

identified above. Under the authority of Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7, and 43 CFR 8364.1, the BLM will enforce the following closure within the Yellowstone Creek area.

**Closure:** During the temporary closure, motorized vehicles and use of motorized equipment is prohibited on Yellowstone Bridge. Pedestrian and bicycle use is allowed.

**Exceptions:** There are no exemptions for motorized vehicle use across the bridge.

**Penalties:** Any person who violates this closure or these restrictions may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.07, or both. In accordance with 43 CFR 8365.1–7, state or local officials may also impose penalties for violations of Oregon law.

**John Huston,**

*Field Manager, Cascades Field Office.*

[FR Doc. 2017–17324 Filed 8–15–17; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS–WASO–NRNHL–23882;  
PPWOCRADIO, PCU00RP14.R50000]

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service is soliciting comments on the significance of properties nominated before July 22, 2017, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted by August 31, 2017.

**ADDRESSES:** Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 7228, Washington, DC 20240.

**SUPPLEMENTARY INFORMATION:** The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before July 22, 2017. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties

under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State Historic Preservation Officers:

#### ARIZONA

##### Maricopa County

Pemberton, Sarah H., 1121 N. 2nd St.,  
Phoenix, SG100001557

#### DISTRICT OF COLUMBIA

##### District of Columbia

Emerald Street Historic District, 1307–1377,  
1306–1368 Emerald St. NE., 517–519 13t  
St. NE., 518–520 14th St. NE., Washington,  
SG100001560

#### ILLINOIS

##### Cook County

Covent Hotel, (Residential Hotels in Chicago,  
1880–1930 MPS), 2653–65 N. Clark St.,  
Chicago, MP100001561

Motley, John Lothrop, School, 739 N. Ada  
St., Chicago, SG100001562

Shoreline Apartments, 22321 E. 67th St.,  
Chicago, SG100001563

##### Madison County

Granite City YMCA, 2001 Edison Ave.,  
Granite City, SG100001564

##### Ogle County

Aplington, Zenas, House, 123 N. Franklin  
Ave., Polo, SG100001565

##### Piatt County

Bryant, Francis E., House, 146 E. Wilson St.,  
Bement, SG100001566

#### IOWA

##### Floyd County

Charles City Junior—Senior High School, 500  
N. Grand Ave., Charles City, SG100001567

##### Warren County

Indianola Carnegie Library, 106 W. Boston  
Ave., Indianola, SG100001568

#### MONTANA

##### Broadwater County

Stone Hill Springs Prehistoric District,  
Address Restricted, Townsend vicinity,  
SG100001569

#### PENNSYLVANIA

##### Centre County

Beck, William Henry and Clara Singer, Farm,  
950 Snyderstown Rd., Howard,  
SG100001570

#### Lancaster County

Mayer, David M., House, 1580 Fruitville  
Pike, Lancaster, SG100001571

#### Philadelphia County

Penn Wynn House, 2201 Bryn Mawr Ave.,  
Philadelphia, SG100001572

#### WISCONSIN

##### Milwaukee County

Blommer Ice Cream Company, 1502 W. North  
Ave., Milwaukee, SG100001574

#### WYOMING

##### Laramie County

Mt. Sinai Synagogue, 2610 Power Ave.,  
Cheyenne, SG100001575

A request for removal has been made for the following resource(s):

#### WYOMING

##### Platte County

Wheatland Railroad Depot, 701 Gilchrist  
Ave., Wheatland, OT96000077

Nominations submitted by Federal  
Preservation Officers:

The State Historic Preservation Officer reviewed the following nominations and responded to the Federal Preservation Officer within 45 days of receipt of the nominations and supports listing the properties in the National Register of Historic Places.

#### CALIFORNIA

##### Mariposa County

Degnan's Restaurant, (National Park Service  
Mission 66 Era Resources MPS), 9001  
Village Dr., Yosemite NP, MP100001558

##### Siskiyou County

Schonchin Butte Fire Lookout, (Historic Park  
Landscapes in National and State Parks  
MPS), Lava Beds NM, Tulelake vicinity,  
MP100001559

#### UTAH

##### Utah County

U.S. Post Office, (US Post Offices in Utah  
MPS), 88 West 100 North St., Provo,  
MP100001573

**Authority:** 36 CFR 60.13.

Dated: July 26, 2017.

**Julie H. Ernstein,**

*Acting Chief, National Register of Historic  
Places/National Historic Landmarks Program.*

[FR Doc. 2017–17260 Filed 8–15–17; 8:45 am]

**BILLING CODE 4312–52–P**

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement**

[S1D1S SS08011000 SX066A0067F  
178S180110; S2D2D SS08011000 SX066A00  
33F 17XS501520]

**Agency Information Collection  
Activities: OMB Control Number 1029–  
0107; Subsidence Insurance Program  
Grants**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice and request for comments for 1029–0107.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing its intention to request renewed approval for the collection of information relating to Subsidence Insurance Program Grants.

**DATES:** Comments on the proposed information collection must be received by October 16, 2017, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240. Comments may also be submitted electronically at [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request contact John Trelease, at (202) 208–2783, or via email at [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies the information collection that OSMRE will be submitting to OMB for approval. This collection is contained in 30 CFR 887, Subsidence Insurance Program Grants. OSMRE will request a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for part 887 is 1029–0107 and is codified at 30 CFR 887.10. Responses are required to obtain a benefit.

*Comments are invited on:* (1) The need for the collection of information

for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSMRE's submission of the information collection request to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

*Title:* 30 CFR 887—Subsidence Insurance Program Grants.

*OMB Control Number:* 1029–0107.

*Summary:* States and Indian tribes having an approved reclamation plan may establish, administer and operate self-sustaining state and Indian tribe-administered programs to insure private property against damages caused by land subsidence resulting from underground mining. States and Indian tribes interested in requesting monies for their insurance programs would apply to the Director of OSMRE.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* States and Indian tribes with approved coal reclamation plans.

*Total Annual Responses:* 1.

*Total Annual Burden Hours:* 8.

*Total Annual Non-Wage Costs:* \$0.

**Authority:** The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: June 15, 2017.

**John A. Trelease,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2017–17292 Filed 8–15–17; 8:45 am]

**BILLING CODE 4310–05–P**

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement**

[S1D1S SS08011000 SX066A0067F  
178S180110; S2D2D SS08011000 SX066A00  
33F 17XS501520]

**Agency Information Collection  
Activities: OMB Control Number 1029–  
0083; Certification of blasters in  
Federal Program States and on Indian  
Lands**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice and request for comments for 1029–0083.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing its intention to request renewed approval to collect information for the certification of blasters in Federal program states and on Indian lands, and the related form.

**DATES:** Comments on the proposed information collection must be received by October 16, 2017, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240. Comments may also be submitted electronically to [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or by email at [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies an information collection that OSMRE will be submitting to OMB for approval. This collection is contained in 30 CFR part 955—Certification of Blasters in Federal program states and on Indian lands, and Form OSM–74. OSMRE will request a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control

number for 30 CFR part 955 and Form OSM-74 is 1029-0083, and is codified at 30 CFR 955.10.

Comments are invited on: (1) the need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSMRE's submission of the information collection request to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

**Title:** 30 CFR part 955—Certification of blasters in Federal program states and on Indian lands.

**OMB Control Number:** 1029-0083.

**Summary:** This information is being collected to ensure that the applicants for blaster certification are qualified. This information, with blasting tests, will be used to determine the eligibility of the applicant.

**Bureau Form Number:** OSM-74.

**Frequency of Collection:** On occasion.

**Description of Respondents:** Individuals intent on being certified as blasters in Federal program States and on Indian lands.

**Total Annual Responses:** 19.

**Total Annual Burden Hours:** 19.

**Total Annual Non-Wage Burden Cost:** \$1,525.

**Authority:** The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: June 27, 2017.

**John A. Trelease,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2017-17288 Filed 8-15-17; 8:45 am]

**BILLING CODE 4310-05-P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX066A0067F  
178S180110; S2D2D SS08011000 SX066A00  
33F 17XS501520]

### Agency Information Collection Activities: OMB Control Number 1029- 0054; Abandoned Mine Reclamation Funds

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice and request for comments for 1029-0054.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing its intention to request renewed authority for the collection of information relating to abandoned mine reclamation funds.

**DATES:** Comments on the proposed information collection must be received by October 16, 2017, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 203—SIB, Washington, DC 20240. Comments may also be submitted electronically to [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request contact John Trelease, at (202) 208-2783, or electronically at [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies the information collection that OSMRE will be submitting to OMB for approval. This collection is contained in 30 CFR 872, Abandoned Mine Reclamation Funds. OSMRE will request a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for Part 872 is 1029-0054 and is codified at 30 CFR 872.10. Comments are invited on: (1) the need for the collection of information for the

performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

**Title:** 30 CFR 872—Abandoned Mine Reclamation Funds.

**OMB Control Number:** 1029-0054.

**Summary:** 30 CFR 872 establishes a procedure whereby States and Indian tribes submit written statements announcing the State/Tribe's decision not to submit reclamation plans, and therefore, will not be granted AML funds.

**Bureau Form Number:** None.

**Frequency of Collection:** Once.

**Description of Respondents:** State and Tribal abandoned mine land reclamation agencies.

**Total Annual Responses:** 1.

**Total Annual Burden Hours:** 1.

**Authority:** The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: July 12, 2017.

**John A. Trelease,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2017-17289 Filed 8-15-17; 8:45 am]

**BILLING CODE 4310-05-P**



**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement**

[S1D1S SS08011000 SX066A0067F  
178S180110; S2D2D SS08011000 SX066A00  
33F 17XS501520]

**Agency Information Collection  
Activities: Permanent Program  
Performance Standards—Surface and  
Underground Mining Activities**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of information collection; request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing its intention to request renewed approval for the collection of information for the permanent program performance standards—surface mining activities and underground mining activities.

**DATES:** Comments on the proposed information collection must be received by October 16, 2017, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240. Comments may also be submitted electronically to [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request contact John Trelease, at (202) 208–2783, or by email at [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies an information collection that OSMRE will be submitting to OMB for renewed approval. This collection is contained in 30 CFR parts 816 and 817—Permanent Program Performance Standards—Surface and Underground Mining Activities. OSMRE will request a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control

number for parts 816 and 817 is 1029–0047. Responses are required to obtain a benefit for this collection.

OSMRE has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents and costs.

*Comments are invited on:* (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSMRE's submission of the information collection request to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

*Title:* 30 CFR parts 816 and 817—Permanent Program Performance Standards—Surface and Underground Mining Activities.

*OMB Control Number:* 1029–0047.

*Summary:* Sections 515 and 516 of the Surface Mining Control and Reclamation Act of 1977 provide that permittees conducting coal mining operations shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority to monitor and inspect surface coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

*Bureau Form Number:* None.

*Frequency of Collection:* Once, on occasion, quarterly and annually.

*Description of Respondents:* Coal mining operators and State regulatory authorities.

*Total Annual Responses:* 391,081.

*Total Annual Burden Hours:* 1,963,782.

*Total Annual Burden Cost:* \$8,662,409.

**Authority:** The authorities for this action are the Surface Mining Control and

Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: June 27, 2017.

**John A. Trelease,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2017–17291 Filed 8–15–17; 8:45 am]

**BILLING CODE 4310–05–P**

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement**

[S1D1S SS08011000 SX066A0067F  
178S180110; S2D2D SS08011000 SX066A00  
33F 17XS501520]

**Agency Information Collection  
Activities: OMB Control Number 1029–  
0039; Underground Mining Permit  
Applications—Minimum Requirements  
for Reclamation and Operation Plans**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice and request for comments for 1029–0039.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing its intention to request renewed approval for the collection of information for Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans.

**DATES:** Comments on the proposed information collection must be received by October 16, 2017, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Room 203—SIB, Washington, DC 20240. Comments may also be submitted electronically to [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request contact John Trelease, at (202) 208–2783, or by email at [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies an information collection that OSMRE will be submitting to OMB for

renewed approval. OSMRE will seek a 3-year term of approval for the collection contained in 30 CFR part 784.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for Part 784 is 1029–0039, and may be found in OSMRE's regulations at 30 CFR 784.10. Responses are required to obtain a benefit for this collection.

OSMRE has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents and costs.

*Comments are invited on:* (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSMRE's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

*Title:* 30 CFR part 784—Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans.

*OMB Control Number:* 1029–0039.

*Summary:* Sections 507(b), 508(a) and 516(b) of Public Law 95–87 require underground coal mine permit applicants to submit an operations and reclamation plan and establish performance standards for the mining operation. Information submitted is used by the regulatory authority to determine if the applicant can comply with the applicable performance and environmental standards required by the law.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* 45 underground coal mining permit applicants and 24 State regulatory authorities.

*Total Annual Responses:* 1,224.

*Total Annual Burden Hours:* 14,906.

*Total Annual Non-wage Cost Burden:* \$439,110.

**Authority:** The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: June 27, 2017.

**John A. Trelease,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2017–17293 Filed 8–15–17; 8:45 am]

**BILLING CODE 4310–05–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX066A0067F  
178S180110; S2D2D SS08011000 SX066A00  
33F 17XS501520]

#### Agency Information Collection Activities: OMB Control Number 1029–0063; Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting and Form OSM–1, Coal Reclamation Fee Report

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice and request for comments for 1029–0063.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSMRE) is announcing its intention to request renewed approval for the continued collection of information for the Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting and the form it implements, the OSM–1, Coal Reclamation Fee Report. This collection was previously approved by the Office of Management and Budget (OMB) and assigned control number 1029–0063.

**DATES:** Comments on the proposed information collection must be received by October 16, 2017, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203–SIB, Washington, DC 20240. Comments may also be submitted electronically at [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request contact John Trelease at (202) 208–2783, or via email at [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**SUPPLEMENTARY INFORMATION:** OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies an information collection that

OSMRE will be submitting to OMB for extension. This collection is contained in 30 CFR 870—Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting, and the implementing form OSM–1—Coal Reclamation Fee Report. OSMRE will request a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection is 1029–0063. Responses are mandatory.

*Comments are invited on:* (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSMRE's submission of the information collection request to OMB.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Title:* 30 CFR 870—Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting.

*OMB Control Number:* 1029–0063.

*Summary:* The information is used to maintain a record of coal produced for sale, transfer, or use nationwide each calendar quarter, the method of coal removal and the type of coal, and the basis for coal tonnage reporting in compliance with 30 CFR 870 and section 401 of Public Law 95–87. Individual reclamation fee payment liability is based on this information. Without the collection of this information, OSMRE could not implement its regulatory responsibilities and collect the fee.

*Bureau Form Number:* OSM–1.

*Frequency of Collection:* Quarterly.

*Description of Respondents:* Coal mine permittees.

*Total Annual Responses:* 8,792.

*Total Annual Burden Hours:* 810.

**Authority:** The authorities for this action are the Surface Mining Control and

Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: June 15, 2017.

**John A. Trelease,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2017-17290 Filed 8-15-17; 8:45 am]

BILLING CODE 4310-05-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1001]

### Certain Digital Video Receivers and Hardware and Software Components Thereof; Commission Determination To Review in Part a Final Initial Determination Finding a Violation of Section 337; Schedule for Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding; Grant of Joint Unopposed Motion for Leave To Amend the Complaint and Notice of Investigation To Correct Corporate Names

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission (the "Commission") has determined to review in part the final initial determination ("the Final ID") issued by the presiding administrative law judge ("ALJ") on May 26, 2017, finding a violation of section 337 of the Tariff Act of 1930, as amended in connection with certain asserted patents. The Commission has also determined to deny Respondents' motion requesting leave to file a reply to Rovi's response to Respondents' petition for review of the Final ID. The Commission has further determined to grant a joint unopposed motion for leave to amend the complaint and notice of investigation to correct the corporate names of certain respondents.

**FOR FURTHER INFORMATION CONTACT:** Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-3427. 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, telephone 202-205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on May 26, 2016, based on a complaint filed on behalf of Rovi Corporation and Rovi Guides, Inc. (collectively, "Rovi"), both of San Carlos, California. 81 FR 33547-48 (May 26, 2016). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain claims of U.S. Patent No. 8,006,263 ("the '263 patent"); U.S. Patent No. 8,578,413 ("the '413 patent"); U.S. Patent No. 8,046,801 ("the '801 patent"); U.S. Patent No. 8,621,512 ("the '512 patent"); U.S. Patent No. 8,768,147 ("the '147 patent"); U.S. Patent No. 8,566,871 ("the '871 patent"); and U.S. Patent No. 6,418,556 ("the '556 patent"). The complaint further alleges that a domestic industry exists. *Id.* at 33548.

The Commission's notice of investigation named sixteen respondents. The respondents are Comcast Corporation of Philadelphia, PA; Comcast Cable Communications, LLC of Philadelphia, PA; Comcast Cable Communications Management, LLC of Philadelphia, PA; Comcast Business Communications, LLC of Philadelphia, PA; Comcast Holdings Corporation of Philadelphia, PA; Comcast Shared Services, LLC of Chicago, IL; Technicolor SA of Issy-les-Moulineaux, France; Technicolor USA, Inc. of Indianapolis, IN; Technicolor Connected Home USA LLC of Indianapolis, IN; Pace Ltd. of Saltaire, England (now ARRIS Global Ltd.); Pace Americas, LLC of Boca Raton, FL; ARRIS International plc of Suwanee, GA; ARRIS Group Inc. of Suwanee, GA; ARRIS Technology, Inc. of Horsham, PA; ARRIS Enterprises Inc. of Suwanee, GA (now ARRIS Enterprises LLC); and ARRIS Solutions, Inc. of Suwanee, GA. 81 FR at 33548. The Office of Unfair Import Investigations is not a party to this investigation. *Id.*

Prior to the evidentiary hearing, Rovi withdrew its allegations as to certain patent claims. See Notice of Commission Determination Not to Review an Initial Determination Granting Complainants' Motion to Terminate Certain Asserted Patent Claims from the Investigation (Oct. 21, 2016); Notice of Commission

Determination Not to Review an Initial Determination Granting Complainants' Motion to Terminate Certain Asserted Patent Claims from the Investigation (Dec. 2, 2016); Notice of Commission Determination Not to Review an Initial Determination Terminating U.S. Patent No. 8,768,147 from the Investigation (Dec. 28, 2016). Rovi proceeded at the evidentiary hearing on the following patents and claims: Claims 7, 18, and 40 of the '556 patent; claims 1, 2, 14, and 17 of the '263 patent; claims 1, 5, 10, and 15 of the '801 patent; claims 12, 17, and 18 of the '871 patent; claims 1, 3, 5, 9, 10, 14, and 18 of the '413 patent; and claims 1, 10, 13, and 22 of the '512 patent.

On May 26, 2017, the ALJ issued the Final ID, which finds a violation of section 337 by the respondents in connection with the asserted claims of the '263 and '413 patents. The Final ID finds no violation of section 337 in connection with the asserted claims of the '556, '801, '871, and '512 patents. The ALJ recommended that, subject to any public interest determinations of the Commission, the Commission should issue a limited exclusion order directed to the accused products, that cease and desist orders issue to the respondents, and that the Commission should not require any bond during the Presidential review period.

On June 12, 2017, Rovi and the respondents filed petitions for review of the Final ID. The respondents petitioned thirty-two of the Final ID's conclusions, and Rovi petitioned seven of the Final ID's conclusions. On June 20, 2017, the parties filed responses to the petitions for review. On July 11, 2017, Rovi and the respondents filed statements on the public interest. The Commission also received numerous comments on the public interest from the public.

On June 26, 2017, Respondents filed a motion requesting leave to file a reply to Rovi's response to Respondents' petition for review, and on June 29, 2017, Rovi filed a response in opposition to that motion. That motion is denied.

On July 5, 2017, Rovi and the ARRIS respondents filed a Joint Unopposed Motion for, and Memorandum in Support of, Leave to Amend the Complaint and Notice of Investigation to Correct Corporate Names of Two ARRIS Respondents. The motion indicates that ARRIS Enterprises, Inc. has changed its name to ARRIS Enterprises LLC and that Pace Ltd. has changed its name to ARRIS Global Ltd. That motion is granted.

On July 25, 2017, Comcast submitted with the Office of the Secretary a letter including supplemental disclosure and

representations. On July 31, 2017, Rovi submitted with the Office of the Secretary a response thereto, which asserted that “this new evidence confirms that there is no reason for the Commission to review” certain of the Final ID’s conclusions. On August 9, 2017, Comcast filed a response to Rovi’s submission. The Commission has determined to reopen the evidentiary record and accept the supplemental disclosure, response thereto, and reply to the response.

Having examined the record in this investigation, including the Final ID, the petitions for review, and the responses thereto, the Commission has determined to review the Final ID in part. In particular, the Commission has determined to review the following:

(1) The Final ID’s determination that Comcast is an importer of the accused products (Issue 1 in Respondents’ Petition for Review).

(2) The Final ID’s determination that Comcast has not sold accused products in the United States after the importation of those products into the United States (the issue discussed in section III of Rovi’s Petition for Review).

(3) The Final ID’s determination that the accused Legacy products are “articles that infringe” (Issue 2 in Respondents’ Petition for Review).

(4) The issue of whether the X1 products are “articles that infringe” (Issue 3 in Respondents’ Petition for Review), the issue of direct infringement of the ’263 and ’413 patents by the X1 accused products (Issue 5 in Respondents’ Petition for Review), and the issue of “the nature and scope of the violation found” (the issue discussed in section X of Respondents’ Petition for Review).

(5) The issue of whether Comcast’s two alternative designs infringe the ’263 and ’413 patents (Issue 4 in Respondents’ Petition for Review).

(6) The Final ID’s claim construction of “cancel a function of the second tuner to permit the second tuner to perform the requested tuning operation” in the ’512 patent, and the Final ID’s infringement determinations as to that patent (Issue 26 in Respondents’ Petition for Review).

(7) The Final ID’s conclusion that the asserted claims of the ’512 patent are invalid as obvious (the issue discussed in section VI.B.4 of Rovi’s Petition for Review).

(8) The issue of whether the ARRIS-Rovi Agreement provides a defense to the allegations against the ARRIS respondents (the issue discussed in section XI of Respondents’ Petition for Review).

(9) The Final ID’s conclusion that Rovi did not establish the economic prong of the domestic industry requirement based on patent licensing (the issue discussed in section IV of Rovi’s Petition for Review).

The Commission has determined to not review the remainder of the Final ID. The Commission has further determined that Respondents’ petition of the Final ID’s determinations is improper as to the following issues: (1) The representative accused X1 products for the ’263, ’413, and ’801 patents; (2) the induced infringement of the ’263 and ’413 patents; and (3) the eligibility under 35 U.S.C. 101 of the ’512 patent. See 19 CFR 210.43(b)(2) (“Petitions for review may not incorporate statements, issues, or arguments by reference.”). Those assignments of error are therefore waived.

The parties are requested to brief their positions with reference to the applicable law and the evidentiary record regarding the questions provided below:

(1) As to whether the Legacy accused products are “articles that infringe” (Issue 2 in Respondents’ Petition for Review):

Has Rovi shown (or has Comcast conceded) that a Legacy accused product that infringes the asserted patents (and if so, which patents) has been imported or re-imported by any respondent or that respondent’s agent(s)?

(2) As to whether the X1 products are “articles that infringe” (Issue 3 in Respondents’ Petition for Review), the issue of direct infringement of the ’263 and ’413 patents by the X1 accused products (Issue 5 in Respondents’ Petition for Review), and the issue of “the nature and scope of the violation found” (the issue discussed in section X of Respondents’ Petition for Review):

a. For purposes of giving rise to a section 337 violation and whether the X1 STBs are “articles that infringe,” is the importation of and infringement through the use of the X1 STBs distinguishable from the importation of and infringement through the use of the scanners in *Suprema v. Int’l Trade Comm’n*, 796 F.3d 1338 (Fed. Cir. 2015)? For example, is *Suprema* distinguishable because the imported X1 STBs require cooperation with hardware (a mobile device and Comcast’s servers) that is not imported by the respondents for an act of infringement to occur? Note that, in *Suprema*, the imported scanners were “not standalone products,” but rather, to function, the scanners had to “be connected to a computer, and that computer must have custom-developed

software installed and running.” 796 F.3d at 1341–42.

b. Please discuss any relevant statutory language, legislative history, case law, and Commission precedent that does or does not support interpreting the language of section 337 such that the X1 STBs are “articles that infringe” and that a violation arises from the importation or sale in the United States after importation of the X1 STBs.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

The parties and the public are requested to brief their positions regarding the public interest. The Commission is particularly interested in responses to the following:

Should the Commission tailor any remedy to mitigate any harm considered by the public interest factors? Please provide any support, factual or otherwise, and relate that support to specific public interest factors.

If the Commission orders some form of remedy, the U.S. Trade

Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

#### Written Submissions

The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainants are requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the date that the patents expire and the HTSUS numbers under which the accused products are imported. Complainants are further requested to supply the names of known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on August 24, 2017. Reply submissions must be filed no later than the close of business on August 31, 2017. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1001") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, [https://www.usitc.gov/secretary/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf)). Persons with questions regarding filing should contact the Secretary ((202) 205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be

directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes (all contract personnel will sign appropriate nondisclosure agreements). All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of 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 10, 2017.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2017-17283 Filed 8-15-17; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Wireless Audio Systems and Components Thereof*, DN 3242; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission,

500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>, and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Broadcom Limited and Avago Technologies General IP (Singapore) Pte. Ltd. on August 10, 2017. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless audio systems and components thereof. The complaint names as respondents DTS, Inc. of Calabasas, CA; Phorus, Inc. of Calabasas, CA; MartinLogan, Ltd. of Lawrence, KS; Paradigm Electronics Inc. of Canada; Anthem Electronics, Inc. of Canada; Wren Sound Systems, LLC of Phoenixville, PA; McIntosh Laboratory, Inc. of Binghamton, NY; Definitive Technology of Owings Mills, MD; and Polk Audio Inc. of Vista, CA. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the

complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3242") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures).<sup>1</sup> Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the

Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,<sup>2</sup> solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.<sup>3</sup>

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: August 11, 2017.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2017–17314 Filed 8–15–17; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint

entitled *Certain Periodontal Laser Devices, Components Thereof, and Advertisements and Claims Regarding the Same, DN 3241*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>, and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Millennium Dental Technologies, Inc. on August 10, 2017. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain periodontal laser devices, components thereof, and advertisements and claims regarding the same. The complaint names as respondents Fotona d.o.o of Slovenia; and Fotona, LLC of Dallas TX. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length,

<sup>1</sup> Handbook for Electronic Filing Procedures: [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf).

<sup>2</sup> All contract personnel will sign appropriate nondisclosure agreements.

<sup>3</sup> Electronic Document Information System (EDIS): <https://edis.usitc.gov>.

inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and
- (v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3241") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, Electronic Filing Procedures).<sup>1</sup> Persons with

questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,<sup>2</sup> solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.<sup>3</sup>

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: August 10, 2017.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2017-17313 Filed 8-15-17; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Group, L.L.C.

Notice is hereby given that, on July 24, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Open Group, L.L.C. ("TOG") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AGESIC, Montevideo, URUGUAY; AVTECH Institute of Technology, Shanghai, PEOPLE'S REPUBLIC OF CHINA; Axellience, Lille, FRANCE; Azbil Corporation, Tokyo, JAPAN; Bayer Business Services GmbH, Leverkusen, GERMANY; BusinessNow, Søborg, DENMARK; Bvolve B.V., Amersfoort, THE NETHERLANDS; Crossfield Technology, LLC, Austin, TX; Depaus Holding B.V., Amsterdam, THE NETHERLANDS; Elma Electronic, Inc., Fremont, CA; Hargrove Controls + Automation, LLC, Mobile, AL; Jemmac Software Ltd., Cranfield, UNITED KINGDOM; Kepner-Tregoe, Inc., Princeton, NJ; Mentor Group S.A.C., San Borja, PERU; PDM Technology Services Pty. Ltd., Midrand, SOUTH AFRICA; Semantic Designs, Inc., Austin, TX; Softing Industrial Automation GmbH, Haar, GERMANY; TOTAL S.A., Paris La Défense, FRANCE; and Xuenn Private Limited, Taipei City, TAIWAN, have been added as parties to this venture.

Also, Agency for Public Management and eGovernment (DFII), Oslo, NORWAY; Alithya Services Conseils, Inc., Quebec, CANADA; BAE Systems, Electronics & Integrated Solutions (E&IS), Wayne, NJ; Centre for Software Reliability, City University, London, UNITED KINGDOM; Drovecrest Ltd., Hedgerley, UNITED KINGDOM; Emerson Process Management LLLP, Round Rock, TX; Hotel Technology Next Generation, Schaumburg, IL; iCMG Private Limited, Bangalore, INDIA; Informatica Corporation, Redwood City, CA; Information Systems Audit and Control Association, Inc., Rolling Meadows, IL; Infovide-Matrix SA, Warsaw, POLAND; Marriott International, Bethesda, MD; Maryville Data Systems, Inc., St. Louis, MO; Optimal Business Growth Ltd., Poole,

<sup>1</sup> Handbook for Electronic Filing Procedures: [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf).

<sup>2</sup> All contract personnel will sign appropriate nondisclosure agreements.

<sup>3</sup> Electronic Document Information System (EDIS): <https://edis.usitc.gov>.



UNITED KINGDOM; PLANAD Consultoria em Gestão Empresarial Ltda-ME, São Paulo, BRAZIL; The Organization Zone LLC, San Jose, CA; and University of Warwick, Coventry, UNITED KINGDOM, have withdrawn as parties to this venture.

In addition, Aviation Industry Corporation of China Information Technology AVICIT has changed its name to AVIC DIGITAL CORPORATION LTD., Beijing, PEOPLE'S REPUBLIC OF CHINA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TOG intends to file additional written notifications disclosing all changes in membership.

On April 21, 1997, TOG filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on May 11, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 7, 2017 (82 FR 26513).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2017-17333 Filed 8-15-17; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to The National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on July 12, 2017, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Context Matters, Inc., New York, NY; InfoChem GmbH, Munich, GERMANY; AMRA (Advanced MR Analytics AB), Linköping, SWEDEN; Transcriptic Inc., Menlo Park, CA; WuXi AppTec, Shanghai, PEOPLE'S REPUBLIC OF CHINA; Chris L. Waller (individual), Brookline, MA; Eli Lilly and Company, Indianapolis, IN; VWR

International, Darmstadt, GERMANY; and Ontoforce NV, Ghent, BELGIUM, have been added as parties to this venture.

Also, Takeda Pharmaceutical Company, Ltd. (as subsidiary Millennium Pharma, Inc.), Cambridge, MA, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on April 24, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 22, 2017 (82 FR 23298).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2017-17334 Filed 8-15-17; 8:45 am]

BILLING CODE P

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

[OMB Number 1110-0015]

#### Agency Information Collection Activities; Proposed eCollection eComments Requested; Hate Crime Incident Report

**AGENCY:** Federal Bureau of Investigation, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division (CJIS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until October 16, 2017.

**FOR FURTHER INFORMATION CONTACT:** All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be

directed to Mrs. Amy C. Blasher, Unit Chief, Federal Bureau of Investigation, Criminal Information Services Division, Module E-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625-3566.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Federal Bureau of Investigation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Hate Crime Incident Report.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1-700. The applicable component within the Department of Justice is the Criminal Justice Information Services Division, in the Federal Bureau of Investigation.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, tribal and Federal law enforcement agencies. Abstract: Under Title 28, U.S. Code, Section 534, this information collection requests hate crime data from respondents in order for the FBI UCR Program to serve as the national clearinghouse for the collection and dissemination of hate crime data and to publish these statistics annually in "Hate Crime Statistics". This provides for the national UCR Program a record of each hate crime incident including

the offense classification and its respective bias motivation, the number and type of victims, the location of the incident, the number of suspected offenders, the suspected offender's race, and whether the victims and offenders are under 18 or over the age of 18.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* UCR Participation Burden Estimation: There is a potential of 10,106 law enforcement agency respondents that submit monthly for a total of 121,272 responses with an estimated response time of 7 minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 4,716 hours, annual burden, associated with this information collection.

*If additional information is required contact:* Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: August 11, 2017.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2017-17312 Filed 8-15-17; 8:45 am]

BILLING CODE 4410-02-P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

[OMB Number 1121-0329]

#### Agency Information Collection Activities; Proposed eCollection; eComments Requested; Substantive Revision of Previously Approved Collection OJP Solicitation Template

**AGENCY:** Office of Justice Programs, Department of Justice (DOJ).

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Office of Justice Programs (OJP), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 30 days until September 15, 2017.

**FOR FURTHER INFORMATION CONTACT:** Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public

burden and associated response time, should be directed to Maria Swineford, (202) 616-0109, Office of Audit, Assessment, and Management, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531 or [maria.swineford@usdoj.gov](mailto:maria.swineford@usdoj.gov).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of This Information Collection

1. *Type of Information Collection:*

Substantive Revision to 1121-0329.

2. *The Title of the Form/Collection:*

OJP Solicitation Template.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

No form number available. Office of Justice Programs, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

The primary respondents are state agencies, tribal governments, local governments, colleges and universities, non-profit organizations, for-profit organizations, and faith-based organizations. The purpose of the solicitation template is to provide a framework to develop program-specific announcements soliciting applications for funding. A program solicitation outlines the specifics of the funding program; describes requirements for eligibility; instructs an applicant on the necessary components of an application under a specific program (*e.g.*, project

activities, project abstract, project timeline, proposed budget, etc.); outlines program evaluation and performance measures; explains selection criteria and the review process; and provides registration dates, deadlines, and instructions on how to apply within the designated application system.

The substantive revision to this collection include three items: (1) The OJP Budget Detail Worksheet; (2) the Coordinated Tribal Assistance Solicitation (CTAS) Tribal Narrative Profile, Budget Detail Worksheet and Demographic Form; and (3) the Financial Management and System of Internal Controls Questionnaire (FCQ).

The now mandatory OJP Budget Detail Worksheet (BDW) will be streamlined and automated with the intent of reducing the burden on public submissions. The current PDF format will be converted to Excel, providing ease of entry and more accurate detail of budget information. Additionally, the BDW has taken the "consultant/contracts" section and broken the details out into two separate sections, "subrecipient/subgrants" and "procurement contracts" to better categorize the details of proposed consultants. Updated and clearer guidance will also be added to better explain how to complete the BDW and the level of detail required in each section.

The Coordinated Tribal Assistance Solicitation (CTAS) Tribal Community and Justice Profile is designed to allow the tribe to describe its community strengths, resources, challenges, and needs. The applicant may enter as much or as little text as needed to fully describe the community. The CTAS BDW and Demographics Form will be updated to align with the BDW streamlining and automation efforts. In addition to those revisions, the Demographics section of the CTAS BDW is designed to capture the unique characteristics of each tribe in order to paint a more detailed picture of each tribe's strengths and challenges. It requests applicants to provide information regarding tribe information; Uniform Crime Report data; law enforcement information; and facilities, capacities, and capabilities information.

The revised FCQ will include five new questions: Three which are required by legislation regarding nonprofit status; one which is simply a clarification of an existing approved question regarding subawards and procurement contracts; and one regarding executive compensation that is also required by legislation and was already part of the approved OJP

solicitation template but was requiring a separate email submission to OJP. Adding it to the FCQ will save the applicant time and effort.

The primary respondents for all three revisions are the same, as listed above. While use of the CTAS BDW and Demographics form is not mandatory, it is required that all applicants ensure that all budget and demographic information requested in the form is included in whichever format the applicant chooses to use. OJP intends to require the same with the OJP BDW. The FCQ is also required of all application submissions that do not already have an updated FCQ on file within the last 3 years.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that information will be collected annually from approximately 10,000 applicants. Annual cost to the respondents is based on the number of hours involved in preparing and submitting a complete application package. Mandatory requirements for an application under the OJP Standard Solicitation Template include a program narrative; budget details and narrative, via the OJP standard BDW; Applicant Disclosure of Pending Applications; Applicant Disclosure of High Risk Status; and the FCQ. With the exception of the Tribal Narrative Profile and added Demographic form, the mandatory requirements for an application under the CTAS Solicitation Template are the same as those for OJP. Optional requirements can be made mandatory depending on the type of program to include, but not limited to: project abstract, indirect cost rate agreement, tribal authorizing resolution, timelines, logic models, memoranda of understanding, letters of support, resumes, and research and evaluation independence and integrity. Public reporting burden for this collection of information is estimated at up to 32 hours per application. The 32-hour estimate is based on the amount of time to prepare a research and evaluation proposal, one of the most time intensive types of application solicited by OJP. The estimate of burden hours is based on OJP's prior experience with the research application submission process.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this application is 320,000 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States

Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: August 10, 2017.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2017-17284 Filed 8-15-17; 8:45 am]

**BILLING CODE 4410-18-P**

## **NUCLEAR REGULATORY COMMISSION**

**[NRC-2017-0064]**

### **Information Collection: NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters"**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of submission to the Office of Management and Budget; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, "NRC Form 241, Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters."

**DATES:** Submit comments by September 15, 2017.

**ADDRESSES:** Submit comments directly to the OMB reviewer at: Aaron Szabo, Desk Officer, Office of Information and Regulatory Affairs (3150-0013), NEOB-10202, Office of Management and Budget, Washington, DC 20503; telephone: 202-395-3621, email: [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: [INFOCOLLECTS.Resource@nrc.gov](mailto:INFOCOLLECTS.Resource@nrc.gov).

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Obtaining Information and Submitting Comments**

##### *A. Obtaining Information*

Please refer to Docket ID *NRC-2017-0064* when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for Docket ID *NRC-2017-0064*.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML17160A178. The supporting statement and NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters" is available in ADAMS under Accession No. ML17160A177.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: [INFOCOLLECTS.Resource@NRC.GOV](mailto:INFOCOLLECTS.Resource@NRC.GOV).

##### *B. Submitting Comments*

Please include Docket ID *NRC-2017-0064* in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment

submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

### Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, "NRC Form 241, Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters." The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on March 24, 2017, 82 FR 15071.

1. *The title of the information collection:* NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters."
2. *OMB approval number:* 3150-0013.
3. *Type of submission:* Extension.
4. *The form number if applicable:* NRC Form 241.

5. *How often the collection is required or requested:* NRC Form 241 must be submitted each time an Agreement State licensee wants to engage in or revise its activities involving the use of radioactive byproduct material in a non-Agreement State, areas of exclusive Federal jurisdiction, or offshore waters. The NRC may waive the requirements for filing additional copies of NRC Form 241 during the remainder of the calendar year following receipt of the initial form.

6. *Who will be required or asked to respond:* Any licensee who holds a specific license from an Agreement State and wants to conduct the same activity in non-Agreement States, areas of exclusive Federal Jurisdiction, or offshore waters under the general license in section 150.20 of title 10 of the *Code of Federal Regulations* (10 CFR).

7. *The estimated number of annual responses:* 1,720 responses.

8. *The estimated number of annual respondents:* 200 respondents.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 480 hours (100 hours for

initial submissions + 380 hours for changes + 0 hours for clarifications).

10. *Abstract:* Any Agreement State licensee who engages in the use of radioactive material in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters, under the general license in 10 CFR 150.20, is required to file, with the NRC Regional Administrator for the Region in which the Agreement State that issues the license is located, a copy of NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters," a copy of its Agreement State specific license, and the appropriate fee as prescribed in 10 CFR 170.31 at least 3 days before engaging in such activity. This mandatory notification permits the NRC to schedule inspections of the activities to determine whether the activities are being conducted in accordance with requirements for protection of the public health and safety.

Dated at Rockville, Maryland, this 11th day of August, 2017.

For the Nuclear Regulatory Commission.

#### David Cullison,

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2017-17309 Filed 8-15-17; 8:45 am]

**BILLING CODE 7590-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81371; File No. SR-MIAX-2017-39]

### Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing of a Proposed Rule Change To Adopt Rules Relating to Trading in Index Options

August 10, 2017.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 9, 2017, Miami International Securities Exchange, LLC ("MIAX Options" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to adopt rules relating to trading in index options.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.miaxoptions.com/rule-filings>, at MIAX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange is proposing to adopt rules to allow the Exchange to list and trade options on indices. The proposed rules include listing and maintenance criteria for options on underlying indices, rules on dissemination of index values, position and exercise limits for index options, exemptions from the limits, and terms of index options contracts. All of the proposed rules and changes to existing Exchange Rules are based on the existing rules of other options exchanges.<sup>3</sup> The proposed rule change is intended to expand the Exchange's capability to introduce and trade both existing and new and innovative index products on the MIAX Options System.<sup>4</sup>

Because the rules related to trading options on indices are product specific in many areas, the Exchange will need to file additional proposed rule changes with the Commission when the Exchange identifies specific products. For purposes of this proposed rule

<sup>3</sup> See Nasdaq ISE, LLC ("ISE") Rules, Chapter 20, Index Rules; NASDAQ PHLX LLC ("Phlx") Rules 1000A-1108A; and Chicago Board Options Exchange, Inc. ("CBOE") Rules, Chapter XXIV, Index Options.

<sup>4</sup> The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

change, certain rules indicate that they apply to “Specified” indices. Proposed MIAX Options Rules 1800, 1801(n), 1804(a), 1807(a), 1809, and 1811 all contain provisions that are dependent upon the Exchange identifying specific index products in the rule. Accordingly, MIAX Options Rule 1800 states that where the rules in Chapter XVIII indicate that particular indices or requirements with respect to particular indices will be “Specified,” MIAX Options will file a proposed rule change with the Commission pursuant to Section 19 of the Act<sup>5</sup> and Rule 19b-4<sup>6</sup> thereunder to specify such indices or requirements. MIAX Options proposes to add new Chapter XVIII to the Exchange rules, together with conforming changes to certain existing MIAX Options rules.

#### Proposed Index Rules

The Exchange is proposing to adopt new Chapter XVIII, Index Options, in the MIAX Options Rules. Proposed Rule 1800, Application of Index Rules, states that the Rules in proposed Chapter XVIII are applicable only to index options (options on indices of securities as defined below). The Rules in current Chapters I through XVII are also applicable to the options provided for in proposed Chapter XVIII, unless such current Rules are specifically replaced or are supplemented by Rules in Chapter XVIII. Where the Rules in Chapter XVIII indicate that particular indices or requirements with respect to particular indices will be “Specified,” the Exchange shall file a proposed rule change with the Commission to specify such indices or requirements.

#### Definitions

Proposed MIAX Options Rule 1801, Definitions, contains the necessary definitions for index options trading.<sup>7</sup> Specifically, the following definitions will apply to index options on MIAX Options:

(a) The term “aggregate exercise price” means the exercise price of the options contract times the index multiplier.

(b) The term “American-style index option” means an option on an industry or market index that can be exercised on any business day prior to expiration, including the business day of expiration in the case of an option contract expiring on a business day.

(c) The term “A.M.-settled index option” means an index options contract for which the current index

value at expiration shall be determined as provided in Rule 1809(a)(5).<sup>8</sup>

(d) The term “call” means an options contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from the Clearing Corporation the current index value times the index multiplier.

(e) The term “current index value” with respect to a particular index options contract means the level of the underlying index reported by the reporting authority for the index, or any multiple or fraction of such reported level specified by the Exchange. The current index value with respect to a reduced-value long term options contract is one-tenth of the current index value of the related index option. The “closing index value” shall be the last index value reported on a business day.

(f) The term “exercise price” means the specified price per unit at which the current index value may be purchased or sold upon the exercise of the option.

(g) The term “European-style index option” means an option on an industry or market index that can be exercised only on the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, the last business day prior to the day it expires.

(h) The term “Foreign Currency Index” means an index designed to track the performance of a basket of currencies, as provided in the table in MIAX Rule 1805A.

(i) The term “index multiplier” means the amount specified in the contract by which the current index value is to be multiplied to arrive at the value

<sup>8</sup> The last day of trading for A.M.-settled index options shall be the business day preceding the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, the business day preceding the last day of trading in the underlying securities prior to the expiration date. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that: (i) In the event that the primary market for an underlying security does not open for trading on that day, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Rule 1808(g), unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of the Clearing Corporation; and (ii) in the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security. See proposed Rule 1809(a)(5).

required to be delivered to the holder of a call or by the holder of a put upon valid exercise of the contract.

(j) The terms “industry index” and “narrow-based index” mean an index designed to be representative of a particular industry or a group of related industries or an index whose constituents are all headquartered within a single country.

(k) The term “market index” and “broad-based index” mean an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.

(l) The term “put” means an options contract under which the holder of the option has the right, in accordance with the terms and provisions of the option, to sell to the Clearing Corporation the current index value times the index multiplier.

(m) The term “Quarterly Options Series” means, for the purposes of Chapter XVIII, a series in an index options class that is approved for listing and trading on the Exchange in which the series is opened for trading on any business day and that expires at the close of business on the last business day of a calendar quarter.

(n) The term “reporting authority” with respect to a particular index means the institution or reporting service designated by the Exchange as the official source for (1) calculating the level of the index from the reported prices of the underlying securities that are the basis of the index and (2) reporting such level. The reporting authority for each index approved for options trading on the Exchange shall be Specified (as provided in Rule 1800) in a table in Interpretations and Policies .01 to this Rule 1801.

(o) The term “Short Term Option Series” means, for the purposes of Chapter XVIII, a series in an index option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Thursday or Friday that is a business day and that expires on the Friday of the following business week that is a business day. If a Friday is not a business day, the series may be opened (or shall expire) on the first business day immediately prior to that Friday.

(p) The term “underlying security” or “underlying securities” with respect to an index options contract means any of the securities that are the basis for the calculation of the index.

#### Listing Standards

Proposed Rule 1802, Designation of an Index, contains the general listing standards for index options. Proposed Rule 1802(a) provides that the

<sup>5</sup> 15 U.S.C. 78s.

<sup>6</sup> 17 CFR 240.19b-4.

<sup>7</sup> The proposed Rule is based on ISE Rule 2001.

component securities of an index underlying an index option contract need not meet the requirements of Rule 402.<sup>9</sup> Except as set forth in subparagraph (b) and (d) (as described below), the listing of a class of index options requires the filing of a proposed rule change to be approved by the Commission.

Proposed Rule 1802(b) describes the initial listing standards for a narrow-based index to be traded on the Exchange. The term “narrow based index” means an index designed to be representative of a particular industry or a group of related industries or an index whose constituents are all headquartered within a single country. Pursuant to proposed Rule 1802(b), the Exchange may trade options on a narrow-based index pursuant to Rule 19b-4(e) of the Act,<sup>10</sup> if each of the following conditions is satisfied:

(1) The options are designated as A.M.-settled index options;

(2) The index is capitalization-weighted, price-weighted, equal dollar-weighted, or modified capitalization-weighted, and consists of 10 or more component securities;

(3) Each component security has a market capitalization of at least \$75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10 percent of the weight of the index, the market capitalization is at least \$50 million;

(4) Trading volume of each component security has been at least one million shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10 percent of the weight of the index, trading volume has been at least 500,000 shares for each of the last six months;

(5) In a capitalization-weighted index or a modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30 percent of the total number of component securities in the index each have had an average monthly trading volume of at least 2,000,000 shares over the past six months;

(6) No single component security represents more than 30 percent of the weight of the index, and the five highest

weighted component securities in the index do not in the aggregate account for more than 50 percent (65 percent for an index consisting of fewer than 25 component securities) of the weight of the index;

(7) Component securities that account for at least 90 percent of the weight of the index and at least 80 percent of the total number of component securities in the index satisfy the requirements of Rule 402 applicable to individual underlying securities;

(8) Each component security must be an “NMS stock” as defined in Rule 600 of Regulation NMS under the Act;<sup>11</sup>

(9) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20 percent of the weight of the index;

(10) The current index value is widely disseminated at least once every 15 seconds by OPRA, CTA/CQ, NIDS or one or more major market data vendors during the time the index options are traded on the Exchange;

(11) An equal dollar-weighted index will be rebalanced at least once every calendar quarter; and

(12) If an underlying index is maintained by a broker-dealer, the index is calculated by a third party who is not a broker-dealer, and the broker-dealer has erected an information barrier around its personnel who have access to information concerning changes in and adjustments to the index.

The above initial listing standards are the same as the initial listing standards currently in place on other exchanges.<sup>12</sup>

In addition to the initial listing standards, certain maintenance listing standards, listed below, apply to each class of index options originally listed pursuant to proposed Rule 1802(b).

Specifically, proposed Rule 1802(c) provides that the requirements stated in proposed Rules 1802(b)(1), (3), (6), (7), (8), (9), (10), (11) and (12) (set forth above) must continue to be satisfied, provided that the requirements stated in proposed Rule 1802(b)(6) below (relating to broad-based indices) must be satisfied only as of the first day of January and July in each year.

In addition to maintaining the initial criteria in the proposed sub-paragraphs listed above, proposed Rule 1802(c) states that, in order for an index to remain listed on the Exchange:

(1) The total number of component securities in the index may not increase

or decrease by more than 33⅓ percent from the number of component securities in the index at the time of its initial listing, and in no event may be less than nine component securities;

(2) Trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10 percent of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and

(3) In a capitalization-weighted index or a modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30 percent of the total number of stocks in the index each have had an average monthly trading volume of at least 1,000,000 shares over the past six months. In the event a class of index options listed on the Exchange fails to satisfy the maintenance listing standards set forth herein, the Exchange shall not open for trading any additional series of options of that class unless such failure is determined by the Exchange not to be significant and the SEC concurs in that determination, or unless the continued listing of that class of index options has been approved by the SEC under Section 19(b)(2) of the Act.<sup>13</sup>

These maintenance listing standards are the same as the maintenance standards currently in place on other exchanges.<sup>14</sup>

Proposed Rule 1802(d) states that the Exchange may trade options on a broad-based index<sup>15</sup> if each of the following conditions is satisfied:

(1) The index is broad-based, as defined in Rule 1801(k);

(2) Options on the index are designated as A.M.-settled;

(3) The index is capitalization-weighted, modified capitalization-weighted, price-weighted, or equal dollar-weighted;

(4) The index consists of 50 or more component securities;

(5) Component securities that account for at least ninety-five percent (95%) of the weight of the index have a market

<sup>9</sup> Exchange Rule 402, Criteria for Underlying Securities, sets forth the criteria that must be met by underlying equity securities with respect to which put or call option contracts are approved for listing and trading on the Exchange.

<sup>10</sup> 17 CFR 242.19b-4(e).

<sup>11</sup> 17 CFR 242.11Aa3-1.

<sup>12</sup> See, e.g., Nasdaq ISE, LLC (“ISE”) Rule 2002(b); NASDAQ PHLX LLC (“Phlx”) Rule 1009A(b); and Chicago Board Options Exchange, Inc. (“CBOE”) Rule 24.2(b).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> See, e.g., ISE Rule 2002(c); Phlx Rule 1009A(c); and CBOE Rule 24.2(c).

<sup>15</sup> The term “market index” and “broad-based index” mean an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries. See proposed Rule 1801(k).

capitalization of at least \$75 million, except that component securities that account for at least sixty-five percent (65%) of the weight of the index have a market capitalization of at least \$100 million;

(6) Component securities that account for at least eighty percent (80%) of the weight of the index satisfy the requirements of Rule 402 applicable to individual underlying securities;

(7) Each component security that accounts for at least one percent (1%) of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six month period;

(8) No single component security accounts for more than ten percent (10%) of the weight of the index, and the five highest weighted component securities in the index do not, in the aggregate, account for more than thirty-three percent (33%) of the weight of the index;

(9) Each component security must be an "NMS stock" as defined in Rule 600 of Regulation NMS under the Act;<sup>16</sup>

(10) Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements do not, in the aggregate, represent more than twenty percent (20%) of the weight of the index;

(11) The current index value is widely disseminated at least once every fifteen (15) seconds by the Options Price Reporting Authority ("OPRA"), the Consolidated Tape Association ("CTA"), the Nasdaq Index Dissemination Service ("NIDS"), or one or more major market data vendors during the time options on the index are traded on the Exchange;

(12) The Exchange reasonably believes it has adequate system capacity to support the trading of options on the index, based on a calculation of the Exchange's current ISCA allocation and the number of new messages per second expected to be generated by options on such index;

(13) An equal dollar-weighted index is rebalanced at least once every calendar quarter;

(14) If an index is maintained by a broker-dealer, the index is calculated by a third-party who is not a broker-dealer, and the broker-dealer has erected an informational barrier around its personnel who have access to information concerning changes in, and adjustments to, the index;

(15) The Exchange has written surveillance procedures in place with respect to surveillance of trading of options on the index.

These initial listing standards are the same as the initial listing standards for broad-based indices currently in place on other exchanges.<sup>17</sup>

Proposed Rule 1802(e) sets forth the maintenance listing standards for broad-based indices. Specifically, the following maintenance listing standards shall apply to each class of index options originally listed pursuant to proposed Rule 1802(d).

First, the requirements set forth in the proposed initial listing standards set forth in proposed Rules 1802(d)(1)–(d)(3), and proposed Rules 1802(d)(9)–(d)(15) must continue to be satisfied. The requirements set forth in proposed Rules 1802(d)(5)–(d)(8) must be satisfied only as of the first day of January and July in each year.

Additionally, for broad-based indices, the total number of component securities in the index may not increase or decrease by more than ten percent (10%) from the number of component securities in the index at the time of its initial listing.

Finally, proposed Rule 1802(e) states that, in the event a class of index options listed on the Exchange fails to satisfy the maintenance listing standards set forth in the proposed Rule, the Exchange shall not open for trading any additional series of options of that class unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Act.<sup>18</sup>

These maintenance listing standards are the same as the maintenance standards for broad-based indices that are currently in place on other exchanges.<sup>19</sup>

The Exchange believes that the requirements in the proposed listing standards regarding, among other things, the minimum market capitalization, trading volume, and relative weightings of an underlying index's component stocks are designed to ensure that the markets for the index's component stocks are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. The Exchange believes that these requirements minimize the potential for manipulating the underlying index.

The Exchange further believes that the requirement in proposed Rule 1802(b)(10) (with respect to narrow-based index options) that the current underlying index value will be reported

at least once every 15 seconds during the time the index options are traded on the Exchange, and the requirement in proposed Rule 1802(d)(11) (with respect to broad-based index options) that the current index value be widely disseminated at least once every 15 seconds by the OPRA, CTA/CQ, NIDS or by one or more major market data vendors during the time an index option trades on MIAX Options should provide transparency with respect to current index values and contribute to the transparency of the market for index options. In addition, the Exchange believes that the requirement in proposed Rule 1802(d)(2) that an index option be A.M.-settled, rather than on closing prices, should help to reduce the potential impact of expiring index options on the market for the index's component securities.

Proposed Rule 1803, Dissemination of Information, requires the dissemination of index values as a condition to the trading of options on an index. The proposed Rule includes the requirement that the Exchange disseminate, or assure that the current index value is disseminated, after the close of business and from time-to-time on days on which transactions in index options are made on the Exchange. The proposed Rule also requires the Exchange to maintain, in files available to the public, information identifying the components whose prices are the basis for calculation of the index and the method used to determine the current index value.<sup>20</sup>

The Exchange is proposing to adopt Rules 1804 through 1807 relating to position limits, exemptions from position limits, and exercise limits in index options. These proposed rules contain the standard position limit and exercise limits for Broad-Based, Industry (narrow-based) and Foreign Currency index options, as well as exemption standards and the procedures for requesting exemptions from those proposed rules.<sup>21</sup>

Proposed Rule 1804, Position Limits for Broad-Based Index Options, states that Exchange Rule 307 generally shall govern position limits for broad-based index options, as modified by proposed Rule 1804. Specifically, the proposed rule states that there may be no position limit for certain Specified (as provided in Rule 1800)<sup>22</sup> broad-based index

<sup>20</sup> This proposed Rule is substantially similar to ISE Rule 2003 and CBOE Rule 24.3.

<sup>21</sup> These proposed Rules are based on ISE Rule 2006.

<sup>22</sup> Where the Rules in proposed Chapter XVIII indicate that particular indices or requirements with respect to particular indices will be

<sup>17</sup> See, e.g., ISE Rule 2002(d); Phlx Rule 1009A(d); and CBOE Rule 24.2(f).

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> See, e.g., ISE Rule 2002(e); Phlx Rule 1009A(e); and CBOE Rule 24.2(g).

<sup>16</sup> 17 CFR 242.600.



options contracts. Except as otherwise indicated below, the position limit for a broad-based index option shall be 25,000 contracts on the same side of the market. Reduced-value options<sup>23</sup> on

broad-based security indexes for which full-value options have no position and exercise limits will similarly have no position and exercise limits. All other broad-based index options contracts

shall be subject to a contract limitation fixed by the Exchange, which shall not be larger than the limits provided in the chart below.

Broad-based underlying index	Standard limit (on the same side of the market)	Restrictions
To be Specified .....	To be Specified .....	To be Specified

Proposed Rules 1804 (b) through (d) describe situations in which index option contracts will, or will not, be aggregated for purposes of establishing the number of contracts in a position. Specifically, proposed Rule 1804(b) states that that index options contracts shall not be aggregated with options contracts on any stocks whose prices are the basis for calculation of the index. Proposed Rule 1804(c) states that positions in reduced-value index options shall be aggregated with positions in full-value indices. For such purposes, ten reduced-value contracts shall equal one contract. Finally, proposed Rule 1804(d) states that positions in Short Term Option Series and Quarterly Options Series shall be aggregated with positions in options contracts on the same index.<sup>24</sup>

Proposed Rule 1805, Position Limits for Industry Index Options, states that Rule 307 generally shall govern position limits for industry index<sup>25</sup> options, as modified by proposed Rule 1805.

Proposed Rule 1805(a) sets forth position limits position limits for industry index options. These position limits, once established by the Exchange, must be reviewed and determined on a semi-annual basis, as described below.

The specific position limits applicable to an industry index are:

(i) 18,000 contracts if the Exchange determines, at the time of a review conducted as described below, that any single underlying stock accounted, on average, for thirty percent (30%) or more of the index value during the thirty (30)-day period immediately preceding the review; or

(ii) 24,000 contracts if the Exchange determines, at the time of a review conducted as set forth below, that any single underlying stock accounted, on average, for twenty percent (20%) or more of the index value or that any five

(5) underlying stocks together accounted, on average, for more than fifty percent (50%) of the index value, but that no single stock in the group accounted, on average, for thirty percent (30%) or more of the index value, during the thirty (30)-day period immediately preceding the review; or  
 (iii) 31,500 contracts if the Exchange determines that the conditions specified above which would require the establishment of a lower limit have not occurred.

Proposed Rule 1805(a)(2) requires the Exchange shall make the determinations of these specific position limits described above with respect to options on each industry index, first at the commencement of trading of such options on the Exchange and thereafter review the determination semi-annually on January 1 and July 1.

Proposed Rule 1805(a)(3) describes the procedures to be taken by the Exchange at the time of each semi-annual review. Specifically, if the Exchange determines, at the time of the semi-annual review, that the position limit in effect with respect to options on a particular industry index is lower than the maximum position limit permitted by the criteria set forth in Rule 1805(a)(1), the Exchange may effect an appropriate position limit increase immediately.<sup>26</sup>

Conversely, if the Exchange determines, at the time of a semi-annual review, that the position limit in effect with respect to options on a particular industry index exceeds the maximum position limit permitted by the criteria set forth in proposed Rule 1805(a)(1), the Exchange shall reduce the position limit applicable to such options to a level consistent with such criteria. Such a reduction would not become effective until after the expiration date of the most distantly expiring options series relating to the industry index that is

open for trading on the date of the review, and such a reduction shall not become effective if the Exchange determines, at the next semi-annual review, that the existing position limit applicable to such options is consistent with the criteria set forth in proposed Rule 1805(a)(1).<sup>27</sup> The purpose of this provision is to protect investors with open positions as of the date of the review from inadvertently violating the new, reduced position limit. Additionally, an Exchange determination (prior to the effectiveness of the new, lower position limit due to remaining unexpired series) that the criteria permitting the higher position limit again exist obviates the need for the lower position limit and the lower position limit will not take effect.

Proposed Rules 1805(b)–(d) describe situations in which industry index option contracts will, or will not, be aggregated for purposes of establishing the number of contracts in a position. Just as with broad-based index options,<sup>28</sup> proposed Rules 1805(b)–(d) state that index options contracts shall not be aggregated with options contracts on any stocks whose prices are the basis for calculation of the index. Positions in reduced-value index options shall be aggregated with positions in full-value index options. For such purposes, ten (10) reduced-value options shall equal one (1) full-value contract. Positions in Short Term Option Series and Quarterly Options Series shall be aggregated with positions in options contracts on the same index.

Proposed Rule 1805A, Position Limits for Foreign Currency Index Options, includes a table to be completed by the Exchange upon the Exchange’s determination to list and trade options overlying a Foreign Currency Index (subject to the Commission’s approval of a proposed rule change). Under the proposed rule, option contracts on a

<sup>23</sup> “Specified,” the Exchange shall file a proposed rule change with the Commission to specify such indices or requirements. See proposed Rule 1800.

<sup>24</sup> See proposed Rule 1809(b)(2).

<sup>25</sup> This is substantially similar to ISE Rule 2004 and CBOE Rule 24.4.

<sup>26</sup> For purposes of this proposed rule change and these proposed rules, the term “industry index” has the same meaning as the term “narrow-based index.”

<sup>27</sup> For example, if the conditions specified in proposed Rule 1805(a)(ii) are determined to exist which would allow a position limit of 24,000 contracts and the current position limit for the

option, based upon the previous review, has been established as 18,000 contracts, the Exchange may effect a position limit increase to 24,000 contracts immediately.

<sup>28</sup> The proposed Rule is virtually identical to CBOE Rule 24.4A.

<sup>29</sup> See proposed Rules 1804(b)–(d).

Foreign Currency Index shall be subject to the position limits described in the table below.

Foreign currency index	Standard limit (on the same side of the market)	Restrictions
To be Specified .....	To be Specified .....	To be Specified

Proposed Rule 1806, Exemptions from Position Limits, describes the broad-based index hedge exemption, the industry index hedge exemption, the application on the Exchange of exemptions granted by other options exchanges, and the delta-based index hedge exemption.

Proposed Rule 1806(a) describes the broad-based index hedge exemption. The broad-based index hedge exemption is in addition to the other exemptions available under Exchange Rules, Interpretations and Policies.<sup>29</sup> The proposed rule sets forth the procedures and criteria which must be satisfied to qualify for a broad-based index hedge exemption.

First, proposed Rule 1806(a)(1) states that the account in which the exempt options positions are held (“hedge exemption account”) must have received prior Exchange approval for the hedge exemption specifying the maximum number of contracts that may be exempt under the proposed Rule. The hedge exemption account must have provided all information required on Exchange-approved forms and must have kept such information current. Exchange approval may be granted on the basis of verbal representations, in which event the hedge exemption account shall within two business days, or such other time period designated by the Exchange, furnish the Exchange with appropriate forms and documentation substantiating the basis for the exemption. The hedge exemption account may apply from time to time for an increase in the maximum number of contracts exempt from the position limits.

Proposed Rule 1806(a)(2) states that a hedge exemption account that is not carried by a Member must be carried by a member of a self-regulatory organization participating in the Intermarket Surveillance Group (“ISG”), which is comprised of an international group of exchanges, market centers, and market regulators.<sup>30</sup>

Proposed Rule 1806(a)(3) requires that the hedge exemption account maintain a qualified portfolio, or will effect transactions necessary to obtain a qualified portfolio concurrent with or at or about the same time as the execution of the exempt options positions, of:

(i) A net long or short position in common stocks in at least four industry groups and contains at least twenty (20) stocks, none of which accounts for more than fifteen percent (15%) of the value of the portfolio or in securities readily convertible, and additionally in the case of convertible bonds economically convertible, into common stocks which would comprise a portfolio; or

(ii) a net long or short position in index futures contracts or in options on index futures contracts, or long or short positions in index options or index warrants, for which the underlying index is included in the same margin or cross-margin product group cleared at the Clearing Corporation as the index options class to which the hedge exemption applies.

To remain qualified, a portfolio must at all times meet these standards notwithstanding trading activity.

Proposed Rule 1806(a)(4) contains the requirement that, in order to qualify for the broad-based exemption, the exemption must apply to positions in broad-based index options dealt in on the Exchange and is applicable to the unhedged value of the qualified portfolio. The unhedged value will be determined as follows:

(i) The values of the net long or short positions of all qualifying products in the portfolio are totaled;

(ii) for positions in excess of the standard limit, the underlying market value (A) of any economically equivalent opposite side of the market calls and puts in broad-based index options, and (B) of any opposite side of the market positions in stock index futures, options on stock index futures, and any economically equivalent opposite side of the market positions, assuming no other hedges for these contracts exist, is subtracted from the qualified portfolio; and

(iii) the market value of the resulting unhedged portfolio is equated to the appropriate number of exempt contracts as follows: The unhedged qualified portfolio is divided by the correspondent closing index value and the quotient is then divided by the index multiplier or 100.

Proposed Rule 1806(a)(5) states that positions in broad-based index options that are traded on the Exchange are exempt from the standard limits to the extent specified in the table below.

Broad-based index option type	Broad-based index hedge exemption (in addition to standard limit)
Broad-based indexes other than for those that do not have any position limits ....	75,000

Proposed Rule 1806(a)(6) lists the types of transactions that are available for hedging. Specifically, only the following qualified hedging transactions and positions are eligible for purposes of hedging a qualified portfolio (*i.e.* stocks, futures, options and warrants) pursuant to the proposed Rule:

- (i) Long put(s) used to hedge the holdings of a qualified portfolio;
- (ii) Long call(s) used to hedge a short position in a qualified portfolio;
- (iii) Short call(s) used to hedge the holdings of a qualified portfolio; and
- (iv) Short put(s) used to hedge a short position in a qualified portfolio.

Proposed Rule 1806(a)(6) then identifies the following strategies, which may be effected only in conjunction with a qualified stock portfolio for non-P.M. settled, European style index options only:

(v) A short call position accompanied by long put(s), where the short call(s) expires with the long put(s), and the strike price of the short call(s) equals or exceeds the strike price of the long put(s) (a “collar”). Neither side of the collar transaction can be in-the-money at the time the position is established. For purposes of determining compliance with Rule 306 and proposed Rule 1806, a collar position will be treated as one contract;

(vi) A long put position coupled with a short put position overlying the same broad-based index and having an

<sup>29</sup> See, e.g., Exchange Rule 308.

<sup>30</sup> The purpose of the ISG is to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket manipulations and trading abuses. The ISG plays a crucial role in information sharing among markets that trade securities, options

on securities, security futures products, and futures and options on broad-based security indexes. A list identifying the current ISG members is available at <https://www.isgportal.org/home.html>.

equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) exceeds the strike price of the short put(s) (a “debit put spread position”); and

(vii) A short call position accompanied by a debit put spread position, where the short call(s) expires with the puts and the strike price of the short call(s) equals or exceeds the strike price of the long put(s). Neither side of the short call, long put transaction can be in-the-money at the time the position is established. For purposes of determining compliance with Rule 307 and this Rule 1806, the short call and long put positions will be treated as one contract.

Proposed Rule 1806(a)(7) describes certain permitted and prohibited activities for hedge exemption accounts. Specifically, the proposed Rule states that the hedge exemption account shall:

(i) Liquidate and establish options, stock positions, their equivalent or other qualified portfolio products in an orderly fashion; not initiate or liquidate positions in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes; and not initiate or liquidate a stock position or its equivalent with an equivalent index options position with a view toward taking advantage of any differential in price between a group of securities and an overlying stock index option;

(ii) liquidate any options prior to or contemporaneously with a decrease in the hedged value of the qualified portfolio which options would thereby be rendered excessive; and

(iii) promptly notify the Exchange of any material change in the qualified portfolio which materially affects the unhedged value of the qualified portfolio.

Proposed Rules 1806(a)(8)–(12) contain several regulatory requirements for hedge exemption accounts.

Specifically, the proposed Rules state that if an exemption is granted, it will be effective at the time the decision is communicated. Retroactive exemptions will not be granted. The proposed Rules also require that the hedge exemption account shall promptly provide to the Exchange any information requested concerning the qualified portfolio.

Positions included in a qualified portfolio that serve to secure an index hedge exemption may not also be used to secure any other position limit exemption granted by the Exchange or any other self-regulatory organization or futures contract market. Any Member that maintains a broad-based index options position in such Member’s own account or in a customer account, and

has reason to believe that such position is in excess of the applicable limit, shall promptly take the action necessary to bring the position into compliance.

Failure to abide by this provision shall be deemed to be a violation of Rules 307 and this Rule 1806 by the Member.

Finally, violation of any of the provisions of the proposed Rule, absent reasonable justification or excuse, shall result in withdrawal of the index hedge exemption and may form the basis for subsequent denial of an application for an index hedge exemption.

Proposed Rule 1806(b) describes the Industry Index Hedge Exemption. The industry (narrow-based) index hedge exemption is in addition to the other exemptions available under Exchange Rules, Interpretations and Policies, and may not exceed twice the standard limit established under Rule 1805. Industry index options positions may be exempt from established position limits for each options contract “hedged” by an equivalent dollar amount of the underlying component securities or securities convertible into such components; provided that, in applying such hedge, each options position to be exempted is hedged by a position in at least seventy-five percent (75%) of the number of component securities underlying the index. In addition, the underlying value of the options position may not exceed the value of the underlying portfolio. The value of the underlying portfolio is: (1) The total market value of the net stock position; and (2) for positions in excess of the standard limit, subtract the underlying market value of: (i) Any offsetting calls and puts in the respective index option; (ii) any offsetting positions in related stock index futures or options; and (iii) any economically equivalent positions (assuming no other hedges for these contracts exist). The following procedures and criteria must be satisfied to qualify for an industry index hedge exemption:

(1) The hedge exemption account must have received prior Exchange approval for the hedge exemption specifying the maximum number of contracts that may be exempt under this Interpretation. The hedge exemption account must have provided all information required on Exchange-approved forms and must have kept such information current. Exchange approval may be granted on the basis of verbal representations, in which event the hedge exemption account shall within two business days, or such other time period designated by the Exchange, furnish the Exchange with appropriate forms and documentation substantiating the basis for the exemption. The hedge

exemption account may apply from time to time for an increase in the maximum number of contracts exempt from the position limits.

(2) A hedge exemption account that is not carried by a Member must be carried by a member of a self-regulatory organization participating in the Intermarket Surveillance Group.

(3) The hedge exemption account shall liquidate and establish options, stock positions, or economically equivalent positions in an orderly fashion; shall not initiate or liquidate positions in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes; and shall not initiate or liquidate a stock position or its equivalent with an equivalent index options position with a view toward taking advantage of any differential in price between a group of securities and an overlying stock index option. The hedge exemption account shall liquidate any options prior to or contemporaneously with a decrease in the hedged value of the portfolio which options would thereby be rendered excessive. The hedge exemption account shall promptly notify the Exchange of any change in the portfolio which materially affects the unhedged value of the portfolio.

(4) If an exemption is granted, it will be effective at the time the decision is communicated. Retroactive exemptions will not be granted.

(5) The hedge exemption account shall promptly provide to the Exchange any information requested concerning the portfolio.

(6) Positions included in a portfolio that serve to secure an index hedge exemption may not also be used to secure any other position limit exemption granted by the Exchange or any other self-regulatory organization or futures contract market.

(7) Any Member that maintains an industry index options position in such Member’s own account or in a customer account, and has reason to believe that such position is in excess of the applicable limit, shall promptly take the action necessary to bring the position into compliance. Failure to abide by this provision shall be deemed to be a violation of Rule 307 and proposed Rule 1806 by the Member.

(8) Violation of any of the provisions of proposed Rule 1806, absent reasonable justification or excuse, shall result in withdrawal of the index hedge exemption and may form the basis for subsequent denial of an application for an index hedge exemption hereunder.

Proposed Rule 1806(c) Exemptions Granted by Other Options Exchanges, states that a Member may rely upon any

available exemptions from applicable position limits granted from time to time by another options exchange for any options contract traded on the Exchange provided that such Member:

(1) Provides the Exchange with a copy of any written exemption issued by another options exchange or a written description of any exemption issued by another options exchange other than in writing containing sufficient detail for Exchange regulatory staff to verify the validity of that exemption with the issuing options exchange, and

(2) fulfills all conditions precedent for such exemption and complies at all times with the requirements of such exemption with respect to the Member's trading on the Exchange.

Proposed Rule 1806(d), Delta-Based Index Hedge Exemption, describes the Delta-Based Index Hedge Exemption as in addition to the standard limit and other exemptions available under Exchange rules. The proposed rule states that an index option position of a Member or non-Member affiliate of a Member that is delta neutral shall be exempt from established position limits as prescribed under Rules 1804 and 1805, subject to the following:

(1) The term "delta neutral" refers to an index option position that is hedged, in accordance with a permitted pricing model, by a position in one or more correlated instruments, for the purpose of offsetting the risk that the value of the option position will change with incremental changes in the value of the underlying index. The term "correlated instruments" means securities and/or other instruments that track the performance of or are based on the same underlying index as the index underlying the option position (but not including baskets of securities).

(2) An index option position that is not delta neutral shall be subject to position limits in accordance with proposed Rules 1804 and 1805 (subject to the availability of other position limit exemptions). Only the options contract equivalent of the net delta of such position shall be subject to the appropriate position limit. The "options contract equivalent of the net delta" is the net delta divided by units of trade that equate to one option contract on a delta basis. The term "net delta" means, at any time, the number of shares and/or other units of trade (either long or short) required to offset the risk that the value of an index option position will change with incremental changes in the value of the underlying index, as determined in accordance with a permitted pricing model.

(3) A "permitted pricing model" shall have the meaning as defined in Rule 308(a)(7)(iii).<sup>31</sup>

Proposed Rule 1806(d)(4), Effect on Aggregation of Accounts, states that (i) Members and non-Member affiliates

<sup>31</sup> A "permitted pricing model" means: (A) A pricing model maintained and operated by the Clearing Corporation ("OCC Model"); (B) A pricing model maintained and used by a Member subject to consolidated supervision by the SEC pursuant to Appendix E of SEC Rule 15c3-1, or by an affiliate that is part of such Member's consolidated supervised holding company group, in accordance with its internal risk management control system and consistent with the requirements of Appendices E or G, as applicable, to SEC Rule 15c3-1 and SEC Rule 15c3-4 under the Exchange Act, as amended from time to time, in connection with the calculation of risk-based deductions from capital or capital allowances for market risk thereunder, provided that the Member or affiliate of a Member relying on this exemption in connection with the use of such model is an entity that is part of such Member's consolidated supervised holding company group; (C) A pricing model maintained and used by a financial holding company or a company treated as a financial holding company under the Bank Holding Company Act of 1956, or by an affiliate that is part of either such company's consolidated supervised holding company group, in accordance with its internal risk management control system and consistent with: 1. The requirements of the Board of Governors of the Federal Reserve System, as amended from time to time, in connection with the calculation of risk based adjustments to capital for market risk under capital requirements of the Board of Governors of the Federal Reserve System, provided that the Member or affiliate of a Member relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group; or 2. the standards published by the Basel Committee on Banking Supervision, as amended from time to time and as implemented by such company's principal regulator, in connection with the calculation of risk-based deductions or adjustments to or allowances for the market risk capital requirements of such principal regulator applicable to such company—where "principal regulator" means a member of the Basel Committee on Banking Supervision that is the home country consolidated supervisor of such company—provided that the Member or affiliate of a Member relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group. (D) A pricing model maintained and used by an OTC derivatives dealer registered with the SEC pursuant to SEC Rule 15c3-1(a)(5) in accordance with its internal risk management control system and consistent with the requirements of Appendix F to SEC Rule 15c3-1 and SEC Rule 15c3-4 under the Exchange Act, as amended from time to time, in connection with the calculation of risk-based deductions from capital for market risk thereunder, provided that only such OTC derivatives dealer and no other affiliated entity (including a Member) may rely on this subparagraph (D); or (E) A pricing model used by a national bank under the National Bank Act maintained and used in accordance with its internal risk management control system and consistent with the requirements of the Office of the Comptroller of the Currency, as amended from time to time, in connection with the calculation of risk based adjustments to capital for market risk under capital requirements of the Office of the Comptroller of the Currency, provided that only such national bank and no other affiliated entity (including a Member) may rely on this subparagraph (E).

who rely on this exemption must ensure that the permitted pricing model is applied to all positions in correlated instruments that are owned or controlled by such Member or non-Member affiliate.

Notwithstanding subparagraph (i), above, the net delta of an option position held by an entity entitled to rely on this exemption, or by a separate and distinct trading unit of such entity, may be calculated without regard to positions in correlated instruments held by an affiliated entity or by another trading unit within the same entity, provided that:

(A) The entity demonstrates to the Exchange's satisfaction that no control relationship, as defined in Rule 307(f), exists between such affiliates or trading units; and

(B) the entity has provided (by the Member carrying the account as applicable) the Exchange written notice in advance that it intends to be considered separate and distinct from any affiliate or, as applicable, which trading units within the entity are to be considered separate and distinct from each other for purposes of this exemption.

Proposed Rule 1806(d)(4)(iii) states that, notwithstanding subparagraphs (i) and (ii) of proposed Rule 1806(d)(4)(i) and (ii), a Member or non-Member affiliate who relies on this exemption shall designate, by prior written notice to the Exchange (to be obtained and provided by the Member carrying the account as applicable), each trading unit or entity whose option positions are required under Exchange Rules to be aggregated with the option positions of such Member or non-Member affiliate that is relying on this exemption for purposes of compliance with Exchange position limits or exercise limits. In any such case: (A) The permitted pricing model shall be applied, for purposes of calculating such Member's or affiliate's net delta, only to the positions in correlated instruments owned and controlled by those entities and trading units who are relying on this exemption; and (B) the net delta of the positions owned or controlled by the entities and trading units who are relying on this exemption shall be aggregated with the non-exempt option positions of all other entities and trading units whose options positions are required under Exchange Rules to be aggregated with the option positions of such Member or affiliate.

Proposed Rule 1806(d)(5) describes the obligations of Members seeking the Delta Hedge Exemption. First, a Member that relies on this exemption for a proprietary index options position: (A) Must provide a written certification to

the Exchange that it is using a permitted pricing model as defined above, and (B) by such reliance authorizes any other person carrying for such Member an account including, or with whom such Member has entered into, a position in a correlated instrument to provide to the Exchange or the Clearing Corporation such information regarding such account or position as the Exchange or Clearing Corporation may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under this exemption. The index option positions of a non-Member relying on this exemption must be carried by a Member with which it is affiliated.

Proposed Rule 1806(d)(5)(iii) requires that a Member carrying an account that includes an index option position for a non-Member affiliate that intends to rely on the Delta-Based Hedge Exemption must obtain from such non-Member affiliate and must provide to the Exchange: (A) A written certification to the Exchange that the non-Member affiliate is using a permitted pricing model as described above; and (B) a written statement confirming that such non-Member affiliate: (1) Is relying on this exemption; (2) will use only a permitted pricing model for purposes of calculating the net delta of its option positions for purposes of this exemption; (3) will promptly notify the Member if it ceases to rely on this exemption; (4) authorizes the Member to provide to the Exchange or the Clearing Corporation such information regarding positions of the non-Member affiliate as the Exchange or Clearing Corporation may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under this exemption; and (5) if the non-Member affiliate is using the Clearing Corporation Model, has duly executed and delivered to the Member such documents as the Exchange may require to be executed and delivered to the Exchange as a condition to reliance on the exemption.

Proposed Rule 1806(d)(6) requires each Member (other than an Exchange market maker using the Clearing Corporation Model) that holds or carries an account that relies on the Delta-Based Hedge Exemption shall report, in accordance with Exchange Rule 310,<sup>32</sup>

<sup>32</sup> Each Member is required under Exchange Rule 310, Reports Related to Position Limits, to file with the Exchange the name, address and social security or tax identification number of any customer, as well as any Member, any general or special partner of the Member, any officer or director of the Member or any participant, as such, in any joint, group or syndicate account with the Member or with any partner, officer or director thereof, who,

all index option positions (including those that are delta neutral) that are reportable thereunder. Each such Member on its own behalf or on behalf of a designated aggregation unit pursuant to Rule 1806(d)(4) shall also report, in accordance with Exchange Rule 310 for each such account that holds an index option position subject to the Delta-Based Hedge Exemption in excess of the levels specified in Rules 1804 and 1805, the net delta and the options contract equivalent of the net delta of such position.

Finally, proposed Rule 1806(d)(7) requires that each Member relying on the Delta-Based Hedge Exemption shall: (i) Retain, and undertake reasonable efforts to ensure that any non-Member affiliate of the Member relying on this exemption retains, a list of the options, securities and other instruments underlying each option position net delta calculation reported to the Exchange hereunder, and (ii) produce such information to the Exchange upon request.

The proposed Rules relating to position limits and exemptions from position limits are based on, and substantially similar to, rules that are currently in place on other exchanges.<sup>33</sup>

Proposed MIAX Options Rule 1808, Trading Sessions, provides that index options will trade between the hours of 9:30 a.m. and 4:15 p.m. Eastern time, the same as on other exchanges. The proposed rule also contains procedures

on the previous business day held aggregate long or short positions of 200 or more option contracts of any single class of options traded on the Exchange. The report shall indicate for each such class of option contracts the number of option contracts comprising each such position and, in case of short positions, whether covered or uncovered. (b) Electronic Exchange Members that maintain an end of day position in excess of 10,000 non-FLEX equity option contracts on the same side of the market on behalf of its own account or for the account of a customer, shall report whether such position is hedged and provide documentation as to how such position is hedged. This report is required at the time the subject account exceeds the 10,000 contract threshold and thereafter, for customer accounts, when the position increases by 2,500 contracts and for proprietary accounts when the position increases by 5,000 contracts. (c) In addition to the reports required by paragraph (a) and (b) of this Rule, each Member shall report promptly to the Exchange any instance in which the Member has reason to believe that a person included in paragraph (a), acting alone or in concert with others, has exceeded or is attempting to exceed the position limits established pursuant to Rule 307. Interpretations and Policies: .01 For purposes of calculating the aggregate long or short position under paragraph (a) above, Members shall combine (i) long positions in put options with short positions in call options, and (ii) short positions in put options with long positions in call options. See Exchange Rule 310.

<sup>33</sup> See, e.g., ISE Rule 2006; CBOE Rule 24.4, Interpretations and Policies .01, .05, and Rule 24.4A; and Phlx Rule 1001A and Interpretations and Policies .01-.04 thereto.

for trading rotations, as well as trading halts and suspensions.

Specifically, proposed Rule 1808(a) states that, except as otherwise provided in this Rule or under unusual conditions as may be determined by the Exchange, (i) transactions in index options may be effected on the Exchange between the hours of 9:30 a.m. and 4:15 p.m. Eastern time, and (ii) transactions in options on a Foreign Currency Index may be effected on the Exchange between the hours of 7:30 a.m. and 4:15 p.m. Eastern time. With respect to options on foreign indexes, the Exchange shall determine the days and hours of business. The proposed Rule and the various enumerated times are consistent with rules in place on other exchanges.<sup>34</sup>

Proposed Rule 1808(b), Trading Rotations, states that, except as otherwise provided in the proposed Rule, the opening process for index options shall be governed by Rule 503.<sup>35</sup> The opening rotation for index options shall be held at or as soon as practicable after 9:30 a.m. Eastern time. The Exchange may delay the commencement of the opening rotation in an index option whenever in the judgment of the Exchange such action is appropriate in the interests of a fair and orderly market. Among the factors that may be considered in making these determinations are: (1) Unusual conditions or circumstances in other markets; (2) an influx of orders that has adversely affected the ability of the Primary Lead Market Maker to provide and to maintain fair and orderly markets; (3) activation of opening price limits in stock index futures on one or more futures exchanges; (4) activation of daily price limits in stock index futures on one or more futures exchanges; (5) the extent to which either there has been a delay in opening or trading is not occurring in stocks underlying the index; and (6) circumstances such as those which would result in the declaration of a fast market under Rule 506(d).

Proposed Rule 1808(c) describes circumstances and procedures relating to halts and suspensions in index options. Specifically, trading on the Exchange in any index option shall be halted or suspended whenever trading in underlying securities whose weighted

<sup>34</sup> See ISE Rule 2008; CBOE Rule 24.6, and Phlx Rule 101.

<sup>35</sup> See Exchange Rule 503. Openings on the Exchange, governs the opening of trading on the Exchange with respect to, among other things, the Pre-Opening Phase, possible opening imbalances and establishment of an opening price with or without opening orders. These and other provisions will apply to openings in index options.

value represents more than twenty percent (20%), in the case of a broad based index, and ten percent (10%) for all other indices, of the index value is halted or suspended. The Exchange also may halt trading in an index option, including in options on a Foreign Currency Index, when, in its judgment, such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the facts that may be considered are the following:

(1) Whether all trading has been halted or suspended in the market that is the primary market for a plurality of the underlying stocks, or in the case of a Foreign Currency Index, in the underlying foreign currency market;

(2) whether the current calculation of the index derived from the current market prices of the stocks is not available, or in the case of a Foreign Currency Index, the current prices of the underlying foreign currency is not available;

(3) the extent to which the rotation has been completed or other factors regarding the status of the rotation; and

(4) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, including, but not limited to, the activation of price limits on futures exchanges.

Proposed Rule 1808(d) describes the resumption of trading following a halt or suspension in an index option. Trading in options of a class or series that has been the subject of a halt or suspension by the Exchange may resume if the Exchange determines that the interests of a fair and orderly market are served by a resumption of trading. Among the factors to be considered in making this determination are whether the conditions that led to the halt or suspension are no longer present, and the extent to which trading is occurring in stocks or currencies underlying an index. Upon reopening, a rotation shall be held in each class of index options unless the Exchange concludes that a different method of reopening is appropriate under the circumstances, including but not limited to, no rotation, an abbreviated rotation or any other variation in the manner of the rotation.

Proposed Rule 1808(e) states that Rule 504, Interpretations and Policies .03 applies to index options trading with respect to the initiation of a market wide trading halt commonly known as a "circuit breaker."<sup>36</sup>

<sup>36</sup> The Exchange shall halt trading in all securities whenever a market-wide trading halt commonly known as a circuit breaker is initiated on the New York Stock Exchange in response to extraordinary

Proposed Rule 1808(f) addresses the hours for trading foreign currency options. Specifically, when the hours of trading of the underlying primary securities market for an index option do not overlap or coincide with those of the Exchange, all of the provisions as described in paragraphs (c), (d) and (e) above shall not apply except for (c)(4).

Proposed Rule 1808(g) governs the situation where the primary market for a security underlying the current index value of an index option does not open for trading on a given day. In such a circumstance, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, based on the opening price of that security on the next day that its primary market is open for trading. This procedure shall not be used if the current index value at expiration is fixed in accordance with the Rules and By-Laws of the Clearing Corporation.

The proposed rules governing trading sessions, including trading rotations, halts and suspensions, resumption of trading following a halt or suspension, circuit breakers, special provisions for foreign indices, and pricing when the primary market does not open are based on, and substantially similar to, the rules in place on other exchanges.<sup>37</sup>

Proposed MIAX Options Rule 1809, Terms of Index Options Contracts, outlines the terms of index options contracts in terms of the meaning of premium bids and offers; exercise prices; expiration months and the trading of European Style Index options.<sup>38</sup> The proposed Rule also applies to A.M. Settled Index Options, and Long-Term Option Series (including Reduced-Value Long Term Options Series), which would also require a filing with the Commission for the specific index option(s) to which the proposed rule is applicable.

Proposed Rule 1809(a) contains general provisions applicable to the trading of index options on the Exchange. Specifically, the proposed Rule states generally that bids and offers shall be expressed in terms of dollars and cents per unit of the index. The Exchange shall determine fixed-point intervals of exercise prices for call and

market conditions. See Exchange Rule 504, Interpretations and Policies .03. Rule 530(e) provides that the Exchange shall halt trading in all options whenever the equities markets initiate a market-wide trading halt commonly known as a circuit breaker in response to extraordinary market conditions.

<sup>37</sup> See, e.g., ISE Rule 2008; CBOE Rule 24.7; and Phlx Rule 1047A.

<sup>38</sup> The Exchange would be required under proposed Rule 1800 to file a proposed rule change with the Commission to specify such indices and any requirements that apply.

put options. With respect to expirations, proposed Rule 1809(a)(3) states that index options contracts, including option contracts on a Foreign Currency Index, may expire at three (3)-month intervals or in consecutive months. The Exchange may list up to six (6) expiration months at any one time, but will not list index options that expire more than twelve (12) months out. Notwithstanding the preceding restriction, the Exchange may list up to seven expiration months at any one time for any broad-based security index option contracts on which any exchange calculates a constant three-month volatility index.

Proposed Rule 1809(a)(4) permits the Exchange to list and trade certain European-style index options to be Specified by the Exchange, some of which may be A.M.-settled as provided in paragraph (a)(5). The Exchange will file a proposed rule change and any such listing and trading is subject to the approval of the Commission.

Proposed Rule 1809(a)(5) governs A.M.-Settled Index Options. The last day of trading for A.M.-settled index options shall be the business day preceding the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, the business day preceding the last day of trading in the underlying securities prior to the expiration date. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these proposed Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that:

(i) In the event that the primary market for an underlying security does not open for trading on that day, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Rule 1808(g), unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of the Clearing Corporation; and

(ii) In the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security.

Proposed Rule 1809(a)(5)(ii) permits the Exchange to list specific A.M.-settled index options that are approved for trading on the Exchange, subject to the filing of a proposed rule change and the approval of the Commission.

Proposed Rule 1809(b)(1) permits the Exchange, notwithstanding the permitted expiration months set forth in proposed Rule 1809(a)(3) (as described above), to list long-term index options series that expire from twelve (12) to sixty (60) months from the date of issuance. Under the proposal, long term index options series may be based on either the full or reduced value of the underlying index. There may be up to ten (10) expiration months, none further out than sixty (60) months. Strike price interval, bid/ask differential and continuity Rules shall not apply to such options series until the time to expiration is less than twelve (12) months. When a new long term index options series is listed, such series will be opened for trading either when there is buying or selling interest, or forty (40) minutes prior to the close, whichever occurs first. No quotations will be posted for such options until they are opened for trading.

Proposed Rule 1809(b)(2) governs the trading of reduced-value long term options series.<sup>39</sup> Proposed Rule 1809(b)(2)(i) permits the Exchange to list the specific reduced-Value long term options series traded on the Exchange (subject to an Exchange filing and Commission approval). Reduced-value long term options series may expire at six-month intervals. When a new expiration month is listed, series may be near or bracketing the current index value. Additional series may be added when the value of the underlying index increases or decreases by ten (10) to fifteen (15) percent.

Proposed Rule 1809(c) sets forth the procedures for adding and deleting strike prices. The procedures for adding and deleting strike prices for index options are provided in Exchange Rule 404, as amended by the following:

(1) The interval between strike prices will be no less than \$5.00; provided that in the case of certain classes of index options, the interval between strike prices will be no less than \$2.50 and such must be listed specifically in the Rule.

(2) New series of index options contracts may be added up to, but not on or after, the fourth business day prior to expiration for an option contract

expiring on a business day, or, in the case of an option contract expiring on a day that is not a business day, the fifth business day prior to expiration.

(3) When new series of index options with a new expiration date are opened for trading, or when additional series of index options in an existing expiration date are opened for trading as the current value of the underlying index to which such series relate moves substantially from the exercise prices of series already opened, the exercise prices of such new or additional series shall be reasonably related to the current value of the underlying index at the time such series are first opened for trading. In the case of all classes of index options, the term “reasonably related to the current value of the underlying index” shall have the meaning set forth in proposed Rule 1809(c)(4), described below.

(4) Proposed Rule 1809(c)(4) states that, notwithstanding any other provision of proposed Rule 1809(c), the Exchange may open for trading additional series of the same class of index options as the current index value of the underlying index moves substantially from the exercise price of those index options that already have been opened for trading on the Exchange. The exercise price of each series of index options opened for trading on the Exchange shall be reasonably related to the current index value of the underlying index to which such series relates at or about the time such series of options is first opened for trading on the Exchange. The term “reasonably related to the current index value of the underlying index” means that the exercise price is within thirty percent (30%) of the current index value.

The Exchange may also open for trading additional series of index options that are more than thirty percent (30%) away from the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market Makers trading for their own account shall not be considered when determining customer interest under this provision.

Proposed Rule 1809(d) states that the reported level of the underlying index that is calculated by the reporting authority on the business day of expiration, or, in the case of an option contract expiring on a day that is not a business day, the last day of trading in the underlying securities prior to the expiration date for purposes of determining the current index value at the expiration of an A.M.-settled index

option, may differ from the level of the index that is separately calculated and reported by the reporting authority and that reflects trading activity subsequent to the opening of trading in any of the underlying securities.

Proposed Rule 1809(e) provides that the Rules of the Clearing Corporation specify that, unless the Rules of the Exchange provide otherwise, the current index value used to settle the exercise of an index options contract shall be the closing index value for the day on which the index options contract is exercised in accordance with the Rules of the Clearing Corporation or, if such day is not a business day, for the most recent business day. The closing settlement value for options on a Foreign Currency Index shall be specified by the Exchange.

Proposed Rule 1809, Interpretations and Policies .01, Short Term Option Series Program, specifies that, notwithstanding the restriction in Rule 1809(a)(3), after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (“Short Term Option Opening Date”) series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays in which monthly options series or Quarterly Options Series expire (“Short Term Option Expiration Dates”). The Exchange may have no more than a total of five Short Term Option Expiration Dates. If the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday.

Proposed Interpretations and Policies .01(a) to Rule 1809 permits the Exchange to select up to thirty (30) currently listed option classes on which Short Term Option Series may be opened on any Short Term Option Opening Date. In addition to the 30 option class restriction, the Exchange may also list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules. For each index option class eligible for participation in the Short Term Option Series Program, the Exchange may open up to 30 Short Term Option Series on index options for each expiration date in that class. The Exchange may also open Short Term Option Series that are opened by other

<sup>39</sup> A reduced-value options series is an option series overlying an index that trades in units based upon a percentage of the value of the underlying index, for example, ten percent of the value of the index.



securities exchanges in option classes selected by such exchanges under their respective short term option rules.

Proposed Interpretations and Policies .01(b) to proposed Rule 1809 states that no Short Term Option Series on an index option class may expire in the same week during which any monthly option series on the same index class expires or, in the case of Quarterly Options Series, on an expiration that coincides with an expiration of Quarterly Options Series on the same index class.

Proposed Interpretations and Policies .01(c) to Rule 1809 governs the listing and trading of initial series in short-term options. The Exchange may open up to 20 initial series for each option class that participates in the Short Term Option Series Program. The strike price of each Short Term Option Series will be fixed at a price per share, with approximately the same number of strike prices above and below the calculated index value of the underlying index at about the time that Short Term Option Series are initially opened for trading on the Exchange (e.g., if seven series are initially opened, there will be at least three strike prices above and three strike prices below the calculated index value). Any strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current value of the underlying index.

Proposed Interpretations and Policies .01(d) to Rule 1809, Additional Series, states that the Exchange may open up to 10 additional series for each option class that participates in the Short Term Option Series Program when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the current value of the underlying index moves substantially from the exercise price or prices of the series already opened. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current value of the underlying index. The Exchange may also open additional strike prices on Short Term Option Series that are more than 30% above or below the current value of the underlying index provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market Makers trading for their own account shall not be considered when determining customer interest under this provision. In the event that the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security, the Exchange will delist any series with no open

interest in both the call and the put series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or the call series for a given expiration month, so as to list series that are at least 10% but not more than 30% above or below the current price of the underlying security. In the event that the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security and all existing series have open interest, the Exchange may list additional series, in excess of the 30 allowed under this Interpretations and Policies .01. The opening of the new Short Term Option Series shall not affect the series of options of the same class previously opened.

Notwithstanding any other provisions in proposed Rule 1809, Short Term Option Series may be added up to, and including on, the Short Term Option Expiration Date for that options series.

Proposed Interpretations and Policies .01(e) to Rule 1809 governs strike price intervals for short term index option series. The interval between strike prices on Short Term Option Series shall be the same as the strike prices for series in that same index option class that expire in accordance with the normal monthly expiration cycle. During the month prior to expiration of an index option class that is selected for the Short Term Option Series Program pursuant to this rule ("Short Term Option"), the strike price intervals for the related index non-Short Term Option ("Related non-Short Term Option") shall be the same as the strike price intervals for the index Short Term Option.

Proposed Interpretations and Policies .02 to Rule 1809 governs the Quarterly Options Series Program. Notwithstanding the restriction in proposed Rule 1809(a)(3) (described above), the Exchange may list and trade options series that expire at the close of business on the last business day of a calendar quarter ("Quarterly Options Series"). The Exchange may list Quarterly Options Series for up to five (5) currently listed options classes that are either index options or options on exchange traded funds ("ETFs"). In addition, the Exchange may also list Quarterly Options Series on any options classes that are selected by other securities exchanges that employ a similar pilot program under their respective rules. The Exchange may list series that expire at the end of the next consecutive four (4) calendar quarters,

as well as the fourth quarter of the next calendar year. The Exchange will not list a Short Term Option Series on an options class whose expiration coincides with that of a Quarterly Options Series on that same options class. Quarterly Options Series shall be P.M. settled.

Proposed Interpretations and Policies .02(d) to Rule 1809, Initial Series, states that the strike price of each Quarterly Options Series will be fixed at a price per share, with at least two, but no more than five, strike prices above and at least two, but no more than five, strike prices below the value of the underlying index at about the time that a Quarterly Options Series is opened for trading on the Exchange. The Exchange shall list strike prices for Quarterly Options Series that are reasonably related to the current index value of the underlying index to which such series relates at about the time such series of options is first opened for trading on the Exchange. The term "reasonably related to the current index value of the underlying index" means that the exercise price is within thirty percent (30%) of the current index value.

Proposed Interpretations and Policies .02(e) to Rule 1809, Additional Series, permits the Exchange to open for trading additional Quarterly Options Series of the same class when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the initial exercise price or prices. The Exchange may also open for trading additional Quarterly Options Series that are more than thirty percent (30%) away from the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-makers trading for their own account shall not be considered when determining customer interest under this provision. The Exchange may open additional strike prices of a Quarterly Options Series that are above the value of the underlying index provided that the total number of strike prices above the value of the underlying is no greater than five. The Exchange may open additional strike prices of a Quarterly Options Series that are below the value of the underlying index provided that the total number of strike prices below the value of the underlying index is no greater than five. The opening of any new Quarterly Options Series shall not affect the series of options of the same class previously opened.

Proposed Interpretations and Policies .02(f) to Rule 1809, Strike Interval, states that the interval between strike prices on Quarterly Options Series shall be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle.

Proposed Interpretations and Policies .03 to Rule 1809 states that, notwithstanding the requirements set forth in proposed Rule 1809, the Exchange may list additional series of index options classes if such series are listed on at least one other national securities exchange in accordance with the applicable rules of such exchange for the listing of index options. For each options series listed pursuant to this Interpretations and Policies .03, the Exchange will submit a proposed rule change with the Securities and Exchange Commission that is effective upon filing within the meaning of Section 19(b)(3)(A) under Act.

Proposed Interpretations and Policies .04 to Rule 1809 states that, notwithstanding the requirements set forth in proposed Rule 1809 and any Interpretations and Policies thereto, the Exchange may list additional expiration months on options classes opened for trading on the Exchange if such expiration months are opened for trading on at least one other registered national securities exchange.

Proposed Interpretations and Policies .05 to Rule 1809 states that, notwithstanding the requirements set forth in this Rule 1809 and any Interpretations and Policies thereto, the Exchange may open for trading Short Term Option Series on the Short Term Option Opening Date that expire on the Short Term Option Expiration Date at strike price intervals of (i) \$0.50 or greater where the strike price is less than \$75, and \$1 or greater where the strike price is between \$75 and \$150 for all index option classes that participate in the Short Term Options Series Program; or (ii) \$0.50 for index option classes that trade in one dollar increments and are in the Short Term Option Series Program.

The proposed rules concerning the terms of options contracts are based on, and substantially similar to, rules that are currently operative on other exchanges.<sup>40</sup>

Proposed MIAX Options Rule 1810 applies to debit put spreads. Debit put spread positions in European-style, broad-based index options traded on the Exchange (hereinafter “debit put spreads”) may be maintained in a cash

account as defined by Federal Reserve Board Regulation T Section 220.8<sup>41</sup> by a Public Customer, provided that the following procedures and criteria are met:

(a) approval to maintain debit put spreads in a cash account carried by an Exchange Member. A customer so approved is hereinafter referred to as a “spread exemption customer.”

(b) The spread exemption customer has provided all information required on Exchange-approved forms and has kept such information current.

(c) The customer holds a net long position in each of the stocks of a portfolio that has been previously established or in securities readily convertible, and additionally in the case of convertible bonds economically convertible, into common stocks which would comprise a portfolio. The debit put spread position must be carried in an account with a member of a self-regulatory organization participating in the Intermarket Surveillance Group.

(d) The stock portfolio or its equivalent is composed of net long positions in common stocks in at least four industry groups and contains at least twenty (20) stocks, none of which accounts for more than fifteen percent (15%) of the value of the portfolio (hereinafter “qualified portfolio”). To remain qualified, a portfolio must at all times meet these standards notwithstanding trading activity in the stocks.

(e) The exemption applies to European-style broad-based index options dealt in on the Exchange to the extent the underlying value of such options position does not exceed the unhedged value of the qualified portfolio. The unhedged value would be determined as follows: (1) The values of the net long or short positions of all qualifying products in the portfolio are totaled; (2) for positions in excess of the standard limit, the underlying market value (A) of any economically equivalent opposite side of the market calls and puts in broad-based index options, and (B) of any opposite side of the market positions in stock index futures, options on stock index futures, and any economically equivalent opposite side of the market positions, assuming no other hedges for these contracts exist, is subtracted from the qualified portfolio; and (3) the market value of the resulting unhedged portfolio is equated to the appropriate number of exempt contracts as follows—the unhedged qualified portfolio is divided by the correspondent closing index value and

the quotient is then divided by the index multiplier or 100.

(f) A debit put spread in Exchange-traded broad-based index options with European-style exercises is defined as a long put position coupled with a short put position overlying the same broad-based index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) exceeds the strike price of the short put(s). A debit put spread will be permitted in the cash account as long as it is continuously associated with a qualified portfolio of securities with a current market value at least equal to the underlying aggregate index value of the long side of the debit put spread.

(g) The qualified portfolio must be maintained with either a Member, another broker-dealer, a bank, or securities depository.

(h) The spread exemption customer shall agree promptly to provide the Exchange any information requested concerning the dollar value and composition of the customer’s stock portfolio, and the current debit put spread positions.

(1) The spread exemption customer shall agree to and any Member carrying an account for the customer shall:

(i) Comply with all Exchange Rules and regulations;

(ii) liquidate any debit put spreads prior to or contemporaneously with a decrease in the market value of the qualified portfolio, which debit put spreads would thereby be rendered excessive; and

(iii) promptly notify the Exchange of any change in the qualified portfolio or the debit put spread position which causes the debit put spreads maintained in the cash account to be rendered excessive.

(i) If any Member carrying a cash account for a spread exemption customer with a debit put spread position dealt in on the Exchange has a reason to believe that as a result of an opening options transaction the customer would violate this spread exemption, and such opening transaction occurs, then the Member has violated this Rule 1810.

(j) Violation of any of these provisions, absent reasonable justification or excuse, shall result in withdrawal of the spread exemption and may form the basis for subsequent denial of an application for a spread exemption hereunder.

Proposed Rule 1811, Disclaimers, disclaims liability for index reporting authorities. The Disclaimer shall apply

<sup>40</sup> See, e.g., ISE Rule 2009; CBOE Rule 24.9; and Phlx Rule 1101A.

<sup>41</sup> 12 CFR 220.8.

to the reporting authorities<sup>42</sup> identified in the Interpretations and Policies to proposed Rule 1801.<sup>43</sup>

Proposed Rule 1811(b), Disclaimer, provides that no reporting authority, and no affiliate of a reporting authority (each such reporting authority, its affiliates, and any other entity identified in this Rule are referred to collectively as a “Reporting Authority”), makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of an index it publishes, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any options contract based thereon or for any other purpose. The Reporting Authority shall obtain information for inclusion in, or for use in the calculation of, such index from sources it believes to be reliable, but the Reporting Authority does not guarantee the accuracy or completeness of such index, any opening, intra-day or closing value therefor, or any data included therein or related thereto. The Reporting Authority hereby disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such index, any opening, intra-day, or closing value therefor, any data included therein or relating thereto, or any options contract based thereon. The Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person’s use of such index, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any options contract based thereon, or

arising out of any errors or delays in calculating or disseminating such index.

Proposed Rule 1811 concerning Disclaimers is based on, and substantially similar to, rules that are currently operative on other exchanges.<sup>44</sup>

Proposed Rule 1812, Exercise of American-Style Index Options, contains standards for exercising American-style index options. The proposed Rule provides that no Member may prepare, time stamp or submit an exercise instruction for an American-style index options series if the Member knows or has reason to know that the exercise instruction calls for the exercise of more contracts than the “net long position” of the account for which the exercise instruction is to be tendered. For purposes of this Rule: (i) The term “net long position” shall mean the net position of the account in such option at the opening of business of the day of such exercise instruction, plus the total number of such options purchased that day in opening purchase transactions up to the time of exercise, less the total number of such options sold that day in closing sale transactions up to the time of exercise; (ii) the “account” shall be the individual account of the particular customer, market-maker or “non-customer” (as that term is defined in the By-Laws of the Clearing Corporation) who wishes to exercise; and (iii) every transaction in an options series effected by a market-maker in a market-maker’s account shall be deemed to be a closing transaction in respect of the market-maker’s then positions in such options series. No Member may adjust the designation of an “opening transaction” in any such option to a “closing transaction” except to remedy mistakes or errors made in good faith.

#### Restrictions on Position and Exercise Limits

Exchange Rule 307 currently establishes position limits for Members.<sup>45</sup> Rule 308 sets forth rules

that apply to Market Makers seeking an exemption from the established position limits for an option class. Generally, an exemption will be granted only to a Market Maker who has requested an exemption, who is appointed to the options class in which the exemption is requested, whose positions are near the current position limit and who is significant in terms of daily volume.<sup>46</sup> The positions must generally be within ten percent (10%) of the limits contained in Rule 307 for equity options. Under the proposal, the positions must generally be within ten percent (10%) of the limits contained in Rule 307 for equity and narrow-based index options, and twenty percent (20%) of those limits for broad-based index options. The purpose of this provision is to ensure that the Market Maker requesting the exemption is compliant with the current requirement to be a Market Maker whose positions are near the current position limit and who is significant in terms of daily volume. Proposed Rules 1804 through 1807 described below) contain the standard position limit and exercise limits for Broad-Based, Industry (narrow-based) and Foreign Currency index options, as well as exemption standards and the procedures for requesting exemptions from those proposed rules.

Proposed Rule 308(b)(8) states that a Market Maker may rely upon any available exemptions from applicable position limits granted from time to time by another options exchange for any options contract traded on the Exchange provided that such Market Maker: (i) Provides the Exchange with a copy of any written exemption issued by another options exchange or a written description of any exemption issued by another options exchange other than in writing containing sufficient detail for Exchange regulatory staff to verify the validity of that exemption with the issuing options exchange, and (ii) fulfills all conditions precedent for such exemption and complies at all times with the requirements of such exemption with respect to the Market Maker’s trading on the Exchange.<sup>47</sup> The purpose of this provision is to afford Market Makers the same exemptions available on other exchanges that are not explicitly set forth in MIAX Options Rules.

fixed from time to time by another exchange for an option contract not traded on the Exchange, when the Member is not a member of the other exchange on which the transaction was effected. See Exchange Rule 307.

<sup>46</sup> See Exchange Rule 308(b)(3).

<sup>47</sup> This proposed rule is based on ISE Rule 413(d).

<sup>42</sup> The term “reporting authority” with respect to a particular index means the institution or reporting service designated by the Exchange as the official source for (1) calculating the level of the index from the reported prices of the underlying securities that are the basis of the index and (2) reporting such level. The reporting authority for each index approved for options trading on the Exchange shall be Specified (as provided in Rule 1800) in the Interpretations and Policies to Rule 1801. See proposed Rule 1801(n). Proposed Rule 1800 states that where the rules in Chapter XVIII indicate that particular indices or requirements with respect to particular indices will be “Specified,” MIAX Options will file a proposed rule change with the Commission pursuant to Section 19 of the Act and Rule 19b-4 thereunder to specify such indices or requirements, including the designated reporting authority for each index listed on the Exchange.

<sup>43</sup> The reporting authorities designated by the Exchange in respect of each index underlying an index options contract traded on the Exchange are as provided in a chart in proposed Rule 1801, Interpretations and Policies .01.

<sup>44</sup> See, e.g., ISE Rule 2011 and CBOE Rule 24.14.

<sup>45</sup> Members may not enter into opening transactions if the Member has reason to believe that as a result of such transaction the Member or its customer would, acting alone or in concert with others, directly or indirectly control an aggregate position in an option contract traded on the Exchange in excess of 25,000 or 50,000 or 75,000 or 200,000 or 250,000 option contracts (whether long or short) of the put type and the call type on the same side of the market respecting the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options, or such other number of option contracts as may be fixed from time to time by the Exchange as the position limit for one or more classes or series of options; or (2) exceed the applicable position limit

Proposed amended Rule 313, Other Restrictions on Options Transactions and Exercises will govern the restrictions on the exercise of cash settled index options. Specifically, the Exchange is proposing to amend Rule 313(a)(2) to state that during the ten (10) business days prior to the expiration date of a given series of options, other than index options, no restriction on exercise under this Rule may be in effect with respect to that series of options. With respect to index options, restrictions on exercise may be in effect until the opening of business on the last business day before the expiration date.

Proposed Rule 313(a)(3) prohibits exercises under certain conditions, and certain exceptions to those prohibitions. As an initial matter, exercises of American-style, cash-settled index options shall be prohibited during any time when trading in such options is delayed, halted, or suspended, subject to the exceptions set forth in the remainder of the Rule. The purpose of this prohibition is to promote just and equitable principles of trade by minimizing the ability of the holder of such an option to take advantage of such a delay, halt or suspension, during which market participants with short positions, cannot act in response to the conditions causing the delay, halt or suspension.

Proposed Rule 313(a)(3) provides specific exceptions to the prohibition. First, the exercise of an American-style, cash-settled index option may be processed and given effect in accordance with and subject to the Rules of the Clearing Corporation while trading in the option is delayed, halted, or suspended if it can be documented, in a form prescribed by the Exchange, that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension. The purpose of this exception is to provide relief from the prohibition when the holder of the option to be exercised has made a legitimate decision to exercise prior to the delay, halt, or suspension. For the same reason, proposed Rule 313(a)(3)(ii) states that exercises of expiring American-style, cash-settled index options shall not be prohibited on the last business day prior to their expiration. Proposed Rule 313(a)(iv) states that exercises of American-style, cash-settled index options shall not be prohibited during a trading halt that occurs at or after 4:00 p.m. Eastern time. In the event of such a trading halt, exercises may occur through 4:20 p.m. Eastern time. In addition, if trading resumes following such a trading halt (such as by closing rotation), exercises

may occur during the resumption of trading and for five (5) minutes after the close of the resumption of trading. The provisions of this subparagraph are subject to the authority of the Exchange to impose restrictions on transactions and exercises pursuant to paragraph (a) of the Rule.

Finally, the Exchange may determine to permit the exercise of American-style, cash-settled index options while trading in such options is delayed, halted, or suspended. The Exchange believes that it is consistent with just and equitable principles of trade to determine if circumstances exist to grant or deny a request to exercise an American-style, cash-settled index option while trading in such options is delayed, halted, or suspended.

#### Openings

The Exchange proposes to amend Rule 503, Openings, to include index options in the Rule by stating that, for a period of time before the scheduled opening in the underlying security the Exchange will accept orders and quotes in equity and index options during the "Pre-Opening Phase".

#### Trading Halts

The Exchange proposes to amend Rule 504, Trading Halts, Interpretations and Policies .04 to address the handling of trade nullifications in index options due to trading halts. Specifically, Interpretations and Policies .04 would be amended to state that, with respect to index options, trades on the Exchange will be nullified if the trade occurred during a trading halt on the primary market in underlying securities representing more than 10 percent of the current index value for narrow-based stock index options, and 20 percent of the current index value for broad-based index options. New Interpretations and Policies .05 to Rule 504 states that trading halts, resumptions, trading pauses and post-halt notifications involving index options are governed by Rules 1808(c)–(f) (described above).

#### Limitation on Exchange Liability

The Exchange proposes to amend Rule 527, Exchange Liability, to state that the Exchange shall have no liability to any person for any loss, expense, damages or claims that result from any error, omission or delay in calculating or disseminating any current or closing index value or any reports of transactions in or quotations for options or other securities, including underlying securities. The proposed Rule is based

on the rules of other Exchanges.<sup>48</sup> The Exchange believes that and such error, omission or delay is outside the scope of its function and purpose, and thus it should not incur loss, damages or claims due to conditions caused by the action or inaction of other persons. In conjunction with MIAX Options Rule 1811, this proposed rule also limits liability regarding the dissemination of index information.

#### Obligations of Market Makers

Currently, Rule 603, Obligations of Market Makers, Rule 603(a), imposes obligations on Market Makers to refrain from purchasing a call option or a put option at a price more than \$0.25 below parity, and places restrictions on the maximum permissible bid/ask differential for an option, depending on the width of the quote in the underlying security.

Current Rule 603(b)(4) requires Market Makers to price option contracts fairly by, among other things, bidding and offering so as to create differences of no more than \$5 between the bid and offer ("bid/ask differentials") following the opening rotation in an equity option contract; current Rule 603(b)(5), however, states that the bid/ask differentials stated in subparagraph (b)(4) of the Rule shall not apply to in-the-money options where the underlying security's market is wider than the differentials set forth above. For these options, the bid/ask differential may be as wide as the quotation on the primary market of the underlying security.

The Exchange proposes to amend Rule 603(b)(5) to state, in new subparagraph (b)(5)(ii), that the Exchange or its authorized agent may calculate bids and asks for various indices for the sole purpose of determining permissible bid/ask differentials on options on these indices. These values will be calculated by determining the weighted average of the bids and asks for the components of the corresponding index. These bids and asks will be disseminated by the Exchange at least every fifteen (15) seconds during the trading day solely for the purpose of determining the permissible bid/ask differential that market-makers may quote on an in-the-money option on the indices. For in-the-money series in index options where the calculated bid/ask differential is wider than the applicable differential set out in subparagraph (b)(4) of this Rule, the bid/ask differential in the index options series may be as wide as the calculated bid/ask differential in the underlying

<sup>48</sup> See, e.g., ISE Rule 705(a); CBOE Rule 6.7(a); and Phlx Rule 1102A.

index. The Exchange will not make a market in the basket of stock comprising the indices and is not guaranteeing the accuracy or the availability of the bid/ask values. The Exchange believes that the calculation of a bid/ask differential for the underlying index perfects the mechanisms of a free and open market and a national market system by using a weighted average method to determine allowable bid/ask differentials in options overlying an index. This calculation should provide an accurate standard for Market Makers to follow when establishing their markets. The Exchange believes that the proposed rule will result in narrower bid/ask differentials in index option quotations on the Exchange, all to the benefit of investors and the marketplace as a whole.

In conjunction with the amendments to Rule 308, the Exchange is proposing to adopt new Rule 700(h) to set forth the process to be followed by Clearing Members and Members when exercising American-style cash-settled options.

Specifically, Clearing Members must follow the procedures of the Clearing Corporation when exercising American-style cash-settled index options contracts issued or to be issued in any account at the Clearing Corporation. Members must also follow the procedures set forth below with respect to American-style cash-settled index options:

First, for all contracts exercised by the Member or by any customer of the Member, an "exercise advice" must be delivered by the Member in such form or manner prescribed by the Exchange no later than 4:20 p.m. Eastern time, or if trading hours are extended or modified in the applicable options class, no later than five (5) minutes after the close of trading on that day. Subsequent to the delivery of an "exercise advice," should the Member or a customer of the Member determine not to exercise all or part of the advised contracts, the Member must also deliver an "advice cancel" in such form or manner prescribed by the Exchange no later than 4:20 p.m. Eastern time, or if trading hours are extended or modified in the applicable options class, no later than five (5) minutes after the close of trading on that day. This is to ensure that the Exchange and the Clearing Corporation are given adequate notice to process the "exercise advice" or "advice cancel". The Exchange may determine to extend the applicable deadline for the delivery of "exercise advice" and "advice cancel" notifications pursuant to this paragraph (h) if unusual circumstances are present. The purpose of this provision is to provide a fair and

equitable determination to allow more time for such delivery if the circumstances warrant.

Proposed Rule 700(h)(4) states that no Member may prepare, time stamp or submit an "exercise advice" prior to the purchase of the contracts to be exercised if the Member knew or had reason to know that the contracts had not yet been purchased. The proposed Rule is intended to further just and equitable principles of trade by stating in proposed Rule 700(h)(5) that the failure of any Member to follow the procedures in this paragraph (h) may result in the assessment of a fine, which may include but is not limited to disgorgement of potential economic gain obtained or loss avoided by the subject exercise, as determined by the Exchange. Additionally, under proposed Rule 700(h)(6) preparing or submitting an "exercise advice" or "advice cancel" after the applicable deadline on the basis of material information released after such deadline, in addition to constituting a violation of the Rule, is activity inconsistent with just and equitable principles of trade.

Proposed Rules 700(h)(7) and (8) include prohibitions and exceptions to the submission of corresponding "exercise advice" and "advice cancel" forms that are similar to the prohibitions and exceptions to the exercise of index options in Rule 313(a)(3).

The proposed rule relating to the exercise of American-style options is based on, and substantially similar to, rules currently operative on other Exchanges.<sup>49</sup>

#### Surveillance and Capacity

The Exchange represents that it has an adequate surveillance program in place for index options. The Exchange is a member of the ISG, which "is comprised of an international group of exchanges, market centers, and market regulators." The purpose of the ISG is to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket manipulations and trading abuses. The ISG plays a crucial role in information sharing among markets that trade securities, options on securities, security futures products, and futures and options on broad-based security indexes. A list identifying the current ISG members is available at <https://www.isgportal.org/home.html>.

MIAX Options has analyzed its capacity and represents that it believes

the Exchange and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the additional traffic associated with the listing and trading of index options.

The Exchange will announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 90 days following the date the Commission issues an order approving the proposed rule change. The implementation date will be no later than 90 days following the issuance of the Regulatory Circular.

#### 2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act<sup>50</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>51</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change will expand the Exchange's capability to introduce and trade both existing and new and innovative index products on the MIAX Options System. The added capability is consistent with the Act in that it should foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, specifically index options. The Exchange believes that there is unmet market demand on MIAX Options for exchange-listed index options and the listing and trading of index options on the Exchange is designed to attract both liquidity and order flow to the Exchange, all to the benefit of the marketplace as a whole.

The Exchange believes that the requirements in the proposed listing standards regarding, among other things, the minimum market capitalization, trading volume, and relative weightings of an underlying index's component stocks are designed to ensure that the markets for the index's component stocks are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. These requirements are

<sup>49</sup> See, e.g., ISE Rule 2012; CBOE Rule 24.18; and Phlx Rule 1042A.

<sup>50</sup> 15 U.S.C. 78f(b).

<sup>51</sup> 15 U.S.C. 78f(b)(5).

designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by ensuring that unusual or extreme volatility in any single component of an index could not cause the entire index to become so volatile that it puts investors at undue and unplanned risk. These requirements also minimize the potential for manipulating the underlying index, which protects investors and the public interest.

The Exchange further believes that the requirement in proposed Rule 1802(b)(10) that the current underlying index value will be reported at least once every 15 seconds during the time the index options are traded on the Exchange, and the requirement in proposed Rule 1802(d)(11) (with respect to broad-based index options) that the current index value be widely disseminated at least once every 15 seconds by OPRA, the CTA, NIDS or one or more major market data vendors during the time the index options are traded on the Exchange removes impediments to and perfects the mechanisms of a free and open market and a national market system by providing transparency with respect to current index values and by contributing to the overall transparency of the market for index options. In addition, the Exchange believes that the requirement in proposed Rule 1802(d)(2) that an index option be A.M.-settled, rather than based on closing prices, should help to reduce the potential impact of expiring index options on the market for an index's component securities.

The Exchange believes that the requirement in proposed Rule 1803 to disseminate of index values as a condition to the trading of options on an index fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities by requiring absolute transparency regarding the dissemination of index values. The requirement that the Exchange disseminate, or assure that the current index value is disseminated, and the requirement that the Exchange maintain, in files available to the public, information identifying the components whose prices are the basis for calculation of the index and the method used to determine the current index value, protects investors and the public interest by ensuring that the current index value is disseminated regularly and consistently.

The Exchange's proposal to adopt Rules 1804 through 1807 relating to position limits, exemptions from position limits, exercise limits in index options, and regular maintenance reviews are designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by limiting investors' levels of concentration in a single index position. Not only would an investor be at undue risk by assuming such a position, but the market for the affected index option could be disproportionately affected by the trading activities of that single investor with an unusually large long or short position. The Exchange is proposing to mitigate this risk by establishing the same position and exercise limits, and hedging rules, that already exist on other exchanges, all designed for the protection of investors and the public interest.

Proposed Rule 1808, Trading Sessions, is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, by establishing the same, uniform trading hours for index options as other exchanges. The Exchange's proposal to establish rules and procedures for openings, halts and reopenings, together with the designation by the Board of an Exchange official authorized to halt trading when, in his or her judgment, such action is appropriate in the interests of a fair and orderly market is designed to protect investors and the public interest by ensuring that there are multiple safeguards available during times of unusual or particularly volatile market activity.

Proposed MIA X Options Rule 1809, Terms of Index Options Contracts, outlines the terms of index options contracts in terms of the meaning of premium bids and offers; exercise prices; expiration months; the trading of European Style Index options. This proposed Rule is the same as the rules concerning terms of index options contracts on other exchanges.<sup>52</sup> Proposed Rule 1809 is a generic rule concerning the manner of trading of index option contracts. The Exchange's proposal to adopt existing uniform rules governing terms of index option contracts is designed to perfect the mechanisms of a free and open market and a national market system and, in

general, to protect investors and the public interest by adopting standards and rules for index option contracts that are consistent with other exchanges' standards and rules. The Exchange believes that this benefits investors and the marketplace as a whole because investors who determine to trade index options on MIA X Options will not need to rely on an unfamiliar set of rules and contract terms when they begin trading index options here.

The Exchange believes that its proposal to include index options in the Short Term Options Series Program removes impediments to, and perfects the mechanisms of, a free and open market and a national market system, and will benefit market participants by giving them more flexibility to closely tailor their investment and hedging decisions in a greater number of securities. The Exchange also believes that expanding the Short Term Options Series Program to include index options will provide the investing public and other market participants with additional opportunities to hedge their investment, thus allowing these investors to better manage their acceptable risk tolerance levels, all to the benefit of the investing public and the marketplace as a whole.

The Exchange's proposal to adopt Rule 1810 relating to debit put spreads fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitates transactions in, securities, by maintaining uniformity in its rules governing this strategy with the same specificity as the rules on other exchanges.

Proposed Rule 1811 concerning Disclaimers is based on, and substantially similar to, rules that are currently operative on other exchanges.<sup>53</sup> The proposed Rule promotes just and equitable principles of trade by stating that a Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of an index, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any options contract based thereon, or arising out of any errors or delays in calculating or disseminating such index.

Proposed Rule 1812, Exercise of American-Style Index Options, is

<sup>52</sup> See ISE Rule 2009; CBOE Rule 24.9; and Phlx Rule 1101A.

<sup>53</sup> See, e.g., ISE Rule 2011 and CBOE Rule 24.14.

designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade by providing that no Member may prepare, time stamp or submit an exercise instruction for an American-style index options series if the Member knows or has reason to know that the exercise instruction calls for the exercise of more contracts than the then "net long position" of the account for which the exercise instruction is to be tendered. The proposed Rule contains standards for exercising American-style index options that are in effect on other exchanges.<sup>54</sup>

The Exchange's proposal to adopt a requirement that a Market Maker requesting a position limit exemption must have a position that is within twenty percent of the existing limits contained in Rule 307 removes impediments to and perfects the mechanisms of a free and open market by requiring Market Makers seeking the exemption to have positions that are within a reasonable range of existing position limits. This should ensure that the Market Makers seeking the position limit exemption are those whose positions are near the current position limit and who have significant daily volume, as required by the current Rule.

Additionally, the proposed amendments to Rule 313 prohibiting exercise of American-style, cash settled index options during any time when trading in such options is delayed, halted, or suspended, protects investors and the public interest by limiting the ability of holders of such options to take advantage of such a delay, halt or suspension, during which all market participants cannot act in response to the conditions causing the delay, halt or suspension.

The Exchange believes that proposed Rule 603(b)(5)(ii) to permit the Exchange or its authorized agent may calculate bids and asks for various indices for the sole purpose of determining permissible bid/ask differentials on options on these indices perfects the mechanisms of a free and open market and a national market system by using a weighted average method of determining allowable bid/ask differentials. The Exchange believes that the calculation of a bid/ask differential for the underlying index perfects the mechanisms of a free and open market and a national market system by determining reasonable allowable bid/ask differentials in options overlying an index. This calculation should provide an accurate

standard for Market Makers to follow when establishing their markets. The Exchange believes that the proposed rule will result in narrower bid/ask differentials in index option quotations on the Exchange, all to the benefit of investors and the marketplace as a whole.

The Exchange believes that its proposed surveillance program and available capacity with respect to the listing and trading of index options perfects the mechanisms of a free and open market and a national market system through, among other things, its membership in ISG and its current available capacity. As discussed above, the Exchange represents that has an adequate surveillance program in place for index options. The Exchange is a member of the ISG, which "is comprised of an international group of exchanges, market centers, and market regulators." The purpose of the ISG is to provide a framework for the sharing of information and the coordination of regulatory efforts among exchanges trading securities and related products to address potential intermarket manipulations and trading abuses. The ISG plays a crucial role in information sharing among markets that trade securities, options on securities, security futures products, and futures and options on broad-based security indexes. A list identifying the current ISG members is available at <https://www.isgportal.org/home.html>. MIAX Options has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the additional traffic associated with the listing and trading of index options.

#### *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. On the contrary, the Exchange believes that the proposed rule change will enable the Exchange to compete for order flow in index options products with other exchanges that currently have rules and functionality in place to list and trade index options.

The Exchange further believes that the proposed rule change will enhance intra-market competition, as more varied index products become available for trading on the Exchange, which should encourage a greater number of Market Makers to trade index options, resulting in greater liquidity and more competitive quoting on the Exchange.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2017-39 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-MIAX-2017-39. 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

<sup>54</sup> See, e.g., ISE Rule 2012; CBOE Rule 24.18; and Phlx Rule 1042A.



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-MIAX-2017-39 and should be submitted on or before September 6, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>55</sup>

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2017-17272 Filed 8-15-17; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81368; File No. SR-BatsBYX-2017-18]

### Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.24, Retail Price Improvement Program, To Extend the Pilot Period

August 10, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 8, 2017, Bats BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it 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 extend the pilot period for the Exchange's Retail Price Improvement ("RPI") Program (the "Program"), which was set to expire on July 31, 2017, for 12 months, to expire on July 31, 2018.

The text of the proposed rule change is available at the Exchange's Web site at [www.bats.com](http://www.bats.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

In November 2012, the Commission approved the RPI Program on a pilot basis.<sup>5</sup> The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the Program, all Exchange Users<sup>6</sup> are permitted to provide potential price improvement for Retail Orders<sup>7</sup> in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation ("Protected NBB") or the national best offer that is a Protected Quotation ("Protected

NBO", and together with the Protected NBB, the "Protected NBBO").<sup>8</sup>

The Program was approved by the Commission on a pilot basis running one-year from the date of implementation.<sup>9</sup> The Commission approved the Program on November 27, 2012.<sup>10</sup> The Exchange implemented the Program on January 11, 2013, and has extended the pilot period four times.<sup>11</sup> The pilot period for the Program expired on July 31, 2017. The lapse of the pilot was inadvertent and this filing seeks to reinstate the pilot under the same terms as the original pilot.

#### Proposal To Extend the Operation of the Program

The Exchange established the RPI Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit Retail Price Improvement Orders ("RPI Orders")<sup>12</sup> to interact with Retail Orders. Such competition has the ability

<sup>8</sup> The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid ("NBB") and national best offer ("NBO", together with the NBB, the "NBBO") will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

<sup>9</sup> See RPI Approval Order, *supra* note 5 at 71652.

<sup>10</sup> *Id.*

<sup>11</sup> See Securities Exchange Act Release Nos. 71249 (January 7, 2014), 79 FR 2229 (January 13, 2014) (SR-BYX-2014-001) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the Retail Price Improvement Program); 74111 (January 22, 2015), 80 FR 4598 (January 28, 2015) (SR-BYX-2015-05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for BATS Y-Exchange, Inc.'s Retail Price Improvement ("RPI") Program for 12 Months, To Expire on January 31, 2016); 76965 (January 22, 2016), 81 FR 4682 (January 27, 2016) (SR-BYX-2016-01) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.24, Retail Price Improvement Program, To Extend the Pilot Period); 78180 (June 28, 2016), 81 FR 43306 (July 1, 2016) (SR-BYX-2016-15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.24, Retail Price Improvement Program, To Extend the Pilot Period).

<sup>12</sup> A "Retail Price Improvement Order" is defined in Rule 11.24(a)(3) as an order that consists of non-displayed interest on the Exchange that is priced better than the Protected NBB or Protected NBO by at least \$0.001 and that is identified as such. See Rule 11.24(a)(3).

<sup>55</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>5</sup> See Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) ("RPI Approval Order") (SR-BYX-2012-019).

<sup>6</sup> A "User" is defined in BYX Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

<sup>7</sup> A "Retail Order" is defined in Rule 11.24(a)(2) as an agency order that originates from a natural person and is submitted to the Exchange by a RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any computerized methodology. See Rule 11.24(a)(2).

to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to gather and analyze data regarding the Program that the Exchange has committed to provide.<sup>13</sup> As such, the Exchange believes that it is appropriate to extend the current operation of the Program.<sup>14</sup> Through this filing, the Exchange seeks to extend the current pilot period of the Program until July 31, 2018.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>15</sup> In particular, the Exchange believes the proposed change furthers the objectives of Section 6(b)(5) of the Act,<sup>16</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that extending the pilot period for the RPI Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price

discovery, and on the broader market structure.

### 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 extends an established pilot program for 12 months, thus allowing the RPI Program to enhance competition for retail order flow and contribute to the public price discovery process.

### 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

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>18</sup> the Exchange has designated this rule filing as non-controversial.

The Exchange has requested the Commission waive the standard five-day pre-filing and 30-day operative delay requirements as specified in Rule 19b-4(f)(6)(iii)<sup>19</sup> so that BatsBYX's RPI Program can continue to operate with limited interruption. The Commission waives the 5-day pre-filing requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to reinstate the RPI Program on a pilot basis immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>20</sup>

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4.

<sup>19</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>20</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-BatsBYX-2017-18 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-BatsBYX-2017-18. 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 No. SR-BatsBYX-2017-18 and should be submitted on or before September 6, 2017

proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> See RPI Approval Order, *supra* note 5 at 71655.

<sup>14</sup> Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the RPI orders in sub-penny increments. See Letter from Anders Franzon, SVP, Associate General Counsel, Bats BYX Exchange, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission dated August 7, 2017.

<sup>15</sup> 15 U.S.C. 78f(b).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

Robert W. Errett,  
Deputy Secretary.

[FR Doc. 2017-17273 Filed 8-15-17; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81370; File No. SR-Phlx-2017-64]

### Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule

August 10, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 31, 2017 NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Section I, entitled "Rebates and Fees for Adding and Removing Liquidity in SPY," and Section IV, Part A entitled "PIXL Pricing" to amend pricing related to PIXL<sup>3</sup> executions.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on August 1, 2017.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> PIXL™ is the Exchange's price improvement mechanism known as Price Improvement XL or PIXL. A member or member organization may electronically submit for execution an order it represents as agent on behalf of a public customer, broker-dealer, or any other entity ("PIXL Order") against principal interest or against any other order (except as provided in Rule 1080(n)(i)(E)) it represents as agent ("Initiating Order"), provided it submits the PIXL order for electronic execution into the PIXL Auction pursuant to Rule 1080. See Exchange Rule 1080(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 aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Section I, entitled "Rebates and Fees for Adding and Removing Liquidity in SPY" and specifically, the section that pertains to PIXL Executions in Standard and Poor's Depository Receipts/SPDRs ("SPY").<sup>4</sup> The Exchange also proposes to amend PIXL Pricing in Section IV, Part A, entitled "PIXL Pricing" for all other Multiply-Listed options symbols.

First, the Exchange proposes to increase the SPY Complex PIXL rebate it offers Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers<sup>5</sup> 2 through 6 or qualify for the Monthly Firm Fee Cap. Presently, the Exchange offers a rebate of \$0.10 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month. The Exchange proposes to increase that rebate to \$0.12 per contract. In doing so, the Exchange desires to incentivize members or member organizations to

<sup>4</sup> Options overlying Standard and Poor's Depository Receipts/SPDRs ("SPY") are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

<sup>5</sup> Section B of the Pricing Schedule contains Customer Rebate Tiers which are calculated by totaling Customer volume in Multiply Listed Options (including SPY) that are electronically-delivered and executed, except volume associated with electronic QCC Orders, as defined in Exchange Rule 1080(o). Rebates are paid on Customer Rebate Tiers according to certain categories. Members and member organizations under Common Ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Affiliated Entities may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. See Section B of the Pricing Schedule.

transact a greater number of SPY Complex PIXL Orders while also incentivizing members or member organizations to submit Customer order flow on Phlx.

Second, the Exchange proposes to increase the Complex PIXL (excluding SPY Options) rebate it offers to Phlx members and member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap. Presently, the Exchange offers a rebate of \$0.10 per contract for all Complex PIXL Orders (excluding SPY Options) greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of Complex SPY PIXL Orders in a month. The Exchange proposes to increase that rebate to \$0.12 per contract. In doing so, the Exchange desires to incentivize members and member organizations to transact a greater number of Complex PIXL Orders while also incentivizing members and member organizations to submit Customer order flow on Phlx to obtain the \$0.12 rebate on all Complex PIXL Orders (excluding SPY Options).

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>7</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>8</sup>

Likewise, in *NetCoalition v. Securities and Exchange Commission*<sup>9</sup> ("NetCoalition") the D.C. Circuit upheld

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>8</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

<sup>9</sup> *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>10</sup> As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."<sup>11</sup>

Further, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ."<sup>12</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that its proposal is reasonable to offer to Phlx members or member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap an increased rebate of \$0.12 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month. The proposed rebate increase will incentivize members and member organizations to transact a greater number of SPY Complex PIXL Orders will also incentivize members and member organizations to submit Customer order flow on Phlx. All members and member organizations are eligible for this increased rebate.

The Exchange also believes that its proposal is equitable and not unfairly discriminatory because all members and member organizations are eligible for the proposed rebate increase, provided they met the requisite qualifications. Members and member organizations would be uniformly paid the increased rebate.

The Exchange also believes that its proposal is reasonable to offer to Phlx members or member organizations that qualify for Section B, Customer Rebate

Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap an increased rebate of \$0.12 per contract for all Complex PIXL Orders (excluding SPY Options) greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month. The proposed increased rebate will incentivize members and member organizations to transact a greater number of Complex PIXL Orders and will also incentivize members and member organizations to submit Customer order flow on Phlx. All members and member organizations are eligible for this rebate, which applies to all Complex PIXL Orders excluding SPY Options.

This proposal is equitable and not unfairly discriminatory because all members and member organizations are eligible for the proposed increased rebate, provided that they meet the requisite qualifications.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The Exchange believes that increasing its rebates will promote inter-market competition by differentiating it from other options exchanges (e.g., MIAX) and making it a more attractive options trading venue.

The Exchange also believes that its proposal does not impose an undue burden on intra-market competition to offer Phlx members and member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap an

increased rebate of \$0.12 per contract for all SPY Complex PIXL Orders greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month. All members and member organizations are eligible for the proposed rebate increase, provided they met the requisite qualifications. Members and member organizations would be uniformly paid the increased rebate.

For the same reasons, the Exchange does not believe that its proposal imposes an undue burden on intra-market competition to offer to Phlx members and member organizations that qualify for Section B, Customer Rebate Tiers 2 through 6 or qualify for the Monthly Firm Fee Cap an increased rebate of \$0.12 per contract for all Complex PIXL Orders (excluding SPY Options) greater than 499 contracts, provided the member or member organization executes an average of 2,500 contracts per day of SPY Complex PIXL Orders in a month.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>13</sup>

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> See *NetCoalition*, at 534–535.

<sup>11</sup> *Id.* at 537.

<sup>12</sup> *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

*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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2017-64 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-Phlx-2017-64. 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-Phlx-2017-64 and should be submitted on or before September 6, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2017-17278 Filed 8-15-17; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-81372; File No. SR-MIAX-2017-40]

**Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule in Connection With the Adoption of Certain New Complex Order Types**

August 10, 2017.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 7, 2017, Miami International Securities Exchange LLC ("MIAX Options" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the "Fee Schedule") to adopt transaction fees and rebates for certain new complex order types that have become available for trading on the Exchange, as described below. The Exchange also proposes to clarify an existing transaction fee that applies to an existing order type, as well as make a number of technical corrections to its Fee Schedule.

The Exchange initially filed the proposal on July 27, 2017 (SR-MIAX-2017-37). That filing was withdrawn and replaced with the current filing (SR-MIAX-2017-40).

[sic]

The text of the proposed rule change is available on the Exchange's Web site at <http://www.miaxoptions.com/rule-filings>, at MIAX's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The Exchange proposes to amend its Fee Schedule to adopt transaction fees and rebates for certain new complex order types that have become available for trading on the Exchange, as described below. The Exchange also proposes to clarify an existing transaction fee that applies to an existing order type, as well as make a number of technical corrections to the Fee Schedule.

The Exchange began trading complex orders<sup>3</sup> in October, 2016.<sup>4</sup> As part of its effort to continue to build out its complex order market segment, the Exchange recently adopted rules to establish the following three new types of complex orders as well as adopted new provisions that relate to the processing of such complex order types: (i) Complex PRIME ("cPRIME") Orders, (ii) Complex Qualified Contingent Cross ("cQCC") Orders, and (iii) Complex Customer Cross ("cC2C") Orders.<sup>5</sup> A cPRIME Order is a complex order that is submitted for participation in a cPRIME Auction. A cQCC Order is comprised of an originating complex order to buy or sell where each leg is at

<sup>3</sup> A "complex order" is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the "legs" or "components" of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing. See Exchange Rule 518(a)(5).

<sup>4</sup> For a complete description of the trading of complex orders on the Exchange, see Exchange Rule 518. See also, Securities Exchange Act Release No. 79072 (October 7, 2016), 81 FR 71131 (October 14, 2016) (SR-MIAX-2016-26).

<sup>5</sup> See Securities Exchange Act Release No. 81131 (July 12, 2017), 82 FR 32900 (July 18, 2017) (SR-MIAX-2017-19). (Order Granting Approval of a Proposed Rule Change to Amend MIAX Options Rules 515, Execution of Orders and Quotes; 515A, MIAX Prime Improvement Mechanism ("PRIME") and PRIME Solicitation Mechanism; and 518, Complex Orders).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

least 1,000 contracts and that is identified as being part of a qualified contingent trade, as defined in Rule 516, Interpretations and Policies .01, coupled with a contra-side complex order or orders for the same strategy totaling an equal number of contracts. A cC2C Order is comprised of one Priority Customer complex order to buy and one Priority Customer complex order to sell the same complex strategy at the same initiating price (which must be better than (inside) the icMBBO<sup>6</sup> price or the best net price of a complex order for the strategy) and for the same quantity. cPRIME Orders are processed and executed in the Exchange's PRIME mechanism, the same mechanism that the Exchange uses to process and execute simple PRIME orders, pursuant to Exchange Rule 515A. cQCC and cC2C Orders are processed and executed in the same mechanism that the Exchange uses to cross simple QCC orders and Customer Cross orders, pursuant to Exchange Rule 515.

cPRIME Orders

Rule 518(b)(7) defines a cPRIME Order as a type of complex order that is submitted for participation in a cPRIME Auction. Trading of cPRIME Orders is governed by Rule 515A, Interpretations and Policies .12. A cPRIME Auction is the price-improvement mechanism of the Exchange's System<sup>7</sup> pursuant to which a Member ("Initiating Member") electronically submits a complex order that it represents as agent (an "Agency Order") into a cPRIME Auction. The Initiating Member, in submitting an Agency Order, must be willing to either (i) cross the Agency Order at a single price (a "single-price submission") against principal or solicited interest, or (ii) automatically match ("auto-match"), against principal or solicited interest, the price and size of responses to a Request for Response ("RFR") that is broadcast to MIAX Options participants up to an optional designated limit price.

The Exchange utilizes the same mechanism for the processing and

execution of both PRIME and cPRIME Orders. Accordingly, the Exchange has modified Rule 515A so that it also permits the execution of cPRIME Orders, through changes to Rule 515A(a) and the adoption of Interpretations and Policies .12 (PRIME for Complex Orders).<sup>8</sup> Interpretations and Policies .12 includes certain processing and execution requirements for cPRIME Orders that differ from the processing and execution requirements under Rule 515A(a) for simple PRIME Orders.<sup>9</sup>

The Exchange now proposes to adopt new Section 1(a)(vi), MIAX Complex Price Improvement Mechanism ("cPRIME") Fees, on the Fee Schedule to establish transaction fees and credits for executions in a cPRIME Auction, which transaction fees and credits are similar to transaction fees and credits that the Exchange currently assesses for executions in a PRIME Auction:

Types of market participants	cPRIME order fee		Responder to cPRIME auction fee		cPRIME break-up credit	
	Per contract fee for agency order	Per contract fee for contra-side order	Per contract fee for penny classes	Per contract fee for non-penny classes	Per contract credit for penny classes	Per contract credit for non-penny classes
Priority Customer .....	\$0.00	\$0.00	\$0.50	\$0.99	\$0.25	\$0.60
Public Customer that is Not a Priority Customer .....	0.30	0.05	0.50	0.99	0.25	0.60
MIAX Market Maker .....	0.30	0.05	0.50	0.99	0.25	0.60
Non-MIAX Market Maker .....	0.30	0.05	0.50	0.99	0.25	0.60
Non-Member Broker-Dealer .....	0.30	0.05	0.50	0.99	0.25	0.60
Firm .....	0.30	0.05	0.50	0.99	0.25	0.60

This cPRIME Fee table (including the amounts therein) is identical to the PRIME Fee table (including the amounts therein), which is contained in Section 1(a)(v) of the Fee Schedule.

The Exchange also proposes to adopt certain explanatory text relating to the cPRIME Fee table, just as the Exchange currently has relating to the PRIME Fee table. The text provides that all fees and credits are per contract per leg. Also, MIAX will assess the Responder to cPRIME Auction Fee to: (i) A cPRIME AOC Response that executes against a

cPRIME Order, and (ii) a cPRIME Participating Quote or Order<sup>10</sup> that executes against a cPRIME Order. MIAX will apply the cPRIME Break-up credit to the EEM that submitted the cPRIME Order for agency contracts that are submitted to the cPRIME Auction that trade with a cPRIME AOC Response or a cPRIME Participating Quote or Order that trades with the cPRIME Order. MIAX will assess the standard complex transaction fees to a cPRIME AOC Response if it executes against unrelated complex orders. Any Member<sup>11</sup> or its

Affiliate<sup>12</sup> that qualifies for Priority Customer Rebate Program volume tiers 3 or higher and submits a cPRIME AOC Response that is received during the Response Time Interval and executed against the cPRIME Order, or a cPRIME Participating Quote or Order that is received during the Response Time Interval and executed against the cPRIME Order, will be assessed a Discounted cPRIME Response Fee of \$0.46 per contract for standard complex order options in Penny Pilot classes. Any Member or its Affiliate that

<sup>6</sup> The Implied Complex MIAX Best Bid or Offer ("icMBBO") is a calculation that uses the best price from the Simple Order Book for each component of a complex strategy including displayed and non-displayed trading interest. For stock-option orders, the icMBBO for a complex strategy will be calculated using the best price (whether displayed or non-displayed) on the Simple Order Book in the individual option component(s), and the NBBO in the stock component. See Exchange Rule 518(a)(11).

<sup>7</sup> The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

<sup>8</sup> See *supra* note 5.

<sup>9</sup> *Id.*

<sup>10</sup> The term "cPRIME Participating Quote or Order" means an unrelated MIAX Market Maker complex quote or unrelated MIAX Market Maker complex order that is received during the Response Time Interval and executed against a cPRIME Order. See Section 1(a)(i) of the Fee Schedule, as described below.

<sup>11</sup> The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are

deemed "members" under the Exchange Act. See Exchange Rule 100.

<sup>12</sup> For purposes of the MIAX Options Fee Schedule, the term "Affiliate" means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, ("Affiliate"), or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). See Fee Schedule note 1.

qualifies for Priority Customer Rebate Program volume tiers 3 or higher and submits a cPRIME AOC Response that is received during the Response Time Interval and executed against the cPRIME Order, or a cPRIME Participating Quote or Order that is received during the Response Time Interval and executed against the cPRIME Order, will be assessed a Discounted cPRIME Response Fee of \$0.95 per contract for standard complex order options in non-Penny Pilot classes.

The Exchange also proposes to amend Section 1(a)(iii), the Priority Customer Rebate Program (the “PCRP”), of the Fee Schedule to establish a tiered per contract credit for cPRIME Agency Orders. The Exchange proposes to credit each Member \$0.10 per contract per leg for each Priority Customer cPRIME Agency Order in each tier. The Exchange also proposes to adopt certain explanatory text relating to cPRIME Agency Orders in PCRP table, just as the Exchange currently has relating to other order types in the PCRP table. The text provides that all fees and rebates are per contract per leg. Also for each Priority Customer complex order submitted into the cPRIME Auction as a cPRIME

Agency Order, MIAX shall credit each member at the separate per contract per leg rate for cPRIME Agency Orders. However, no rebates will be paid if the cPRIME Agency Order executes against a Contra-side Order which is also a Priority Customer. Finally, unless otherwise explicitly set forth therein, the remainder of the explanatory text relating to the PCRP set forth in that Section 1(a)(iii) shall apply to cPRIME Agency Orders. The Exchange notes that a Member or its Affiliate that qualifies for PCRP volume tiers 3 or higher receives an additional rebate of \$0.02 per contract for each Priority Customer order executed in the PRIME Auction as a PRIME Agency Order over a threshold of 1,500,000 contracts in a month.

Finally, for clarification, just as is the case today for other types of complex orders, if the cPRIME order legs into the simple order book, the contracts that were entered directly into the simple order book will be subject to all standard transaction fees, marketing fees, rebates, and credits, as set forth in the Exchange’s Fee Schedule and as applicable to simple orders. Also, the Exchange will assess only the cPRIME fees contained in Section 1(a)(vi) with respect to cPRIME Auctions—the

Exchange will not also assess the complex order fees contained elsewhere in Section 1(a). For example, a MIAX Market Maker would only be charged \$0.50 per contract per leg executed for responding to a cPRIME Auction, pursuant to Section 1(a)(vi); it would not also be charged the \$0.10 Per Contract Surcharge for Removing Liquidity Against a Resting Priority Customer Complex Order on the Strategy Book fee contained in Section 1(a)(i). Also, if a cPRIME Agency Order legs into a simple Market Maker order on the simple order book, the Market Maker order would not be considered to be a Responder for fee purposes.

As Section 1(a)(vi) will now contain the proposed cPRIME fees, the current simple QCC Fees table will be renumbered as Section 1(a)(vii). There are no substantive changes for simple QCC fees.

**cQCC Orders**

The Exchange proposes to adopt new Section 1(a)(viii), cQCC Fees, to the Fee Schedule to establish transaction fees and rebates for cQCC Orders, which are identical to transaction fees and rebates that the Exchange currently charges for simple QCC Orders:

Types of market participants	cQCC Order		
	Per contract fee for initiator	Per contract fee for contra-side	Per contract rebate for initiator
Priority Customer .....	\$0.00	\$0.00	\$0.10
Public Customer that is Not a Priority Customer .....	0.15	0.15	0.10
MIAX Market Maker .....	0.15	0.15	0.10
Non-MIAX Market Maker .....	0.15	0.15	0.10
Non-Member Broker-Dealer .....	0.15	0.15	0.10
Firm .....	0.15	0.15	0.10

This cQCC Fees table (including the amounts therein) is identical to the QCC Fees table (including the amounts therein), which is contained in Section 1(a)(vii) of the Fee Schedule. The Exchange also proposes to adopt certain explanatory text relating to the cQCC Fees table, just as the Exchange currently has relating to the simple QCC Fees table. The text provides that all fees and rebates are per contract per leg. Also, rebates will be delivered to the Member firm that enters the order into the MIAX system, but will only be paid on the initiating side of the cQCC transaction. However, no rebates will be paid for cQCC transactions for which both the initiator and contra-side orders are Priority Customers. A cQCC transaction is comprised of an ‘initiating complex order’ to buy (sell) where each component is at least 1,000 contracts

that is identified as being part of a qualified contingent trade, coupled with a contra-side complex order or orders to sell (buy) an equal number of contracts.

**C2C and cC2C Orders**

The Exchange proposes to adopt new Section 1(a)(ix), C2C and cC2C Fees, to the Fee Schedule to clarify and establish transaction fees and rebates for C2C Orders and cC2C Orders.

Types of market participants	C2C and cC2C order per contract fee/ rebate
Priority Customer .....	\$0.00

The Exchange notes that it currently offers trading in C2C Orders.<sup>13</sup> Because

<sup>13</sup> See Exchange Rule 516(i).

C2C Orders are comprised entirely of Priority Customer orders, the Exchange assesses a \$0.00 per contract transaction fee and a \$0.00 rebate to such orders, pursuant to section 1(a)(ii) of the Fee Schedule. However, the Exchange desires to clarify and make explicit that C2C Orders are assessed a \$0.00 per contract transaction fee and paid a \$0.00 per contract rebate. The Exchange is also proposing to assess cC2C Orders a \$0.00 per contract transaction fee and to pay a \$0.00 per contract rebate.

The Exchange also proposes to adopt certain explanatory text relating to the C2C and cC2C Fees table. The text provides that all fees and rebates are per contract per leg. Also, a C2C Order is comprised of a Priority Customer Order to buy and a Priority Customer Order to sell at the same price and for the same quantity. A cC2C Order is comprised of



one Priority Customer complex order to buy and one Priority Customer complex order to sell at the same price and for the same quantity.

#### Exclusion From Certain Percentage Thresholds and Programs and Technical Corrections

The Exchange notes that it currently excludes certain simple PRIME, QCC, and C2C order types from counting towards certain percentage thresholds and from participating in certain programs under its Fee Schedule. Accordingly, with the introduction of these new complex order types on the Exchange, *i.e.* cPRIME, cQCC, and cC2C Orders, the Exchange is similarly proposing to exclude these new order types from counting towards those certain percentage thresholds and from participating in certain programs under its Fee Schedule. The Exchange notes that C2C Orders are comprised entirely of Priority Customer orders, and thus, where applicable, are currently excluded contracts under Priority Customer-to-Priority Customer Orders. However, the Exchange desires to clarify that C2C Orders are, where applicable, excluded by explicitly identifying and adding such orders to the list of excluded contracts, as described below.

First, in Section 1(a)(i) of the Fee Schedule, Market Maker Transaction Fees, Market Maker Sliding Scale, the Exchange currently excludes certain contracts executed from counting towards volume for purposes calculating the percentage threshold in each of the Market Maker tiers. The Fee Schedule currently provides that volume thresholds are based on the total national Market Maker volume of any options classes with traded volume on MIAX during the month in simple and complex orders (excluding QCC Orders, PRIME AOC Responses, and unrelated MIAX Market Maker quotes or unrelated MIAX Market Maker orders that are received during the Response Time Interval and executed against the PRIME Order (“PRIME Participating Quotes or Orders”)). With the introduction of these new complex order types, the Exchange now proposes to add the following order types to the list of excluded contracts: cQCC Orders, cPRIME AOC Responses, and unrelated MIAX Market Maker complex quotes or unrelated MIAX Market Maker complex orders that are received during the Response Time Interval and executed against a cPRIME Order (“cPRIME Participating Quote or Order”). Accordingly, as amended, the list of excluded contracts shall be QCC and cQCC Orders, PRIME and cPRIME AOC Responses, and unrelated MIAX Market

Maker quotes or unrelated MIAX Market Maker orders that are received during the Response Time Interval and executed against the PRIME Order (“PRIME Participating Quotes or Orders”) and unrelated MIAX Market Maker complex quotes or unrelated MIAX Market Maker complex orders that are received during the Response Time Interval and executed against a cPRIME Order (“cPRIME Participating Quote or Order”).

Second, in Section 1(a)(iii) of the Fee Schedule, PCRPs, the Exchange currently excludes certain contracts executed from participation in the PCRPs. The Fee Schedule currently excludes, in simple or complex as applicable, QCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, PRIME AOC Responses, PRIME Contra-side Orders, PRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Rule 1400. With the introduction of these new complex order types, the Exchange now proposes to add the following contract executions to the list of excluded contracts: cQCC Orders, C2C and cC2C Orders, cPRIME AOC Responses, cPRIME Contra-side Orders, and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers. Accordingly, as amended, the list of excluded contracts shall be, in simple or complex as applicable, QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Rule 1400. The Exchange notes that C2C Orders are comprised entirely of Priority Customer orders, and thus are currently excluded contracts. However, the Exchange desires to clarify that C2C Orders are excluded by explicitly identifying and adding such orders to the list of excluded contracts. The Exchange notes that Priority Customer-to-Priority Customer Orders are two opposite Priority Customer Orders that are paired and entered into a PRIME Auction, with the Member designating one such Priority Customer Order as the PRIME Agency Order, which such order

becomes eligible for price improvement in the PRIME Auction.

Further, the Exchange currently excludes certain contracts executed from counting towards volume for purposes of calculating the percentage threshold in each of the PCRPs tiers. The Fee Schedule currently provides that the percentage thresholds are calculated based on the percentage of national customer volume in multiply-listed options classes listed on MIAX entered and executed over the course of the month (excluding QCC Orders, Priority Customer-to-Priority Customer Orders, PRIME AOC Responses, PRIME Contra-side Orders, PRIME Orders for which both the Agency and Contra-side Order are Priority Customers). With the introduction of these new complex order types, the Exchange now proposes to add the following order types to the list of excluded contracts: cQCC Orders, C2C and cC2C Orders, cPRIME AOC Responses, cPRIME Contra-side Orders, and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers. Accordingly, as amended, the list of excluded contracts shall be QCC and cQCC Orders, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, and PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers. The Exchange notes that C2C Orders are comprised entirely of Priority Customer orders, and thus are currently excluded contracts under Priority Customer-to-Priority Customer Orders. However, the Exchange desires to clarify that C2C Orders are excluded by explicitly identifying and adding such orders to the list of excluded contracts.

Further, pursuant to the PCRPs, the Exchange currently credits each “Qualifying Member”<sup>14</sup> \$0.03 per contract resulting from each Priority Customer order in simple or complex order executions which falls within the PCRPs volume tier 1. However, the Exchange also currently excludes certain contracts executed from receiving the \$0.03 per contract credit. The Fee Schedule currently excludes QCC Orders, mini-options, Priority Customer-to-Priority Customer Orders,

<sup>14</sup> “Qualifying Member” shall mean a Member or its Affiliate that qualifies for the Professional Rebate Program as described below and achieves a volume increase in excess of 0.065% for Professional orders transmitted by that Member which are executed electronically on the Exchange in all multiply-listed option classes for the account(s) of a Professional and which qualify for the Professional Rebate Program during a particular month relative to the applicable Baseline Percentage (as defined under the Professional Rebate Program).

PRIME Agency Orders, PRIME AOC Responses, PRIME Contra-side Orders, PRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAAX Rule 1400. With the introduction of these new complex order types, the Exchange now proposes to add the following contract executions to the list of excluded contracts: cQCC Orders, C2C and cC2C Orders, cPRIME Agency Orders, cPRIME AOC Responses, cPRIME Contra-side Orders, and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers. Accordingly, as amended, the list of excluded contracts shall be QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME Agency Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAAX Rule 1400. The Exchange notes that C2C Orders are comprised entirely of Priority Customer orders, and thus are currently excluded contracts under Priority Customer-to-Priority Customer Orders. However, the Exchange desires to clarify that C2C Orders are excluded by explicitly identifying and adding such orders to the list of excluded contracts.

Further, pursuant to the PCRCP, the Exchange currently credits any Member or its Affiliate that qualifies for PCRCP volume tiers 3 or higher an additional \$0.02 per contract for each Priority Customer order executed in the PRIME Auction as a PRIME Agency Order over a threshold of 1,500,000 contracts in a month. The Exchange notes that the additional \$0.02 per contract credit will not be applicable for cPRIME Agency orders, and cPRIME Agency orders do not count toward the threshold as described below. The Exchange also currently excludes certain contracts executed from counting towards the threshold of 1,500,000 contracts in a month. The Fee Schedule currently excludes QCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, PRIME AOC Responses, PRIME Contra-side Orders, PRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and

executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAAX Rule 1400. With the introduction of these new complex order types, the Exchange now proposes to add the following contract executions to the list of excluded contracts: cQCC Orders, C2C and cC2C Orders, cPRIME Agency Orders, cPRIME AOC Responses, cPRIME Contra-side Orders, and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers. Accordingly, as amended, the list of excluded contracts shall be QCC and cQCC Orders, mini-options, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, cPRIME Agency Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAAX Rule 1400. The Exchange notes that C2C Orders are comprised entirely of Priority Customer orders, and thus are currently excluded contracts under Priority Customer-to-Priority Customer Orders. However, the Exchange desires to clarify that C2C Orders are excluded by explicitly identifying and adding such orders to the list of excluded contracts.

Third, in Section 1(a)(iv) of the Fee Schedule, Professional Rebate Program (“PRP”), the Exchange currently excludes certain contracts executed from participation in the PRP. The Fee Schedule currently excludes, in simple or complex as applicable, mini-options, Non-Priority Customer-to-Non-Priority Customer Orders, QCC Orders, PRIME Orders, PRIME AOC Responses, PRIME Contra-side Orders, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAAX Rule 1400 (collectively, for purposes of the Professional Rebate Program, “Excluded Contracts”). With the introduction of these new complex order types, the Exchange now proposes to add the following contract executions to the list of Excluded Contracts: cQCC Orders, cPRIME Orders, cPRIME AOC Responses, and cPRIME Contra-side Orders. Accordingly, as amended, the list of Excluded Contracts shall be, in simple or complex as applicable, mini-options, Non-Priority Customer-to-Non-Priority Customer Orders, QCC and

cQCC Orders, PRIME and cPRIME Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAAX Rule 1400.

Fourth, in Section 1(b) of the Fee Schedule, Marketing Fee, the Exchange currently does not assess the Marketing Fee to Market Makers<sup>15</sup> for contracts executed as a PRIME Agency Order, Contra-side Order, Qualified Contingent Cross Order, PRIME Participating Quote or Order or a PRIME AOC Response in the PRIME Auction, unless it executes against an unrelated order. With the introduction of these new complex order types, the Exchange now proposes to add the following executions to that list: (i) cPRIME Agency Orders, (ii) cQCC Orders, and (iii) cPRIME Participating Quotes or Orders or cPRIME AOC Responses that trade against a cPRIME Agency Order. The Exchange also proposes to make a number of non-substantive technical corrections to the list, as follows: The Exchange proposes to abbreviate “Qualified Contingent Cross Order” to “QCC Order”; the Exchange proposes to add clarifying language and to combine the PRIME Participating Quote or Order and PRIME AOC Response so that it reads “PRIME Participating Quote or Order or a PRIME AOC Response trades against a PRIME Agency Order”; and the Exchange proposes to delete the text “Contra side Order” and “in the PRIME Auction; unless, it executes against an unrelated order”, as such text is now redundant because it is more explicitly covered in the clarified text. Accordingly, as amended, the text will provide that MIAAX will not assess a Marketing Fee to Market Makers for contracts executed: (i) as a PRIME or cPRIME Agency Order, or as a QCC or cQCC Order; (ii) when a PRIME Participating Quote or Order or a PRIME AOC Response trades against a PRIME Agency Order; or (iii) when a cPRIME Participating Quote or Order or a cPRIME AOC Response trades against a cPRIME Agency Order.

Fifth, the Exchange proposes to make a number of non-substantive, technical corrections to Section 1(a)(v) of the Fee

<sup>15</sup> The term “Market Makers” refers to Lead Market Makers (“LMMs”), Primary Lead Market Makers (“PLMMs”), and Registered Market Makers (“RMMs”) collectively. See Exchange Rule 100. A Directed Order Lead Market Maker (“DLMM”) and Directed Primary Lead Market Maker (“DPLMM”) is a party to a transaction being allocated to the LMM or PLMM and is the result of an order that has been directed to the LMM or PLMM. See Fee Schedule note 2.

Schedule, MIAX Price Improvement Mechanism ("PRIME") Fees. The Exchange proposes to clarify certain explanatory text relating to the PRIME Fees table. The first sentence of the text currently states that "MIAX will assess the Responder to PRIME Auction Fee to: (i) A PRIME AOC Response that executes against a PRIME Order, and (ii) a PRIME Participating Quote or Order." The Exchange proposes to revise the text so that, as amended, it states "MIAX will assess the Responder to PRIME Auction Fee to: (i) A PRIME AOC Response that executes against a PRIME Order, and (ii) a PRIME Participating Quote or Order that executes against a PRIME Order." The second sentence of the text states "MIAX will apply the PRIME Break-up credit to the EEM that submitted the PRIME Order for agency contracts that are submitted to the PRIME Auction that trade with a PRIME AOC Response or a PRIME Participating Quote or Order." The Exchange proposes to revise the text so that, as amended, it states "MIAX will apply the PRIME Break-up credit to the EEM that submitted the PRIME Order for agency contracts that are submitted to the PRIME Auction that trade with a PRIME AOC Response or a PRIME Participating Quote or Order that trades with the PRIME Order. The third sentence of the text states "The applicable fee for PRIME Orders will be applied to any contracts for which a credit is provided." The Exchange proposes to delete this sentence in its entirety, as it is redundant and potentially ambiguous. The Exchange believes that deleting this sentence (which reiterates that Exchange charges the Responder to PRIME Auction Fee [sic] for all contracts on which the Exchange pays the PRIME Break-up Credit) will eliminate any potential confusion among Members and investors. The fifth sentence of the text states "MIAX will assess the standard transaction fees to a PRIME AOC Response if they execute against unrelated orders." The Exchange proposes to revise the text so that, as amended, it states "MIAX will assess the standard transaction fees to a PRIME AOC Response if it executes against unrelated orders."

## 2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(4) of the Act in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The

Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that the proposed fee structure for cPRIME Auction transaction fees and rebates is reasonable, equitable, and not unfairly discriminatory. The proposed fee structure is reasonably designed because it is intended to incentivize market participants to send complex order flow to the Exchange in order to participate in the price improvement mechanism in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. cPRIME Auctions and the corresponding fees are also reasonably designed because the proposed fees and rebates are very similar to ones the Exchange assesses for simple PRIME transactions, and are within the range of fees and rebates assessed by other exchanges employing similar fee structures for complex orders submitted and executed in a price improvement mechanism.<sup>16</sup> Other competing exchanges offer different fees and rebates for complex agency orders, contra-side orders, and responders to an auction in a manner similar to the proposal.<sup>17</sup> Other competing exchanges also charge different rates for transactions in their complex price improvement mechanisms for customers versus their non-customers in a manner similar to the proposal.<sup>18</sup>

The fee and rebate structure is reasonable, equitable, and not unfairly discriminatory because it will apply equally amongst all Priority Customer orders in each category of cPRIME Auction participation and it will also apply equally amongst all non-Priority Customer orders in each category of cPRIME Auction participation. All similarly situated orders for Priority Customers are subject to the same transaction fee and rebate schedule. All similarly situated orders for market participants that are not Priority Customers are subject to the same transaction fee and rebate schedule, and access to the Exchange is offered on

terms that are not unfairly discriminatory.

The Exchange believes that is equitable and not unfairly discriminatory that Priority Customers be charged lower fees in cPRIME Auctions than other market participants. The exchanges in general have historically aimed to improve markets for investors and develop various features within market structure for customer benefit. The Exchange assesses Priority Customers lower or no transactions fees because Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Moreover, the Exchange believes that assessing all other market participants that are not Priority Customers a higher transaction fee than Priority Customers for cPRIME Order transactions is reasonable, equitable, and not unfairly discriminatory because these types of market participants are more sophisticated and have higher levels of order flow activity and system usage. This level of trading activity draws on a greater amount of system resources than that of Priority Customers, and thus, generates greater ongoing operational costs. Further, the Exchange believes that charging all market participants that are not Priority Customers the same fee for all cPRIME transactions is not unfairly discriminatory as the fees will apply to all these market participants equally.

The Exchange believes that it is reasonable for cPRIME Agency and Contra-side Orders to be assessed lower fees than those providing responses. Contra-side Orders guarantee the cPRIME Agency Order, and are subject to market risk during the time period that the cPRIME Agency Order is exposed to other market participants. The Exchange believes that the market participants entering the Contra-side Order acts as a critical role in the cPRIME Auction as their willingness to guarantee the cPRIME Agency Order is the keystone to the cPRIME Agency Order gaining the opportunity for price improvement.

The Exchange believes that it is equitable and not unfairly discriminatory to assess fees to responders to the cPRIME Auction and credit another participant to provide

<sup>16</sup> See Nasdaq ISE, LLC Schedule of Fees, p. 9; BOX Options Exchange Fee Schedule, p. 8.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

incentive for participants to submit order flow to cPRIME Auctions. The Exchange believes that it is appropriate to provide incentives to market participants to direct orders to participate in cPRIME Auctions. Further, the Exchange believes that the transaction fees for responding to the cPRIME Auction will not deter market participants from providing price improvement.

The Exchange believes that it is reasonable to assess lower transaction and credit rates to penny option classes than non-penny option classes. The Exchange believes that options which trade at these wider spreads merit offering greater inducement for market participants. In particular, within the cPRIME Auction, option classes that typically trade in minimum increments of \$0.05 or \$0.10 provide greater opportunity for market participants to offer price improvement. As such, the Exchange believes that the opportunity for additional price improvement provided by these wider spreads again merits offering greater incentive for market participants to increase the potential price improvement for customer orders in these transactions.

The Exchange believes that the proposed PCRCP rebates for Priority Customer orders submitted into cPRIME Auctions are fair, equitable, and not unreasonably discriminatory. The rebate program is reasonably designed because it will incentivize providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to receive a credit in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed tiered rebate is fair, equitable, and not unreasonably discriminatory because it will apply equally to all Priority Customer orders submitted as a cPRIME Agency Order. All similarly situated Priority Customer orders are subject to the same rebate schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory. In addition, the PCRCP is equitable and not unfairly discriminatory because, while only Priority Customer order flow qualifies for the rebate program, an increase in Priority Customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. Market participants want to trade with Priority Customer order flow. To the extent Priority Customer order flow is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange

including sending more orders and providing narrower and larger-sized quotations in the effort to trade with such Priority Customer order flow.

The Exchange believes that excluding cQCC Orders, C2C and cC2C Orders, cPRIME AOC Responses, cPRIME Contra-side Orders, and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers from the number of options contracts executed on the Exchange by any Member for purposes of the volume thresholds and the PCRCP is reasonable, equitable, and not unfairly discriminatory because participating Members could otherwise collect the rebates offered and volume thresholds by executing excess volume in these types of transactions in which no transaction fees are charged on the Exchange. The Exchange believes that the rebate for Priority Customer agency orders in the cPRIME Auction is reasonably designed to incentivize additional customer order flow to the cPRIME Auction.

The Exchange believes the proposed transaction fees for cQCC Orders are reasonable because the proposed amounts are identical to the fees assessed for QCC transactions and are in line with the amounts assessed at other Exchanges for similar transactions.<sup>19</sup> Additionally, the proposed fees would be assessed to all non-Priority Customers alike.

The Exchange believes the proposed rebate for the initiating order side of a cQCC transaction is reasonable because other competing exchanges also provide a rebate on the initiating order side.<sup>20</sup> Additionally, the proposed rebate amount is within the range of the rebate amounts at the other competing exchanges.<sup>21</sup> The Exchange believes the

<sup>19</sup> See BOX Options Exchange LLC ("BOX") Fee Schedule, Section I(D) (BOX does not charge Public Customers but charges Professional Customers, Broker Dealers and Market Makers \$0.20 per contract on both Agency and Contra Orders); see also Chicago Board Options Exchange ("CBOE") Fee Schedule, "QCC Rate Table," Page 5 (CBOE charges non-Public Customers \$0.17 per contract and does not charge Public Customers); see also NYSE Amex Options Fee Schedule, Section I.F (NYSE Amex charges Non-Customers \$0.20 per contract, Specialists and e-Specialists \$0.13 per contract, and does not charge Customer and Professional Customers).

<sup>20</sup> See BOX Fee Schedule, Section I(D)(1); see also CBOE Fee Schedule, "QCC Rate Table," Page 5; see also NYSE Amex Options Fee Schedule, Section I.F; see also Nasdaq ISE Fee Schedule, Section IV(A).

<sup>21</sup> See BOX Fee Schedule, Section I(D)(1) (a \$0.15 per contract rebate will be applied to the Agency Order where at least one party to the QCC transaction is a Non-Public Customer); see also CBOE Fee Schedule, "QCC Rate Table," Page 5 (a \$0.10 per contract credit will be delivered to the TPH Firm that enters the order into CBOE Command but will only be paid on the initiating

proposed rebate is equitable and not unfairly discriminatory because it applies to all Members that enter the initiating order (except for when both the initiator and contra-side orders are Priority Customers) and because it is intended to incentivize the sending of more cQCC Orders to the Exchange. The Exchange believes it is reasonable, equitable, and not unfairly discriminatory to not provide a rebate for the initiating order for cQCC transactions for which both the initiator and the contra-side orders are Priority Customers since Priority Customers are already incentivized by a reduced fee for submitting cQCC Orders. The Exchange believes that the proposed exclusion of cQCC Orders from the Market Maker Sliding Scale, the PCRCP, and the PRP is reasonable because it enables cQCC Orders from all market participants to be subject to only the specific transaction fees as described above that are tailored specifically for encouraging market participants to transact cQCC Orders on the Exchange. The Exchange believes that the exclusion is equitable and not unfairly discriminatory because it ensures all market participants, other than Priority Customers, to be subject to the same transaction fee for cQCC Orders. While Priority Customers will benefit from a reduced transaction fee rate for cQCC Orders, excluding cQCC Orders from the PCRCP enables a more equitable and not unfairly discriminatory outcome.

The Exchange believes that adding the C2C fee to the Fee Schedule is reasonable since it is clarifying the Exchange's existing practice and by adding such C2C Order fee to the Fee Schedule the Exchange believes that it will make it more transparent as to how the Exchange assesses such fee and avoid any confusion as to how such fee is assessed for simple (C2C) and complex (cC2C) orders. The Exchange believes that the proposed transaction fee for cC2C Orders is reasonable because the proposed amount is identical to the fee assessed for C2C transactions, which is currently \$0.00. The proposed fees would be charged to all Priority Customers alike and the Exchange believes that assessing a \$0.00 fee to Priority Customers is equitable and not unfairly discriminatory. By assessing a \$0.00 fee to Priority Customer orders, the C2C and cC2C

side of the QCC transaction); see also NYSE Amex Options Fee Schedule, Section I.F (a \$0.07 credit is applied to Floor Brokers executing 300,000 or fewer contracts in a month and a \$0.10 credit is applied to Floor Brokers executing more than 300,000 contracts in a month); see also Nasdaq ISE Fee Schedule, Section IV(A) (rebates range from \$0.01 to \$0.11 per contract).

transaction fees will not discourage the sending of Priority Customer orders.

The Exchange believes that specifying that cPRIME Order and cQCC Order executions are not subject to marketing fees is reasonable, equitable and not unfairly discriminatory. The Exchange is seeking to encourage all participants, including Market Makers, to send cPRIME Orders and to respond to cPRIME Auction RFR messages and the Exchange believes that collecting marketing fees from Market Makers may discourage such participation. By encouraging as many participants as possible to respond, the Exchange believes that it will lead to greater opportunities for price improvement for all cPRIME Agency Orders, not just those entered on behalf of customers. For these reasons, the Exchange believes that excluding cPRIME Orders and responses from the marketing fees are reasonable, equitable, and not unfairly discriminatory. The Exchange believes that it is equitable and not unfairly discriminatory to continue to charge a marketing fee if an unrelated order executes in the cPRIME Auction, because that unrelated order is not subject to the specialized fee structure for cPRIME Auctions that is designed to incentivize participation. The market participant receives the benefit of a cPRIME Auction execution and would already expect to be charged a marketing fee that is no different than the fee the market participant was expecting to pay trading against unrelated orders outside the cPRIME Auction. The Exchange further believes that not assessing a Marketing Fee for contracts executed as a cQCC Order is equitable and not unfairly discriminatory because such order type originated from the same Member, thus obviating the purpose of the Marketing Fee.

The Exchange believes that the proposed technical changes are consistent with Section 6(b)(5) of the Act because they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes it is appropriate to make the proposed technical corrections to its Fee Schedule so that Exchange Members have a clear and accurate understanding of the meaning of the Exchange's Fee Schedule.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change will enhance the competitiveness of the Exchange relative to other exchanges that offer their own electronic crossing mechanisms and offer their own complex crossing order types. The Exchange believes that the proposed fees and rebates for participation in the cPRIME Auction, the cQCC fees, and the C2C and cC2C fees are not going to have an impact on intra-market competition based on the total cost for participants to transact in such order types versus the cost for participants to transact in the other order types available for trading on the Exchange. As noted above, the Exchange believes that the proposed pricing for the cPRIME Auction is comparable to that of other exchanges offering similar electronic price improvement mechanisms for complex orders,<sup>22</sup> and the Exchange believes that, based on experience with electronic price improvement crossing mechanisms on other markets, market participants understand that the price-improving benefits offered by the cPRIME Auction justify the transaction costs associated with the cPRIME Auction. To the extent that there is a difference between non-cPRIME Auction transactions and cPRIME Auction transactions, the Exchange does not believe this difference will cause participants to refrain from responding to cPRIME Auctions. In addition, the Exchange does not believe that the proposed transaction fees and credits for these new complex crossing order types burden competition by creating a disparity of transaction fees between these order types and other order types. The Exchange expects to see robust competition within the cPRIME Auction to trade against the cPRIME Agency Order. The Exchange also expects to see robust competition in the trading of cQCC Orders and cC2C Orders, as the Exchange's pricing for those order types is competitive with the pricing of other competing Exchanges.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it

establishes a fee structure in a manner that encourages market participants to direct their order flow, to provide liquidity, and to attract additional transaction volume to the Exchange.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>23</sup> and Rule 19b-4(f)(2)<sup>24</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2017-40 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-MIAX-2017-40. 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

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>24</sup> 17 CFR 240.19b-4(f)(2).

<sup>22</sup> See *supra* note 16.

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-MIAX-2017-40, and should be submitted on or before September 6, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Robert W. Errett,**  
Deputy Secretary.

[FR Doc. 2017-17277 Filed 8-15-17; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81369; File No. SR-BatsEDGA-2017-20]

### Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Bats EDGA Exchange, Inc.

August 10, 2017

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 31, 2017, Bats EDGA Exchange, Inc. (the "Exchange" or "EDGA") 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<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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<sup>5</sup> and non-Members of the Exchange pursuant to EDGA 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](http://www.bats.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend its fee schedule to increase the fee for orders in securities priced at or above \$1.00 that yield fee code RT.<sup>6</sup> Fee code RT is appended to orders that are routed using a ROUT<sup>7</sup> routing strategy. ROUT is a routing strategy that checks the System<sup>8</sup> for available shares and it then sent to destinations on the System

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> 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).

<sup>6</sup> The Exchange does not propose to amend the fees for orders yielding fee code RT in securities priced below \$1.00.

<sup>7</sup> See Exchange Rule 11.11(g)(3).

<sup>8</sup> The term "System" is defined as the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away. See Exchange Rule 1.5(cc).

Routing Table.<sup>9</sup> The Exchange proposes to increase the fee charged for orders that yield fee code RT from \$0.00250 to \$0.00260 per share. The Exchange proposes to implement this amendment to its fee schedule August 1, 2017.<sup>10</sup>

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>12</sup> 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 its proposal to increase the fee for orders that yield fee code RT represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities in that they are designed in part to cover the costs of routing. While the affected Members' orders will be charged higher fees due to the proposal, the increased revenue received by the Exchange will be used to fund the Exchange generally, including the cost of maintaining and improving the technology used to handle and route orders from the Exchange as well as programs that the Exchange believes help to attract additional liquidity and thus improve the depth of liquidity available on the Exchange. Accordingly, although the cost of routing is increasing, the Exchange believes that the increase is modest and that higher routing fees will benefit Members in other ways. Furthermore, the Exchange notes that routing through the Exchange is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does 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

<sup>9</sup> The System Routing Table refers to the proprietary process for determining the specific trading venues to which the System routes orders and the order in which it routes them. See Exchange Rule 11.11(g). See also Exchange Rule 11.11(g)(3).

<sup>10</sup> By way of background, on May 1, 2017, the Exchange previously charged \$0.00250 per share for orders in securities priced at or above \$1.00 that yield fee code RT. See Securities Exchange Act Release Nos. 80653 (May 11, 2017), 82 FR 22685 (May 17, 2017) (SR-BatsEDGA-2017-12); and 79305 (November 14, 2016), 81 FR 81892 (November 18, 2016) (SR-BatsEDGA-2016-26).

<sup>11</sup> 15 U.S.C. 78f.

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>25</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

change to fee code RT represents a significant departure from previous pricing offered by the Exchange or from 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 changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange believes that its proposal would not burden intramarket competition because the proposed rates would apply uniformly to all Members.

*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<sup>13</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>14</sup> 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](mailto:rule-comments@sec.gov). Please include File No. SR-BatsEDGA-2017-20 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-BatsEDGA-2017-20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BatsEDGA-2017-20, and should be submitted on or before September 6, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-81373; File No. SR-NYSEArca-2017-85]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend NYSE Arca Equities Rule 8.700 To Reference EURO STOXX 50 Volatility Index Futures and To List and Trade Shares of the ProShares European Volatility Futures ETF**

August 10, 2017.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934

(“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 28, 2017, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend NYSE Arca Equities Rule 8.700 to add EURO STOXX 50 Volatility Index (VSTOXX<sup>®</sup>) futures to the financial instruments that an issue of Managed Trust Securities may hold; and (2) to list and trade shares of the ProShares European Volatility Futures ETF under proposed amended NYSE Arca Equities Rule 8.700. The proposed change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

NYSE Arca Equities Rule 8.700 permits the trading of Managed Trust Securities either by listing or pursuant to unlisted trading privileges (“UTP”).<sup>3</sup>

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>3</sup> Managed Trust Security means a security that is registered under the Securities Act of 1933 (15 U.S.C. 77a), as amended (the “Securities Act”), is issued by a trust that (1) is a commodity pool as defined in the Commodity Exchange Act (7 U.S.C. 1) (the “CEA”), and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission (the “CFTC”), and (2) holds long and/or short positions in exchange-traded futures contracts and/or certain

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C.78s(b)(1).



The Exchange proposes to amend NYSE Arca Equities Rule 8.700 to add futures and swaps on the EURO STOXX 50 Volatility Index (VSTOXX) to the financial instruments in which an issue of Managed Trust Securities may hold long and/or short positions. (Futures on VSTOXX are referred to herein as “Futures Contracts.”) In addition, the Exchange proposes to list and trade the shares (the “Shares”) of the ProShares European Volatility Futures ETF (the “Fund”) under proposed amended NYSE Arca Equities Rule 8.700.<sup>4</sup>

#### Proposed Amendments to NYSE Arca Equities Rule 8.700

The Exchange proposes to amend NYSE Arca Equities Rule 8.700(c)(1) to add Futures Contracts and/or swaps on VSTOXX to the financial instruments in which an issue of Managed Trust Securities may hold long and/or short positions.

The VSTOXX is based on EURO STOXX 50 Index (“Index”) real-time option prices that are listed on the Eurex Exchange (“Eurex”) and are designed to reflect the market expectations of near-term up to long-term volatility by measuring the square root of the implied variances across all options of a given time to expiration.<sup>5</sup> The Index includes 50 stocks that are among the largest free-float market capitalization stocks from 11 Eurozone countries.<sup>6</sup> Futures Contracts are cash settled and trade between the hours of 7:30 a.m. and 10:30 p.m. Central

currency forward contracts and/or swaps selected by the trust’s advisor consistent with the trust’s investment objectives, which will only include, exchange-traded futures contracts involving commodities, commodity indices, currencies, currency indices, stock indices, fixed income indices, interest rates and sovereign, private and mortgage or asset backed debt instruments, and/or forward contracts on specified currencies, and/or swaps on stock indices, fixed income indices, commodity indices, commodities, currencies, currency indices, or interest rates, each as disclosed in the trust’s prospectus as such may be amended from time to time, and cash and cash equivalents; and (ii) is issued and redeemed continuously in specified aggregate amounts at the next applicable net asset value. See NYSE Arca Equities Rule 8.700(c)(1).

<sup>4</sup> On May 12, 2017, the Trust filed with the Commission a registration statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”) relating to the Fund (File No. 333-217962) (the “Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement.

<sup>5</sup> The VSTOXX is a non-investable index that seeks to measure the volatility of the Index over a future time horizon as implied by the price of option contracts on the Index available on the Eurex. The VSTOXX does not measure the actual volatility of the Index.

<sup>6</sup> These countries include Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain.

European Time (“CET”) (2:30 a.m. and 5:30 p.m. Eastern Time). The Futures Contract value is 100 Euros per index point of the underlying and it is traded to two decimal places with a minimum price change of 0.05 points (equivalent to a value of 5 Euros). The daily settlement price is determined during the closing auction of the respective Futures Contract. The last trading day and final settlement day is 30 calendar days prior to the third Friday of the expiration month of the underlying options, which is usually the Wednesday prior to the second to last Friday of the respective maturity month. Information regarding the VSTOXX and the Futures Contracts can be found on the STOXX Limited (“STOXX”) Web site and the Eurex Web site, respectively.<sup>7</sup>

STOXX computes the Index on a real-time basis throughout each trading day, from 8:50 a.m. until 5:30 CET (3:50 a.m. until 12:30 p.m. Eastern Time [sic]). VSTOXX levels will be calculated by STOXX and disseminated by major market data vendors on a real-time basis throughout each trading day.

The Exchange believes that the proposed amendment to add Futures Contracts and/or swaps on VSTOXX to the financial instruments in which an issue of Managed Trust Securities may hold long and/or short positions will provide investors with the ability to better diversify and hedge their portfolios using an exchange traded security without having to trade directly in the underlying Futures Contracts, and will facilitate the listing and trading on the Exchange of additional Managed Trust Securities that will enhance competition among market participants, to the benefit of investors and the marketplace.<sup>8</sup>

<sup>7</sup> Eurex is a member of the ISG and, as such, the Exchange may obtain information regarding trading in the Futures Contracts. For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

<sup>8</sup> The Exchange notes that the Commission has issued a notice of effectiveness regarding amendments to NYSE Arca Equities Rule 5.2(j)(6)(v) to add futures on VSTOXX as a “Futures Reference Asset” underlying an issue of “Futures-Linked Securities”. See Securities Exchange Act Release No. 79975 (February 6, 2017), 82 FR 10418 (February 10, 2017) (SR-NYSEArca-2017-08) (notice of filing and immediate effectiveness to amend NYSE Arca Equities Rule 5.2(j)(6)(v) to add EURO STOXX 50 Volatility Futures to the definition of Futures Reference Asset in Rule 5.2(j)(6)). See also, Securities Exchange Act Release No. 79069 (October 7, 2016), 81 FR 70714 (October 13, 2016) (SR-BatsBZX-2016-26) (order approving amendments to Bats BZX Exchange, Inc. Rule 14.11(d) to add EURO STOXX 50 Volatility Futures to the definition of Futures Reference Asset).

#### ProShares European Volatility Futures ETF

The Exchange proposes to list and trade the Shares of the Fund under proposed amended NYSE Arca Equities Rule 8.700. The Fund will be a commodity pool that is a series of the ProShares Trust II (“Trust”). The Fund’s sponsor and commodity pool operator will be ProShare Capital Management LLC (the “Sponsor”). Brown Brothers Harriman & Co. will be the Administrator, Custodian and Transfer Agent of the Fund and its Shares. SEI Investments Distribution Co. (“SEI”) will be the distributor for the Fund’s Shares.<sup>9</sup>

The Sponsor is registered as a commodity pool operator and is affiliated with a FINRA-registered broker-dealer through common ownership. As part of the enterprise-wide compliance program, the Sponsor has implemented a “fire wall” regarding access to information concerning the composition and/or changes to the Fund’s portfolio. The Sponsor’s Code of Ethics and internal controls are designed to prevent and detect such exchange of information.

In the event (a) the Sponsor becomes newly affiliated with a broker-dealer, or (b) any new sponsor becomes affiliated with a broker-dealer, such broker-dealer shall erect and maintain a “fire wall” around the personnel of the sponsor who have access to information concerning changes and adjustments to the Disclosed Portfolio (as defined in NYSE Arca Equities Rule 8.700(c)(2)). Personnel of the sponsor who make decisions regarding the composition of the Disclosed Portfolio must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Disclosed Portfolio.

#### Operation of the Trust

According to the Registration Statement, the Fund’s primary investment objective will be to provide long exposure to lead month Futures Contracts. The Futures Contracts are widely regarded as a general measure of the forward implied volatility of certain

<sup>9</sup> The Commission has previously approved the listing and trading of other issues of Managed Trust Securities on the Exchange. See Securities Exchange Act Release Nos. 60064 (June 8, 2009), 74 FR 28315 (June 15, 2009) (SR-NYSEArca-2009-30) (order approving the adoption of listing standards for Managed Trust Securities and the listing and trading of shares of the iShares® Diversified Alternatives Trust); 80254 (March 15, 2017), 82 FR 14548 (March 21, 2017) (SR-NYSEArca-2016-96) (order approving proposed rule change to amend NYSE Arca Equities Rule 8.700 and to list and trade shares of the Managed Emerging Markets Trust).

blue-chip European companies.<sup>10</sup> The Fund will use these Futures Contracts as a performance benchmark (“Benchmark”). The Fund will be actively managed and will have a secondary investment objective to outperform its Benchmark by actively managing the “rolling” of these Futures Contracts.<sup>11</sup>

According to the Registration Statement, by being long Futures Contracts, the Fund will seek to benefit from increases in the price of the Futures Contracts. When the price of Futures Contracts held by the Fund declines the Fund will lose value. The performance of the Futures Contracts is related to the performance of the VSTOXX. The Fund will not seek to track or outperform either the VSTOXX or the Index and the performance of the Fund will be very different from the

<sup>10</sup> The Futures Contracts offer traders the ability to take a view on European implied volatility changes, trade the spread between different volatility indexes or hedge the volatility exposure of portfolios. The Futures Contracts are denominated in Euros and are traded on the Eurex under the ticker symbol “FVS”. The performance of the Futures Contracts is tied to the performance of the VSTOXX. Both the Futures Contracts and the VSTOXX are negatively correlated to the Index. Investors that believe the forward implied market volatility of the Index will increase may buy the Futures Contracts. Conversely, investors that believe that the forward implied market volatility of the Index will decline may sell the Futures Contracts. The Futures Contracts are available with respect to the eight nearest successive calendar months. The market value of the Futures Contracts is available on the Eurex.

<sup>11</sup> According to the Registration Statement, to “roll” a Futures Contract means to sell a Futures Contract as it nears its expiration date and to replace it with a new contract that has a later expiration date. When rolling Futures Contracts, the Fund generally will select between Futures Contracts with the three nearest expiration dates (known as the front, second and third month contracts) based on an analysis of the cost of establishing and maintaining such positions. Futures Contracts with a longer term to expiration may be priced higher than Futures Contracts with a shorter term to expiration, a relationship called “contango”. When rolling Futures Contracts that are in contango, the Fund may sell the expiring Futures Contract at a lower price and buy a longer-dated Futures Contract at a higher price, resulting in a negative roll yield. During contango environments, the Fund’s active investment strategy will attempt to select among the front, second, and third month Futures Contracts in a manner that mitigates negative roll yield and potentially increases returns as compared to a strategy that uses a formulaic roll, always rolling to the Futures Contract with the nearest expiration. Conversely, Futures Contracts with a longer term to expiration may be priced lower than Futures Contracts with a shorter term to expiration, a relationship called “backwardation”. When rolling Futures Contracts that are in backwardation, the Fund may sell the expiring Futures Contract at a higher price and buy the longer-dated Futures Contract at a lower price, resulting in a positive roll yield. During backwardation environments, the Fund’s active strategy will attempt to select among the front, second, and third month Futures Contracts in a manner that maximizes positive roll yield and potentially increases returns.

performance of either the VSTOXX Index or the Index.

According to the Registration Statement, in seeking to achieve the Fund’s investment objectives, the Sponsor will use a mathematical approach to investing. Using this approach, the Sponsor will determine the type, quantity and mix of investment positions that the Sponsor believes, in combination, should produce daily returns consistent with the Fund’s objectives. The Sponsor will rely upon a pre-determined model to generate orders that result in repositioning the Fund’s investments in accordance with its investment objective.

Under normal market conditions,<sup>12</sup> the Fund generally will seek to remain fully invested at all times in the Futures Contracts in a manner consistent with its investment objectives without regard to market conditions, trends or direction.

The Fund will invest the remainder of its un-invested assets in high-quality, short-term debt instruments that have terms-to-maturity of less than 397 days, such as U.S. government securities and repurchase agreements (“Money Market Instruments”).

Under limited circumstances, the Fund also may invest in swap contracts and forward contracts that reference its Benchmark (“Financial Instruments”). In the event position price or accountability limits are reached with respect to Futures Contracts, the Sponsor may, in its commercially reasonable judgment, cause the Fund to obtain exposure to the Futures Contracts through swaps referencing the Futures Contracts.<sup>13</sup> The Fund may also invest in swaps if the market for a specific Futures Contract experiences emergencies (e.g., natural disaster, terrorist attack or an act of God) or disruptions (e.g., a trading halt or a flash crash) which, in the Sponsor’s commercially reasonable judgment, prevent, or otherwise make it impractical, for the Fund to obtain the appropriate amount of investment

<sup>12</sup> The term “normal market conditions” is defined in NYSE Arca Equities Rule 8.600(c)(5).

<sup>13</sup> The Fund intends to enter into swap agreements only with major, global financial institutions; however, there are no limitations on the percentage of its assets the Fund may invest in swap agreements with a particular counterparty. The Fund may use various techniques to minimize credit risk. The Fund will seek to mitigate risks in connection with the uncleared OTC swaps by generally requiring that the counterparties for the Fund agree to post collateral for the benefit of the Fund, marked to market daily, subject to certain minimum thresholds.

exposure to the affected Futures Contracts.

The Fund will also hold cash or cash equivalents, such as U.S. Treasury securities or other high credit quality, short-term fixed-income or similar securities (such as shares of money market funds and collateralized repurchase agreements), for direct investment or as collateral for Futures Contracts and Financial Instruments and pending investment in Futures Contracts and Financial Instruments. The Fund may invest up to 100% of its assets in any of these types of cash or cash equivalent securities.

Subject to the Sponsor’s rolling methodology used for the Fund, the Sponsor will not invest the assets of the Fund based on its view of the investment merit of a particular investment, other than for cash management purposes, nor does it conduct conventional volatility research or analysis, or forecast market movement or trends, in managing the assets of the Fund. The Fund will seek to remain fully invested at all times in Futures Contracts, Financial Instruments and Money Market Instruments that, in combination, provide exposure to the Futures Contracts consistent with its investment objective without regard to market conditions, trends or direction.

#### Creation and Redemption Transactions

According to the Registration Statement, an “Authorized Participant” may purchase (*i.e.*, create) or redeem “Creation Units” in the Fund. A Creation Unit is a block of 50,000 Shares of a Fund. The size of a Creation Unit is subject to change. A creation transaction generally will take place when an Authorized Participant deposits a specified amount of cash in exchange for a specified number of Creation Units. Similarly, Shares can be redeemed only in Creation Units, generally for cash.<sup>14</sup> Purchase orders

<sup>14</sup> According to the Registration Statement, Creation Units of the Fund are expected to be created when there is sufficient demand for Shares of the Fund that the market price per Share is at a premium to the net asset value (“NAV”) per Share. Authorized Participants will likely sell the Shares to the public at prices that are expected to reflect, among other factors, the trading price of the Shares and the supply of and demand for the Shares at the time of sale and are expected to fall between the NAV and the trading price of the Shares at the time of sale. Similarly, it is expected that Creation Units of the Fund will be redeemed when the market price per Share of the Fund is at a discount to the NAV per Share. The Sponsor expects that the exploitation of such arbitrage opportunities by Authorized Participants and their clients and customers will tend to cause the public trading price of the Shares to track the NAV per Share of the Fund closely over time. Retail investors seeking

will be irrevocable. Except when aggregated in Creation Units, Shares will not be redeemable. The prices at which creations and redemptions occur will be based on the next calculation of the NAV after an order is received in proper form.

Creation and redemption transactions must be placed each day with SEI by the create/redeem cut-off time (*i.e.*, 3:00 Central Europe Time (9:00 a.m. Eastern Time most of the year)), or earlier if the Exchange or other exchange material to the valuation or operation of the Fund closes before the cut-off time, to receive that day's NAV. The total payment required to create each Creation Unit is the NAV of 50,000 Shares on the purchase order date plus the applicable transaction fee.

If permitted by the Sponsor in its sole discretion with respect to the Fund, an Authorized Participant may also agree to enter into or arrange for an exchange of a futures contract for related position ("EFCRP") or block trade with the Fund whereby the Authorized Participant would also transfer to the Fund Futures Contracts at or near the closing settlement price for such contracts on the purchase order date.

#### Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Creation Units will mirror the procedures for the creation of Creation Units. On any "Business Day",<sup>15</sup> an Authorized Participant may place an order with the Distributor to redeem one or more Creation Units. If a redemption order is received prior to the applicable cut-off time, or earlier if the Exchange or other exchange material to the valuation or operation of the Fund closes before the cut-off time, the day on which SEI receives a valid redemption order is the redemption order date. If the redemption order is received after the applicable cut-off time, the redemption order date will be the next day. Redemption orders will be irrevocable.

Upon request of an Authorized Participant made at the time of a redemption order, the Sponsor at its sole discretion may determine, in addition to delivering redemption proceeds, to transfer Futures Contracts to the Authorized Participant pursuant to an EFCRP or to a block trade sale of

Futures Contracts to the Authorized Participant.

The redemption proceeds from the Fund will consist of the cash redemption amount and, if permitted by the Sponsor in its sole discretion with respect to the Fund, an EFCRP or block trade with the Fund as described in "— Creation and Redemption Transactions" above. The cash redemption amount will be equal to the NAV of the number of Creation Unit(s) of the Fund requested in the Authorized Participant's redemption order as of the time of the calculation of the Fund's NAV on the redemption order date, less transaction fees and any amounts attributable to any applicable EFCRP or block trade.

#### Net Asset Value

According to the Registration Statement, the NAV in respect of the Fund means the total assets of the Fund including, but not limited to, all cash and cash equivalents or other debt securities less total liabilities of the Fund, consistently applied under the accrual method of accounting. In particular, the NAV will include any unrealized profit or loss on open Futures Contracts and Financial Instruments, and any other credit or debit accruing to the Fund but unpaid or not received by the Fund. The NAV per Share of the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.*, the value of its total assets less total liabilities) by its total number of Shares outstanding. Expenses and fees will be accrued daily and taken into account for purposes of determining the NAV. The Fund will compute its NAV at the time set forth below, or an earlier time as set forth on [www.ProShares.com](http://www.ProShares.com), if necessitated by the Exchange or other exchange material to the valuation or operation of the Fund closing early. The Fund's NAV is calculated only once each trading day. The NAV calculation time for the Fund will typically be 5:30 Central Europe Time (11:30 a.m. Eastern Time most of the year).

In calculating the NAV of the Fund, the settlement value of the Fund's non-exchange-traded Financial Instruments will be determined by applying the then-current disseminated levels for the Futures Contracts to the terms of the Fund's non-exchange-traded Financial Instruments. However, in the event that underlying Futures Contracts are not trading due to the operation of daily limits or otherwise, the Sponsor may, in its sole discretion, choose to fair value the Futures Contracts in order to value the Fund's non-exchange-traded Financial Instruments for purposes of

the NAV calculation. Such fair value prices would generally be determined based on available inputs about the current value of the Futures Contracts and would be based on principles that the Sponsor deems fair and equitable so long as such principles are consistent with normal industry standards.

Futures Contracts will be calculated at their then current market value, which is based upon the settlement price (for the Fund) or the last traded price before the NAV time, for that particular Futures Contract traded on the applicable exchange on the date with respect to which the NAV is being determined. If a Futures Contract could not be liquidated on such day, due to the operation of daily limits or other rules of the exchange upon which that position is traded or otherwise, the Sponsor may, in its sole discretion, choose to determine a fair value price as the basis for determining the market value of such position for such day. Such fair value prices would generally be determined based on available inputs about the current value of the Futures Contracts and would be based on principles that the Sponsor deems fair and equitable so long as such principles are consistent with normal industry standards.

Short-term debt instruments will be priced at amortized cost.

#### Indicative Optimized Portfolio Value ("IOPV")

The IOPV is an indicator of the value of the Fund's net assets at the time the IOPV is disseminated. The IOPV will be calculated and disseminated every 15 seconds throughout the trading day. The IOPV will generally be calculated using the prior day's closing net assets of the Fund as a base and updating throughout the trading day changes in the value of the Futures Contracts and Financial Instruments held by the Fund. The IOPV should not be viewed as an actual real time update of the NAV because NAV is calculated only once at the end of each trading day. The IOPV also should not be viewed as a precise value of the Shares.

The Exchange will disseminate the IOPV. In addition, the IOPV will be published on the Exchange's Web site and is available through on-line information services such as Bloomberg Finance L.P. and/or Reuters.

#### Availability of Information

The Trust's Web site, which will be publicly accessible at no charge, will contain the following information: (a) The daily NAV of the Trust, the daily NAV per Share, the prior Business Day's NAV per Share, the reported daily

to purchase or sell Shares on any day are expected to effect such transactions in the secondary market at the market price per Share, rather than in connection with the creation or redemption of Creation Units.

<sup>15</sup> A Business Day is any day on which the NAV of the Fund is determined.

closing price and the reported daily trading volume; (b) the daily composition of the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.700(c)(2);<sup>16</sup> (c) the midpoint of the bid-ask price as of the time the NAV per Share is calculated (the “Bid-Ask Price”); (d) the calculation of the premium or discount of such price against such NAV per Share; (e) data in chart form displaying the frequency distribution of discounts or premiums of the bid-ask price against the NAV per Share, within appropriate ranges for each of the four (4) previous calendar quarters; and (f) the current prospectus of the Trust, included in the Registration Statement.

On a daily basis, the Trust will disclose on its Web site ([www.Proshares.com](http://www.Proshares.com)) for the Futures Contracts and Financial Instruments in the Disclosed Portfolio the following information: Name; ticker symbol (if applicable); CUSIP or other identifier (if applicable); description of the holding; with respect to derivatives, the identity of the security, commodity, index or other underlying asset; the quantity or aggregate amount of the holding as measured by par value, notional value or amount, number of contracts or number of units (if applicable); maturity date; coupon rate (if applicable); effective date or issue date (if applicable); market value; percentage weighting in the Disclosed Portfolio; and expiration date (if applicable). The Web site information will be publicly available at no charge. In addition, price information for the Futures Contracts and Financial Instruments held by the Trust will be available through major market data vendors and/or the exchange on which they are listed and traded, as applicable.

As noted above, the Trust’s NAV and the NAV per Share will be calculated and disseminated daily.<sup>17</sup> The Exchange will disseminate for the Trust on a daily basis by means of the Consolidated Tape Association (the “CTA”) high-speed line information with respect to the most recent NAV per Share, and the number of Shares outstanding. The Exchange also will make available on its Web site

<sup>16</sup> NYSE Arca Equities Rule 8.700(c)(2) provides that the term “Disclosed Portfolio” means “the identities and quantities of the securities and other assets held by the Trust that will form the basis for the Trust’s calculation of net asset value at the end of the business day”.

<sup>17</sup> The Exchange will obtain a representation from the Trust that the NAV and the NAV per Share will be calculated daily and that the NAV, the NAV per Share and the composition of the Disclosed Portfolio will be made available to all market participants at the same time.

daily trading volume, closing prices and the NAV per Share.

Pricing for Futures Contracts will be available from Eurex and pricing for Financial Instruments will be available from major market data vendors. Price information for cash equivalents and Money Market Instruments will be available from major market data vendors.

The IOPV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange’s Core Trading Session (as defined in NYSE Arca Equities Rule 7.34).<sup>18</sup>

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. The previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the CTA high-speed line.

The current trading price per Share will be published continuously as trades occur throughout each trading day through CTA, or through major market data vendors.

#### Impact on Arbitrage Mechanism

The Sponsor believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives, including swaps. Market makers and participants should be able to value derivatives, including swaps, as long as the positions are disclosed with relevant information. The Sponsor believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares at their NAV, which should help ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Sponsor does not believe there will be any significant impacts to the settlement or operational aspects of the Fund’s arbitrage mechanism due to the use of derivatives, including swaps.

#### Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in NYSE Arca Equities Rule 8.700 for initial and continued listing of the Shares.

The minimum number of Shares to be outstanding at the start of trading will be 100,000 Shares. The Exchange

<sup>18</sup> Currently, it is the Exchange’s understanding that several major market data vendors widely disseminate IOPVs taken from the CTA high-speed line or other data feeds.

believes that this minimum number of Shares to be outstanding at the start of trading is sufficient to provide adequate market liquidity. The Exchange represents that, for the initial and continued listing of the Shares, the Trust must be in compliance with NYSE Arca Equities Rule 5.3 and Rule 10A–3 under the Exchange Act.<sup>19</sup>

#### Trading Rules

Under NYSE Arca Equities Rule 8.700(b), Managed Trust Securities are included within the Exchange’s definition of “securities.” The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities. Commentary .02 to NYSE Arca Equities Rule 8.700 provides that transactions in Managed Trust Securities will occur during the trading hours specified in NYSE Arca Equities Rule 7.34. Therefore, in accordance with NYSE Arca Equities Rule 7.34, the Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading in the Shares will be halted if the circuit breaker parameters under NYSE Arca Equities Rule 7.12 are reached. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

In addition, if the Exchange becomes aware that the NAV, the NAV per Share and/or the Disclosed Portfolio with respect to a series of Managed Trust Securities is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV, the NAV per Share and the Disclosed Portfolio is available to all market participants.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the

<sup>19</sup> 17 CFR 240.10A–3.

existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>20</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and Futures Contracts with other markets or other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and Futures Contracts from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares and Futures Contracts from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement (“CSSA”).<sup>21</sup> FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain Money Market Instruments held by the Fund reported to FINRA’s Trade Reporting and Compliance Engine (“TRACE”).

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio of the Fund or Benchmark, (b) limitations on portfolio of the Fund or Benchmark, or

<sup>20</sup> FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

<sup>21</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

(c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (4) how information regarding the IOPV and the Disclosed Portfolio is disseminated; (5) the risks involved in trading the Shares during the opening and late trading sessions when an updated IOPV will not be calculated or publicly disseminated; and (6) trading information.

In addition, the Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement.

The Bulletin also will reference the fact that there is no regulated source of last sale information regarding certain of the asset classes that the Trust may hold and that the Commission has no jurisdiction over the trading of the Futures Contracts.

The Bulletin also will discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Exchange Act.

The Bulletin also will disclose that the NAV and NAV per Share will be calculated after 4:00 p.m. E.T. each trading day.

#### 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the

requirement under Section 6(b)(5)<sup>22</sup> that an exchange have rules that are 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed amendment to add Futures Contracts and/or swaps on VSTOXX to the financial instruments in which an issue of Managed Trust Securities may hold long and/or short positions will provide investors with the ability to better diversify and hedge their portfolios using an exchange traded security without having to trade directly in the underlying Futures Contracts, and will facilitate the listing and trading on the Exchange of additional Managed Trust Securities that will enhance competition among market participants, to the benefit of investors and the marketplace.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.700. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the ISG from other exchanges that are members of the ISG or with which the Exchange has entered into a CSSA. The NAV of the Trust, the NAV per Share and the Disclosed Portfolio will be disseminated to all market participants at the same time. The Trust will provide Web site disclosure of portfolio holdings daily. The IOPV per Share (quoted in U.S. dollars) will be widely disseminated at least every 15 seconds during the Exchange’s Core Trading Session by major market data vendors. Pricing for Futures Contracts will be available from Eurex and pricing for forward contracts and swaps will be available from major market data vendors. Quotation and last-sale information regarding the Shares will be disseminated through the CTA high-speed line.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest given that a large amount of information will be publicly available regarding the Trust and the Shares,

<sup>22</sup> 15 U.S.C. 78f(b)(5).

thereby promoting market transparency. The Exchange may halt trading during the day in which an interruption to the dissemination of the IOPV occurs, or the value of the underlying Futures Contracts occurs. If the interruption to the dissemination of the IOPV or the value of the underlying Futures Contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. If the Exchange becomes aware that the NAV, the NAV per Share and the Disclosed Portfolio with respect to a series of Managed Trust Securities are not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV, the NAV per Share and the Disclosed Portfolio are available to all market participants. Trading in Shares of the Trust will be halted if the circuit breaker parameters under NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in the Bulletin of the special characteristics and risks associated with trading the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest given that it will facilitate the listing and trading of an additional type of exchange-traded product that will principally hold futures contracts and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via the ISG from other exchanges that are members of the ISG or with which the Exchange has entered into a CSSA. In addition, as noted above, investors will have ready access to information regarding the IOPV and quotation and last sale information for the Shares.

#### *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 Exchange Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will principally hold futures contracts,

and that will enhance competition among market participants, to the benefit of investors and the marketplace.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2017-85 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-NYSEArca-2017-85. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2017-85 and should be submitted on or before September 6, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-81374; File No. SR-Phlx-2017-63]

### **Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter VI, Section A of Its Pricing Schedule Relating to the Exchange's Monthly Permit Fees for PSX Only Members**

August 10, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 31, 2017, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>23</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter VI, Section A of its Pricing Schedule relating to the Exchange's monthly permit fees for PSX only members. The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend Chapter VI, Section A of its Pricing Schedule to add a new exemption from the \$4,000 per month "PSX Only Permit Fee" that the Exchange assesses to "PSX only" members and member organizations. A "PSX only" member or member organization is one that only does business only [sic] on PSX and not on the PHLX options market.

Presently, the Exchange waives this Permit Fee if a PSX only member or member organization executes at least 1,000 shares per day, on average, in a given month. The Exchange proposes to also waive the Permit Fee during any month in which a PSX only member's or member organization's business on the Exchange is limited to "clearing-only." For the purpose of the proposal, the term "clearing-only" means that the PSX only member or member organization: (1) Does not execute any trades on PSX throughout a given month; (2) maintains no active connections to execute trades on PSX during that month (either through its own MPID or through a sponsored access relationship on behalf of another member or member organization); and (3) maintains PSX membership for the

sole purpose of clearing trades on behalf of another member or member organization that is actively trading on PSX.

The purpose of the proposal is to enhance its fee structure for members and member organizations that limit their business on the Exchange during a given month to only clearing trades on behalf of others. The Exchange has determined that assessing clearing-only members and member organizations a monthly PSX Only Permit Fee is unnecessary given that the PSX Only Permit Fee exists for two purposes that do not apply to those that engage in clearing-only. First, the PSX Only Permit Fee serves as the price that members and member organizations pay for the privilege of executing trades on PSX. However, unlike other PSX members and member organizations, clearing firms do not obtain their PSX membership to execute trades and they do not, in fact, execute trades on PSX. The PSX Only Permit Fee also exists to defray the costs that the Exchange incurs to examine and oversee those of its members and member organizations for which the Exchange acts as the Designated Examination Authority. Again, however, the Exchange does not serve as the Designated Examination Authority for clearing-only firms and it therefore does not incur these costs.

Moreover, the Exchange believes that the assessment of the monthly PSX Only Permit Fee to clearing-only members and member organizations serves as a disincentive for clearing firms to provide their valuable services to other Exchange members and member organizations. The Exchange wishes to encourage, rather than discourage, clearing firms to participate on the Exchange. Indeed, the Exchange hopes that waiving the PSX Only Permit Fee for clearing-only members and member organizations will not only attract new clearing firms to PSX, but it will also more generally attract additional trading participation and trading on PSX. This proposal is part of an effort to nurture the growth of PSX.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,<sup>4</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair

discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>5</sup>

Likewise, in *NetCoalition v. Securities and Exchange Commission*<sup>6</sup> ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.<sup>7</sup> As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."<sup>8</sup>

Further, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . ."<sup>9</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that waiving the monthly PSX Only Permit Fee for clearing-only members and member organization is reasonable because no justification exists for charging this Fee to members and member organizations that do not use their membership to execute trades on PSX and are not

<sup>5</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

<sup>6</sup> *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

<sup>7</sup> See *NetCoalition*, at 534–535.

<sup>8</sup> *Id.* at 537.

<sup>9</sup> *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(4) and (5).



subject to examination by the Exchange. The Exchange also believes that its definition of “clearing-only” is reasonable because it excludes those firms that are PSX members for purposes other than simply to clear transactions, those that execute even small volumes of trades during a given month, and even those that maintain an active capacity to execute trades during a month, either through its own MPID or through a sponsored access relationship. Finally, the Exchange proposes reasonable steps to ensure that those clearing firms that request waivers of the PSX Only Permit Fee in fact qualify for the waiver. It will require such firms to attest in writing to their “clearing-only” status as a condition of the Exchange granting them the waiver. The attestation form will also obligate firms to promptly notify the Exchange of any change in their statuses.

The Exchange believes that the proposal is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fee waiver to all similarly situated members and member organizations that utilize their membership on the Exchange only to engage in clearing activities. Moreover, the Exchange believes that its proposal does not discriminate against PSX only members and member organizations that execute trades on PSX because such members and member organizations can and typically do qualify for their own waivers of the monthly Permit Fee when, in a given month, they meet or exceed an average daily trading threshold of 1,000 shares. When PSX only members and member organizations do not meet or exceed this monthly trading threshold, the Exchange believes that it is justified in continuing to charge them the Permit Fee insofar as the transaction fees they generate for the Exchange are not sufficient to offset their shares of the Exchange’s regulatory oversight costs.<sup>10</sup>

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or

rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed waiver of the monthly PSX Only Permit Fee will not impose any burden on competition. To the contrary, the Exchange believes that its proposal is pro-competitive because it may encourage additional clearing firms to provide clearing services on the Exchange, which in turn may attract additional trading participants and trading activity.

#### *C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>11</sup>

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2017-63 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2017-63. 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-Phlx-2017-63, and should be submitted on or before September 6, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2017-17276 Filed 8-15-17; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>10</sup> See also Securities Exchange Act Release No. 34-72784 (Aug. 7, 2014), 79 FR 47506 (Aug. 13, 2014) (discussing the Exchange’s rationale for its existing PSX Only Permit Fee waiver).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

**SMALL BUSINESS ADMINISTRATION****Meeting of the Interagency Task Force on Veterans Small Business Development**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of open Federal Interagency Task Force Meeting.

**SUMMARY:** The U.S. Small Business Administration (SBA) is issuing this notice to announce the location, date, time and agenda for the next meeting of the Interagency Task Force on Veterans Small Business Development. The meeting is open to the public.

**DATE AND TIME:** Wednesday, September 6, 2017, from 1:00 p.m. to 4:00 p.m.

**ADDRESSES:** U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

*Where:* Eisenhower Conference Room B, located on the Concourse level.

**CONTACT INFO:** (Teleconference Dial-In) 1-888-858-2144, Access Code: 7805798 (Webinar) <https://connect16.uc.att.com/sba/meet/?ExEventID=87805798&CT=M>, Access Code: 7805798.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development (Task Force). The Task Force is established pursuant to Executive Order 13540 to coordinate the efforts of Federal agencies to improve capital, business development opportunities, and pre-established federal contracting goals for small business concerns owned and controlled by veterans and service-disabled veterans. Moreover, the Task Force shall coordinate administrative and regulatory activities and develop proposals relating to “six focus areas”:

- (1) Improving capital access and capacity of small business concerns owned and controlled by veterans and service-disabled veterans through loans, surety bonding, and franchising;
- (2) Ensuring achievement of the pre-established Federal contracting goals for small business concerns owned and controlled by veterans and service-disabled veterans through expanded mentor-protégé assistance and matching such small business concerns with contracting opportunities;
- (3) Increasing the integrity of certifications of status as a small business concern owned and controlled by a veteran or service-disabled veteran;
- (4) Reducing paperwork and administrative burdens on veterans in accessing business development and entrepreneurship

opportunities; (5) increasing and improving training and counseling services provided to small business concerns owned and controlled by veterans; and (6) making other improvements relating to the support for veterans business development by the Federal Government.

**ADDITIONAL INFORMATION:** This meeting is open to the public. Advance notice of attendance is requested. Anyone wishing to attend and/or make comments to the Task Force should contact SBA’s Office of Veterans Business Development no later than June 2, 2017 at [veteransbusiness@sba.gov](mailto:veteransbusiness@sba.gov). Comments for the record should be applicable to the “six focus areas” of the Task Force and will be limited to five minutes in the interest of time and to accommodate as many participants as possible. Written comments should also be sent to the above email no later than June 2, 2017. Special accommodations requests should also be directed to SBA’s Office of Veterans Business Development at (202) 205-6773 or to [veteransbusiness@sba.gov](mailto:veteransbusiness@sba.gov).

For more information on veteran owned small business programs, please visit [www.sba.gov/veterans](http://www.sba.gov/veterans).

Dated: August 4, 2017.

**Richard W. Kingan,**

*SBA Committee Management Officer.*

[FR Doc. 2017-17298 Filed 8-15-17; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION****Meeting of the Advisory Committee on Veterans Business Affairs**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of open Federal Advisory Committee meeting.

**SUMMARY:** The U.S. Small Business Administration (SBA) is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Advisory Committee on Veterans Business Affairs. The meeting is open to the public.

**DATES:** Thursday, September 7, 2017, from 9:00 a.m. to 4:00 p.m.

**ADDRESSES:** U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416. *Where:* Eisenhower Conference Room B, located on the concourse level.

**CONTACT INFO:** (Teleconference Dial-in) 1-888-858-2144, Access Code: 7805798 (Webinar) <https://connect16.uc.att.com/sba/meet/?ExEventID=87805798&CT=W>, Access Code: 7805798.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs (ACVBA). The ACVBA is established pursuant to 15 U.S.C. 657(b) note, and serves as an independent source of advice and policy. The purpose of this meeting is to discuss veteran and service-disabled veteran entrepreneurship. The agenda includes reports from the SBA Offices of Veterans Business Development, Government Contracting and Business Development, Capital Access and Advocacy.

*Additional Information:* This meeting is open to the public. Advance notice of attendance is requested. Anyone wishing to attend and/or make comments to the ACVBA should contact SBA’s Office of Veterans Business Development no later than September 1, 2017 at [veteransbusiness@sba.gov](mailto:veteransbusiness@sba.gov). Comments for the record will be limited to five minutes to accommodate as many participants as possible. Written comments should be sent to the above by September 1, 2017. Special accommodation requests should also be directed to SBA’s Office of Veterans Business Development at (202) 205-6773 or [veteransbusiness@sba.gov](mailto:veteransbusiness@sba.gov). For more information on veteran owned small business programs, please visit [www.sba.gov/veterans](http://www.sba.gov/veterans).

Dated: August 4, 2017.

**Richard W. Kingan,**

*SBA Committee Management Officer.*

[FR Doc. 2017-17297 Filed 8-15-17; 8:45 am]

**BILLING CODE 8025-01-P**

**SOCIAL SECURITY ADMINISTRATION**

[Docket No: SSA-2017-0041]

**Agency Information Collection Activities: Proposed Request and Comment Request**

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency’s burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to

minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202-395-6974, Email address: OIRA\_Submission@omb.eop.gov.

(SSA), Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235,

Fax: 410-966-2830, Email address: OR.Reports.Clearance@ssa.gov.

Or you may submit your comments online through [www.regulations.gov](http://www.regulations.gov), referencing Docket ID Number [SSA-2017-0041].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than October 16, 2017. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. *Application to Collect a Fee for Payee Service—20 CFR 404.2040a & 20 CFR 416.640a—0960-0719.* Sections

205(j)(4)(A)&(B), and 1631(a)(2) of the Social Security Act (Act) allow SSA to authorize certain organizational representative payees to collect a fee for providing payee services. Before an organization may collect this fee, they complete and submit Form SSA-445. SSA uses the information to determine whether to authorize or deny permission to collect fees for payee services. The respondents are private sector businesses or State and local government offices applying to become fee-for-service organizational representative payees.

*Type of Request:* Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-445—Private sector business .....	90	1	10	15
SSA-445—State/local government offices .....	10	1	10	2
Totals .....	100	.....	.....	17

2. *Redetermination of Eligibility for Help with Medicare Prescription Drug Plan Costs—20 CFR 418.3125—0960-0723.* As per the requirements of the Medicare Modernization Act of 2003, SSA conducts low-income subsidy eligibility redeterminations for Medicare beneficiaries who currently receive the Medicare Part D subsidy and who meet certain criteria. Respondents complete Form SSA-1026-REDE under the

following circumstances: (1) When individuals became entitled to the Medicare Part D subsidy during the past 12 months; (2) if they were eligible for the Part D subsidy for more than 12 months; or (3) if they reported a change in income, resources, or household size. Part D beneficiaries complete the SSA-1026-SCE when they need to report a potentially subsidy-changing event, including the following: (1) Marriage;

(2) spousal separation; (3) divorce; (4) annulment of a marriage; (5) spousal death; or (6) moving back in with one's spouse following a separation. The respondents are current recipients of the Medicare Part D low-income subsidy who will undergo an eligibility redetermination for one of the reasons mentioned above.

*Type of Request:* Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-1026-REDE .....	98,990	1	18	29,697
SSA-1026-SCE .....	4,267	1	18	1,280
SSA-1026-REDE—Field Office Interview .....	50,529	1	18	15,159
SSA-1026-SCE—Field Office Interview .....	3,468	1	18	1,040
Total .....	157,254	.....	.....	47,176

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding these information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than September 15, 2017. Individuals can obtain copies of the OMB clearance packages by writing to [OR.Reports.Clearance@ssa.gov](mailto:OR.Reports.Clearance@ssa.gov).

1. *Statement Regarding Date of Birth and Citizenship—20CFR 404.716—0960-0016.* Section 205(a) of the Act gives the Commissioner of SSA the authority to make rules and regulations and to establish procedures for collecting evidence from individuals applying for Social Security benefits. When individuals apply for Social Security benefits and cannot provide preferred methods of proving age or citizenship, SSA uses Form SSA-702 to

establish these facts. Specifically, SSA uses the SSA-702 to establish age as a factor of entitlement to Social Security benefits, or U.S. citizenship as a payment factor. Respondents are individuals with knowledge about the date of birth or citizenship of applicants filing for one or more Social Security benefits who need to establish age or citizenship.

*Type of Request:* Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-702 .....	1,200	1	10	200

**2. Marital Relationship Questionnaire—20 CFR 416.1826—0960-0460.** SSA uses Form SSA-4178, Marital Relationship Questionnaire, to determine if unrelated individuals of the opposite sex who live together are

misrepresenting themselves as husband and wife. SSA needs this information to determine whether we are making correct payments to couples and individuals applying for or currently receiving Supplemental Security

Income (SSI) payments. The respondents are applicants for and recipients of SSI payments.

*Type of Request:* Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA-4178—Modernized SSI Claims System .....	1,200	1	10	200
SSA-4178 .....	3,825	1	5	319
Totals .....	5,100	.....	.....	425

**3. Medical Source Statement of Ability To Do Work Related Activities (Physical and Mental)—20 CFR 404.1512-404.1513, 416.912-416.913, 404.1517, and 416.917—0960-0662.** In some instances when a claimant appeals a denied disability claim, SSA may ask the claimant to have a consultative examination at the agency’s expense, if the claimant’s medical sources cannot or will not give the agency sufficient

evidence to determine whether the claimant is disabled. The medical providers who perform these consultative examinations provide a statement about the claimant’s state of disability. Specifically, these medical source statements determine the work-related capabilities of these claimants. SSA collects the medical data on the HA-1151 and HA-1152 to assess the work-related physical and mental

capabilities of claimants who appeal SSA’s previous determination on their issue of disability. The respondents are medical sources who provide reports based either on existing medical evidence or on consultative examinations.

*Type of Request:* Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
HA-1151 .....	5,000	30	150,000	15	37,500
HA-1152 .....	5,000	30	150,000	15	37,500
Totals .....	10,000	.....	300,000	.....	75,000

Dated: August 10, 2017.

**Naomi R. Sipple,**

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 2017-17269 Filed 8-15-17; 8:45 am]

BILLING CODE 4191-02-P

**DEPARTMENT OF STATE**

[Public Notice 10088]

**Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: “Art and China after 1989: Theater of the World” Exhibition**

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition “Art and

China after 1989: Theater of the World,” 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 Solomon R. Guggenheim Museum, in New York, New York, from on or about October 6, 2017, until on or about January 7, 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 Paul W. Manning in the Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6469; 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. 2017-17327 Filed 8-15-17; 8:45 am]

**BILLING CODE 4710-05-P**

## **SURFACE TRANSPORTATION BOARD**

[Docket No. FD 36133]

### **Cleveland Commercial Railroad Company, LLC—Amended Lease and Operation Exemption Containing Interchange Commitment—Norfolk Southern Railway Company**

Cleveland Commercial Railroad Company, LLC (CCR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to continue to lease and operate approximately 25.3 miles of rail line from Norfolk Southern Railway Company (NSR) between milepost RH 2.2+/- at Cleveland, Ohio, and milepost RH 27.5+/- at Aurora, Ohio.

According to CCR, it first entered into a lease agreement (Original Agreement) with NSR on May 13, 2009. *See Cleveland Commercial R.R.—Lease and Operation Exemption—Norfolk S. Ry., FD 35251 (STB served May 29, 2009).* On September 15, 2016, CCR and NSR agreed to amend the Original Agreement (1st Agreement Amendment) to extend the agreement's termination date an additional six years, through December 31, 2025, and to make other changes.<sup>1</sup> CCR states that the 1st Agreement Amendment will take effect on the effective date of this notice of exemption.

CCR states that the 1st Agreement Amendment contains an interchange commitment in the form of lease credits. According to CCR, these credits were part of the Original Agreement, which CCR sought in negotiations to afford it greater financial flexibility to, among other things, improve the line's infrastructure. CCR states that the lease agreement does not prohibit it from interchanging with other carriers and it does not set forth terms under which CCR may interchange traffic with third parties. CCR states that it regularly interchanges traffic with Wheeling & Lake Erie Railway Company (W&LE) and that CCR's lease and operation of

the subject line, which physically connects with the line that CCR currently leases from W&LE, will not affect the existing CCR and W&LE relationship.<sup>2</sup> As required under 49 CFR 1150.43(h)(1), CCR has disclosed in its verified notice that the Original Agreement, as modified by the 1st Agreement Amendment, affects the interchange points with NSR at a track in the vicinity of Von Willer Yard in Cleveland and with W&LE at Falls Junction in Glenwillow, Ohio. CCR has provided additional information regarding the interchange commitment as required by 1150.43(h).

CCR also certifies that its projected annual revenues as a result of the transaction will not result in CCR's becoming a Class II or Class I rail carrier and further certifies that its projected annual revenues will not exceed \$5 million.

The transaction may be consummated on or after August 30, 2017, the effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 23, 2017 (at least 7 days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 36133, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on John D. Heffner, Strasburger & Price, LLP, 1025 Connecticut Ave. NW., Suite 717, Washington, DC 20036.

Board decisions and notices are available on our Web site at [WWW.STB.GOV](http://WWW.STB.GOV).

Decided: August 11, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Marline Simeon,**

*Clearance Clerk.*

[FR Doc. 2017-17335 Filed 8-15-17; 8:45 am]

**BILLING CODE 4915-01-P**

<sup>1</sup> CCR filed a confidential, complete version of the 1st Agreement Amendment with its notice of exemption to be kept confidential by the Board under 49 CFR 1104.14(a) without the need for the filing of an accompanying motion for protective order under 49 CFR 1104.14(b).

<sup>2</sup> *See Cleveland Commercial R.R.—Change in Operators Exemption—Wheeling & Lake Erie Ry., FD 34521 (STB served Aug. 6, 2004).*

## **SURFACE TRANSPORTATION BOARD**

### **30-Day Notice of Intent To Seek Extension of Approval: Demurrage Liability Disclosure Requirements**

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, the Surface Transportation Board (STB or Board) gives notice that it is requesting from the Office of Management and Budget (OMB) an extension of approval for the collection of Demurrage Liability Disclosure Requirements. The Board previously published a notice about this collection in the **Federal Register**. *60-Day Notice of Intent to Seek Extension of Approval: Demurrage Liability Disclosure Requirements*, 82 FR 16,872 (Apr. 6, 2017). That notice allowed for a 60-day public review and comment period. No comments were received.

**DATES:** Comments on this information collection should be submitted by September 15, 2017.

**ADDRESSES:** Written comments should be identified as "Paperwork Reduction Act Comments, Surface Transportation Board: Demurrage Liability Disclosure Requirements." These comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Chad Lallemand, Surface Transportation Board Desk Officer, by email at [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov), by fax at (202) 395-6974; or by mail to Room 10235, 725 17th Street NW., Washington, DC 20503. Please also direct comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001, or to [pra@stb.gov](mailto:pra@stb.gov).

**FOR FURTHER INFORMATION CONTACT:** For further information regarding this collection, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0284 or at [michael.higgins@stb.gov](mailto:michael.higgins@stb.gov). [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:** Comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

#### Description of Collection

*Title:* Demurrage Liability Disclosure Requirements.

*OMB Control Number:* 2140-0021.

*STB Form Number:* None.

*Type of Review:* Extension with change (relating to the change in burden hours based on the estimated decrease in (a) the number of respondents from 650 to 575 and (b) the time per response from eight hours to one hour, due to fact that the unique burdens associated with the initiation of the collection no longer exist).

*Respondents:* Freight railroads subject to the Board's jurisdiction.

*Number of Respondents:* 575 (including seven Class I [*i.e.*, large] railroads).

*Estimated Time per Response:* One hour.

*Frequency:* Occasionally. The notice requirement is triggered in two circumstances: (1) When a shipper initially arranges with a railroad for transportation of goods pursuant to the railroad's tariff; or (2) when a railroad changes the terms of its demurrage tariff.

*Total Burden Hours (annually including all respondents):* 864.6 hours. Board staff estimates that: (1) Seven Class I railroads will each take on 15 new customers each year (105 hours); (2) each of the seven Class I railroads will update its demurrage tariffs every three years (2.3 hours annualized); (3) 568 non-Class I railroads will each take on one new customer a year (568 hours); and (4) each non-Class I railroad will update its demurrage tariffs every three years (189.3 hours annualized).

*Total "Non-hour Burden" Cost:* No non-hourly cost burdens associated with this collection have been identified. The notice may be provided electronically.

*Needs and Uses:* Demurrage is a charge that railroads assess their customers for detaining rail cars beyond a specified amount of time. It both compensates railroads for expenses incurred for that rail car, and serves as a penalty for undue car detention to promote efficiency. Demurrage is subject to the Board's jurisdiction under 49 U.S.C. 10702 and 10746, which require railroads to compute demurrage

charges and to establish demurrage-related rules.

A railroad and its customers may enter into demurrage contracts without providing notice, but, in the absence of such contracts, demurrage will be governed by the railroad's demurrage tariff. Under 49 CFR 1333.3, a railroad's ability to charge demurrage pursuant to its tariff is conditional on its having given, prior to rail car placement, actual notice of the demurrage tariff to the person receiving rail cars for loading and unloading. Once a shipper receives a notice as to a particular tariff, additional notices are only required when the tariff changes materially. The parties use the information in these disclosure requirements to avoid demurrage disputes, and the Board uses the information to resolve demurrage disputes that come before the agency.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information.

Dated: August 11, 2017.

Jeffrey Herzig,  
Clearance Clerk.

[FR Doc. 2017-17340 Filed 8-15-17; 8:45 am]

BILLING CODE 4915-01-P

## SURFACE TRANSPORTATION BOARD

### 60-Day Notice of Intent To Seek Extension of Approval: Applications for Land-Use-Exemption Permits

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, the Surface Transportation Board (STB or Board) gives notice that it is requesting from the Office of Management and Budget (OMB) an extension of approval for the collection of Applications for Land-Use-Exemption Permits (for Solid Waste Rail Transfer Facilities).

**DATES:** Comments on this information collection should be submitted by October 13, 2017.

**ADDRESSES:** Direct all comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001, or to *pra@stb.gov*. When submitting comments, please refer to "Paperwork Reduction Act Comments: Applications for Land-Use-Exemption Permits."

**FOR FURTHER INFORMATION CONTACT:** For further information regarding Land-Use-Exemption Permits, contact *pra@stb.gov*, or submit your question at <https://www.stb.gov/Ect1/ecorrespondence.nsf/incoming?OpenForm>. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

**SUPPLEMENTARY INFORMATION:** Comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

#### Description of Collection

*Title:* Applications for Land-Use-Exemption Permits.

*OMB Control Number:* 2140-0018.

*STB Form Number:* None.

*Type of Review:* Extension without change.

*Respondents:* Any applicant seeking a land-use-exemption permit.

*Number of Respondents:* One.

*Estimated Time Per Response:* 160 hours.

*Frequency:* On occasion.

*Total Burden Hours (annually including all respondents):* 160 hours.

*Total "Non-hour Burden" Cost:* An estimated \$200,000 to hire an environmental consultant to work with Board staff on the required environmental report.

*Needs and Uses:* Pursuant to 49 U.S.C. 10501(c)(2), as amended by the Clean Railroads Act of 2008 (CRA), 49 U.S.C. 10908-10910, the Board adopted final rules in *Solid Waste Rail Transfer Facilities*, EP 684 (STB served Nov. 20, 2012). Under these rules, a person seeking a Land-Use-Exemption Permit must file an application including substantial facts and argument as to why

a permit is necessary and, as required by the National Environmental Policy Act, an environmental report and/or an environmental impact statement. To date, the Board has not received any applications under these rules.

Under 49 CFR 1155.20, an applicant is required to file a notice of intent to apply for a land-use-exemption permit before filing its application. A suggested form for this notice may be found in Appendix A to 49 CFR part 1155.

Further, under 49 CFR 1155.21(e), an application must include a draft **Federal Register** notice. A suggested form for the draft **Federal Register** notice may be found at Appendix B to part 1155.

This collection is needed to develop a record in land-use-exemption-permit proceedings, a process mandated by Congress in the CRA. The Board uses the information in this collection to accurately assess the merits of a permit application.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: August 11, 2017.

**Jeffrey Herzig,**  
Clearance Clerk.

[FR Doc. 2017-17306 Filed 8-15-17; 8:45 am]

BILLING CODE 4915-01-P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR-2017-0015]

### 2017 Special 301 Out-of-Cycle Review of Notorious Markets: Comment Request

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) requests written comments that identify online and physical markets based outside the United States that should be included in the 2017 Notorious Markets

List (List). Conducted under the auspices of the Special 301 program, the List identifies online and physical marketplaces that reportedly engage in and facilitate substantial copyright piracy and trademark counterfeiting. In 2010, USTR began publishing the Notorious Markets List separately from the annual Special 301 Report as an "Out-of-Cycle Review."

#### **DATES:**

*October 2, 2017 at midnight EST:* Deadline for submission of written comments.

*October 16, 2017 at midnight EST:* Deadline for submission of rebuttal comments and other information USTR should consider during the review.

**ADDRESSES:** You should submit written comments through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments in section III below. For alternatives to online submissions, please contact USTR at [Special301@ustr.eop.gov](mailto:Special301@ustr.eop.gov) before transmitting a comment and in advance of the relevant deadline.

#### **FOR FURTHER INFORMATION CONTACT:**

Christine Peterson, Director for Intellectual Property and Innovation, at [Special301@ustr.eop.gov](mailto:Special301@ustr.eop.gov). You can find information about the Special 301 Review, including the Notorious Markets List, at [www.USTR.gov](http://www.USTR.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The United States is concerned with trademark counterfeiting and copyright piracy on a commercial scale because they cause significant financial losses for rights holders, legitimate businesses and governments, undermine critical U.S. comparative advantages in innovation and creativity to the detriment of American workers, and potentially pose significant risks to consumer health and safety as well as privacy and security. The Notorious Markets List identifies select online and physical marketplaces that reportedly engage in or facilitate substantial copyright piracy and trademark counterfeiting.

Beginning in 2006, USTR identified notorious markets in the annual Special 301 Report. In 2010, pursuant to the Administration's 2010 Joint Strategic Plan on Intellectual Property Enforcement, USTR announced that it would publish the List as an Out-of-Cycle Review, separate from the annual Special 301 Report. USTR published the first List in February 2011. USTR develops the annual List based upon public comments solicited through the **Federal Register** and in consultation

with other Federal agencies that serve on the Special 301 Subcommittee of the Trade Policy Staff Committee.

The United States encourages owners and operators of markets reportedly involved in piracy and counterfeiting to adopt business models that rely on the licensed distribution of legitimate content and products and to work with rights holders and enforcement officials to address infringement. USTR also encourages responsible government authorities to intensify their efforts to investigate reports of piracy and counterfeiting in such markets, and to pursue appropriate enforcement actions. The List does not purport to reflect findings of legal violations, nor does it reflect the United States Government's analysis of the general intellectual property rights (IPR) protection and enforcement climate in the country or countries concerned. For an analysis of the IPR climate in particular countries, please refer to the annual Special 301 Report, published each spring no later than 30 days after USTR submits the National Trade Estimate to Congress.

##### **II. Public Comments**

USTR invites written comments concerning examples of online and physical notorious markets, including foreign trade zones that allegedly facilitate substantial trademark counterfeiting and copyright piracy. To facilitate the review, written comments should be as detailed as possible.

Comments must clearly identify the market and the reasons why the commenter believes that the market should be included in the List.

Commenters should include the following information, as applicable:

- If a physical market, the market's name and location, *e.g.*, common name, street address, neighborhood, shopping district, city, etc., and the identity of the principal owners/operators.

- If an online market:
  - The domain name(s) past and present, available registration information, and name(s) and location(s) of the hosting provider(s) and operator(s).

- Information on the volume of Internet traffic associated with the Web site, including number of visitors and page views, average time spent on the site, estimate of the number of infringing goods offered, sold or traded and number of infringing files streamed, shared, seeded, leached, downloaded, uploaded or otherwise distributed or reproduced, and global or country popularity rating (*e.g.*, Alexa rank).

- Revenue sources such as sales, subscriptions, donations, upload incentives, or advertising and the



methods by which that revenue is collected.

- Whether the market is owned, operated or otherwise affiliated with a government entity.
- Types of counterfeit or pirated products or services sold, traded, distributed or otherwise made available at that market.
- Volume of counterfeit or pirated goods or services or other indicia of a market's scale, reach or relative significance in a given geographic area or with respect to a category of goods or services.
- Estimates of economic harm to right holders resulting from the piracy or counterfeiting and a description of the methodology used to calculate the harm.
- Whether the volume of counterfeit or pirated goods or estimates of harm has increased or decreased from previous years, and an approximate calculation of that increase or decrease for each year.
- Whether the infringing goods or services sold, traded, distributed or made available pose a risk to public health or safety.
- Any known contractual, civil, administrative or criminal enforcement activity against the market and the outcome of that enforcement activity.
- Additional actions taken by rights holders against the market such as takedown notices, requests to sites to remove URLs or infringing content, cease and desist letters, warning letters to landlords and requests to enforce the terms of their leases, requests to providers to enforce their terms of service or terms of use, and the outcome of these actions.
- Additional actions taken by the market owners or operators to remove, limit or discourage the availability of counterfeit or pirated goods or services, including policies to prevent or remove access to such goods or services, or to disable seller or user accounts; the effectiveness of market policies and guidelines in addressing counterfeiting and piracy; and the level of cooperation with right holders and law enforcement.
- Any other additional information relevant to the review.

### III. Submission Instructions

All submissions must be in English and sent electronically via [www.regulations.gov](http://www.regulations.gov). To submit comments, locate the docket (folder) by entering the docket number USTR-2017-0015 in the "Enter Keyword or IP" window at the [www.regulations.gov](http://www.regulations.gov) homepage and click "Search." The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this

notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Comment Now!" You should provide comments in an attached document, and name the file according to the following protocol, as appropriate: Commenter Name or Organization\_2017 Notorious Markets OCR. Please include the following information in the "Type Comment" field: "2017 Out-of-Cycle Review of Notorious Markets." USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) format. If the submission is in another file format, please indicate the name of the software application in the "Type Comment" field. For further information on using the [www.regulations.gov](http://www.regulations.gov) Web site, please select "How to Use Regulations.gov" on the bottom of any page.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comment submitted electronically that contains business confidential information, the file name of the business confidential version should begin with the characters "BC". Any page containing business confidential information must be clearly marked "BUSINESS CONFIDENTIAL" on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and would not customarily be released to the public by the submitter. Additionally, the submitter should type "Business Confidential 2017 Out-of-Cycle Review of Notorious Markets" in the "Comment" field.

Filers of comments containing business confidential information also must submit a public version of their comments. The file name of the public version should begin with the character "P". The non-business confidential version will be placed in the docket at [www.regulations.gov](http://www.regulations.gov) and be available for public inspection.

As noted, USTR strongly urges submitters to file comments through [www.regulations.gov](http://www.regulations.gov). You must make any alternative arrangements in advance of the relevant deadline and before transmitting a comment by contacting USTR at [Special301@ustr.eop.gov](mailto:Special301@ustr.eop.gov).

We will post comments in the docket for public inspection, except business confidential information. You can view comments on the <https://www.regulations.gov> Web site by entering docket number USTR-2017-0015 in the search field on the home page.

**Elizabeth Kendall,**

*Acting Assistant U.S. Trade Representative for Innovation and Intellectual Property, Office of the United States Trade Representative.*

[FR Doc. 2017-17287 Filed 8-15-17; 8:45 am]

**BILLING CODE 3290-F7-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2017-0006]

#### Agency Information Collection Activities; Reinstatement of an Information Collection: Practices of Household Goods Brokers

**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 reinstatement and approval and invites public comment. The FMCSA requests approval to reinstate, with changes, the ICR titled "Practices of Household Brokers" to no longer include one-time costs previously incurred by brokers, and to update other wage related costs that have changed since the last approval. This ICR requires reinstatement because the previous ICR expired on July 31, 2017, before the ICR renewal request could be submitted to OMB for approval. The reinstatement of this ICR is necessary, and FMCSA's responsibility to ensure consumer protection in the transportation of household goods (HHG).

**DATES:** Please send your comments by September 15, 2017. OMB must receive your comments by this date in order to act quickly on the ICR.

**ADDRESSES:** All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA-2017-0006. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of

Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov), or faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Monique Riddick, Commercial Enforcement and Investigations Division, U. S. Department of Transportation, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Telephone: 202-366-8045; email [monique.riddick@dot.gov](mailto:monique.riddick@dot.gov).

**SUPPLEMENTARY INFORMATION:** There were no comments received from the 60-day **Federal Register** notice (82 FR 14102) published on March 16, 2017.

**Background:** FMCSA amended then-existing regulations for brokers in response to Title IV, Subtitle B of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59) and a petition for rulemaking from the American Moving and Storage Association (AMSA). The final rule, titled "Brokers of Household Goods Transportation by Motor Vehicles," (75 FR 72987, Nov. 29, 2010), amended 49 CFR part 371, by providing additional consumer protection responsibilities for brokers of HHG. Specifically, section 4212 of SAFETEA-LU directs the Secretary to require HHG brokers to provide individual shippers with the following information whenever a broker has contact with a shipper or potential shipper:

1. The broker's USDOT number.
2. The FMCSA booklet titled "Your Rights and Responsibilities When You Move."
3. A list of all authorized motor carriers providing transportation of HHG used by the broker and a statement that the broker is not a motor carrier providing transportation of HHG.

The collection of information required in the referenced final rule assists shippers in their business dealings with interstate HHG brokers. The information collected is used by prospective shippers to make informed decisions about contracts, services ordered, executed, and settled. The HHG broker is often the primary contact for individual shippers and in the best position to educate shippers and prepare them for a successful move. The

information collected makes that possible. It also combats deceptive business practices as the information helps enforcement personnel better protect consumers by verifying that shippers are receiving information to which they are entitled by regulation.

HHG brokers are required to provide individual shippers the "Your Rights and Responsibilities When You Move" booklet and the "Ready to Move" brochure. They have the option of providing paper copies or presenting the information through a link on their Internet Web site. The broker is required to document with signed receipts that the individual shipper was provided those materials. HHG brokers are also required to provide the list of HHG motor carriers for which it would arrange transportation to move a potential individual shipper's HHG, and that broker's identification information:

1. Assigned USDOT number; and
2. Address.

With this renewal, FMCSA makes a change to the collection to an adjustment in estimate. A program estimate change of 19,522 annual burden hours is the result of the removal of a 1,000 burden-hours that are no longer applicable. There is also an updated estimate in the number of household goods brokers which also contributes to the change of 19,522 in the calculated burden hours.

**Title:** Practices of Household Goods Brokers.

**OMB Control Number:** 2126-0048.

**Type of Request:** Reinstatement of an information collection.

**Respondents:** Brokers of Household Goods.

**Estimated Number of Respondents:** 543 brokers.

**Estimated Time per Response:** 0.25 hours per day × 240 workdays for transactions per household goods broker; 20 hours per year per broker for Web site/ad modifications; 10 hours per year per household goods broker for creating a list of carriers; 0.5 hours per month × 12 months per household goods broker for confirming required information; 0.083 hour per year × 36.8 explanations on average per household goods broker; 4 hours per year × 5 agreements per household goods broker for annual agreements through turnover; and 10 hours per year per household goods broker for disclosure and records.

**Expiration Date:** July 31, 2017.

**Frequency of Response:** On occasion.

**Estimated Total Annual Burden:** 70,000 hours.

**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 10, 2017.

**Kelly Regal,**

*Associate Administrator, Office of Research and Information Technology.*

[FR Doc. 2017-17307 Filed 8-15-17; 8:45 am]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-2017-0074; Notice No. 1]

#### Addressing Electrode-Induced Rail Pitting From Pressure Electric Welding

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of draft Safety Advisory; request for comment.

**SUMMARY:** This document provides notice of FRA's intent to issue a Safety Advisory alerting railroads, contractors, and the rail welding industry of the potential for electrode-induced rail pitting and fatigue cracking during the pressure electric rail welding process. Based on investigation and research, FRA believes improper electrode contact to the rail during the welding process can result in electrode-induced pitting that may lead to fatigue fracture and ultimately rail failure. The draft Safety Advisory includes recommendations to help the industry prevent electrode-induced rail pitting and to inspect for and then remediate such pitting if it occurs. FRA invites public comment on all aspects of the draft Safety Advisory.

**DATES:** Interested persons are invited to submit comments on the draft Safety Advisory provided below on or before October 16, 2017.

**ADDRESSES:** Comments in response to this notice may be submitted by any of the following methods:

- **Web site:** The Federal eRulemaking Portal, [www.Regulations.gov](http://www.Regulations.gov). Follow the Web site's online instructions for submitting comments.
- **Fax:** 202-493-2251.
- **Mail:** Docket Management Facility, U.S. Department of Transportation,

Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12-140 on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name, docket name, and docket number for this notice, Docket No. FRA-2017-0074; Notice No. 1. 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 Statement in this document.

**FOR FURTHER INFORMATION CONTACT:** Mr. Matthew Brewer, Staff Director, Rail Integrity Division, Office of Railroad Safety, FRA, 500 Broadway, Suite 240, Vancouver, WA 98660, telephone (202) 385-2209; or Mr. Aaron Moore, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone (202) 493-7009.

**SUPPLEMENTARY INFORMATION:**

**Draft Safety Advisory**

FRA routinely conducts investigations of railroad accidents to determine causation and any contributing factors to help the railroad industry implement corrective measures that may prevent similar incidents in the future. Over the past decade, FRA has investigated multiple broken rail accidents in which it found fractures in the rail web. Similarities in the fracture characteristics of the recovered rail fragments in some of these accidents have led FRA to conclude stray arcing may occur during the pressure electric welding process performed to create continuous welded rails.

Pressure electric welding is the process of using a hydraulically-operated welding head that clamps around two opposing rail ends, pressing an electrode on each rail, then hydraulically pulling the rail ends together while arcing current through the electrodes into the rails, causing them to essentially melt together to form a continuous rail. FRA believes stray arcing during this process results in the formation of electrode burns or pits on the web, head, or base of the rail. Fractures in the rail may originate from the electrode pits because they behave

as stress raisers (also referred to as stress concentrations). Fatigue cracks often develop at locations of stress concentration. Once a fatigue crack initiates, the localized stress encourages the growth of the crack, which may potentially lead to rail failure. FRA believes electrode pitting may be a contributing factor, if not the root cause, in some accidents involving rail web cracking.

Figure 1 below shows a photograph of a rail with electrode pits in the web. The location of these electrode pits, when they occur, is typically four to eight inches on either side of the weld. Electrode-induced pitting from pressure electric welding may also occur in the head and base of the rail. At this time, it is unclear whether traditional ultrasonic rail testing can consistently detect electrode-induced pitting.

In 2016, FRA's Office of Railroad Safety requested technical support from The National Transportation Systems Center (Volpe) to study the fatigue and fracture behavior of rails with pitting from electrodes used in welding. Volpe enlisted technical support from the U.S. Army's Benét Laboratories (Benét) to conduct forensic examination of three rail sections with electrode-induced pitting in the web from the pressure electric welding process. FRA obtained these rails from members of the railroad industry. Benét's examination included fractography (the science of studying fracture surfaces to identify the origin and causes of fracture), metallography (the science of studying the microstructure of metals to provide information concerning the properties and processing history of metallic alloys), and testing to determine the chemical composition and tensile mechanical properties of the rail steel. Benét confirmed FRA's hypothesis that electrode-induced web fatigue cracking is a result of pitting caused by inadequate electrode-to-rail contact.

Specifically, Benét's metallurgical analyses concluded the cracking in the rail web originated from the pitting created by inadequate electrode-to-rail contact during the pressure electric welding process. The fractographic and metallographic examinations revealed evidence of fatigue cracking originating from the pitting and fast fracture once the fatigue crack reached a critical length. Figure 2 below shows three photographs of the fracture surface of a crack found in one of the rails Benét examined. These photographs support

the metallurgical evidence indicative of three stages of fatigue fracture: (1) Crack initiation or formation originating from the pitting; (2) crack propagation or growth by metal fatigue; and (3) final rupture or fast fracture. Figure 3 below shows photographs of the microstructure near the electrode pits in each examined rail, providing further evidence the cracking originated from the pitting created by improper electrode contact during welding.

The results from the metallurgical analysis also suggested premature and sudden rail failure may result from high wheel-impact load (e.g., flat wheel), especially in cold-weather environments when the longitudinal rail force is tensile. Results from the chemical analysis and mechanical testing indicated the chemistry and mechanical properties of the rails selected for evaluation were within specifications the American Railway Engineering and Maintenance-of-Way Association (AREMA) published, except for the hardness measurements in one rail, which were slightly lower than the AREMA minimum. Hardness is a measure of the resistance of a material to surface indentation produced by a carbide indenter applied at a given load for a given length of time. The lower hardness in that rail, manufactured in the 1950s, may be attributed to lower concentrations (compared to the other two rails) of alloying elements, specifically carbon, silicon, and chromium, which were still within AREMA tolerances. Testing of the chemistry and the mechanical properties revealed all three rails were made from standard quality steel containing no other defects except the electrode-induced pitting.

FRA presented its concerns about electrode-induced rail pitting and fatigue cracking to the Railroad Safety Advisory Committee's Rail Integrity Working Group. FRA also advised the Working Group that FRA was considering issuing a safety advisory to ensure all parties are aware of the potential for electrode-induced pitting and fatigue cracking (as identified in the figures below) and the pressure electric welding process is performed properly. (FRA has posted a copy of this notice on its public Web site, [www.fra.dot.gov](http://www.fra.dot.gov), where you may view the figures below in their full resolution.)

**BILLING CODE 4910-06-P**

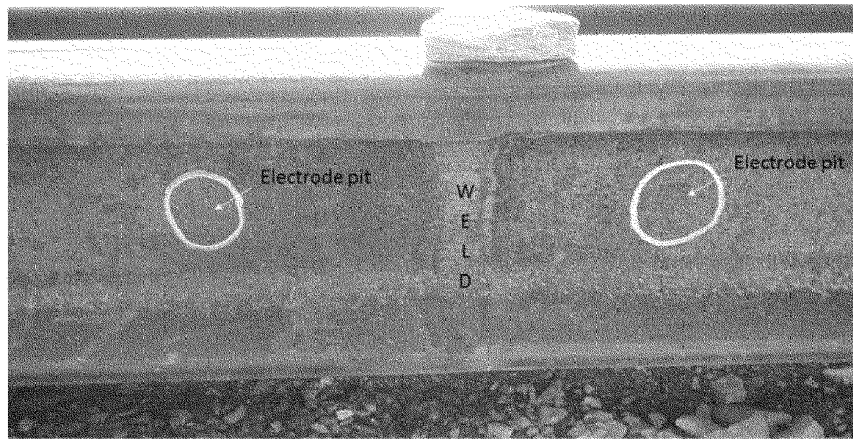


Figure 1: Electrode-Induced Pits in a Rail

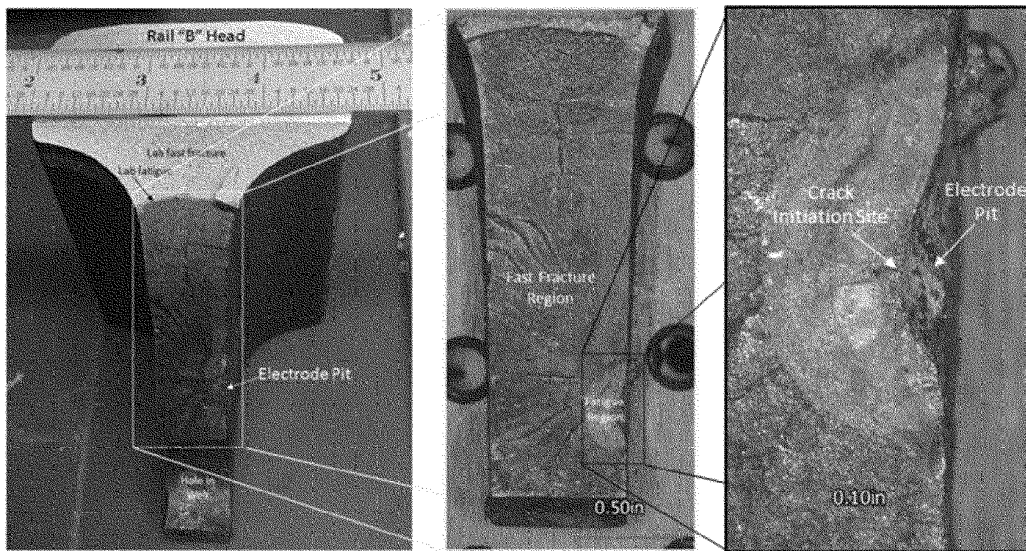


Figure 2: Photographs of Crack Fracture Surface in Examined Rail

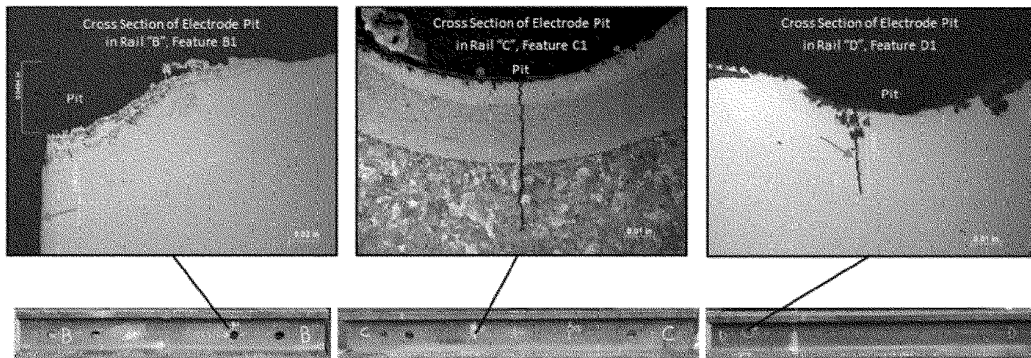


Figure 3: Photographs of Rail Cross Sections

**BILLING CODE 4910-06-C**

*Recommended Action:* Based on the discussion above, and to prevent future electrode-induced pitting and fatigue cracking which may lead to premature

rail failure, FRA recommends railroads, contractors, and the rail welding industry develop and apply appropriate methods to:

1. Prevent electrode-induced rail pitting from occurring by:
  - a. Reviewing proper pre- and post-weld procedures to avoid the development of electrode pitting;

b. Improving welder training programs to ensure consistency in welding procedures, especially for the pressure electric welding process; and

c. Developing and scheduling appropriate pressure electric welding maintenance and rail testing programs.

2. Identify electrode-induced rail pitting by:

a. Inspecting the rail upon completion of welding, and reviewing the documentation in the weld report to help identify if pitting occurred;

b. Visually inspecting existing welds for electrode-induced pitting during routine track inspections; and

c. Considering alternative methods of identifying electrode-induced pitting, such as ultrasonic testing, machine vision, etc.

3. Remediate any identified electrode-induced pitting by:

a. Removing the section of rail containing electrode-induced pitting and re-welding the rail; or

b. Developing and applying possible alternative methods to remove electrode-induced pitting, such as drilling, if electrode-induced pitting is found and the section of rail cannot be readily removed or re-welded.

FRA requests public comment on all aspects of this draft Safety Advisory.

*Privacy Act Statement:* Anyone can search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://www.regulations.gov/#!privacyNotice>.

Issued in Washington, DC, on August 10, 2017.

**Patrick Warren,**  
Executive Director.

[FR Doc. 2017-17285 Filed 8-15-17; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2017-0035; Notice 1]

#### Ride the Ducks International, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Ride the Ducks International, LLC (RTDI), has determined that certain model year (MY) 1996–2014 Ride the Ducks International Stretch Amphibious passenger vehicles (APVs) do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 103, *Windshield Defrosting and Defogging Systems*. RTDI filed a noncompliance information report dated March 15, 2017. RTDI also petitioned NHTSA on April 12, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

**DATES:** The closing date for comments on the petition is September 15, 2017.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to 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 comments by hand to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to [https://www.regulations.gov](https://www.regulations.gov/), including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the

closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477-78).

#### SUPPLEMENTARY INFORMATION:

*I. Overview:* Ride the Ducks International, LLC (RTDI), has determined that certain model year (MY) 1996–2014 Ride the Ducks International Stretch Amphibious passenger vehicles (APVs) do not fully comply with paragraph S4.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 103, *Windshield Defrosting and Defogging Systems*. RTDI filed a noncompliance information report dated March 15, 2017, pursuant to 49 CFR 573, *Defect and Noncompliance Responsibility and Reports*. RTDI also petitioned NHTSA on April 12, 2017, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of RTDI's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

*II. Vehicles Involved:* Approximately 105 MY 1996–2014 Ride the Ducks International Stretch APVs, manufactured between January 1, 1996, and December 31, 2014, are potentially involved.

*III. Noncompliance:* RTDI explained that the noncompliance is that the subject vehicles were manufactured without a windshield defrosting and defogging system, as required by paragraph S4.1 of FMVSS No. 103.

*IV. Rule Text:* Paragraph S4.1 of FMVSS No. 103 states in pertinent part:

S4.1 Each vehicle shall have a windshield defrosting and defogging system

*V. Summary of RTDI's Petition:* As background, in 1996, RTDI began to produce APVs. The original Amphibious Passenger vehicles (APVs) are based on military vehicles that were capable of operation over both land and water. The "Stretch" APVs were refurbished by RTDI in accordance with state and U.S. Coast Guard rules and regulations. These vehicles have renewed hulls that are "stretched" over the original chassis frame and original vehicle components that were replaced with modern equipment. RTDI manufactured the stretch APVs until 2005, when RTDI introduced its "Truck" APVs. The truck APVs are based on military cargo vehicles. RTDI has not manufactured any vehicles since 2014.

RTDI described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, RTDI submitted the following reasoning:

1. FMVSS No. 103 specifies that "[e]ach vehicle shall have a windshield defrosting and defogging system." 49 CFR 571.103, S4(a), S4.1. The purpose of FMVSS No. 103 is to establish minimum performance requirements for vehicle windshield defrosting and defogging systems in order to ensure that the vehicle operator is able to sufficiently see through the windshield.

The APVs have features that are designed to achieve the same purpose as the standard. The APVs' "open-air" design precludes fog from building up on the windshield. Fog buildup on the interior or exterior of a motor vehicle windshield occurs when water condenses on the windshield. For water to condense on a windshield, the air next to the windshield must be humid and the air's dew point—the temperature to which air must be cooled to become saturated with water vapor—must be higher than the windshield's temperature. In other words, humid and warm air must surround a cool windshield. Because of its open-air design, the APVs will not encounter any of the physical conditions that create fog buildup on the windshield. The APVs do not have solid glass windows in the passenger compartment and the rear of the vehicle is also open to the air. The side panels of the driver's compartment are open on both sides of the windshield and the center windshield can be pushed outward and opened when needed. Because of the APVs' design, the ambient air is able to continually circulate within the interior of the vehicle, creating no difference between the temperature or humidity of the air outside and inside the vehicle. In

the unlikely event that fog did accumulate on the windshield, the APVs have windshield wipers to clear the surface and the vehicle operator can also push down the windshield for visibility.

2. Frost builds up on the windshield of a vehicle when the temperature of liquid or condensation on the windshield decreases to the freezing point of water, turning the condensation into frost. The APVs' lack of a defrosting system similarly does not present a safety concern. The APVs are only operated on a seasonal basis and not during the winter months in any location where the vehicles provide tours. The APVs, therefore, are not operated during or exposed to weather conditions that would expose the vehicles to frost or create the need to defrost the windshields. As above, the operator also has the ability to push down the center windshield or use the windshield wipers to increase visibility in the unlikely event of frost.

3. From its inception, the Safety Act has included a provision recognizing that some noncompliances may pose little or no actual safety risk. The Safety Act exempts manufacturers from their statutory obligation to provide notice and remedy upon a determination by NHTSA that a noncompliance is inconsequential to motor vehicle safety. See 49 U.S.C. 30118(d). In applying this recognition to particular fact situations, the agency considers whether the noncompliance gives rise to "a significantly greater risk than . . . in a compliant vehicle." 69 FR 19897, 19900 (April 14, 2000). As described above, the specialized design of the APVs and the vehicles' pattern of use does not expose the vehicles to conditions that could create an increased safety risk when compared to a vehicle that has a windshield defrosting and defogging system installed.

RTDI concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any

decision on this petition only applies to the subject vehicles that RTDI no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after RTDI notified them that the subject noncompliance existed.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.

**Jeffrey M. Giuseppe,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2017-17325 Filed 8-15-17; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2017-0038; Notice 1]

#### Ride the Ducks International, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Ride the Ducks International, LLC (RTDI), has determined that certain model year (MY) 1996–2014 Ride the Ducks International Stretch Amphibious passenger vehicles (APVs) do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 104, *Windshield Wiping and Washing Systems*. RTDI filed a noncompliance information report dated March 15, 2017. RTDI also petitioned NHTSA on April 12, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

**DATES:** The closing date for comments on the petition is September 15, 2017.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to 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 comments by hand to U.S. Department of



Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <https://www.regulations.gov/> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477-78).

#### SUPPLEMENTARY INFORMATION:

*I. Overview:* Ride the Ducks International, LLC (RTDI), has determined that certain model year (MY) 1996-2014 Ride the Ducks International Stretch Amphibious passenger vehicles (APVs) do not fully comply with paragraph S4.2.2 of Federal Motor Vehicle Safety Standard

(FMVSS) No. 104, *Windshield Wiping and Washing Systems*. RTDI filed a noncompliance information report dated March 15, 2017, pursuant to 49 CFR 573, *Defect and Noncompliance Responsibility and Reports*. RTDI also petitioned NHTSA on April 12, 2017, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of RTDI's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

*II. Vehicles Involved:* Approximately 105 MY 1996-2014 Ride the Ducks International Stretch APVs, manufactured between January 1, 1996, and December 31, 2014, are potentially involved.

*III. Noncompliance:* RTDI explained that the noncompliance is that the subject vehicles were manufactured without a windshield washing system, as required by paragraph S4.2.2 of FMVSS No. 104.

*IV. Rule Text:* Paragraph S4.2.2 of FMVSS No. 104 states in pertinent part:

S4.2.2 Each multipurpose passenger vehicle, truck, and bus shall have a windshield washing system that meets the requirements of SAE Recommended Practice J942 (1965) (incorporated by reference, see § 571.5), except that the reference to "the effective wipe pattern defined in SAE J903, paragraph 3.1.2" in paragraph 3.1 of SAE Recommended Practice J942 (1965) shall be deleted and "the pattern designed by the manufacturer for the windshield wiping system on the exterior surface of the windshield glazing" shall be inserted in lieu thereof.

*V. Summary of RTDI's Petition:* As background, in 1996, RTDI began to produce APVs. The original Amphibious Passenger vehicles (APVs) are based on military vehicles that were capable of operation over both land and water. The "Stretch" APVs were refurbished by RTDI in accordance with state and U.S. Coast Guard rules and regulations. These vehicles have renewed hulls that are "stretched" over the original chassis frame and original vehicle components that were replaced with modern equipment. RTDI manufactured the stretch APVs until 2005, when RTDI introduced its "Truck" APVs. The truck APVs are based on military cargo vehicles. RTDI has not manufactured any vehicles since 2014.

RTDI described the subject noncompliance and stated its belief that

the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, RTDI submitted the following reasoning:

1. FMVSS No. 104 specifies, in relevant part, that "each . . . [vehicle] shall have a windshield washing system that meets the requirements of SAE Recommended Practice J942 (1965)" 49 CFR 571.104, S4(a), S4.2.2. This FMVSS is designed to ensure that when activated, the windshield washing system is capable of reaching a sufficient portion of the exterior surface of the windshield, as designed by the manufacturer. The standard establishes minimum performance requirements for the windshield wiping and washing systems so that the vehicle operator is able to sufficiently see through the windshield. The APVs have features installed that are designed to achieve the same purpose as the standard. If there is debris present on the windshield, the driver is able to engage the vehicle's windshield wipers to clear the windshield's exterior surface. Further, the windshield of the APVs have a unique design that allows the driver to fully lower and raise the windshield glass. In the event that the windshield wipers could not clear the surface of the windshield, the driver has the option of lowering the windshield. Under either option, the visibility of the operator would not be compromised.

2. In the water portion of the vehicles' tours, the APVs are required to have the windshield lowered during operation, per U.S. Coast Guard regulations. The Coast Guard has recognized that in the event of an accident on the water, a raised windshield could impede passenger egress. Consequently, the Coast Guard has issued guidance which provides that the windshields of APVs be "designed to fold down with minimal force to allow egress." U.S. Coast Guard Navigation and Inspection Circular (NVIC) 1-01, inspection of Amphibious Passenger Carrying Vehicles, p.24. Further, the APV's exteriors, including the windshields, are washed after each tour, removing any debris that may have accumulated during the last tour.

3. From its inception, the Safety Act has included a provision recognizing that some noncompliances may pose little or no actual safety risk. The Safety Act exempts manufacturers from their statutory obligation to provide notice and remedy upon a determination by NHTSA that a noncompliance is inconsequential to motor vehicle safety. See 49 U.S.C. 30118(d). In applying this recognition to particular fact situations, the agency considers whether the noncompliance gives rise to "a significantly greater risk than . . . in a compliant vehicle." 69 FR 19897, 19900 (April 14, 2000). As described above, the specialized design of the APVs and the vehicles' pattern of use does not expose the vehicles to conditions that could create an increased safety risk when compared to a vehicle that has a windshield washing system installed.

RTDI concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be



exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that RTDI no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after RTDI notified them that the subject noncompliance existed.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.

**Jeffrey M. Giuseppe,**  
Director, Office of Vehicle Safety Compliance.  
[FR Doc. 2017-17326 Filed 8-15-17; 8:45 am]  
**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2017-0063]

#### Autocar Industries, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Autocar Industries, LLC (Autocar Industries), has determined that certain model year (MY) 2014–2018 Autocar Xspotter trucks do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays*. Autocar Industries filed a noncompliance report dated June 12, 2017, and subsequently petitioned NHTSA on June 19, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

**DATES:** The closing date for comments on the petition is September 15, 2017.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to 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 comments by hand to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- **Electronically:** Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to [https://www.regulations.gov](https://www.regulations.gov/), including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at [https://www.regulations.gov](https://www.regulations.gov/) by following the online instructions for accessing the dockets. The docket ID number for this

petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477-78).

#### SUPPLEMENTARY INFORMATION:

**I. Overview:** Autocar Industries has determined that certain MY 2014–2018 Autocar Xspotter trucks do not fully comply with Table 2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays*. Autocar Industries filed a noncompliance report dated June 12, 2017, pursuant to CFR part 573, *Defect and Noncompliance Responsibility and Reports*, and petitioned NHTSA on June 19, 2017, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of their petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

**II. Vehicles Involved:** Approximately 644 MY 2014–2018 Autocar Xspotter trucks, manufactured between September 12, 2013 and August 4, 2017, are potentially involved.




**III. Noncompliance:** Autocar Industries explains that the noncompliance is that the Low Brake Air Pressure telltale for air brake systems displays the word “BRAKE PRESSURE” and the Canadian Motor Vehicle Safety Standard (CMVSS) 101 specified symbol, rather than the words “Brake Air,” as specified in Table 2 of FMVSS No. 101. Autocar Industries states that the telltale is accompanied by an audible alert and pressure gauges.

**IV. Rule Text:** Paragraph S5 of FMVSS No. 101 provides: “Each passenger car, multipurpose passenger vehicle, truck and bus that is fitted with a control, a telltale, or an indicator listed in Table 1 or Table 2 must meet the requirements of this standard for the location, identification, color, and illumination of that control, telltale or indicator.”

Paragraph S5.2.1 of FMVSS No. 101 provides, in pertinent part: “. . . each control, telltale and indicator that is listed in column 1 of Table 1 or Table 2 must be identified by the symbol specified for it in column 2 or the word or abbreviation specified for it in column 3 of Table 1 or Table 2.”

Table 2 appears as follows:

**Table 2**  
**Identifiers for**  
**Controls, Telltales and Indicators with**  
**No Color or Illumination Requirements**

Column 1 ITEM	Column 2 SYMBOL	Column 3 WORD(S) OR ABBREVIATION
Hand Throttle Control	—	Throttle
Engine Start Control	—	Engine Start, <sup>1</sup>
Manual Choke Control	—	Choke
Odometer	—	Kilometers or km, if kilometers are shown. Otherwise, no identifier is required. <sup>2</sup>
Horn		Horn
Master Lighting Switch		Lights
Headlamps and Taillamps Control	—	— <sup>4,5</sup>
Low Brake Air Pressure Telltale (for vehicles subject to FMVSS 121)	—	Brake Air
Seat Belt Unfastened Telltale		Fasten Belts or Fasten Seat Belts

*Notes:*

1. Use when engine control is separate from the key locking system.
2. Any combination of upper- or lowercase letters may be used.
3. Framed areas may be filled.
4. If a line appears in Column 2 and Column 3, the Control, Telltale or Indicator is required to be identified, however the form of the identification is the manufacturer's option.
5. Separate identification not required if function is combined with Master Lighting Switch.

*V. Summary of Petition:* Autocar Industries described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Autocar Industries submitted the following reasoning:

(a) Autocar Industries notes that the purpose of the low brake air pressure telltale is to alert the driver to a low air condition, consistent with the requirements of FMVSS No. 121, S5.1.5 (warning signal). The words “BRAKE PRESSURE” instead of “BRAKE AIR,” the CMVSS required symbol, and an audible alert that occurs in the subject vehicles would alert the driver to an air issue with the brake system. Once alerted, the driver can check the actual air pressure by reading the primary and secondary air gauges and seeing the

contrasting color on the gauges indicating low pressure.

(b) NHTSA stated in a 2005 FMVSS No. 101 rulemaking that the reason for including vehicles over 10,000 pounds GVWR in the application of the standard is that drivers of heavier vehicles need to see and identify their displays, just like drivers of lighter vehicles. See 70 FR 48295, 48298 (Aug. 17, 2005). Drivers of commercial vehicles conduct pre-trip daily inspections. For vehicles with pneumatic brake systems, the in-cab air brake checks for warning light and buzzer, at 60 PSI, would familiarize the driver with the specific telltale displayed and audible warning in the event a low-air condition occurred during operation.

(c) There are two scenarios when a low brake air pressure condition would

exist: A parked vehicle and a moving vehicle. In both conditions, the driver would be alerted to a low-air condition by the following means:

- Red contrasting color of the telltale indicating “BRAKE PRESSURE”
- Audible alert to the driver as long as the vehicle has low air
- Air pressure gauges for the primary and secondary air reservoirs clearly indicating the level of air pressure in the system

• Red contrasting color on the air gauges indicating pressure below 60 PSI

The functionality of both the parking brake system and the service brake system remains unaffected by using “BRAKE PRESSURE” instead of “Brake Air” for the telltale in the subject vehicles.

(d) NHTSA Precedents—Autocar Industries notes that NHTSA has

previously granted petitions for decisions of inconsequential noncompliance for similar brake telltale issues. See Docket No. NHTSA–2012–0004, 78 FR 69931 (November 21, 2013) (grant of petition for Ford Motor Company); Docket No. NHTSA–2014–0046, 79 FR 78559 (December 30, 2014) (grant of petition for Chrysler Group, LLC); and Docket No. NHTSA–2016–0103, 82 FR 17084 (April 7, 2017) (grant of petition for Daimler Trucks North America). In all of these instances, the vehicles at issue did not have the exact requirements listed in FMVSS No. 101 table 2. The available warnings were deemed sufficient to provide the necessary driver warning. Autocar Industries respectfully suggests that the same is true for the subject vehicles: The red “BRAKE PRESSURE” telltale, the audible alert, and the contrasting colors on the air pressure gauges are fully sufficient to warn the driver of a low brake air pressure situation.

Autocar Industries concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

To view Autocar Industries’ petition analyses in its entirety you can visit <https://www.regulations.gov> by following the online instructions for accessing the dockets and by using the docket ID number for this petition shown in the heading of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Autocar Industries no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Autocar Industries notified them that the subject noncompliance existed.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.

**Jeffrey M. Giuseppe,**  
*Director, Office of Vehicle Safety Compliance.*  
[FR Doc. 2017–17329 Filed 8–15–17; 8:45 am]  
**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0064]

#### Autocar Industries, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Autocar Industries, LLC (Autocar Industries), has determined that certain model year (MY) 2014–2018 Autocar Xpert trucks do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays*. Autocar Industries filed a noncompliance report dated June 12, 2017, and subsequently petitioned NHTSA on June 19, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

**DATES:** The closing date for comments on the petition is September 15, 2017.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to 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 comments by hand to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

- **Electronically:** Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT’s complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

#### SUPPLEMENTARY INFORMATION:

*I. Overview:* Autocar Industries has determined that certain MY 2014–2018 Autocar Xpert trucks do not fully comply with Table 2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays*. Autocar Industries filed a noncompliance report dated June 12, 2017, pursuant to CFR part 573, *Defect and Noncompliance Responsibility and Reports*, and petitioned NHTSA on June 19, 2017, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of their petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of

judgment concerning the merits of the petition.

*II. Vehicles Involved:* Approximately 522 MY 2014–2018 Autocar Xpert trucks, manufactured between September 5, 2013 and September 5, 2017, are potentially involved.

*III. Noncompliance:* Autocar Industries explains that the noncompliance is that the Low Brake Air Pressure telltale for air brake systems displays the International

Standards Organization (ISO) symbol for brake malfunction rather than the words “Brake Air,” as specified in Table 2 of FMVSS No. 101. Autocar Industries states that the telltale is accompanied by an audible alert and pressure gauges.




*IV. Rule Text:* Paragraph S5 of FMVSS No. 101 provides: “Each passenger car, multipurpose passenger vehicle, truck and bus that is fitted with a control, a telltale, or an indicator listed in Table 1 or Table 2 must meet the requirements

of this standard for the location, identification, color, and illumination of that control, telltale or indicator.”

Paragraph S5.2.1 of FMVSS No. 101 provides, in pertinent part: “. . . each control, telltale and indicator that is listed in column 1 of Table 1 or Table 2 must be identified by the symbol specified for it in column 2 or the word or abbreviation specified for it in column 3 of Table 1 or Table 2.”

Table 2 appears as follows:

**Table 2  
Identifiers for  
Controls, Telltales and Indicators with  
No Color or Illumination Requirements**

Column 1 ITEM	Column 2 SYMBOL	Column 3 WORD(S) OR ABBREVIATION
Hand Throttle Control	—	Throttle
Engine Start Control	—	Engine Start <sub>1</sub>
Manual Choke Control	—	Choke
Odometer	—	Kilometers or km, if kilometers are shown. Otherwise, no identifier is required. <sub>2</sub>
Horn		Horn
Master Lighting Switch		Lights <sub>3</sub>
Headlamps and Taillamps Control	—	— <sub>4,5</sub>
Low Brake Air Pressure Telltale (for vehicles subject to FMVSS 121)	—	Brake Air
Seat Belt Unfastened Telltale		Fasten Belts or Fasten Seat Belts

*Notes:*

1. Use when engine control is separate from the key locking system.
2. Any combination of upper- or lowercase letters may be used.
3. Framed areas may be filled.
4. If a line appears in Column 2 and Column 3, the Control, Telltale or Indicator is required to be identified, however the form of the identification is the manufacturer's option.
5. Separate identification not required if function is combined with Master Lighting Switch.

*V. Summary of Petition:* Autocar Industries described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Autocar Industries submitted the following reasoning:

(a) Autocar Industries notes that the purpose of the low brake air pressure telltale is to alert the driver to a low air condition, consistent with the requirements of FMVSS No. 121, S5.1.5 (warning signal). The ISO symbol for brake malfunction instead of “Brake Air,” an audible alert that occurs in the

subject vehicles would alert the driver to an air issue with the brake system. Once alerted, the driver can check the actual air pressure by reading the primary and secondary air gauges and seeing the contrasting color on the gauges indicating low pressure.

(b) NHTSA stated in a 2005 FMVSS No. 101 rulemaking that the reason for including vehicles over 10,000 pounds GVWR in the application of the standard is that drivers of heavier vehicles need to see and identify their displays just like drivers of lighter vehicles. See 70 FR 48295, 48298 (Aug. 17, 2005). Drivers of commercial vehicles conduct pre-trip daily inspections. For vehicles with pneumatic brake systems, the in-cab air brake checks for warning light and buzzer, at 60 PSI, would familiarize the driver with the specific telltale displayed and audible warning in the event a low-air condition occurred during operation.

(c) There are two scenarios when a low brake air pressure condition could exist: a parked vehicle and a moving vehicle. In both conditions, the driver would be alerted to a low-air condition by the following means:

- Red contrasting color of the ISO brake malfunction telltale.
- Audible alert to the driver as long as the vehicle has low air.
- Dual indicator air pressure gauge for the primary and secondary air reservoirs clearly indicating the level of air pressure in the system.
- Red contrasting color on the air gauges indicating pressure below 60 PSI.

The functionality of both the parking brake system and the service brake system remains unaffected by using the ISO symbol for brake malfunction instead of “Brake Air” for the telltale in the subject vehicles.

(d) NHTSA Precedents—Autocar Industries notes that NHTSA has previously granted petitions for decisions of inconsequential noncompliance for similar brake telltale issues. See Docket No. NHTSA–2012–0004, 78 FR 69931 (November 21, 2013) (grant of petition for Ford Motor Company); Docket No. NHTSA–2014–0046, 79 FR 78559 (December 30, 2014) (grant of petition for Chrysler Group, LLC); and Docket No. NHTSA–2016–0103, 82 *Federal Register* 17084 (April 7, 2017) (grant of petition for Daimler Trucks North America). In all of these instances, the vehicles at issue did not have the exact requirements listed in FMVSS No. 101 table 2. The available warnings were deemed sufficient to provide the necessary driver warning. Autocar Industries respectfully suggests that the same is true for the subject vehicles: the red “BRAKE PRESSURE” telltale, the audible alert, and the contrasting colors on the air pressure gauges are fully sufficient to warn the driver of a low brake air pressure situation.

Autocar Industries concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

To view Autocar Industries’ petition analyses in its entirety you can visit <https://www.regulations.gov> by following the online instructions for accessing the dockets and by using the docket ID number for this petition shown in the heading of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Autocar Industries no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Autocar Industries notified them that the subject noncompliance existed.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.

**Jeffrey M. Giuseppe,**  
*Director, Office of Vehicle Safety Compliance.*  
[FR Doc. 2017–17330 Filed 8–15–17; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0065]

#### Autocar, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Autocar, LLC (Autocar), has determined that certain model year

(MY) 2014–2018 Autocar Xpeditor trucks do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays*. Autocar filed a noncompliance report dated June 14, 2017, and subsequently petitioned NHTSA on June 19, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

**DATES:** The closing date for comments on the petition is September 15, 2017.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to 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 comments by hand to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

- **Electronically:** Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also

be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477-78).

**SUPPLEMENTARY INFORMATION:**

*I. Overview:* Autocar, LLC (Autocar), has determined that certain MY 2014-2018 Autocar Xpeditor trucks do not fully comply with Table 2 of Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays*. Autocar filed a noncompliance report dated June

14, 2017, pursuant to CFR part 573, *Defect and Noncompliance Responsibility and Reports*, and petitioned NHTSA on June 19, 2017, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of their petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

*II. Vehicles Involved:* Approximately 5,545 MY 2014-2018 Autocar Xpeditor trucks, manufactured between September 3, 2013 and June 2, 2017, are potentially involved.

*III. Noncompliance:* Autocar explains that the noncompliance is that the Low Brake Air Pressure telltale for air brake system displays the word "BRAKE




PRESSURE" and the Canadian Motor Vehicle Safety Standard (CMVSS) 101 specified symbol, rather than the words "Brake Air," as specified in Table 2 of FMVSS No. 101. Autocar states that the telltale is accompanied by an audible alert and pressure gauges.

*IV. Rule Text:* Paragraph S5 of FMVSS No. 101 provides: "Each passenger car, multipurpose passenger vehicle, truck and bus that is fitted with a control, a telltale, or an indicator listed in Table 1 or Table 2 must meet the requirements of this standard for the location, identification, color, and illumination of that control, telltale or indicator."

Paragraph S5.2.1 of FMVSS No. 101 provides, in pertinent part: ". . . each control, telltale and indicator that is listed in column 1 of Table 1 or Table 2 must be identified by the symbol specified for it in column 2 or the word or abbreviation specified for it in column 3 of Table 1 or Table 2."

Table 2 appears as follows:

**Table 2  
Identifiers for  
Controls, Telltales and Indicators with  
No Color or Illumination Requirements**

Column 1 ITEM	Column 2 SYMBOL	Column 3 WORD(S) OR ABBREVIATION
Hand Throttle Control	—	Throttle
Engine Start Control	—	Engine Start <sub>1</sub>
Manual Choke Control	—	Choke
Odometer	—	Kilometers or km, if kilometers are shown. Otherwise, no identifier is required. <sub>2</sub>
Horn		Horn
Master Lighting Switch		Lights
Headlamps and Taillamps Control	—	— <sub>4,5</sub>
Low Brake Air Pressure Telltale (for vehicles subject to FMVSS 121)	—	Brake Air
Seat Belt Unfastened Telltale		Fasten Belts or Fasten Seat Belts

*Notes:*

- Use when engine control is separate from the key locking system.
- Any combination of upper- or lowercase letters may be used.
- Framed areas may be filled.
- If a line appears in Column 2 and Column 3, the Control, Telltale or Indicator is required to be identified, however the form of the identification is the manufacturer's option.
- Separate identification not required if function is combined with Master Lighting Switch.

*V. Summary of Autocar's Petition:* Autocar described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Autocar submitted the following reasoning:

(a) Autocar notes that the purpose of the low brake air pressure telltale is to alert the driver to a low air condition, consistent with the requirements of FMVSS No. 121, S5.1.5 (warning signal). The words "BRAKE PRESSURE" instead of "Brake Air," the CMVSS required symbol, and an audible alert that occurs in the subject vehicles would alert the driver to an air issue with the brake system. Once alerted, the driver can check the actual air pressure by reading the primary and secondary air gauges and seeing the contrasting color on the gauges indicating low pressure.

(b) NHTSA stated in a 2005 FMVSS No. 101 rulemaking that the reason for including vehicles over 10,000 pounds GVWR in the application of the standard is that drivers of heavier vehicles need to see and identify their displays just like drivers of lighter vehicles. See 70 FR 48295, 48298 (Aug. 17, 2005). Drivers of commercial vehicles conduct pre-trip daily inspections. For vehicles with pneumatic brake systems, the in-cab air brake checks for warning light and buzzer, at 60 PSI, would familiarize the driver with the specific telltale displayed and audible warning in the event a low-air condition occurred during operation.

(c) There are two scenarios when a low brake air pressure condition could exist: A parked vehicle and a moving vehicle. In both conditions, the driver would be alerted to a low-air condition by the following means:

- Red contrasting color of the telltale indicating "BRAKE PRESSURE"
- Audible alert to the driver as long as the vehicle has low air
- Air pressure gauges for the primary and secondary air reservoirs clearly indicating the level of air pressure in the system
- Red contrasting color on the air gauges indicating pressure below 60 PSI

The functionality of both the parking brake system and the service brake system remains unaffected by using "BRAKE PRESSURE" instead of "Brake Air" for the telltale in the subject vehicles.

(d) NHTSA Precedents—Autocar notes that NHTSA has previously granted petitions for decisions of inconsequential noncompliance for

similar brake telltale issues. See Docket No. NHTSA–2012–0004, 78 FR 69931 (November 21, 2013) (grant of petition for Ford Motor Company); Docket No. NHTSA–2014–0046, 79 FR 78559 (December 30, 2014) (grant of petition for Chrysler Group, LLC); and Docket No. NHTSA–2016–0103, 82 **Federal Register** 17084 (April 7, 2017) (grant of petition for Daimler Trucks North America). In all of these instances, the vehicles at issue did not have the exact requirements listed in FMVSS No. 101 table 2. The available warnings were deemed sufficient to provide the necessary driver warning. Autocar respectfully suggests that the same is true for the subject vehicles: the red "BRAKE PRESSURE" telltale, the audible alert, and the contrasting colors on the air pressure gauges are fully sufficient to warn the driver of a low brake air pressure situation.

Autocar concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

To view Autocar's petition analyses in its entirety you can visit <https://www.regulations.gov> by following the online instructions for accessing the dockets and by using the docket ID number for this petition shown in the heading of this notice.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Autocar no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Autocar notified them that the subject noncompliance existed.

**Authority:** 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8.

**Jeffrey M. Giuseppe,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2017–17331 Filed 8–15–17; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee: VA National Academic Affiliations Council Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the VA National Academic Affiliations Council (NAAC) will meet via conference call on September 12, 2017, from 11:00 a.m. to 1:00 p.m. EST. The meeting is open to the public.

The purpose of the Council is to advise the Secretary on matters affecting partnerships between VA and its academic affiliates.

On September 12, 2017, the Council will explore current regulatory proposals to limit the duration of administrative leave available to Federal employees and the possible impact on VA's educational mission; discuss the prohibition on VA employees engaging in teaching activities with for-profit educational institutions; prioritize previous Council recommendations for renewed policy focus; and receive updates on: VA's graduate medical education expansion initiative, the NAAC's Diversity and Inclusion Subcommittee, and VA's August 2017 Health Professions Education Summit in Iron Mountain, MI. The Council will receive public comments from 12:45 p.m. to 1:00 p.m. EST.

Interested persons may attend and/or present oral statements to the Council. The dial in number to attend the conference call is: 1–800–767–1750. At the prompt, enter access code 45206 then press #. Individuals seeking to present oral statements are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Oral presentations will be limited to five minutes or less, depending on the number of participants. Additionally, interested parties may also provide written comments for review by the Council prior to the meeting or at any time, via email to [Steve.Trynosky@va.gov](mailto:Steve.Trynosky@va.gov), or by mail to Stephen K. Trynosky J.D., M.P.H., M.M.A.S., Designated Federal Officer, Office of Academic Affiliations (10A2D), 810 Vermont Avenue NW., Washington, DC



20420. Any member of the public wishing to participate or seeking additional information should contact

Mr. Trynosky via email or by phone at (202) 461-6723.

Dated: August 11, 2017.

**Jelessa M. Burney,**  
*Federal Advisory Committee Management Officer.*

[FR Doc. 2017-17294 Filed 8-15-17; 8:45 am]

**BILLING CODE 8320-01-P**



# FEDERAL REGISTER

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Vol. 82

Wednesday,

No. 157

August 16, 2017

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Part II

The President

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Notice of August 15, 2017—Continuation of the National Emergency With Respect to Export Control Regulations



## Title 3—

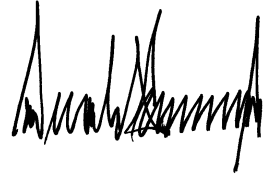
Notice of August 15, 2017

## The President

**Continuation of the National Emergency With Respect to Export Control Regulations**

On August 17, 2001, the President issued Executive Order 13222 pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). In that order, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States related to the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. 4601 *et seq.*). Because the Congress has not renewed the Export Administration Act, the national emergency declared on August 17, 2001, must continue in effect beyond August 17, 2017. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13222, as amended by Executive Order 13637 of March 8, 2013.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,  
*August 15, 2017.*

# Reader Aids

Federal Register

Vol. 82, No. 157

Wednesday, August 16, 2017

## CUSTOMER SERVICE AND INFORMATION

<b>Federal Register/Code of Federal Regulations</b>	
General Information, indexes and other finding aids	<b>202-741-6000</b>
<b>Laws</b>	<b>741-6000</b>
<b>Presidential Documents</b>	
Executive orders and proclamations	<b>741-6000</b>
<b>The United States Government Manual</b>	<b>741-6000</b>
<b>Other Services</b>	
Electronic and on-line services (voice)	<b>741-6020</b>
Privacy Act Compilation	<b>741-6050</b>
Public Laws Update Service (numbers, dates, etc.)	<b>741-6043</b>

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**CFR Checklist.** Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at <http://bookstore.gpo.gov/>.

## FEDERAL REGISTER PAGES AND DATE, AUGUST

35623-35882.....	1
35883-36076.....	2
36077-36318.....	3
36319-36686.....	4
36687-36990.....	7
36991-37170.....	8
37171-37294.....	9
37295-37510.....	10
37511-37804.....	11
37805-38590.....	14
38591-38820.....	15
38821-39006.....	16

## CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

### 1 CFR

<b>Proposed Rules:</b>	
Ch. IV .....	35689, 35697
Ch. VI .....	35689, 35697

### 3 CFR

<b>Proclamations:</b>	
9629 .....	35881

### Administrative Orders:

<b>Notices:</b>	
Notice of August 15, 2017 .....	39005

### 4 CFR

<b>Proposed Rules:</b>	
81 .....	37545

### 5 CFR

9401 .....	35883
------------	-------

### 7 CFR

1 .....	37171
319 .....	38591
929 .....	36991
1205 .....	38595

### Proposed Rules:

1051 .....	37827
------------	-------

### 9 CFR

530 .....	37295
531 .....	37295
532 .....	37295
533 .....	37295
534 .....	37295
537 .....	37295
539 .....	37295
540 .....	37295
541 .....	37295
544 .....	37295
548 .....	37295
550 .....	37295
552 .....	37295
555 .....	37295
557 .....	37295
559 .....	37295
560 .....	37295
561 .....	37295

### Proposed Rules:

94 .....	37546
----------	-------

### 10 CFR

72 .....	37511
429 .....	36858
431 .....	36858
835 .....	37512

### Proposed Rules:

429 .....	37031
430 .....	36349, 37031, 38613

### 12 CFR

1026 .....	37656
------------	-------

### Proposed Rules:

44 .....	36692
741 .....	35705
1026 .....	37794

### 13 CFR

#### Proposed Rules:

Ch. I .....	38617
-------------	-------

### 14 CFR

25 .....	35623, 36319, 36320, 36322, 36326, 36328, 37805, 37806, 37811
39 .....	35628, 35630, 35634, 35636, 35638, 35641, 35644, 35647, 35888, 37172, 37296
71 .....	35649, 36077, 36078, 37514, 37814, 38821, 38822
97 .....	35890, 35896

#### Proposed Rules:

39 .....	35911, 35917, 37360, 37366, 37546, 37549, 37554, 38618, 38621, 38623, 38626, 38629, 38632, 38634, 38637, 38641
71 .....	35714, 35716, 35918, 36103, 36105, 37369, 38856, 38857
91 .....	35920, 36697

### 15 CFR

740 .....	38764
772 .....	38764
774 .....	38764
902 .....	36991

### 16 CFR

1015 .....	37004
------------	-------

#### Proposed Rules:

Ch. II .....	36705
--------------	-------

### 21 CFR

133 .....	37815
573 .....	38595

### 26 CFR

1 .....	37817
---------	-------

### 28 CFR

16 .....	35651
----------	-------

### 29 CFR

4022 .....	38597
------------	-------

### 30 CFR

1202 .....	36934
1206 .....	36934

### 32 CFR

706 .....	35898
-----------	-------

### 33 CFR

100 .....	35654, 37010, 37174,
-----------	----------------------

38598, 38823  
 117 .....35655, 36332, 36687,  
 37011, 37299, 38600, 38602  
 147 .....37176  
 165 .....35655, 35900, 36333,  
 36688, 37299, 37515, 37517,  
 37520, 38603  
**Proposed Rules:**  
 100 .....35717  
 110 .....38643  
 165 .....37182

**34 CFR**  
**Proposed Rules:**  
 Subtitle A .....37555  
 Ch. I .....37555  
 Ch. II .....37555  
 Ch. III .....37555  
 Ch. IV .....37555  
 Ch. V .....37555  
 Ch. VI .....37555  
 Ch. VII .....37555

**37 CFR**  
**Proposed Rules:**  
 202 .....38859

**38 CFR**  
 4 .....36080  
 36 .....35902  
 60 .....35905

**Proposed Rules:**  
 4 .....35719  
 61 .....35922, 38646

**39 CFR**  
**Proposed Rules:**  
 3050 .....36705, 36706, 37036

**40 CFR**  
 52 .....37012, 37013, 37015,  
 37020, 37025, 37299, 37305,  
 37307, 37308, 37310, 37316,  
 37817, 37819, 38604, 38605,  
 38825, 38828, 38832, 38834,  
 38838, 38841  
 60 .....36688, 37822  
 62 .....35906, 36335  
 81 .....37318  
 180 .....36086, 36090, 36335,  
 38844, 38846, 38849  
 271 .....37319  
 300 .....36095  
 710 .....37520

**Proposed Rules:**  
 52 .....35734, 35738, 35922,  
 36707, 37037, 37371, 37374,  
 37375, 37378, 37379, 37384,  
 37389, 37829, 38646, 38651,  
 38654, 38660, 38864, 38865,  
 38866, 38874  
 63 .....36713  
 80 .....37184

192 .....35924  
 271 .....37396  
 300 .....36106

**42 CFR**  
 405 .....37990  
 409 .....36530  
 411 .....36530  
 412 .....36238, 37990  
 413 .....36530, 37990  
 414 .....37990  
 416 .....37990  
 418 .....36638  
 424 .....36530  
 486 .....37990  
 488 .....36530, 37990  
 489 .....37990  
 495 .....37990

**45 CFR**  
 1600 .....37327  
 1629 .....37177  
 1630 .....37327  
 1631 .....37327

**47 CFR**  
 25 .....37027  
 73 .....37354  
 74 .....37354  
 76 .....35658  
 79 .....37345

**Proposed Rules:**  
 64 .....37830

**48 CFR**  
 1852 .....38852

**Proposed Rules:**  
 252 .....35741

**49 CFR**  
 383 .....36101  
 1002 .....35906

**Proposed Rules:**  
 240 .....37038  
 242 .....37038  
 389 .....36719  
 391 .....37038

**50 CFR**  
 300 .....36341, 37824  
 622 .....35658, 36102, 36344  
 635 .....36689, 37825, 38853  
 648 .....35660, 35686, 37359  
 660 .....35687  
 679 .....35910, 36348, 36991,  
 38611, 38612

**Proposed Rules:**  
 17 .....37397  
 20 .....36308, 38664  
 32 .....37398  
 300 .....36724  
 680 .....36111

---

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**LIST OF PUBLIC LAWS**

---

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.

Last List August 8, 2017

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